

Rule 1.17 Sale of a Law Practice
(Proposed Rule Adopted by the Board on March 9, 2017)

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 OF PROFESSIONAL CONDUCT 1.17
(Current 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 practice. 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. Most notably, 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. 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.

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.

Post-Public Comment Revisions

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 Modifications to the Proposed Rule

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.

COMMISSION REPORT AND RECOMMENDATION: RULE 1.17 [2-300]

Commission Drafting Team Information

Lead Drafter: Robert Kehr

Co-Drafters: Jeffrey Bleich, Raul Martinez

I. CURRENT CALIFORNIA RULE

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

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

- (A) Fees charged to clients shall not be increased solely by reason of such 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), then;
 - (1) if the seller is deceased, or has a conservator or other person acting in a representative capacity, and no member 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 client 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 and property, as required by rule 3-700(D); and that if no response is received to the notification within 90 days of the sending of such notice, or in the event the client's rights would be prejudiced by a failure 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 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 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 client 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 and property, as required by rule 3-700(D); and that if no response is received to the notification within 90 days of the sending of such notice, 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 seller, or the member 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 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.
- (C) If substitution is required by the rules of a tribunal in which a matter is pending, all steps necessary to substitute a member 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.
- (E) Confidential information shall not be disclosed to a non-member in connection with a sale under this rule.
- (F) Admission to or retirement from a law partnership or law corporation, 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.

Discussion

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).

Transfer of individual client matters, where permitted, is governed by rule 2-200. Payment of a fee to a non-lawyer broker for arranging the sale or purchase of a law practice is governed by rule 1-320.

II. FINAL VOTES BY THE COMMISSION AND THE BOARD

Commission:

Date of Vote: January 20, 2017

Action: Recommend Board Adoption of Proposed Rule 1.17 [2-300]

Vote: 15 (yes) – 0 (no) – 0 (abstain)

Board:

Date of Vote: March 9, 2017

Action: Board Adoption of Proposed Rule 1.17 [2-300]

Vote: 11 (yes) – 0 (no) – 0 (abstain)

III. COMMISSION'S PROPOSED RULE (CLEAN)

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 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).

IV. COMMISSION'S PROPOSED RULE (REDLINE TO CURRENT CALIFORNIA RULE 2-300)

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

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 3-700~~rule 1.16(D)(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 ~~in~~if the ~~event the client's~~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~~

(bii) 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 memberlawyer 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~~rule 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~~

(bii) the seller, or the memberlawyer 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.~~

(Cc) If substitution is required by the rules of a tribunal* in which a matter is pending, all steps necessary to substitute a memberlawyer 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.
- (Ee) Confidential information shall not be disclosed to a ~~non-member~~nonlawyer in connection with a sale under this ~~rule~~rule.
- (Ff) ~~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.~~

Comment~~Discussion~~

[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.

~~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).~~

[3] Transfer of individual client matters, where permitted, is governed by ~~rule 2-200~~rule 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~~rule 5.4(a).

V. RULE HISTORY

In 1987, the State Bar recommended a new rule 2-300 to the California Supreme Court as part of the "Request That The Supreme Court Of California Approve Amendments To The Rules Of Professional Conduct Of The State Bar Of California, And Memorandum And Supporting Documents In Explanation" ("1987 Request"), page 27 of Bar Misc. No. 5626, December 1987, and pages 5-6 of Enclosure 1. The 1987 version of the rule provided:

Rule 2-300. Sale or Purchase of a Law Practice of a Member, Living or Deceased [1987 Version]

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

- (A) Fees charged to clients shall not be increased solely by reason of such 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), then prior to the transfer;
 - (1) the purchaser shall cause a written notice to be given to the client 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 and property, as required by rule 3-700(D); and that if no response is received to the notification within 90 days of the sending of such notice, or in the event the client's rights would be prejudiced by a failure 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
 - (2) the purchaser shall obtain the written consent of the client provided that such consent shall be presumed until otherwise notified by the client if no response is received to the notification specified in subparagraph (1) 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.
- (C) If substitution is required by the rules of a tribunal in which a matter is pending, all steps necessary to substitute a member 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.
- (E) Confidential information shall not be disclosed to a non-member in connection with a sale under this rule.
- (F) Admission to or retirement from a law partnership or law corporation, 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.

