

Rule 1.17 [2-300] Sale of a Law Practice

All or substantially all of the law practice of a lawyer, living or deceased, including goodwill, may be sold to another lawyer or law firm* subject to all the following conditions:

- (a) Fees charged to clients shall not be increased solely by reason of the sale.
- (b) If the sale contemplates the transfer of responsibility for work not yet completed or responsibility for client files or information protected by Business and Professions Code § 6068(e)(1), then;
 - (1) if the seller is deceased, or has a conservator or other person* acting in a representative capacity, and no lawyer has been appointed to act for the seller pursuant to Business and Professions Code § 6180.5, then prior to the transfer;
 - (i) the purchaser shall cause a written* notice to be given to each client whose matter is included in the sale, stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client materials and property, as required by Rule 1.16(e)(1); and that if no response is received to the notice within 90 days after it is sent, or if the client's rights would be prejudiced by a failure of the purchaser to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client, and
 - (ii) the purchaser shall obtain the written* consent of the client. If reasonable* efforts have been made to locate the client and no response to the paragraph (b)(1)(i) notice is received within 90 days, consent shall be presumed until otherwise notified by the client.
 - (2) in all other circumstances, not less than 90 days prior to the transfer;
 - (i) the seller, or the lawyer appointed to act for the seller pursuant to Business and Professions Code § 6180.5, shall cause a written* notice to be given to each client whose matter is included in the sale, stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client materials and property, as required by Rule 1.16(e)(1); and that if no response is received to the notice within 90 days after it is sent, or if the client's rights would be prejudiced by a failure of the purchaser to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client, and
 - (ii) the seller, or the lawyer appointed to act for the seller pursuant to Business and Professions Code § 6180.5, shall obtain the written* consent of the client prior to the transfer. If reasonable* efforts have been made to locate the client and no response to the paragraph (b)(2)(i) notice is received within 90 days, consent shall be presumed until otherwise notified by the client.

- (c) If substitution is required by the rules of a tribunal* in which a matter is pending, all steps necessary to substitute a lawyer shall be taken.
- (d) The purchaser shall comply with the applicable requirements of Rules 1.7 and 1.9.
- (e) Confidential information shall not be disclosed to a nonlawyer in connection with a sale under this Rule.
- (f) This Rule does not apply to the admission to or retirement from a law firm,* retirement plans and similar arrangements, or sale of tangible assets of a law practice.

Comment

[1] The requirement that the sale be of “all or substantially all of the law practice of a lawyer” prohibits the sale of only a field or area of practice or the seller’s practice in a geographical area or in a particular jurisdiction. The prohibition against the sale of less than all or substantially all of a practice 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 purchasers are required to undertake all client matters sold in the transaction, 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.

[2] Under paragraph (a), the purchaser must honor existing arrangements between the seller and the client as to fees and the scope of the work and the sale may not be financed by increasing fees charged for client matters transferred through the sale. However, fee increases or other changes to the fee arrangements might be justified by other factors, such as modifications of the purchaser’s responsibilities, the passage of time, or reasonable costs that were not addressed in the original agreement. Any such modifications must comply with Rules 1.4 and 1.5 and other relevant provisions of these Rules and the State Bar Act.

[3] Transfer of individual client matters, where permitted, is governed by Rule 1.5.1. Payment of a fee to a nonlawyer broker for arranging the sale or purchase of a law practice is governed by Rule 5.4(a).

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 - (1) if the seller is deceased, or has a conservator or other person* acting in a representative capacity, and no lawyer has been appointed to act for the seller pursuant to Business and Professions Code § 6180.5, then prior to the transfer;
 - (i) the purchaser shall cause a written* notice to be given to each client whose matter is included in the sale, stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client materials and property, as required by Rule 1.16(e)(1); and that if no response is received to the notice within 90 days after it is sent, or if the client's rights would be prejudiced by a failure of the purchaser to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client, and
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 - (2) in all other circumstances, not less than 90 days prior to the transfer;
 - (i) the seller, or the lawyer appointed to act for the seller pursuant to Business and Professions Code § 6180.5, shall cause a written* notice to be given to each client whose matter is included in the sale, stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client may take possession of any client materials and property, as required by Rule 1.16(e)(1); and that if no response is received to the notice within 90 days after it is sent, or if the client's rights would be prejudiced by a failure of the purchaser to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client, and
 - (ii) the seller, or the lawyer appointed to act for the seller pursuant to Business and Professions Code § 6180.5, shall obtain the written* consent of the client prior to the transfer. If reasonable* efforts have been made to locate the client and no response to the paragraph (b)(2)(i) notice is received within 90 days, consent shall be presumed until otherwise notified by the client.

