

1 Rule 1.17. Sale of ~~L~~law ~~P~~practice.

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

4 (a) The seller ceases to engage in the private practice of law, or in the area of  
5 practice that has been sold in the geographic area in which the practice has been  
6 conducted;

7 (b) The entire practice, or the entire area of practice, is sold to one or more lawyers  
8 or law firms;

9 (c) The seller gives written notice ~~is given~~ to each of the seller's clients regarding:

10 (c)(a1) the proposed sale; ~~(b) and~~ the terms identity of ~~any proposed change in~~ the  
11 ~~fee arrangement purchaser~~;

12 (c)(e2) the client's right to retain other counsel or to take possession of the file; and

13 (c)(d3) the fact that the client's consent to the sale transfer of the client's files will be  
14 presumed if the client does not take any action or does not otherwise ~~respond object~~  
15 within ~~90 days of ninety (90) days of mailing of the notice; and~~

16 (d) The fees charged clients are not increased by reason of the sale.

17 Comment

18 [1] The practice of law is a profession, not merely a business. Clients are not  
19 commodities who can be purchased and sold at will. Pursuant to this Rule, when a  
20 lawyer or an entire firm ceases to practice, or ceases to practice in an area of law, and  
21 other lawyers or firms take over the representation, the selling lawyer or firm may obtain  
22 compensation for the reasonable value of the practice as may withdrawing partners of  
23 law firms. See Rules 5.4 and 5.6.

24 Notification

25 In complying with this ~~r~~Rule, a seller must undertake ~~due diligence reasonable steps~~  
26 in locating the clients who would be subject to the sale of the practice or area of clients  
27 ~~who would be subject to the sale of the~~ practice. Typically, this would require attempts  
28 to contact the client at the last known address.

29 Client Confidences, Consent and Notice

30 Negotiations between seller and prospective purchaser prior to disclosure of  
31 information relating to a specific representation of an identifiable client do

32 Termination of Practice by the Seller

33 [2] The requirement that all of the private practice, or all of an area of practice, be  
34 sold is satisfied if the seller in good faith makes the entire practice or area of practice  
35 available for sale to the purchasers. The fact that a number of the seller's clients decide  
36 not to be represented by the purchasers but take their matters elsewhere, therefore,  
37 does not result in a violation. Return to private practice as a result of an unanticipated  
38 change in circumstances does not necessarily result in a violation. For example, a  
39 lawyer who has sold the practice to accept an appointment to judicial office does not  
40 violate the requirement that the sale be attendant to cessation of practice if the lawyer  
41 later resumes private practice upon being defeated in a contested or retention election  
42 for the office or resigns from a judiciary position.

43 [3] The requirement that the seller cease to engage in the private practice of law in  
44 the geographic area does not prohibit employment as a lawyer on the staff of a public  
45 agency or a legal services entity that provides legal services to the poor or as in-house  
46 counsel to a business.

47 [4] The Rule permits a sale of an entire practice attendant upon retirement from the  
48 private practice of law within the geographic area.

49 [5] This Rule also permits a lawyer or law firm to sell an area of practice. If an area  
50 of practice is sold, the law firm or the lawyer remaining in the active practice of law must  
51 cease accepting any matters in the area of practice that has been sold, either as  
52 counsel or co-counsel or by assuming joint responsibility for a matter in connection with  
53 the division of a fee with another lawyer as would otherwise be permitted by Rule 1.5(e).  
54 Selling a law practice or an area of practice is distinct from selling an ownership interest  
55 in a law firm, and nothing in this Rule prohibits the latter even when the divesting lawyer  
56 remains active in the practice of law as a non-owning associate or in an of counsel  
57 capacity. For example, a lawyer or law firm with a substantial number of estate  
58 planning matters and a substantial number of probate administration cases may sell the  
59 estate planning portion of the practice but remain in the practice of law by concentrating  
60 on probate administration; however, that practitioner or law firm may not thereafter  
61 accept any estate planning matters. Although a lawyer who leaves a geographical area  
62 typically would sell the entire practice, this Rule permits the lawyer to limit the sale to

63 one or more areas of the practice, thereby preserving the lawyer's right to continue  
64 practice in the areas of the practice that were not sold.

65 Sale of Entire Practice or Entire Area of Practice

66 [6] This Rule requires that the seller's entire practice or an entire area of practice be  
67 sold. The prohibition against sale of less than an entire practice area protects those  
68 clients whose matters are less lucrative and who might find it difficult to secure other  
69 counsel if a sale could be limited to substantial fee-generating matters. The purchasers  
70 are required to undertake all client matters in the practice or practice area, subject to  
71 client consent. This requirement is satisfied, however, even if a purchaser is unable to  
72 undertake a particular client matter because of a conflict of interest.

73 Client Confidences, Consent and Notice

74 [7] Negotiations between seller and prospective purchaser prior to disclosure of  
75 information relating to a specific representation of an identifiable client no more violate  
76 the

77 confidentiality provisions of Rule 1.6 than do preliminary discussions concerning the  
78 possible association of another lawyer or mergers between firms, with respect to which  
79 client consent is not required. Providing the purchaser access to client-specific  
80 information relating to the representation and to the file, however, requires client  
81 consent. The Rule provides that before such information can be disclosed by the seller  
82 to the purchaser, the client must be sent given actual written notice of the contemplated  
83 sale, ~~including the identity of the purchaser and any proposed change in the terms of~~  
84 ~~future representation, and must be told that the decision to consent or make other~~  
85 ~~arrangements must be made within 90 days. If nothing is heard from the client within~~  
86 ~~that time, consent to the sale is presumed.~~ All the

87 [8] Intentionally omitted as unnecessary.

