

1 **Rule 1.17. Sale of licensed paralegal practice.**

2 A licensed paralegal practitioner may sell or purchase a licensed paralegal practice, if
3 the following conditions are satisfied:

4 (a) The seller ceases to engage in licensed paralegal practice in the geographic area in
5 which the practice has been conducted;

6 (b) The entire practice is sold to one or more licensed paralegal practitioners;

7 (c) The seller gives written notice to each of the seller's clients regarding:

8 (c)(1) the proposed sale and the identity of the purchaser;

9 (c)(2) the client's right to retain other representation or to take possession of the
10 file; and

11 (c)(3) the fact that the client's consent to the transfer of the client's files will be
12 presumed if the client does not take any action or does not otherwise object within ninety
13 (90) days of mailing of the notice; and

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

15

16 **Comment**

17 [1] The practice of law is a profession, not merely a business. Clients are not
18 commodities who can be purchased and sold at will. Pursuant to this Rule, when a licensed
19 paralegal practitioner or an entire firm ceases to practice, or ceases to practice in an area of
20 law, and other licensed paralegal practitioners or firms take over the representation, the
21 selling licensed paralegal practitioner or firm may obtain compensation for the reasonable
22 value of the practice as may withdrawing partners of law firms. See Rules 5.4 and 5.6.

23 **Notification**

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

27 **Termination of Practice by the Seller**

28 [2] The requirement that all of the private practice be sold is satisfied if the seller in
29 good faith makes the entire practice available for sale to the purchasers. The fact that a
30 number of the seller's clients decide not to be represented by the purchasers but take their
31 matters elsewhere, therefore, does not result in a violation. Return to private practice as a
32 result of an unanticipated change in circumstances does not necessarily result in a
33 violation.

34 [3] The requirement that the seller cease to engage in the private practice of law in the
35 geographic area does not prohibit employment as a licensed paralegal practitioner on the
36 staff of a public agency or a legal services entity that provides legal services to the poor, ~~or~~
37 ~~as in-house counsel to a business.~~

38 [4] The rule permits a sale of an entire practice attendant upon retirement from the
39 private practice of law within the geographic area.

40 Sale of Entire Practice or Entire Area of Practice

41 [5] Reserved.

42 [6] The rule requires that the seller's entire practice be sold. The prohibition against
43 sale of less than an entire practice area protects those clients whose matters are less
44 lucrative and who might find it difficult to secure other counsel if a sale could be limited to
45 substantial fee-generating matters. The purchasers are required to undertake all client
46 matters in the practice or practice area, subject to client consent. This requirement is
47 satisfied, however, even if a purchaser is unable to undertake a particular client matter
48 because of a conflict of interest.

49 Client Confidences, Consent and Notice

50 [7] Negotiations between seller and prospective purchaser prior to disclosure of
51 information relating to a specific representation of an identifiable client no more violate the
52 confidentiality provisions of Rule 1.6 than do preliminary discussions concerning the
53 possible association of another licensed paralegal practitioner or mergers between firms,
54 with respect to which client consent is not required. Providing the purchaser access to
55 client-specific information relating to the representation and to the file, however, requires
56 client consent. The rule provides that before such information can be disclosed by the seller
57 to the purchaser, the client must be given actual written notice of the contemplated sale.

58 [8] Reserved.

59 [9] All elements of client autonomy, including the client's absolute right to discharge a
60 licensed paralegal practitioner and transfer the representation to another, survive the sale
61 of the practice or area of practice.

62 Fee Arrangements Between Client and Purchaser

63 [10] The sale may not be financed by increases in fees charged the clients of the
64 practice. Existing arrangements between the seller and the client as to fees and the scope of
65 the work must be honored by the purchaser.

66 Other Applicable Ethical Standards

67 [11] Licensed paralegal practitioners participating in the sale of a law practice are
68 subject to the ethical standards applicable to involving another licensed paralegal
69 practitioner in the representation of a client. These include, for example, the seller's
70 obligation to exercise competence in identifying a purchaser qualified to assume the
71 practice and the purchaser's obligation to undertake the representation competently (see
72 Rule 1.1); to charge reasonable fees (see Rule 1.5); to protect client confidences (see Rule
73 1.6); to avoid disqualifying conflicts and secure the client's informed consent for those
74 conflicts for which there is agreement (see Rules 1.7, 1.9 and Rule 1.0(f) for the definition
75 of informed consent); to releases of liability (see Rule 1.8(h)); and to withdrawal of
76 representation (see Rule 1.16)).

77 [12] Reserved.

78 Applicability of the Rule

79 [13] This Rule applies to the sale of a licensed paralegal practice by representatives of a
80 deceased, disabled or disappeared licensed paralegal practitioner. Thus, the seller may be
81 represented by a nonparalegal practitioner representative not subject to these Rules. Since,
82 however, no licensed paralegal practitioner may participate in a sale of a law practice
83 which does not conform to the requirements of this Rule, the representatives of the seller
84 as well as the purchasing licensed paralegal practitioner can be expected to see to it that
85 they are met.

86 [14] Admission to or retirement from a licensed paralegal partnership or professional
87 association, retirement plans and similar arrangements, and a sale of tangible assets of a
88 practice, do not constitute a sale or purchase governed by this Rule.

89 [15] This Rule does not apply to the transfers of legal representation between licensed
90 paralegal practitioners when such transfers are unrelated to the sale of a practice or an
91 area of practice.

92 [15a] This Rule does not prohibit a licensed paralegal practitioner from selling an
93 interest in a firm and thereafter continuing association with the firm or in an of-counsel
94 capacity.

95 [15b] Reserved.

96 [15c] Section (c)(3) of Utah's Rule 1.7 of the Lawyer's Rules of Professional Conduct
97 deviate from the ABA Model Rule by providing that the 90-day client objection period
98 begins to run from the mailing of the notice rather than from receipt of the notice. The only
99 practical way to prove receipt would be by commercial courier or certified/registered mail.
100 Proving receipt of notice could therefore be cost-prohibitive, especially to the small sole

101 practitioner. Often when a licensed paralegal practitioner does not have a viable address
102 for a client, it is because the subject-matter of the representation has become stale or the
103 client has failed to keep in touch with the licensed paralegal practitioner presumably due to
104 a loss of interest in the matter. Both the Utah Rules of Civil Procedure and the Utah Rules of
105 Criminal Procedure allow for notices to be given by regular U.S. mail at the last-known
106 address for the client and provide a presumption of service upon deposit of the notice in
107 the mail, postage pre-paid. There does not appear to be good reason to place a more
108 onerous burden upon a licensed paralegal practitioner selling a practice or area of practice.
109 Whether the client received actual notice of the proposed sale of a practice or area of
110 practice, the client is not abandoned; there is new counsel to protect the client's existing
111 rights.

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