



# The State Bar of California

## **Rule 1.17 Sale of a Law Practice (Rule Approved by the Supreme Court, Effective November 1, 2018)**

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 section 6068, subdivision (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 section 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 section 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 section 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).

**NEW RULE OF PROFESSIONAL CONDUCT 1.17  
(Former Rule 2-300)  
Sale of a Law Practice**

**EXECUTIVE SUMMARY**

The Commission for the Revision of the Rules of Professional Conduct (“Commission”) evaluated current rule 2-300 (Sale or Purchase of a Law Practice of a Member, Living or Deceased) in accordance with the Commission Charter. In addition, the Commission considered the national standard of ABA Model Rule 1.17 (Sale of Law Practice). The Commission also reviewed relevant California statutes, rules, and case law relating to the issues addressed by the proposed rules, including relevant Probate Code sections. The result of the Commission’s evaluation is proposed rule 1.17 (Sale of a Law Practice).

**Rule As Issued For 90-day Public Comment**

The proposed rule retains the substance of current rule 2-300, edited for clarity and to conform the language of the rule with current rule drafting conventions. The main issue considered when drafting the rule was whether to substantially modify the current rule by adopting a derivation of ABA Model Rule 1.17 to allow for the sale of a field of practice (such as a firm’s personal injury matters), the seller’s practice in a geographic area (such as all cases in Los Angeles County), or the seller’s practice in a jurisdiction (such as the seller’s Nevada clients). The Commission rejected such an approach for several reasons. The Commission was concerned that expanding the rule along the lines of the ABA Model Rule would: (i) provide a device for evading the restrictions on fee sharing and referral fees found in proposed rule 1.5.1 (Fee Divisions Among Lawyers) [current rule 2-200]; (ii) create a great potential for abuse by lawyers and law firms seeking to capitalize on market perceptions of the value of their lawyer-client relationships; and (iii) add to the commercialization of the practice of law. Most important, however, was the Commission’s belief that the current rule’s approach is more client protective. By retaining California’s approach of permitting the sale of a practice under strictly controlled conditions, the proposed rule: (i) avoids the use of sham associations of lawyers to facilitate the transfer of a practice; (ii) provides clients with appropriate notice and protections against potential violations of confidentiality, fee increases, and abandonment of their matters; and (iii) gives clients an opportunity to choose their own legal counsel.

There are three comments to the rule. Comment [1] explains the policy underlying the requirement that the sale be of “all or substantially all of the law practice of a lawyer.” Comment [2] explains that existing agreements as to fees and scope of work must be honored by the purchaser and that any modification of these agreements must comply with the Rules of Professional Conduct and the State Bar Act. Comment [3] retains the substance of the third Discussion paragraph to the current rule.

**Revisions Following 90-Day Public Comment Period**

After consideration of comments received in response to the initial 90-day public comment period, the Commission revised the language in Comment [2] to clarify the use of the term “solely” in paragraph (a). The new language states that under paragraph (a), a purchaser must honor the existing fee arrangements between the seller and the client as to fees and scope of work. The new language also explains that in some situations fee increases or other changes to existing fee arrangements might be justified by the circumstances of a particular case or matter.

With these changes, the Board authorized an additional 45-day public comment period on the revised proposed rule.

### **Final Commission Action on the Proposed Rule Following 45-Day Public Comment Period**

After consideration of comments received in response to the additional 45-day public comment period, the Commission made no changes to the proposed rule and voted to recommend that the Board adopt the proposed rule.

The Board adopted proposed rule 1.17 at its March 9, 2017 meeting.

### **Supreme Court Action (May 10, 2018)**

The Supreme Court approved the rule as modified by the Court to be effective November 1, 2018. Near the end of Comment [2], after the phrase “in the original agreement,” a period was substituted for an erroneous comma.

**Rule ~~2-300~~1.17 Sale ~~or Purchase~~ of a Law Practice ~~of a Member, Living or Deceased~~**

**(Redline Comparison to the California Rule Operative Until October 31, 2018)**

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

- (Aa) Fees charged to clients shall not be increased solely by reason of ~~such~~the sale.
- (Bb) 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 section 6068, subdivision (e)(1), then;
  - (1) if the seller is deceased, or has a conservator or other person\* acting in a representative capacity, and no ~~member~~lawyer has been appointed to act for the seller pursuant to Business and Professions Code section 6180.5, then prior to the transfer;
    - (a) the purchaser shall cause a written\* notice to be given to ~~the~~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 ~~papers~~materials and property, as required by rule ~~3-7001.16(D)~~(1); and that if no response is received to the ~~notification~~notice within 90 days ~~of the sending of such notice, or in the event~~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. ~~Such notice shall comply with the requirements as set forth in rule 1-400(D) and any provisions relating to attorney-client fee arrangements,~~ and
    - (b) the purchaser shall obtain the written\* consent of the client ~~provided that such.~~ 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 ~~if no response is received to the notification specified in subparagraph (a) within 90 days of the date of the sending of such notification to the client's last address as shown on the records of the seller, or the client's rights would be prejudiced by a failure to act during such 90-day period.~~
  - (2) in all other circumstances, not less than 90 days prior to the transfer;
    - (a) the seller, or the ~~member~~lawyer appointed to act for the seller pursuant to Business and Professions Code section 6180.5, shall cause a written\* notice to be given to ~~the~~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 ~~papers~~materials and property, as required by rule ~~3-700~~1.16(~~De~~)(1); and that if no response is received to the ~~notification~~notice within 90 days ~~of the sending of such notice~~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. ~~Such notice shall comply with the requirements as set forth in rule 1-400(D) and any provisions relating to attorney-client fee arrangements, and~~

(~~b~~ii) the seller, or the ~~member~~lawyer appointed to act for the seller pursuant to Business and Professions Code section 6180.5, shall obtain the written\* consent of the client prior to the transfer ~~provided that such.~~ 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 ~~if no response is received to the notification specified in subparagraph (a) within 90 days of the date of the sending of such notification to the client's last address as shown on the records of the seller.~~

(~~G~~c) If substitution is required by the rules of a tribunal\* in which a matter is pending, all steps necessary to substitute a ~~member~~lawyer shall be taken.

(~~D~~) ~~All activity of a purchaser or potential purchaser under this rule shall be subject to compliance with rules 3-300 and 3-310 where applicable.~~

(~~d~~) The purchaser shall comply with the applicable requirements of rules 1.7 and 1.9.

(~~E~~e) Confidential information shall not be disclosed to a ~~non-member~~nonlawyer in connection with a sale under this rule.

(~~F~~f) ~~Admission~~This rule does not apply to the admission to or retirement from a law ~~partnership or law corporation,~~firm,\* retirement plans and similar arrangements, or sale of tangible assets of a law practice ~~shall not be deemed a sale or purchase under this rule.~~

### **DiscussionComment**

~~Paragraph (A) is intended to prohibit the purchaser from charging the former clients of the seller a higher fee than the purchaser is charging his or her existing clients.~~

~~"All or substantially all of the law practice of a member" means, for purposes of rule 2-300, that, for example, a member may retain one or two clients who have such a longstanding personal and professional relationship with the member that transfer of those clients' files is not feasible. Conversely, rule 2-300 is not intended to authorize the~~

~~sale of a law practice in a piecemeal fashion except as may be required by subparagraph (B)(1)(a) or paragraph (D).~~

[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 ~~2-200~~1.5.1. Payment of a fee to a ~~non-lawyer~~nonlawyer broker for arranging the sale or purchase of a law practice is governed by rule ~~1-320.5.4(a)~~.