

Selling Your Law Practice:

The Profitable Exit Strategy



**Bonus
Section!**

*The Fundamentals
of Closing
a Law Practice*

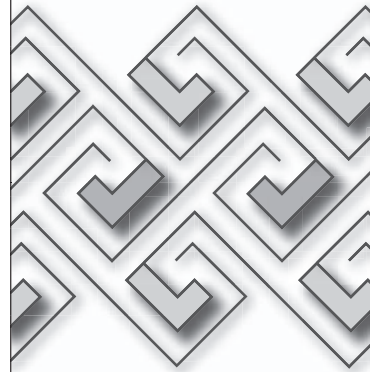
by Edward Poll

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Selling Your Law Practice: The Profitable Exit Strategy

***Including the Fundamentals
of Closing a Law Practice***

by Edward Poll



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Dedication

To my friends and colleagues who have encouraged me to continue to write about selling and buying a law practice and to encourage lawyers to believe as I do: That lawyers have something of value to sell that extends beyond the “sticks and stones” of their law offices ... and failing to see that fact robs them and their loved ones of a very significant asset in their lives.



Table of Contents

Foreword by <i>James E. Brill</i>	xii
Foreword by <i>Robert L. Ostertag</i>	xiv
Preface	xviii
Acknowledgments	xxi
About the Author.....	xxii

PART I: THE ESSENTIALS OF SELLING A LAW PRACTICE..... 1

Chapter 1

<i>Introduction: Can You Sell Your Law Practice?</i>	3
1.1. How's the Playing Field for Transferring Ownership? ⁹	3
1.2. A Look at the Logic That Led to the Rule Change.....	4
1.3. About This Book: Learn the How-Tos of Selling (Or Closing If You Must).....	6
1.4. First, Determine If Your Jurisdiction Permits a Sale	7
Exhibit 1.1 ABA Model Rules of Professional Conduct Model Rule 1.17: Sale of Law Practice	10
Exhibit 1.2 ABA Model Rule 5.6—Restrictions on Right to Practice	16

Chapter 2

<i>Caveats and Ethics Issues: Stop, Look, and Listen</i>	17
2.1. Be Aware of the Prospects and Pitfalls	17
2.2. Salability	17
2.3. Seller Psychology	18
2.4. Have a Timeline.....	18
2.5. Appraisal Figure vs. Sale Price	19
2.6. Don't Be Your Own Negotiator.....	19
2.7. Selling the Entire Law Firm.....	20
2.8. Related Ethics Considerations.....	21
<i>Preserving Client Confidentiality</i>	22
<i>The Question of Referral for Fee</i>	22
<i>Conflicts of Interest</i>	22
<i>Client Files</i>	23
<i>Continuing E&O Insurance Coverage</i>	23
2.9. Cover All the Bases: Consult the Rules in Full	24

Chapter 3	
<i>A Glossary of Terms</i>	25
3.1. What's in a Word?	25
3.2. Appraisal and Financial Terminology.....	25
Chapter 4	
<i>Obtaining a Professional's Opinion of the Value</i>	31
4.1. Hire a Valuation Expert	31
4.2. What Data Will You Need to Provide?	32
4.3. Learn What's Involved in the Valuation Process.....	35
<i>Science vs. Art</i>	35
<i>The Value of Goodwill</i>	37
<i>Law Firm Assets</i>	38
<i>Contingency Fee Agreements</i>	40
4.4. A Snapshot of Valuation Methods	42
Chapter 5	
<i>Engaging in the How-Tos: Valuation Methods in Depth</i>	45
5.1. Take a Closer Look at the Landscape	45
5.2. Fair Market Value.....	45
5.3. Rule-of-Thumb Method	47
5.4. Price/Earnings Ratio.....	49
5.5. Excess Earnings.....	49
5.6. Discounted Future Cash Flow	53
5.7. Put Your Expert's Figure to Use.....	54
Chapter 6	
<i>Spread the Word: Letting Buyers, Employees, and Clients</i>	
<i>Know about the Sale</i>	57
6.1. Think about the Timing of Communications	57
6.2. How to Advertise the Sale to Prospective Buyers.....	57
6.3. Confidential Information Memorandum	59
6.4. How to Break the News to Employees	60
6.5. Make Deals with Employees You Need	62
6.6. Part on Good Terms with Staff Members	63
6.7. Notify Clients According to the Rules	63

