

1       **Rule 1.17. Sale of Law Practice.**

2       A lawyer or a law firm may sell or purchase a law practice or an area of practice, including good will, if  
3 the following conditions are satisfied:

4       (a) The seller ceases to engage in the private practice of law, or in the area of practice that has been  
5 sold in the geographic area in which the practice has been conducted;

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

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 counsel 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 the  
11 client does not take any action or does not otherwise object within ninety (90) days of sending written  
12 notice; and

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

14       Comment

15       [1] The practice of law is a profession, not merely a business. Clients are not commodities who can  
16 be purchased and sold at will. Pursuant to this Rule, when a lawyer or an entire firm ceases to practice, or  
17 ceases to practice in an area of law, and other lawyers or firms take over the representation, the selling  
18 lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing  
19 partners of law firms. See Rules 5.4 and 5.6.

20       Notification

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

24       Termination of Practice by the Seller

25       [2] The requirement that all of the private practice, or all of an area of practice, be sold is satisfied if  
26 the seller in good faith makes the entire practice or the area of practice available for sale to the  
27 purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers  
28 but take their matters elsewhere, therefore, does not result in a violation. Return to private practice as a  
29 result of an unanticipated change in circumstances does not necessarily result in a violation. For  
30 example, a lawyer who has sold the practice to accept an appointment to judicial office does not violate  
31 the requirement that the sale be attendant to cessation of practice if the lawyer later resumes private  
32 practice upon being defeated in a contested or a retention election for the office or resigns  
33 from a judicial position.

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

37 [4] The Rule permits a sale of an entire practice attendant upon retirement from the private practice of  
38 law within the geographic area. The remaining language of the Model Rule Comment [4] has been  
39 intentionally omitted as unnecessary.

40 [5] This Rule also permits a lawyer or law firm to sell an area of practice. If an area of practice is sold,  
41 the law firm or the lawyer remaining in the active practice of law must cease accepting any matters in the  
42 area of practice that has been sold, either as counsel or co-counsel or by assuming joint responsibility for  
43 a matter in connection with the division of a fee with another lawyer as would otherwise be permitted by  
44 Rule 1.5(e). Selling a law practice or an area of practice is distinct from selling an ownership interest in a  
45 law firm, and nothing in this Rule prohibits the latter even when the divesting lawyer remains active in the  
46 practice of law as a non-owning associate or in an of counsel capacity. For example, a lawyer or law firm  
47 with a substantial number of estate planning matters and a substantial number of probate administration  
48 cases may sell the estate planning portion of the practice but remain in the practice of law by  
49 concentrating on probate administration; however, that practitioner or law firm may not thereafter accept  
50 any estate planning matters. Although a lawyer who leaves a geographical area typically would sell the  
51 entire practice, this Rule permits the lawyer to limit the sale to one or more areas of the practice, thereby  
52 preserving the lawyer's right to continue practice in the areas of the practice that were not sold.

#### 53 Sale of Entire Practice or Entire Area of Practice

54 [6] The Rule requires that the seller's entire practice or an entire area of practice be sold. The  
55 prohibition against sale of less than an entire practice area protects those clients whose matters are less  
56 lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-  
57 generating matters. The purchasers are required to undertake all client matters in the practice or practice  
58 area, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to  
59 undertake a particular client matter because of a conflict of interest.

#### 60 Client Confidences, Consent and Notice

61 [7] Negotiations between seller and prospective purchaser prior to disclosure of information relating to  
62 a specific representation of an identifiable client no more violate the confidentiality provisions of Rule 1.6  
63 than do preliminary discussions concerning the possible association of another lawyer or mergers  
64 between firms, with respect to which client consent is not required. Providing the purchaser access to  
65 client-specific information relating to the representation and to the file, however, requires client consent.  
66 The Rule provides that before such information can be disclosed by the seller to the purchaser, the client  
67 must be given actual written notice of the contemplated sale.

68 [8] Intentionally omitted as unnecessary.

69 [9] All elements of client autonomy, including the client's absolute right to discharge a lawyer and  
70 transfer the representation to another, survive the sale of the practice or area of practice.

#### 71 Fee Arrangements Between Client and Purchaser

72 [10] The sale may not be financed by increases in fees charged the clients of the practice. Existing  
73 arrangements between the seller and the client as to fees and the scope of the work must be honored by  
74 the purchaser.