Discussion:

“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) or paragraph (D).

Transfer of individual client matters, where permitted, is governed by rule 2-200. Payment of a fee to a non-lawyer broker for arranging the sale or purchase of a law practice is governed by rule 1-320.

The 1987 Request provided the following statement for recommending a new rule 2-300:

Proposed rule 2-300 was drafted by COPRAC after an extensive study. The lack of express standards to guide members concerning the termination of their practices results in inadequate protection of clients and the lack of an orderly transfer of client matters to new counsel.

In addition, a member who retires from a firm may receive retirement compensation which can include the value of the member’s share of goodwill. In contrast, a sole practitioner who retires from the practice of law cannot receive compensation which includes the value of the goodwill of the practice. (*Geffen v. Moss* (1975) 53 Cal.App.3d 215.)

The proposed rule would permit compensation which includes the value of goodwill and would regulate such sales in order to protect the rights and interests of existing clients and potential consumers of legal services. (See page 27 of the 1987 Request.)

In response to the 1987 Request, the Supreme Court sent the State Bar a letter that raised the following issues concerning proposed rule 2-300:

3. Proposed Rule 2-300(A) (Sale or Purchase of a Law Practice of a Member, Living or Deceased) contains ambiguous language limiting attorney’s fee increases following the sale and purchase of a law practice. Does the subdivision prohibit all post-sale fee increases? Or, is it simply intended to

prohibit unnecessary, unreasonable, or inadequately noticed fee increases? If so, should notice be sent to all clients whenever a sale takes place under this rule? Proposed Rule 2-300 further omits a necessary provision which would indicate that all activities of the seller are subject to Proposed Rule 3-100 (Duty to Maintain Client Confidence and Secrets Inviolable). Even if proposed rule 3-100 does apply, rule 2-300(B) should require the seller, not the purchaser, to send written notice to the client to prevent disclosure of any privileged or confidential client identification information. (See *People v. Pic'l* (1981) 114 Cal.App.3d 824, 883; *Willis v. Superior Court* (1980) 112 Cal.App.3d 277, 291.) To the same end, should proposed rule 2-300(B) specify that the written notice should be sent to the client at least 90 days prior to the transfer, whenever any sale occurs under this rule? (June 9, 1988 Letter from Supreme Court of California to State Bar of California, at page 2 provided as Enclosure 4 to Bar Misc. 5626 "Request that the Supreme Court of California Approve Amendments to the Rules of Professional Conduct of the State Bar of California, and Supplemental Memorandum and Supporting Documents in Explanation" dated September 1988.)

In response to the Supreme Court's June 9, 1988 inquiry concerning proposed rule 2-300, the State Bar stated:

As to the question regarding fee increases after the sale, the proposed language was patterned after the language in current rule 2-108 and was not intended to prohibit all post sale fee increases. It was intended to prohibit the purchaser from routinely charging the "purchased" clients a higher fee than is charged to existing clients to cover the costs of the purchase. In order to clarify conduct prohibited by paragraph (A), it is recommended that the following paragraph be added to the Discussion portion of the rule:

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.

As to the question regarding giving notice to all clients whenever a sale is made, the Discussion portion of the rule states that the rule is not intended to permit piecemeal sale of cases, except in rare instances, but rather to permit and regulate the sale and purchase of entire law practices. Therefore, if a member determines to sell his or her practice, except in rare instances, all clients will be subject to the transfer and will therefore receive the notice contemplated by paragraph (B).

As to the concern about inserting a provision indicating that the seller is bound by the ethical duty of confidentiality, such a provision was thought to be redundant because all members of the bar are bound by all the standards of professional responsibility, including Business and Professions Code § 6068, subdivision (e), in whatever situation.

The question raised requiring the seller, rather than the purchaser, to send the notice to avoid the disclosure of confidential information raises the issue of client

protection. If the attorney whose law practice is being sold is deceased or is represented by another, the sale might well be handled by someone other than the lawyer. Because the sale might be handled on the seller's side by a non-lawyer, it was determined to impose the duty on the purchaser to send the notice. This is because the purchaser is the one party to the transaction who is certain to be a member of the bar. If the duty to send the notice was placed on the seller, who might not be a lawyer and is therefore not bound by the Rules of Professional Conduct, compliance with the notice requirement could not be ensured.

