

**RULE 1.17. SALE OF LAW PRACTICE.**

August 27, 2003

A lawyer or a law firm may sell or purchase a law practice, or an area of law practice, including good will, if the following conditions are satisfied:

- (a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, in the State in which the practice has been conducted;
- (b) The practice, or the entire area of practice, is sold as ~~an entirety to another lawyer or law firm~~ to one or more lawyers or law firms;
- (c) ~~Actual~~ The seller gives written notice ~~is given~~ to each of the seller's clients regarding:
  - (1) the proposed sale;
  - (2) the client's right to retain other counsel or to take possession of the file; and,
  - (3) the fact that the client's consent to the sale will be presumed if the client does not take any action or does not otherwise object within ~~sixty (60)~~ ninety (90) days of receipt of the notice.

~~The purchaser shall also cause an announcement or notice of the purchase and transfer of the practice to be published, on two consecutive weeks, in a newspaper of general circulation within the county in which the practice is located at least thirty days in advance of the effective date of the transfer.~~

If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by the court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

- (d) ~~The purchaser shall honor the fee agreements that were entered into between the seller and the seller's clients.~~ The fees charged clients shall not be increased by reason of the sale.
- (e) In every instance in which a law practice in its entirety is sold, the selling attorney, or the legal representative thereof, in the case of a deceased, disabled or disappeared attorney, shall within twenty (20) days of the completion of the sale, file an affidavit with the Committee on Professional Conduct that he or she has complied with the requirements of notice contained within this provision, to include proof of publication, along with a list of clients so notified and an exemplar of such notice. Such affidavit shall also contain the address where communications may thereafter be directed to the affiant.

**COMMENT:**

[1] The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer or an entire firm ceases to practice, or ceases to practice in an area of law, and ~~another lawyer~~ other lawyers or ~~firm takes~~ firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See Rules 5.4 and 5.6.

### **Termination of Practice by the Seller**

[2] The requirement that all of the private practice, or all of an area of practice, be sold is satisfied if the seller in good faith makes the entire practice, or the area of practice, available for sale to the ~~purchaser~~ purchasers. The fact that a number of the seller's clients decide not to be represented by the ~~purchaser~~ purchasers but take their matters elsewhere, therefore, does not result in a violation. ~~Neither does a return~~ Return to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation. For example, a lawyer who has sold the practice to accept an appointment to judicial office does not violate the requirement that the sale be attendant to cessation of practice if the lawyer later resumes private practice upon being defeated in a contested or a retention election for the office or resigns from a judiciary position.

[3] The requirement that the seller cease to engage in the private practice of law does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to a business.

[4] The Rule permits a sale of an entire practice attendant upon retirement from the private practice of law within the jurisdiction. Its provisions, therefore, accommodate the lawyer who sells the practice upon the occasion of moving to another state.

[5] This Rule also permits a lawyer or law firm to sell an area of practice. If an area of practice is sold and the lawyer remains in the active practice of law, the lawyer must cease accepting any matters in the area of practice that has been sold, either as counsel or co-counsel or by assuming joint responsibility for a matter in connection with the division of a fee with another lawyer as would otherwise be permitted by Rule 1.5(e). For example, a lawyer with a substantial number of estate planning matters and a substantial number of probate administration cases may sell the estate planning portion of the practice but remain in the practice of law by concentrating on probate administration; however, that practitioner may not thereafter accept any estate planning matters. Although a lawyer who leaves a jurisdiction or geographical area typically would sell the entire practice, this Rule permits the lawyer to limit the sale to one or more areas of the practice, thereby preserving the lawyer's right to continue practice in the areas of the practice that were not sold.

### **Single Purchaser Sale of Entire Practice or Entire Area of Practice**

[6] The Rule requires a single purchaser that the seller's entire practice, or an entire area of practice, be sold. The prohibition against ~~piecemeal~~ sale of a less than an entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. ~~The purchaser is~~ purchasers are required to undertake all client matters in the practice or practice area, subject to client consent. ~~If This requirement is satisfied,~~ however, ~~the~~ even if a purchaser is unable to undertake ~~all a particular client matters matter~~ because of a conflict of interest ~~in a specific matter respecting which the purchaser is not permitted by Rule 1.7 or another rule to represent the client,~~ the requirement that there be a single purchaser is nevertheless satisfied.

### **Client Confidences, Consent and Notice**

[7] Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Model Rule 1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. Providing the purchaser access to client-specific information relating to the representation and to the file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale, including the identity of the purchaser and must be told that the decision to consent or make other arrangements must be made ~~within 60~~ 90 days. If nothing is heard from the client within that time, consent to the sale is presumed.

[8] A lawyer or law firm ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. Since these clients cannot themselves consent to the purchase or direct any other disposition of their files, the Rule ~~presumes consent if notice is sent to the client's last known address in the file and no response to the notice is received, and if notice is published in accordance with this Rule. No client will be left without representation.~~ requires an order from a court having jurisdiction authorizing their transfer or other disposition. The Court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered in camera.

[9] All the elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice or area of practice.

### **Fee Arrangements Between Client and Purchaser**

[10] The sale may not be financed by increases in fees charged the clients of the practice.

Existing agreements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

### **Other Applicable Ethical Standards**

[11] Lawyers participating in the sale of a law practice or a practice area are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.1); the obligation to avoid disqualifying conflicts, and to secure ~~client~~ the client's informed consent after consultation for those conflicts that can be agreed to (see Rule 1.7 regarding conflicts and Rule 1.0(e) for the definition of informed consent); and the obligation to protect information relating to the representation (see Rules 1.6 and 1.9).

[12] If approval of the substitution of the purchasing lawyer for the selling lawyer is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale (see Rule 1.16).

### **Applicability of the Rule**

[13] This Rule applies to the sale of a law practice by representatives of a deceased, disabled or disappeared lawyer. Thus, the seller may be represented by a non-lawyer representative not subject to these Rules. Since, however, no lawyer may participate in a sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

[14] Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.

[15] This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice or an area of practice.