Chapter 7

Find a Qualified Buyer and Prepare to Negotiate	65
7.1. Who Wants to Buy a Law Practice?	65
7.2. Vet the Candidates: Due Diligence on Prospective Buyers	67
7.3. Check for Conflicts of Interest in Advance.....	67
7.4. Prepare to Move in with the Right Mind-Set.....	68
<i>The Function of the Valuation Figure</i>	68
<i>The Reason for Selling</i>	68

Chapter 8

Time to Sit Down at the Table: The Negotiation Process	71
8.1. “How Much Will I Get for My Practice?”	71
8.2. Who Should Do the Negotiating?	71
8.3. Cover These Essential Negotiating Points.....	73
8.4. Should You Use a Covenant Not to Compete?.....	75
8.5. Think about Errors and Omissions: Tail Insurance Policies.....	76
8.6. Settle on the Payment Terms	77
<i>Guarantee</i>	78
<i>Price vs. Terms</i>	79
8.7. The Ticking-Clock Factor: Wrap It Up	80

Chapter 9

Don't Forget Uncle Sam: Tax Aspects of a Practice's Sale	83
9.1. What Does the Sale Mean for Your Tax Obligations?	83
9.2. Tax Treatment of the Furniture, Fixtures, and Equipment Being Conveyed.....	84
9.3. Tax Treatment of Goodwill and Going-Concern Value	88
9.4. Tax Treatment of Client Lists	89
9.5. Tax Treatment of a Sale of a Professional Corporation.....	90
<i>Sale of Stock</i>	90
<i>Asset Sale</i>	92

Chapter 10

Transition Issues: A Checklist for the Selling Attorney	95
Transition Issues on the Ethics Side of the Practice.....	96
<i>Description of Actions to Be Taken</i>	96
Transition Issues on the Business Side of the Practice	98
<i>Description of Actions to Be Taken</i>	98

Chapter 11

<i>How to Close Your Law Practice: Tying Up the Ends</i>	103
11.1. When You Are Unable to Sell	103
11.2. Do-It-Yourself Retirement.....	104
11.3. Build Your Timeline.....	105
11.4. Communicate the News	107
<i>Notifying Staff</i>	107
<i>Notifying Clients</i>	109
<i>Notifying Other Parties</i>	110
<i>Seeking Publicity</i>	110
11.5. Will They Stay or Will They Go? Ending Relationships with Employees	111
<i>Severance Packages</i>	112
<i>ERISA and COBRA Issues</i>	112
11.6. Other Ethics and Business Responsibilities in Closing the Practice	113
<i>Your Professional Considerations as a Lawyer</i>	113
<i>Your Responsibilities as a Business Owner</i>	116
11.7. Moving Your Property Out of the Office	120
11.8. Reduce the Bumps in the Road and Have a Safe Journey	123
Exhibit 11.1 Timeline for Closing Your Law Practice.....	124
<i>Checklist for the Ethics Side of the Practice</i>	125
<i>Checklist for the Business Side of the Practice</i>	129
PART II: SAMPLE AGREEMENTS, LETTERS, AND FORMS	133
Confidentiality and Nondisclosure Agreement.....	135
Asset Purchase and Sale Agreement	138
Agreement of Non-Competition	153
Secured Promissory Note	161
Letter to Clients Advising of Practice’s Sale	170
Letter to Clients Advising of Law Office’s Closing	172
Client Authorization for Transfer of Client File.....	174
Client Request to Obtain Client File.....	175
Sample Press Release Announcing Sale of Law Practice.....	176
Sample Press Release Announcing Closing of Law Practice	177
Sample Client File-Tracking Chart	178

PART III: FINANCIAL WORKSHEETS	179
Profit & Loss Worksheet	181
Alternative Valuation Scenarios Worksheet	184
Asset & Liability Summary Worksheet	185
Accounts Receivable Aging Schedule	187
Work-in-Progress Schedule	188
Equipment Schedule.....	189
Furniture & Fixtures Schedule	190
Real Estate Schedule	191
Accounts Payable Schedule.....	192
Notes Payable Schedule	193
Lease Liability Schedule.....	194
Client Trust Account Schedule	195