The Court also inquired regarding the requirement that a written notice be sent 90 days prior to the transfer of the files to avoid disclosure of client secrets prior to consent of the client to the transfer. This involves the same issue of client protection outlined above. There was great concern that if the seller is deceased, has a conservator or other person acting in a representative capacity and the purchaser does not have access to the files, client matters might be left unattended for the 90 day period between the notice and transfer of the files. Allowing flexibility in the time for transfer and permitting the purchaser to act in an emergency on behalf of a client of the seller before the 90 day period for response expired would afford the client greater protection in those situations in which the seller is deceased or incapacitated.

Upon further reflection, it appears that greater client protection would be afforded if the rule contained the procedures outlined in the Court's letter in those situations in which the seller is not deceased, has not had a conservator appointed, nor has another person acting for him or her in a representative capacity. Therefore, the version of the rule most recently adopted by the Board imposes this duty of giving notice to the client on the seller in those situations in which the seller is acting on his or her own behalf in the sale.

As to those situations in which the seller is deceased, has had a conservator appointed, or has another acting in a representative capacity, the version of the rule currently being recommended continues to impose the duty of notice to the client on the purchaser because, in those situations, the client would be afforded the greatest protection possible. (See pages 9-12 of Bar Misc. 5626 "Request That The Supreme Court Of California Approve Amendments To The Rules Of Professional Conduct Of The State Bar Of California, And Supplemental Memorandum And Supporting Documents In Explanation" dated September 1988.)

In accordance with the State Bar's response, the State Bar submitted a modified proposed rule as follows:

Rule 2-300. Sale or Purchase of a Law Practice of a Member, Living or Deceased [1989 version]

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

- (A) Fees charged to clients shall not be increased solely by reason of such sale.
- (B) If the sale contemplates the transfer of responsibility for work not yet completed or responsibility for client files or information protected by ~~rule 3-400~~ Business and Professions Code section 6068, subdivision (e), then prior to the transfer;
- (1) if the seller is deceased, has a conservator or other person acting in a representative capacity, prior to the transfer;
- (a) the purchaser shall cause a written notice to be given to the client 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 and property, as required by rule 3-700(D); and that if no response is received to the notification within 90 days of the sending of such notice, or in the event the client's rights would be prejudiced by a failure 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 consent shall be presumed until otherwise notified by the client if no response is received to the notification specified in subparagraph (1)(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 shall cause a written notice to be given to the client 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 and property, as required by rule 3-700(D); and that if no response is received to the notification within 90 days of the sending of such notice, 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 seller shall obtain the written consent of the client prior to the transfer provided that such 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.

- (C) If substitution is required by the rules of a tribunal in which a matter is pending, all steps necessary to substitute a member 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.
- (E) Confidential information shall not be disclosed to a non-member in connection with a sale under this rule.
- (F) Admission to or retirement from a law partnership or law corporation, 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.

Discussion:

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).

Transfer of individual client matters, where permitted, is governed by rule 2-200. Payment of a fee to a non-lawyer broker for arranging the sale or purchase of a law practice is governed by rule 1-320.

The foregoing version was approved operative on May 26, 1989 as part of comprehensive revisions to the Rules of Professional Conduct.

In 1991, the State Bar requested that the Court amend rule 2-300 and provided this explanation:

Proposed amendment to subparagraphs (B)(1), (B)(2)(a) and (B)(2)(b) would add reference to Business and Professions Code, section 6180.5, regarding the courts' authority to assume jurisdiction over an attorney's practice where the attorney dies, resigns or becomes an inactive member of the State Bar (either voluntarily or involuntarily).

Proposed amendment to subparagraphs (B)(2)(a) and (B)(2)(b) would require that a new attorney appointed by the court pursuant to section 6180.5 comply with the written notice and consent requirements found in these two subparagraphs. Proposed amendment to subparagraph (B)(1) would clarify that

subparagraphs (B)(1)(a) and (B)(1)(b) do not apply in situations where a new attorney has been appointed by the court pursuant to section 6180.5. (Supreme Court File No. S024408, "Request That The Supreme Court Of California Approve Amendments To The Rules Of Professional Conduct Of The State Bar Of California, And Memorandum And Supporting Documents In Explanation," dated December 1991, at page 12.)

