

1 **Rule 1.17. Sale of Licensed Paralegal Practice.**

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

4 (a) The seller ceases to engage in licensed paralegal practice in the geographic area in which
5 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 file; and

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

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

14
15 Comment

16 [1] The practice of law is a profession, not merely a business. Clients are not
17 commodities who can be purchased and sold at will. Pursuant to this Rule, when a licensed
18 paralegal practitioner or an entire firm ceases to practice, or ceases to practice in an area of law,
19 and other licensed paralegal practitioners or firms take over the representation, the selling
20 licensed paralegal practitioner or firm may obtain compensation for the reasonable value of the
21 practice as may withdrawing partners of law firms. See Rules 5.4 and 5.6.

22 Notification

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

26 Termination of Practice by the Seller

27 [2] The requirement that all of the private practice be sold is satisfied if the seller in good
28 faith makes the entire practice available for sale to the purchasers. The fact that a number of the
29 seller's clients decide not to be represented by the purchasers but take their matters elsewhere,
30 therefore, does not result in a violation. Return to private practice as a result of an unanticipated
31 change in circumstances does not necessarily result in a violation.

32 [3] The requirement that the seller cease to engage in the private practice of law in the
33 geographic area does not prohibit employment as a licensed paralegal practitioner on the staff of
34 a public agency or a legal services entity that provides legal services to the poor, or as in-house
35 counsel to a business.

36 [4] The rule permits a sale of an entire practice attendant upon retirement from the private
37 practice of law within the geographic area.

38 Sale of Entire Practice or Entire Area of Practice

39 [5] Reserved.

40 [6] The rule requires that the seller's entire practice be sold. The prohibition against sale of
41 less than an entire practice area protects those clients whose matters are less lucrative and who
42 might find it difficult to secure other counsel if a sale could be limited to substantial fee-
43 generating matters. The purchasers are required to undertake all client matters in the practice or
44 practice area, subject to client consent. This requirement is satisfied, however, even if a
45 purchaser is unable to undertake a particular client matter because of a conflict of interest.

46 Client Confidences, Consent and Notice

47 [7] Negotiations between seller and prospective purchaser prior to disclosure of information
48 relating to a specific representation of an identifiable client no more violate the confidentiality
49 provisions of Rule 1.6 than do preliminary discussions concerning the possible association of
50 another licensed paralegal practitioner or mergers between firms, with respect to which client
51 consent is not required. Providing the purchaser access to client-specific information relating to
52 the representation and to the file, however, requires client consent. The rule provides that before
53 such information can be disclosed by the seller to the purchaser, the client must be given actual
54 written notice of the contemplated sale.

55 [8] Reserved.

56 [9] All elements of client autonomy, including the client's absolute right to discharge a
57 licensed paralegal practitioner and transfer the representation to another, survive the sale of the
58 practice or area of practice.

59 Fee Arrangements Between Client and Purchaser

60 [10] The sale may not be financed by increases in fees charged the clients of the practice.
61 Existing arrangements between the seller and the client as to fees and the scope of the work must
62 be honored by the purchaser.

63 Other Applicable Ethical Standards

64 [11] Licensed paralegal practitioners participating in the sale of a law practice are subject to
65 the ethical standards applicable to involving another licensed paralegal practitioner in the
66 representation of a client. These include, for example, the seller's obligation to exercise
67 competence in identifying a purchaser qualified to assume the practice and the purchaser's
68 obligation to undertake the representation competently (see Rule 1.1); to charge reasonable fees
69 (see Rule 1.5); to protect client confidences (see Rule 1.6); to avoid disqualifying conflicts and
70 secure the client's informed consent for those conflicts for which there is agreement (see Rules
71 1.7, 1.9 and Rule 1.0(f) for the definition of informed consent); to releases of liability (see Rule
72 1.8(h)); and to withdrawal of representation (see Rule 1.16)).

73 [12] Reserved.

74 Applicability of the Rule

75 [13] This Rule applies to the sale of a licensed paralegal practice by representatives of a
76 deceased, disabled or disappeared licensed paralegal practitioner. Thus, the seller may be
77 represented by a nonparalegal practitioner representative not subject to these Rules. Since,
78 however, no licensed paralegal practitioner may participate in a sale of a law practice which does
79 not conform to the requirements of this Rule, the representatives of the seller as well as the
80 purchasing licensed paralegal practitioner can be expected to see to it that they are met.

81 [14] Admission to or retirement from a licensed paralegal partnership or professional
82 association, retirement plans and similar arrangements, and a sale of tangible assets of a practice,
83 do not constitute a sale or purchase governed by this Rule.

84 [15] This Rule does not apply to the transfers of legal representation between licensed
85 paralegal practitioners when such transfers are unrelated to the sale of a practice or an area of
86 practice.

87 [15a] This Rule does not prohibit a licensed paralegal practitioner from selling an interest in
88 a firm and thereafter continuing association with the firm or in an of-counsel capacity.

89 [15b] Reserved.

90 [15c] Section (c)(3) of Utah's Rule 1.7 of the Lawyer's Rules of Professional Conduct
91 deviate from the ABA Model Rule by providing that the 90-day client objection period begins to
92 run from the mailing of the notice rather than from receipt of the notice. The only practical way
93 to prove receipt would be by commercial courier or certified/registered mail. Proving receipt of

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

Effective November 1, 2018