75 Other Applicable Ethical Standards

76 [11] Lawyers participating in the sale of a law practice or a practice area are subject to the ethical  
77 standards applicable to involving another lawyer in the representation of a client. These include, for  
78 example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the  
79 practice and the purchaser's obligation to undertake the representation competently (see Rule 1.1); to  
80 charge reasonable fees (see Rule 1.5); to protect client confidences (see Rule 1.6); to avoid disqualifying  
81 conflicts and secure the client's informed consent for those conflicts for which there is agreement (see  
82 Rules 1.7; 1.9 and Rule 1.0(e) for the definition of informed consent); to releases of liability (see Rule  
83 1.8(h); and to withdrawal of representation (see Rule 1.16)).

84 [12] If approval of the substitution of the purchasing lawyer for the selling lawyer is required by the  
85 rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can  
86 be included in the sale (see Rule 1.16).

87 Applicability of the Rule

88 [13] This Rule applies to the sale of a law practice by representatives of a deceased, disabled or  
89 disappeared lawyer. Thus, the seller may be represented by a nonlawyer representative not subject to  
90 these Rules. Since, however, no lawyer may participate in a sale of a law practice which does not  
91 conform to the requirements of this Rule, the representatives of the seller as well as the purchasing  
92 lawyer can be expected to see to it that they are met.

93 [14] Admission to or retirement from a law partnership or professional association, retirement plans  
94 and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or  
95 purchase governed by this Rule.

96 [15] This Rule does not apply to the transfers of legal representation between lawyers when such  
97 transfers are unrelated to the sale of a practice or an area of practice.

98 [15a] This Rule does not prohibit a lawyer from selling an interest in a law firm and thereafter  
99 continuing association with the firm or in an of-counsel capacity.

100 [15b] The body of the ABA Model Rule 1.17 does not provide for inclusion of the identity of the  
101 purchaser in the written notice; however, Comment [7] to the ABA Model Rule does indicate that the  
102 identity of the purchaser should be given in writing to clients. Utah's Rule 1.17 departs from the ABA  
103 Model Rule by requiring only one written notice and enumerating in the body of the rule all required  
104 content of the notice.

105 [15c] Section (c)(3) of Utah's Rule 1.17 deviates from the ABA Model Rule by providing that the 90-  
106 day client objection period begins to run from the mailing of the notice rather than from receipt of the  
107 notice. The only practical way to prove receipt would be by commercial courier or certified/registered mail.  
108 Proving receipt of notice could therefore be cost-prohibitive, especially to the small sole practitioner. Often

109 when a lawyer does not have a viable address for a client, it is because the subject-matter of the  
110 representation has become stale or the client has failed to keep in touch with the lawyer presumably due  
111 to a loss of interest in the matter. Both the Utah Rules of Civil Procedure and the Utah Rules of Criminal  
112 Procedure allow for notices to be given by regular U.S. mail at the last-known address for the client and  
113 provide a presumption of service upon deposit of the notice in the mail, postage pre-paid. There does not  
114 appear to be good reason to place a more onerous burden upon a lawyer selling a law practice or area of  
115 practice. Whether the client received actual notice of the proposed sale of a practice or area of practice,  
116 the client is not abandoned; there is new counsel to protect the client's existing rights. The last paragraph  
117 of Model Rule 1.17(c)(3) has been intentionally omitted as unnecessary.

118 [15d] The Utah version of Rule 1.17 deletes the provision of the ABA Model Rule (c)(3) relating to  
119 obtaining court order for transfer of representation in those instances where the lawyer cannot give and  
120 prove actual notice of the proposed sale of a law practice or area of practice to a client. As discussed  
121 above, Utah's version of Rule 1.17 does not require proof of actual notice of the sale of a law practice or  
122 area of practice before the 90-day client objection period begins to run; therefore, it is impossible to know  
123 which clients received actual notice and which did not.

124 [15e] The Utah version of Rule 1.17 changes the context of the ABA Model Rule 1.17(d) regarding  
125 fees from "shall not" to "are" because the ABA wording seemed to be in the nature of a mandate and out  
126 of place with the conditional language of the Rule.