The State Bar amended the rule and submitted the following version to the Supreme Court:

Rule 2-300. Sale or Purchase of a Law Practice of a Member, Living or Deceased [1992 version]

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

(A) Fees charged to clients shall not be increased solely by reason of such 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), then;

(1) if the seller is deceased, or has a conservator or other person acting in a representative capacity, and no member 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 client 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 and property, as required by rule 3-700(D); and that if no response is received to the notification within 90 days of the sending of such notice, or in the event the client's rights would be prejudiced by a failure 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 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 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 client 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 and property, as required by rule 3-700(D); and that if no response is received to the notification within 90 days of the sending of such notice, 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 seller, or the member 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 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.

(C) If substitution is required by the rules of a tribunal in which a matter is pending, all steps necessary to substitute a member 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.

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

(F) Admission to or retirement from a law partnership or law corporation, 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.

Discussion:

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).

Transfer of individual client matters, where permitted, is governed by rule 2-200. Payment of a fee to a non-lawyer broker for arranging the sale or purchase of a law practice is governed by rule 1-320.

(See Enclosure 1 of the “Request That The Supreme Court Of California Approve Amendments To The Rules Of Professional Conduct Of The State Bar Of California, And Memorandum And Supporting Documents In Explanation,” December 1991, Supreme Court File No. S024408, for the clean version text of this rule.)

The Court approved the foregoing amendments operative on September 14, 1992. The 1992 version is current rule 2-300.

VI. OFFICE OF CHIEF TRIAL COUNSEL / STATE BAR COURT COMMENTS

- **Gregory Dresser, Office of Chief Trial Counsel, 9/27/2016**
(In response to 90-day public comment circulation):

1. 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.

Commission Response: 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.

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.

- **Gregory Dresser, Office of Chief Trial Counsel, 1/9/2017**
(In response to 45-day public comment circulation):

For the 45-day public comment version of the rule, OCTC re-submitted substantially the same comments as on the 90-day public comment version of the rule and the Commission's responses to OCTC remained the same.

- **State Bar Court:** No comments received from State Bar Court.

VII. SUMMARY OF PUBLIC COMMENTS (INCLUDING COMMENTS SUBMITTED BY THE OFFICE OF CHIEF TRIAL COUNSEL AND STATE BAR COURT) & PUBLIC HEARING TESTIMONY

During the 90-day public comment period, five public comments were received. Two comments agreed with the proposed Rule, two comments disagreed, one comment agreed only if modified, and one comment did not indicate a position. During the 45-day public comment period, two public comments were received. One comment agreed with the proposed Rule, and one comment agreed only if modified. A public comment

synopsis table, with the Commission's responses to each public comment, is provided at the end of this report.

VIII. RELATED CALIFORNIA LAW AND ABA MODEL RULE ADOPTIONS

A. Related California Law

1. Business and Professions Code § 16602.

California law regulates certain anti-competitive agreements among partners. Business and Professions Code § 16602 provides that:

(a) Any partner may, upon or in anticipation of any of the circumstances described in subdivision (b), agree that he or she will not carry on a similar business within a specified geographic area where the partnership business has been transacted, so long as any other member of the partnership, or any person deriving title to the business or its goodwill from any such other member of the partnership, carries on a like business therein.

(b) Subdivision (a) applies to either of the following circumstances:

(1) A dissolution of the partnership.

(2) Dissociation of the partner from the partnership.

2. Business and Professions Code §§ 6180 et seq.

The State Bar Act provides that the courts shall have jurisdiction over the law practice of a lawyer who dies, resigns, or becomes an inactive or disbarred member.

3. Business and Professions Code §§ 6190 et seq.

The State Bar Act provides that the courts shall have jurisdiction over the law practice of a lawyer who has for any reason, including but not limited to excessive use of alcohol or drugs, physical or mental illness, or other infirmity or other cause, become incapable of devoting the time and attention to, and providing the quality of service for, his or her law practice which is necessary to protect the interest of a client.