PART IV: STATE BAR RULES REGARDING THE SALE OF A

LAW PRACTICE	197
Alabama	199
Alaska	199
Arizona	204
Arkansas	209
California	214
Colorado	217
Connecticut.....	223
Delaware	223
District of Columbia	229
Florida	241
Georgia	247
Hawaii	252
Idaho	256
Illinois.....	260
Indiana.....	262
Iowa	267
Kansas.....	272
Kentucky	274
Louisiana	276
Maine.....	276
Maryland.....	278
Massachusetts.....	282

Michigan	286
Minnesota	298
Mississippi	301
Missouri.....	303
Montana	312
Nebraska	313
Nevada.....	316
New Hampshire.....	317
New Jersey.....	317
New Mexico	318
New York	320
North Carolina	324
North Dakota.....	329
Ohio.....	335
Oklahoma	349
Oregon.....	357
Pennsylvania	359
Rhode Island.....	364
South Carolina	368
South Dakota.....	374
Tennessee.....	379
Texas	384
Utah	384
Vermont	386
Virginia.....	391
Washington	397
West Virginia	406
Wisconsin	407
Wyoming.....	412



Foreword

by James E. Brill

Some years ago, I researched and wrote a paper titled “Dealing With the Death of the Solo Practitioner.” One of the obvious issues was what to do about the law practice—the files, the trust accounts, potential malpractice issues, pending cases, and all the other elements that complicate the administration of a solo’s estate. It quickly became apparent that if a sale could be made, the solo’s family and the solo’s clients could benefit.

In Texas, where I practice, the disciplinary rules do not specifically permit the sale of any lawyer’s practice. In fact, it is easy to argue that rules relating to confidentiality would prohibit a sale of a Texas lawyer’s practice. Yet further research revealed that many other states do specifically authorize the sale of a practice and the American Bar Association has a model procedure—Rule 1.17—for such a sale. However, there has been little written about how to evaluate or sell a law practice, much less how to close a practice. With this book, Ed Poll has stepped up to fill that void.

In this volume, you can determine your state’s rules (or lack of rules) regarding the sale of a practice. If you determine that a sale is permitted, you will find even-handed guidance for how to proceed with the process. You will learn what to look for, what facts and figures are essential, how to analyze that information, and how to negotiate the most favorable result.

There are also suggestions for those whose jurisdictions do not specifically authorize the sale of a practice.

The practice of law has changed and is continuing to change. All issues relating to the sale of a law practice have not been identified, much less resolved. Nevertheless, it always will be necessary to assemble, analyze, and understand particular facts and how they relate to the value of a law practice.

This new volume expands on Mr. Poll's earlier writings dealing with the sale of a law practice to comprehensively guide you from concept to contract to completion of a successful transition following the sale, or the closing, of your practice.

James E. Brill is a solo practitioner from Houston, Texas, who previously chaired the American Bar Association Law Practice Management Section.

Foreword

by Robert L. Ostertag

The setting is 1988. You're sitting in your office contemplating retirement. You've practiced law for 40 years—during most of that time, and now, as a sole practitioner. You'd like to travel, spend more time with the family, do things before you no longer can. You'd like to sell your practice—not just the books, the desks, those new things called computers, but also the goodwill. That means your good name, your outstanding reputation for competence and professionalism, and all the things you know that lawyers should be and that you are. Certainly, you think, it all must have value.

You look around for professional guidance, but you can't find any. Why? Because, as you learn, you can't sell your goodwill under current rules of ethics. Why? Because, as you're told, your clients are not salable chattels. They're not to be bought and sold. But you're not selling your clients, you say—you're selling their files. Sorry. As for the files, you're bound to maintain the client confidences and secrets that are contained in those files. Who would buy your practice without first needing to know the identity of your clients and what the subject matter and status of their files are?

That doesn't seem fair, you opine, since just about every other profession of which you are aware has no problem with the sale and purchase of their practices. Why only lawyers? But it is so . . . and so you must swallow your pride, notify your clients that they can pick up their files, close your office doors, and walk up the avenue, head hanging and pride of accomplishment totally dispelled. Your doctor friends have all stopped practicing. They've bought those beautiful places on the lake or in Arizona and are living off the retirement income made available by someone's purchase of their practices. Where did you go wrong?