- (c) If substitution is required by the rules of a tribunal* in which a matter is pending, all steps necessary to substitute a lawyer shall be taken.
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[1] The requirement that the sale be of “all or substantially all of the law practice of a lawyer” prohibits the sale of only a field or area of practice or the seller’s practice in a geographical area or in a particular jurisdiction. The prohibition against the sale of less than all or substantially all of a practice 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 purchasers are required to undertake all client matters sold in the transaction, 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.

[2] Under paragraph (a), the purchaser must honor existing arrangements between the seller and the client as to fees and the scope of the work¹ and ~~the fact of a sale may not serve as the basis for increasing fees charged to clients of the law practice. Consequently,~~ the sale may not be financed by increasing fees charged for client matters transferred through the sale. ~~To the extent that~~ However, fee increases ~~are~~ or other changes to the fee arrangements might be justified by other factors, such as modifications of the purchaser’s responsibilities, the passage of time, or reasonable costs that were not addressed in the original agreement, ~~such~~ Any such modifications must comply with Rules 1.4 and 1.5 and other relevant provisions of these Rules and the State Bar Act.

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¹ Sentence taken from MR 1.17, cmt. [10] and converted to active voice per discussion during 9/30/2016 Commission meeting. Redline is to draft 3.1 version of Comment [2], which was drafted following an email correspondence among the drafting team members and staff, and submitted for consideration at the September 30, 2016 meeting.

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[2] ~~The sale may not be financed by increases in fees charged to the client of the law practice. Existing~~Under paragraph (a), the purchaser must honor existing arrangements between the seller and the client as to fees and the scope of the work ~~must be honored by the purchaser. Any modifications of existing~~and the sale may not be financed by increasing fees charged for client matters transferred through the sale. However, fee increases or other changes to the fee arrangements ~~between the purchaser and the client after the sale must comply with~~might be justified by other factors, such as modifications of the purchaser's responsibilities, the passage of time, or reasonable costs that were not addressed in the original agreement. Any such modifications must comply with Rules 1.4 and 1.5 and other relevant provisions of these Rules and the State Bar Act.

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Proposed Rule 1.17 [2-300] Sale of Law Practice
Synopsis of Public Comments

TOTAL = 5 **A = 1**
D = 1
M = 1
NI = 2

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
X-2016-32g	Law Professors (Zitrin) (07-25-16)	Yes	M	1.17	Section (e) of the current proposed rule says that the fee to the client shall not be increased “solely” by reason of the purchase of the practice. The word “solely” should be stricken in order to make the fee increase absolute in accordance to the ABA rule.	The Commission did not make the requested change. There are valid reasons for a purchaser to increase fees. See Comment [2] to the Rule.
X-2016-43s	Committee on Professional Responsibility and Conduct (COPRAC) (Baldwin) (08-17-16)	Yes	D	1.17	The proposed rule seeks to limit the sale of a law practice to “all or substantially all” of that practice, and expressly prohibits the sale of only certain areas of practice or the sale of only specific geographic areas. We believe the better approach is the one taken by the ABA in Model Rule 1.17, which allows the sale of distinct practice areas or geographic areas, even if they constitute less than the entire practice.	The Commission has not made the requested change. The Commission does not believe that the ABA Model Rule approach would provide sufficient public protection for the clients who files are transferred as part of the sale. It is not aware of any problems that have arisen under the current rule.
X-2016-52g	Law Professors (Zitrin) (08-24-16)	Yes	M	1.17	See X-2016-32g Law Professors (Zitrin) dated July 25, 2016 for the comment synopsis. The comments are identical and the only difference is the signatories.	See X-2016-32g for the Commission’s response to the Law Professors’ comments.
X-2016-68g	Law Professors (Zitrin) (09-22-16)	Yes	M	1.17	See X-2016-32g Law Professors (Zitrin) dated July 25, 2016 for the comment synopsis. The comments are identical and the only difference is the signatories.	See X-2016-32g for the Commission’s response to the Law Professors’ comments.

¹ A = AGREE with proposed Rule D = DISAGREE with proposed Rule M = AGREE ONLY IF MODIFIED NI = NOT INDICATED

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Synopsis of Public Comments**

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X-2016-104af	Office of Chief Trial Counsel (OCTC) (Dresser) (09-27-16)	Yes	A	1.17	OCTC notes that Comment 1 could raise antitrust issues that would make this rule unenforceable. OCTC recommends that the Commission research the issue of whether prohibiting the sale of only a field or area of a practice, a practice in a geographical area, or a practice in a particular jurisdiction raises anti-trust issues.	See response to COPRAC, X-2016-43a, above. In addition, the Commission is unaware of any such antitrust problems that have arisen under the current California rule or similar rules in other jurisdictions.