4. Probate Code Probate Code § 2468.

The conservator of the estate of a disabled attorney who was engaged in the practice of law at the time of his or her disability, or other person interested in the estate, may bring a petition seeking the appointment of an active member of the State Bar of California to take control of the files and assets of the practice of the disabled member. The appointed person serves as the "practice administrator" and may petition to exercise the powers set forth in Business and Professions

Code § 6185. Section 6185 includes the authority to sell “the practice and its goodwill.”

The State Bar of California offers a model agreement¹ for the designation of an attorney to administer a lawyer's law practice in the event that the lawyer becomes disabled or incapacitated. The agreement details the typical responsibilities of the lawyers involved in an “Agreement to Close Law Practice in the Future” and is intended to facilitate compliance with Probate Code § 2468 and Business and Professions Code § 6185.

B. ABA Model Rule Adoptions

The ABA Comparison Chart, entitled “Variations of the ABA Model Rules of Professional Conduct, Rule 1.17: Terminology,” revised September 27, 2016, is available at:

- http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc_1_17.pdf [last visited 2/7/17]
- Eight states have adopted Model Rule 1.17 verbatim.² Sixteen states have adopted a slightly modified version of Model Rule 1.17.³ Twenty-four jurisdictions have adopted a version of the rule that is substantially different from Model Rule 1.17.⁴ Three states did not adopt Model Rule 1.17.

IX. CONCEPTS ACCEPTED/REJECTED; CHANGES IN DUTIES; NON-SUBSTANTIVE CHANGES; ALTERNATIVES CONSIDERED

A. Concepts Accepted (Pros and Cons):

1. Retain the substance of current rule 2-300, edited in conformity with current practice.
 - Pros: No compelling argument has been made for any substantive change in the current California rule.

¹ The model agreement can be found at: <http://ethics.calbar.ca.gov/Ethics/SeniorLawyersResources/AttorneySurrogacy.aspx>.

² The eight jurisdictions are: Arizona, Indiana, Iowa, Kansas, Vermont, West Virginia, Wisconsin, and Wyoming.

³ The sixteen jurisdictions are: Alaska, Arkansas, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Missouri, Montana, Nebraska, Nevada, Rhode Island, South Dakota, Utah, and Washington.

⁴ The twenty-four jurisdictions are: California, District of Columbia, Florida, Georgia, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, and Virginia.

- Cons: See Section IX.B, below.

B. Concepts Rejected (Pros and Cons):

1. Substantially modify the current California Rule by adopting some version of the ABA MR so as to permit sale of a field of practice (such as a firm's contingent fee cases), the seller's practice in a geographic area (such as all cases in Kern County), or the seller's practice in a jurisdiction (such as the seller's Nevada clients).
 - Pros: The main argument in favor of expansion is that doing so would recognize the economic realities of law practice.
 - Cons: Current California rule 2-300 is narrowly drafted to permit a solo practitioner to recoup through a one-time sale of his or her practice the good will developed in the practice over the practitioner's professional lifetime. This sale might have happened due to the lawyer's death or retirement or because the lawyer is leaving the practice of law, such as would happen if the lawyer were appointed to the bench. Thus, current rule 2-300 overcame the earlier, traditional concept that clients cannot be bought or sold, and it did so only to the extent of leveling the playing field by giving to solo practitioners an opportunity to realize the value of the practice just as might be the case with lawyers in large law firms whose interests can be purchased by the firm or its remaining partners. By permitting the sale of a practice under strictly controlled conditions, the current rule: (i) avoids the former use of sham associations of lawyers to facilitate 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. An expansion along the MR's lines would: (i) provide a device for evading the restrictions on fee sharing and referral fees found in Rule 1.5.1 [currently 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; (iii) add to the commercialization of the practice of law' and (iv) create the risk that clients whose matters are less lucrative might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The current rule was created to address a genuine concern. No compelling reason for the MR expansion has been advanced by its proponents other than that there might be situations where there could be a genuine special need to carve out some part of an established practice; an example would be a lawyer who is not leaving the practice of law but due to health problems cannot handle particular matters, but that situation can be handled under Rule 1.5.1 through a co-counsel fee-sharing arrangement or a referral arrangement that reduces or eliminates the burden on the ill lawyer.

