

**Rule 1.17 [2-300] Sale of a Law Practice
(Commission's Proposed Rule Adopted on October 21–22, 2016 – Clean Version)**

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 scope of 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).

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

TOTAL = 2	A = 1
	D = 0
	M = 1
	NI = 0

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
Y-2016-11	Poll, Edward (01-05-17)	N	M	1.17	It would make sense, both ethically and economically, for the protection of clients and the well-being of lawyers, to permit sales of practice areas rather than limiting law practice sales to “all or substantially all” of a law practice.	This comment repeats a perspective the Commission thoroughly discussed in making its decision to retain the “all or substantially all” language of current rule 2-300. While there are pros and cons to increasing the opportunity for lawyers to profit from sales of a portion of a law practice, the Commission’s view on balance is that the current rule works well, that there would be no material client benefit to any change along the line suggested, and that restrictions against the piecemeal sale of a practice are needed to protect clients and ensure that lawyers meet their paramount duty of loyalty.
Y-2016-21r	State Bar Office of Chief Trial Counsel (Dresser) (OCTC) (01-09-17)	Y	A	1.17	OCTC supports this rule, however notes that Comment 1 could raise anti-trust or other constitutional issues that would make this rule unenforceable, e.g. the sale of only a field or area of a practice, a practice in a geographical area, or a practice in a particular jurisdiction.	If the OCTC letter is intended to suggest that the possibility of an anti-trust violation b/c the Rule permits only sales of “all or substantially all” of a law practice, the Commission is not aware of any authority suggesting this result and notes that the language recommended by the Commission continues California’s current and long-standing rule.

¹ A = AGREE with proposed Rule

D = DISAGREE with proposed Rule

M = AGREE ONLY IF MODIFIED

NI = NOT INDICATED