Fast-forward a year, to 1989. The State of California has just adopted a rule, the first in the nation, permitting lawyers to sell the goodwill aspects of their practices. Are clients suddenly commodities? Have the thinkers suddenly found a new way to deal with clients' confidences and secrets? Has something about clients unexpectedly changed? Whatever. Perhaps someday soon your jurisdiction will adopt a similar rule.

Now fast-forward to 2005. You've found the elixir of youth. Remarkably, you're still practicing, and you aren't even a year older. You've decided again to sell your practice and retire. This, finally, is it. Your state has at last adopted the magic rule, so you're going to the lake. Or perhaps you really don't want to retire after all. They'll have to carry you from the office, but you do want to prepare for the day when suddenly the elixir runs out. What of your spouse's, and your children's, future? Who is to be left with the problem of dealing with your practice? What about your clients and their files you'll have left behind? Until now, surviving spouses have commonly been left with the problem of gaining no monetary benefit from all the successful years of their deceased spouses' practices. Now that the rules have changed, you'd like to derive for your own spouse some meaningful tangible benefit from your years of labor. How to go about it? The likely answer, you decide, is to educate yourself and find help. But where?

Well, you've found it. Indeed, you have in your hands what is now by far the most useful and up-to-date material available on the sale and purchase of a law practice: Edward Poll's *Selling Your Law Practice: The Profitable Exit Strategy*.

Ed Poll has spent the past 15 years serving as a consultant to practitioners on issues involving the practice of law, with particular emphasis on law office economics and management. He knows the subject. He previously practiced law privately for some 25 years. He is a firm believer that the practice of law is indeed a profession, but one whose business aspects are no less important to the practice than is the manner by which one

represents clients and dutifully conducts their legal affairs. Not only has he practiced privately, he has also managed and served as CEO and general counsel to corporate businesses, from which he has gained sound practical business knowledge referable to law office management.

Having decided to help lawyers survive the unique pressures of their professions, he has since consulted with scores of solo, small, medium, and large law firms and has provided meaningful recommendations and assistance to them. For years, he has lectured on the subject at law schools, institutions, and bar association programs. He has also been a frequent and significant contributor to legal and business publications on various topics, including, since the evolution of rules relating to the sale of law firms, how to go about purchasing and selling firms under the various rules relating to that subject. Among the numerous books he has authored, his *Attorney and Law Firm Guide to the Business of Law* is itself nationally recognized as the bible on the operation of a law practice. He and his work are nationally recognized.

Ed Poll is a firm believer that every competent and principled lawyer has a monetarily valuable reputation that should translate to salable goodwill. He has invested years adding to his repertoire of knowledge and lecturing and writing on the subject. The treatise in your hands is the product of that effort. It discusses in detail the essentials of selling a law practice and the how-to aspects of the steps in the process, including the most delicate matter of the maintenance of clients' confidences and secrets. Of particular value to practitioners are the book's chapters on valuation, including its tax aspects. This volume also provides a step-by-step method for closing your practice and includes valuable sample worksheets, agreements (including non-compete clauses) and myriad pointers to make both the seller's and purchaser's participation in the process safer and more complete.

This work is clearly the most expansive and up-to-date in its field, and it is an invaluable resource that anyone considering the sale or purchase of a law practice should read before entering into the process. I highly commend it.

Robert L. Ostertag, a former president of the New York State Bar Association, is a small firm practitioner in Poughkeepsie, New York.

Preface

Not that many years ago, lawyers cringed at the idea of selling their law practices. Law was a profession, they said, not a business.

Fortunately, times have changed, and now most attorneys understand the concept that the law is both a profession and a business. And as businesses, law practices can and should be sold.

Who would want to sell a law practice? Prospective sellers fall into many categories.

For one, surveys show that many lawyers are unhappy in the practice of law. They would opt out today if they could find a way to “cash in” on their years of toil. Many have built a quality practice that provides a good living. But for whatever reason, the joy of the practice has waned and they are thinking about doing “something” else.

Other types of sellers include attorneys who simply want to retire; who have been elected or appointed to a judgeship; who desire to relocate to another geographic area; or whose dreams of what the practice might be like just haven’t been fulfilled otherwise.

In addition, a potential sale situation arises when an attorney dies suddenly, leaving a spouse who must “mop up.” Is there anything of value that can be sold? Yes, there are the books in the library, the computer equipment, the office furniture and the like. There are also accounts receivable. But there is also value in the firm’s goodwill.

