

RPC 1.17
SALE OF LAW PRACTICE

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) **[Reserved.]**

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

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

(1) the proposed sale;

(2) the client's right to retain another legal practitioner or to take possession of the file; and

(3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.

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 a 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 fees charged clients shall not be increased by reason of the sale.

[Adopted effective September 1, 2006; Amended effective April 14, 2015.]

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 other lawyers or 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] **[Reserved.]**

[3] **[Reserved.]**

[4] **[Reserved.]**

[5] **[Reserved.]**

Sale of Entire Practice or Entire Area of Practice

[6] **[Washington revision]** The Rule requires that the seller's entire practice, or an entire area of practice, be sold. The prohibition against sale of less than an entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure another legal practitioner if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice or practice area, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular

client matter because of a conflict of interest. See also Washington Comment [17].

[Comment 6 amended effective April 14, 2015.]

Client Confidences, Consent and Notice

[7] **[Washington revision]** 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 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 detailed information relating to the representation, such as the client's file, however, requires client consent. But see RPC 1.6(b)(7) (permitting disclosure of information relating to the representation in limited circumstances to detect and resolve potential conflicts of interest). 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 90 days. If nothing is heard from the client within that time, consent to the sale is presumed.

[Comment 7 amended effective September 1, 2016.]

[8] **[Washington revision]** 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 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 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] **[Washington revision]** The sale may not be financed by increases in fees charged the clients of the practice. Existing arrangements between the seller and the client as to fees and the scope of the work must be honored by the purchaser. See also Washington Comment [17].

[Comment 10 amended effective April 14, 2015.]

Other Applicable Ethical Standards

[11] **[Washington revision]** 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 the client's informed consent for those conflicts that can be agreed to (see Rule 1.7 regarding conflicts and Rule 1.0A(e) for the definition of informed consent); and the obligation to protect information relating to the representation (see Rules 1.6 and 1.9).

[Comment 11 amended effective April 14, 2015.]

[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] **[Washington revision]** This Rule applies to the sale of a law practice of a deceased, disabled or disappeared lawyer. Thus, the seller may be represented by a 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.

[Comment 13 amended effective April 14, 2015.]

[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.

Additional Washington Comments (16-19)

[16] If, at the time the notice under paragraph (c) is given, the buyer or seller knows of a conflict that would preclude the buyer from representing a client of the seller, the notice to that client should inform the client of the conflict and the need for the client to obtain a substitute legal practitioner or retrieve the file. When such a conflict exists, the notice described in paragraph (c)(3) cannot be given because there can be no presumption that the client's file will be transferred to the buyer.

[Comment 16 amended effective April 14, 2015.]

Notice Requirements Related to LLLT Services

[17] Notice under paragraph (c) of this Rule must disclose whether legal services performed by LLLTs have been provided by the seller or will be provided by the purchaser of the law practice or area of practice that is subject to the sale. Where the purchaser will provide legal services performed by an LLLT, this notice must include written disclosures that comply with LLLT Rule 1.5(b). See RPC 1.5 Washington Comment [17].

[Comment 17 adopted effective April 14, 2015.]

[18] A purchaser is not required to employ or associate with an LLLT to provide legal services where the law practice or area of practice that is the subject of the sale includes legal services provided by LLLTs. However, the purchaser must honor existing agreements between client and seller as to fees and scope of work. Notice under paragraph (c) must include the purchaser's agreement to do so.

[Comment 18 adopted effective April 14, 2015.]

[19] There are some restrictions on a lawyer's ability to sell a law practice to an LLLT when the legal services provided are outside the scope of the LLLT's practice. As such, a lawyer may not participate in or facilitate a sale that is in violation of LLLT RPC 1.17. See LLLT RPC 1.17 cmt. [2]; RPC 8.4(f)(2).

[Comment 19 adopted effective April 14, 2015; Amended effective June 4, 2019.]

