

## **27 NCAC 02 RULE 1.17 SALE OF A 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) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, from an office that is within a one-hundred (100) mile radius of the purchased law practice, except the seller may continue to practice law with the purchaser and may provide legal representation at no charge to indigent persons or to members of the seller's family;
- (b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;
- (c) Written notice is sent to each of the seller's clients regarding:
  - (1) the proposed sale, including the identity of the purchaser;
  - (2) the client's right to retain other counsel and to take possession of the client's files prior to the sale or at any time thereafter; and
  - (3) the fact that the client's consent to the transfer of the client's files and legal representation to the purchaser will be presumed if the client does not take any action or does not otherwise object within thirty (30) days of receipt of the notice.
- (d) If the seller or the purchaser identifies a conflict of interest that prohibits the purchaser from representing the client, the seller's notice to the client shall advise the client to retain substitute counsel.
- (e) 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. In the event the court fails to grant a substitution of counsel in a matter, that matter shall not be included in the sale and the sale otherwise shall be unaffected.
- (f) The fees charged clients shall not be increased by reason of the sale.
- (g) The seller and purchaser may agree that the purchaser does not have to pay the entire sales price for the seller's law practice in one lump sum. The seller and purchaser may enter into reasonable arrangements to finance the purchaser's acquisition of the seller's law practice without violating Rules 1.5(e) and 5.4(a). The seller, however, shall have no say regarding the purchaser's conduct of the law practice.

### **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 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 principals of law firms. See Rules 5.4 and 5.6.

### *Termination of Practice by the Seller*

[2] The requirement that all of the private practice be sold is satisfied if the seller in good faith makes the entire practice available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation. Return to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation. For example, a lawyer who has sold the practice to accept an appointment to judicial office does not violate the requirement that the sale be attendant to cessation of practice if the lawyer later resumes private practice upon being defeated in a contested or a retention election for the office.

[3] The requirement that the seller cease to engage in the private practice of law does not prohibit employment as an independent contract lawyer or an employee for the practice. Permitting the seller to continue to work for the practice will assist in the smooth transition of cases and will provide mentoring to new lawyers. The requirement that the seller cease private practice also does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to a business. Similarly, the Rule allows the seller to provide pro bono representation to indigent persons on his own initiative and to provide legal representation to family members without charge.

*See also* 98 Formal Ethics Opinion 6 (1998) (requirements in rule relative to sale of law practice to lawyer who is stranger to the firm do not apply to the sale of law practice to lawyer who is a current employee of firm).

[4] The Rule permits a sale attendant upon discontinuing the private practice of law from an office that is within a one-hundred (100) mile radius of the purchased practice. Its provisions, therefore, accommodate the lawyer who sells the practice upon the occasion of moving to another part of North Carolina or to another state.

### *Sale of Entire Practice or Entire Area of Practice*

[5] The Rule requires that the seller's entire practice, or an entire area of practice, be sold. The prohibition against sale of less than the entire practice area 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 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.

#### *Client Confidences, Consent and Notice*

[6] Written notice of the proposed sale must be sent to all clients who are currently represented by the seller and to all former clients whose files will be transferred to the purchaser. Although it is not required by this rule, the placement of a notice of the proposed sale in a local newspaper of general circulation would supplement the effort to provide notice to clients as required by Paragraph (c) of the rule.

[7] 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.

[8] 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. *See* Rule 1.6(b)(8). Providing the purchaser access to detailed information relating to the representation, such as the client's file, however, requires client consent. 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 30 days. If nothing is heard from the client within that time, consent to the sale is presumed.

[9] All the 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. The notice to clients must advise clients that they have a right to retain a lawyer other than the purchaser. In addition, the notice must inform clients that their right to counsel of their choice continues after the sale even though they consent to the transfer of the representation to the purchaser.

#### *Fee Arrangements Between Client and Purchaser*

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

#### *Other Applicable Ethical Standards*

[11] Lawyers participating in the sale of a law practice 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 1.0(f) for the definition of informed consent); and the obligation to protect information relating to the representation (see Rules 1.6 and 1.9).

[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).

[13] After purchase, the law practice may retain the same name subject to the requirements of Rule 7.5. The seller's retirement or discontinuation of affiliation with the law practice must be indicated on letterhead and other communications as necessary to avoid misleading the public as to the seller's relationship to the law practice. If the seller becomes an independent contract lawyer or employee of the practice, the letterhead and other communications must indicate that the seller is no longer the owner of the firm; an "of counsel" designation would be sufficient to do so.

#### *Applicability of the Rule*

[14] This Rule applies to the sale of a law practice by representatives of a deceased, disabled or disappeared lawyer. Thus, the seller may be represented by a non-lawyer 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.

[15] 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.

[16] This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice.

*History Note: Authority G.S. 84-23;  
Eff. July 24, 1997;  
Amendments Approved by the Supreme Court: September 22, 2016; October 2, 2014; November 16, 2006; March 1, 2003.*

Ethics Opinion Notes

**98 Formal Ethics Opinion 6.** Opinion rules that the requirements set forth in Rule 1.17 relative to the sale of a law practice to a lawyer who is a stranger to the firm do not apply to the sale of a law practice to lawyers who are current employees of the firm.