Still other attorneys will just want to know what the value of their practice is, if only for their own personal satisfaction.

Happily, the profession overall is finally recognizing the reality that a lawyer has built something of real value in a law practice. Until fairly recently, lawyers may have felt trapped by the need to continue to earn a living in the face of the profession's failure to permit the sale of a law practice. But since 1989, one jurisdiction after another has changed its Rules of Professional Conduct. The net result is that now, in the vast majority of the country, attorneys can sell their law practices. The lawyer no longer has to merely close the practice's doors; he or she can finally receive payment for the true economic value of the law practice upon transfer to another licensed professional.

This new volume was prompted by and reflects the growing number of rule changes across the country, as more and more jurisdictions have come to support American Bar Association Model Rule 1.17, which originated from the ABA General Practice Section, endorsing the principle permitting the sale of law practices. (The rules governing the sale of law practices in all 50 states are included at the back of this book.) I am proud to say I was a catalyst to get the discussion moving forward and then part of the group that persuaded the ABA House of Delegates to modify Rule 1.17 and allow the sale of "... an area of ..." the practice of law, not necessarily the entire practice.

While this book builds on my earlier publication *The Tool Kit for Buying or Selling a Law Practice*, so many things have been added that it is a brand-new book with a brand-new title. Any lawyer who wants to sell a practice should read this entire volume. In addition, those old-fashioned enough to want to close the doors of their practices when they retire can still find the information they will need to close their doors while also fulfilling their professional responsibilities to their clients.

Those specifically looking to buy a law practice will find a wealth of information of use and interest here as well—since selling is the natural counterpart to buying (and vice versa)—and I strongly encourage them to read these pages. However, because there are also separate issues and steps involved at

the buyer's end, you will also want to see our forthcoming companion volume on the essentials of buying a law practice.

I've been in the law business for a long time. I'm happy to finally see lawyers thinking about the business side of our profession.

And as always, I am also happy to answer your questions and hear your comments. If you have questions, comments or related concerns, I invite you to contact me via e-mail or telephone.

Ed Poll, J.D., M.B.A., CMC

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Acknowledgments

There have been many people who, along the way, have given me support and encouragement. While I would like to list all of them here, I cannot possibly. Instead, I must extend my thanks to a particular few.

Of special note is my father, who supported and encouraged me in everything.

There have also been a number of people who have caused me to modify my behavior and my entire approach to my personal life and my business life. Among them are Alan Weiss, Ph.D., who coaches me and challenges me to be a better consultant and coach; as well as Jack Rosenberg, Ph.D., and Beverly Kitaen-Morse, Ph.D., who continue to help me modify my personal values and challenge me to be a better person, husband, and father (and lest I forget, a grandfather, too).

My thanks also to Steve Wolf for sharing his expertise and preparing the tax issues chapter of this book, as well as to Berne Rolston for contributing the asset purchase and sale agreement.

And to Sam Harris and Hugh Griffin, I extend my deep and heartfelt gratitude for providing me opportunities for new business and an ear to listen to my dreams and passions.

Perhaps most of all, I want to acknowledge and thank my clients and colleagues who make my learning possible, who support my passion for law practice management, and who continue to keep me on target.

About the Author

Edward Poll, J.D., M.B.A., CMC, is a nationally recognized coach, certified management consultant, author, and speaker on law practice management topics. He is “Board Approved” in the speciality of Coaching to the Legal Profession by the Society for Advancement of Consulting®. Ed’s mission and passion is to make attorneys and law firms more effective in serving their clients, more efficient in delivering their services, and more profitable.

Ed has the unique blend of 25 years of law practice (including civil litigation and corporate/business law) and more than 15 years of helping lawyers become better at The Business of Law® and, thus, more profitable. He also was the CEO and COO of several manufacturing businesses.

He is the author of numerous articles and books that demonstrate how to successfully manage a law practice, among them *Attorney and Law Firm Guide to the Business of Law*, 2nd Edition (published by the American Bar Association). Other works include *Collecting Your Fee: Getting Paid from Intake to Invoice* (published by the ABA) and *Secrets of the Business of Law: Successful Practices for Increasing Your Profits!* and *The Profitable Law Office Handbook: A Guide to Successful Business Planning*, published by LawBiz®.