2. Remove the word “solely” from paragraph (a).

- Pros: At least two commenters on the first Commission’s proposals (OCTC and a group of law professors) recommended this change, and the Commission reconsidered this possibility. The previous commenters did not explain their view, and we find nothing to support the change.
- Cons: As the State Bar said in its exchanges with the Supreme Court prior to the original adoption of the current Rule, a buyer of a law practice should not routinely increase fees. This would have the effect of causing the clients to pay a part of the purchase price. However, there are legitimate bases on which the buyer and a client might agree to increase fees. These include a change in the scope of the legal work and the passage of time. In addition, we are not aware that the current inclusion of “solely” has caused any client harm. To further clarify the “solely by reason” limitation in paragraph (a), the Commission recommends the adoption of proposed new Comment [2]. To the extent the earlier commenters had in mind that the purchaser of a law practice should be prohibited from *ever* raising fees on the matter sold, that likely would make it impossible to ever sell a law practice under proposed Rule 1.17 and would be inconsistent with the current rule and the views exchanged with the Court in the drafting of prior versions of the current rule.

3. Shorten from 90 days to 30 days the waiting period stated in paragraphs (b)(i) and (ii).

- Pros: This was recommended to the first Commission by the Santa Clara County Bar Assoc., but we are unable to see any aspect of client protection in that suggestion. The Rule does not require the buyer to wait 90 days before providing services. It states that “... if the client’s rights would be prejudiced by a failure of the purchaser to act during that time [the 90-day period], the purchaser may act on behalf of the client until otherwise notified by the client.”
- Cons: There is no evidence that the 90-day period is deficient, so there is no reason to change the current Rule in that respect.

2. Address the antitrust and other constitution issues raised by Office of Chief Trial Counsel.

- Pros: None identified.
- Cons: The Commission does not see any antitrust or constitutional issues. As to the former, the “all or substantially all” language was part of the original version of this rule when adopted by the Supreme Court, has been part of the rule ever since, and has triggered no antitrust complaints to our knowledge. The Commission is not aware of any constitutional challenge due to that limitation.

This section identifies concepts the Commission considered before the rule was circulated for public comment. Other concepts considered by the Commission, together with the Commission's reasons for not recommending their inclusion in the rule, can be found in the Public Comment Synopsis Tables.

C. Changes in Duties/Substantive Changes to the Current Rule:

None.

D. Non-Substantive Changes to the Current Rule:

1. Substituting the term “lawyer” for “member”.
 - Pros: The current Rules’ use of “member” departs from the approach taken in the rules in every other jurisdiction, all of which use the term lawyer. The Rules apply to all non-members practicing law in the State of California by virtue of a special or temporary admission. For example, those eligible to practice pro hac vice or as military counsel. (See, e.g., rules 9.40, 9.41, 9.42, 9.43, 9.44, 9.45, 9.46, 9.47, and 9.48 of the California Rules of Court.)
 - Cons: Retaining “member” would carry forward a term that has been in use in the California Rules for decades.
2. Changing the rule number to correspond to the ABA Model Rules numbering and formatting (e.g., lower case letters)
 - Pros: It will facilitate the ability of lawyers from other jurisdictions who are authorized to practice in California under *pro hac vice* admission (see current rule 1-100(D)(1)) to find the California rule corresponding to their jurisdiction’s rule, thus permitting ease of determining whether California imposes different duties. It will also facilitate the ability of California lawyers to research case law and ethics opinions that address corresponding rules in other jurisdictions, which would be of assistance in complying with duties, particularly when California does not have such authority interpreting the California rule. As to the “Con” that there is a large body of case law that cites to the current rule numbers, the rule numbering was drastically changed in 1989 and there has been no apparent adverse effect. A similar change in rule numbering of the Rules of Court was implemented in 2007, also with no apparent adverse effect.
 - Cons: There is a large body of case law that cites to the current rule numbers and California lawyers are presumed to be familiar with that numbering system.

E. Alternatives Considered:

None.

X. RECOMMENDATION AND PROPOSED BOARD RESOLUTION

Recommendation:

The Commission recommends adoption of proposed Rule 1.17 [2-300] in the form attached to this report and recommendation.

Proposed Resolution:

RESOLVED: That the Board of Trustees adopts proposed Rule 1.17 [2-300] in the form attached to this Report and Recommendation.