88 [9] All elements of client autonomy, including the client's absolute right to discharge  
89 a lawyer and transfer the representation to another, survive the sale of the practice or  
90 area of practice.

91 Fee Arrangements Between Client and Purchaser

92 [10] The sale may not be financed by increases in fees charged to clients of the  
93 practice. Existing agreements between the seller and the client as to fees and the  
94 scope of the work must be honored by the purchaser.

95 Other Applicable Ethical Standards

96 [11] Lawyers participating in the sale of a law practice or a practice area are subject  
97 to the ethical standards applicable to involving another lawyer in the representation of a  
98 client. These include, for example, the seller's obligation to exercise competence in  
99 identifying a purchaser qualified to assume the practice and the purchaser's obligation  
100 to undertake the representation competently (see Rule 1.1); to charge reasonable fees  
101 (see Rule 1.5); to protect client confidences (see Rule 1.6); to resolve conflict situations  
102 (see Rules 1.7; 1.9 and Rule 1.0(e) for the definition of informed consent); to releases of  
103 liability (see Rule 1.8(h); and to withdrawal of representation (see Rule 1.16)).

104 [12] If approval of the substitution of the purchasing lawyer for the selling lawyer is  
105 required by the rules of any tribunal in which a matter is pending, such approval must be  
106 obtained before the matter can be included in the sale (see Rule 1.16).

107 Applicability of the Rule

108 [13] This Rule applies to the sale of a law practice by representatives of a  
109 deceased, disabled or disappeared lawyer. Thus, the seller may be represented by a  
110 nonlawyer representative not subject to these Rules. Since, however, no lawyer may  
111 participate in a sale of a law practice which does not conform to the requirements of this  
112 Rule, the representatives of the seller as well as the purchasing lawyer can be expected  
113 to see to it that they are met.

114 [14] Admission to or retirement from a law partnership or professional association,  
115 retirement plans and similar arrangements, and a sale of tangible assets of a law  
116 practice, do not constitute a sale or purchase governed by this Rule.

117 [15] This Rule does not apply to the transfer of legal representation between  
118 lawyers when such transfers are unrelated to the sale of a practice or an area of  
119 practice.

120 [15a] This Rule does not prohibit a lawyer from selling an interest in a law firm and  
121 thereafter continuing association with the firm or in an of-counsel capacity.

122 [15b] The body of the ABA Model Rule 1.17 does not provide for inclusion of the  
123 identity of the purchaser in the written notice; however, Comment [7] to the ABA Model  
124 Rule does indicate that the identity of the purchaser should be given in writing to clients.  
125 Utah's Rule 1.17 departs from the ABA Model Rule by requiring only one written notice  
126 and enumerating in the body of the rule all required content of the notice.

127 [15c]Section (c)(3) of Utah's Rule 1.17 deviates from the ABA Model Rule by  
128 providing that the 90-day client objection period begins to run from the mailing of the  
129 notice. Generally This Rule is intended to provide a means for lawyers to cease the  
130 practice of law and realize the value of the practice they have developed. Cessation of  
131 practice may be, among other reasons, to retire, take a judicial or other public-service  
132 position, undertake a new career or to practice law in another venue. The Rule does  
133 not, however, exempt either the selling or purchasing lawyer or firm from complying with  
134 other applicable Rules, including Rule 1.5 (requiring reasonable fees), Rule 1.6  
135 (protecting client confidences), Rules 1.7 and 1.9 (requiring resolution of conflicts  
136 situations), Rule 1.8(h) (governing releases of liability) and Rule 1.16(d) (governing  
137 withdrawal of representation). The Rule does not require the rather than from receipt of  
138 the notice. The only practical way to prove receipt would be by commercial courier or  
139 certified/registered mail. Proving receipt of notice could therefore be cost-prohibitive,  
140 especially to the small sole practitioner. Often when a lawyer does not have a viable  
141 address for a client, it is because the subject-matter of the representation has become  
142 stale or the client has failed to keep in touch with the lawyer presumably due to a loss of  
143 interest in the matter. Both the Utah Rules of Civil Procedure and the Utah Rules of  
144 Criminal Procedure allow for notices to be given by regular U.S. mail at the last-known  
145 address for the client and provide a presumption of service upon deposit of the notice in  
146 the mail, postage pre-paid. There does not appear to be good reason to place a more  
147 onerous burden upon a lawyer selling a law practice or area of practice. Whether the  
148 client received actual notice of the proposed sale of a practice to a single practitioner or  
149 law firm, but it does not permit the seller to "skim" certain clients for one purchaser and  
150 designate a less desirable category of clients for another purchaser (or, worse, to  
151 abandon them). A situation justifying the sale of a practice to more than one purchaser  
152 might involve a practice consisting of two or more discrete areas of the law, each of

153 ~~which would be sold to a separate purchaser. Notification~~ or area of practice, the client  
154 is not abandoned; there is new counsel to protect the client's existing rights.

155 [15d] The Utah version of Rule 1.17 deletes the provision of the ABA Model Rule  
156 (c)(3) relating to obtaining court order for transfer of representation in those instances  
157 where the lawyer cannot give and prove actual notice of the proposed sale of a law  
158 practice or area of practice to a client. As discussed above, Utah's version of Rule 1.17  
159 does not require proof of actual notice of the sale of a law practice or area of practice  
160 before the 90-day client objection period begins to run; therefore, it is impossible to  
161 know which clients received actual notice and which did not.

162 [15e] The Utah version of Rule 1.17 changes the context of the ABA Model Rule  
163 1.17(d) regarding fees from "shall not" to "are" because the ABA wording seemed to be  
164 in the nature of a mandate and out of place with the conditional language of the Rule.

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