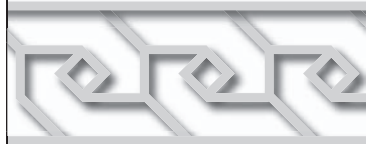
In addition, Ed taught “Creating New Business Enterprises” in the Department of Entrepreneurship, University of California, Los Angeles (UCLA), and created the “Business of Law Practice” for the University of Southern California (USC) Law Center for Advanced Professional Education, among other programs.

He is also a leader in the California and national bar associations. Ed has served on boards of various local, state,

and national bar associations, including as Chair of the State Bar of California's Law Practice Management & Technology Section and as a member of the Council of the American Bar Association Law Practice Management Section.

PART I

The Essentials of Selling a Law Practice



I

Chapter 1

*“Success is a journey,
not a destination.”*
—H. Tom Collard

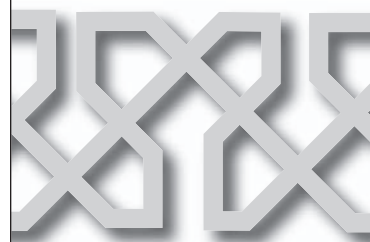
Introduction: Can You Sell Your Law Practice?

1.1. How’s the Playing Field for Transferring Ownership?

In the old days, days I still remember clearly, attorneys did not sell their law practices. They simply closed them.

Sometimes they closed the practice because they wanted to retire or were elevated to the bench. Sometimes they closed it because they became disabled or were disbarred. And sometimes they closed it because they wanted to leave the profession—or merely to move from the jurisdiction in which they were practicing. There were no other options in those days. As a result, sole and small firm practitioners especially had no mechanism for reaping the rewards accumulated during their years in the law.

Large firms, on the other hand, have long had well-defined methods for transferring ownership interests in a practice via mergers, retirements, partnership breakups, and the like. Lawyers in larger firms have also always had mechanisms that



provided them and their heirs with funding for the value of their individual interests in the firm.

By contrast, the outright “sale” of a law practice from one attorney to another was prohibited for decades.

Fortunately, times have changed. In 1991 the American Bar Association dropped its opposition, adding Model Rule 1.17 to the ABA Model Rules of Professional Conduct. California, notably, had already permitted such sales since 1989. In the ensuing years, more and more states followed suit. In addition, in 2002, the ABA adopted a modification to Rule 1.17 permitting the sale of a part (versus the entirety) of a law practice. Several states have since adopted the ABA’s modified version of the rule.

Overall, more than 40 states now have some version of the ABA rule and permit the sale of a law practice. Thus, the mechanisms for selling a law practice have continued to develop (albeit slowly) across the country.

These changes are economically vital for smaller firms and sole practitioners—many of whom still tend to conclude their law practices without any transfer of ownership. They simply close their office doors one day and never return. When they do so, however, they forgo “cashing in” on a highly valuable asset, one that has taken many years to build. That no longer has to happen. Like their counterparts in large firms, sole and small firm practitioners—and their heirs—can now reap the rewards of their years of effort. This levels the economic playing field for all lawyers, especially for retirement and estate planning purposes. And justly so.

1.2. A Look at the Logic That Led to the Rule Change

Before the adoption of Model Rule 1.17, there were at least two methods used to recognize economic realities and, in the

process, avoid the harshness of the prohibition against selling.

One way was to take an inflated value of the physical, or tangible, assets of the practice being transferred and couple that with an “understanding” that it was the “seller’s” intent to refer prospective clients to the “buyer” instead of the “seller” performing legal services for those clients. One problem with this approach was the inability to enforce such an “agreement” because it was perceived to be against public policy.

A second method was to form a partnership between the “seller” and the “buyer.” While not expressly stated, all parties operated from the premise that the “selling” partner would retire in the near future (for example, three to nine months hence), and then the interest of the retiring partner could be acquired by the firm (the “buying” lawyer) without proscription by the bar. Among the many problems with this approach: potential violations of other Professional Rules of Conduct as well as the questionable enforceability should one “partner” default against the other. (The author knows of no state that has yet set such a transaction aside as being form over substance; however, such an argument would likely get a sympathetic ear in some state high courts.)

Generally, over the years, the arguments against selling a law practice have included (1) prohibition against sharing fees, (2) prohibition against selling client files, (3) prohibition against restricting the right of a person to practice law after the transaction, and (4) allowing a prospective client to select any lawyer of his or her own choosing.

The preceding arguments are, in fact, still in play where the sale of a law practice remains prohibited in a state jurisdiction. But in most jurisdictions, those arguments ultimately were overcome by two practical issues.

First, larger firms were able to make arrangements for the sale of a law practice, so why should not a sole practitioner be able

to do so? Why should sole practitioners be penalized in such harsh fashion—and what was the basis of such a one-sided penalty? Few if any suggestions could be put forward ... and any that were had no rational basis in today’s world.

Second, clients would actually be better protected from malpractice actions by allowing rather than prohibiting a sale. A lawyer no longer interested in practicing law, for whatever reason, becomes less likely to pay full attention to the interests of clients. However, a new lawyer, interested in retaining the client base of the selling firm, is motivated to “bend over backward” in efforts to please the transferred client material acquired in the transaction, thus assuring the clients of fully focused attention and best efforts.

Today the vast majority of states understand the benefits to clients and the lack of solid foundation of the arguments focused against small firms and sole practitioners and, consequently, permit the sale and the purchase of law practices.

1.3. About This Book: Learn the How-Tos of Selling (Or Closing If You Must)

While the sale of a law practice is now widely permissible in the United States, the valuation issues, transaction steps, and negotiation factors involved in the sale are still not widely understood by most lawyers. This book is designed to remedy that situation and to give you insights into the transition issues involved in the process—working from the premise that you are focused on the sale of your own law practice, not the sale of a minority interest.

You should note that in the following pages, you will not find a comprehensive analysis of associated case law. In fact, there is currently little or no case law concerning Rule 1.17 or its progeny. Practitioners who might choose to delve further into that area have access to case law through a range

of other resources. Nor will you gain an expert's high-level understanding of how to analyze every financial statement and report that will be involved in the transaction. Practitioners have accountants, appraisers, practice management consultants, and other expert resources to assist them with that task. Other, more esoteric issues are also left to the side.

Instead, what you will find in the following pages is a wealth of practical information—including hands-on checklists, sample forms, and financial worksheets (also on the accompanying CD-ROM)—that will enable you to determine whether your practice is in fact salable and, if so, how to proceed with assessing its value, finding a buyer, conducting the transaction, and closing the deal. Alternatively, if it turns out that the practice is not salable, you can learn about issues and steps involved in closing the practice in a separate section.

1.4. First, Determine If Your Jurisdiction Permits a Sale

Of course, the first step the reader should take is to consult the Rules of Professional Conduct—as well as applicable ethics opinions and rulings—regarding the sale or purchase of a law practice in their particular jurisdictions. All readers are strongly advised to do so before proceeding with any of the steps described in the following chapters.

ABA Model Rule 1.17 is included at the end of this chapter (along with Rule 5.6, regarding a lawyer's right to practice after leaving a firm). Rules relating to the sale of a law practice for the 50 states and the District of Columbia can be found in Part IV at the back of the book. Every effort has been made to ensure that the rules included are current as of press time.

In addition, many of the state bar associations' Web sites (see the sidebar on the next page for URLs) contain the current

State Bar URLs

Alabama	www.alabar.org	Montana	www.montanabar.org
Alaska	www.alaskabar.org	Nebraska	www.nebar.com
Arizona	www.azbar.org	Nevada	www.nmbar.org
Arkansas	www.arkbar.com	New Hampshire	www.nhbar.org
California	www.calbar.ca.gov	New Jersey	www.njsba.com
Colorado	www.cobar.org	New Mexico	www.nmsbar.org
Connecticut	www.ctbar.org	New York	www.nysba.org
Delaware	www.dsba.org	North Carolina	www.ncbar.org
District of Columbia	www.dcbar.org	North Dakota	www.sband.org
Florida	www.flabar.org	Ohio	www.ohiobar.org
Georgia	www.gabar.org	Oklahoma	www.okbar.org
Hawaii	www.hsba.org	Oregon	www.osbar.org
Idaho	www2.state.id.us/isb	Pennsylvania	www.pabar.org
Illinois	www.illinoisbar.org	Rhode Island	www.ribar.com
Indiana	www.inbar.org	South Carolina	www.scbar.org
Iowa	www.iowabar.org	South Dakota	www.sdbar.org
Kansas	www.ksbar.org	Tennessee	www.tba.org
Kentucky	www.kybar.org	Texas	www.texasbar.com
Louisiana	www.lsba.org	Utah	www.utahbar.org
Maine	www.mainebar.org	Vermont	www.vtbar.org
Maryland	www.msba.org	Virginia	www.vsb.org
Massachusetts	www.massbar.org	Washington	www.wsba.org
Michigan	www.michbar.org	West Virginia	www.wvbar.org
Minnesota	www.mnbar.org	Wisconsin	www.wisbar.org
Mississippi	www.msbar.org	Wyoming	www.wyomingbar.org
Missouri	www.mobar.org		

versions of the rules. Consult these Web sites as the first stage to confirm the contents of the most-current rule versions. Some state bars do not post their rules on their sites—for those jurisdictions, please consult other authorities such as www.legalethics.com, www.lexisnexis.com, www.findlaw.com, or another such authority. Contacting your individual state bar office will also help guide you to the relevant rules and opinions, as well as to information on whether any revisions may be under consideration in your jurisdiction.

Exhibit 1.1
ABA Model Rules of Professional Conduct
Model Rule 1.17: Sale of Law Practice

A lawyer or a law firm may sell or purchase a law practice, or an area of 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, [in the geographic area] [in the jurisdiction] (a jurisdiction may elect either version) in which the practice has been conducted;
- (b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;
- (c) The seller gives written notice to each of the seller's clients regarding:
 - (1) the proposed sale;
 - (2) the client's right to retain other counsel or to take possession of the file; and
 - (3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.

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.

(d) The fees charged clients shall not be increased by reason of the sale.

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, or ceases to practice in an area of law, 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 partners 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, or all of an area of practice, be sold is satisfied if the seller in good faith makes the entire practice, or the area of 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 or resigns from a judiciary position.

[3] The requirement that the seller cease to engage in the private practice of law 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.

[4] The Rule permits a sale of an entire practice attendant

upon retirement from the private practice of law within the jurisdiction. Its provisions, therefore, accommodate the lawyer who sells the practice upon the occasion of moving to another state. Some states are so large that a move from one locale therein to another is tantamount to leaving the jurisdiction in which the lawyer has engaged in the practice of law. To also accommodate lawyers so situated, states may permit the sale of the practice when the lawyer leaves the geographic area rather than the jurisdiction. The alternative desired should be indicated by selecting one of the two provided for in Rule 1.17(a).

[5] This Rule also permits a lawyer or law firm to sell an area of practice. If an area of practice is sold and the lawyer remains in the active practice of law, the lawyer must cease accepting any matters in the area of practice that has been sold, either as counsel or co-counsel or by assuming joint responsibility for a matter in connection with the division of a fee with another lawyer as would otherwise be permitted by Rule 1.5(e). For example, a lawyer with a substantial number of estate planning matters and a substantial number of probate administration cases may sell the estate planning portion of the practice but remain in the practice of law by concentrating on probate administration; however, that practitioner may not thereafter accept any estate planning matters. Although a lawyer who leaves a jurisdiction or geographical area typically would sell the entire practice, this Rule permits the lawyer to limit the sale to one or more areas of the practice, thereby preserving the lawyer's right to continue practice in the areas of the practice that were not sold.

Sale of Entire Practice or Entire Area of Practice

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

[7] 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 Model 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. Providing the purchaser access to client-specific information relating to the representation and to the 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 90 days. If nothing is heard from the client within that time, consent to the sale is presumed.

[8] 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. (A procedure by which such an order can be obtained

needs to be established in jurisdictions in which it presently does not exist.)

[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.

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 or a practice area 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(e) 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).

Applicability of the Rule

[13] 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.

[14] 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.

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

Exhibit 1.2

ABA Model Rule 5.6—Restrictions on Right to Practice

A lawyer shall not participate in offering or making:

(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

Comment

[1] An agreement restricting the right of lawyers to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer. Paragraph (a) prohibits such agreements except for restrictions incident to provisions concerning retirement benefits for service with the firm.

[2] Paragraph (b) prohibits a lawyer from agreeing not to represent other persons in connection with settling a claim on behalf of a client.

[3] This Rule does not apply to prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17.