From Legal Practice to What’s Next:
The Boomer-Lawyer’s Guide to a Smooth Transition

Presented by the ISBA Senior Lawyers Section
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Illinois State Bar Association

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Outline

Rule 1.17  Illinois Rules of Professional Conduct of 2010


Rule 1.15 (a) (8)  Illinois Rules of Professional Conduct of 2010

Checklist

Rule 776  Illinois Rules on Admission and Discipline of Attorneys

Power of Attorney

Olmstead & Associates
RULE 1.17: SALE OF LAW PRACTICE

A lawyer or a law firm may sell or purchase, and the estate of a deceased lawyer or the guardian or authorized representative of a disabled lawyer may sell, a law practice, including good will, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law in the geographic area in which the practice has been conducted;

(b) The entire 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 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 be sold is satisfied if the seller in good faith makes the entire practice available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation. Return to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation. For example, a lawyer who has sold the practice to accept an appointment to judicial office does not violate the requirement that the sale be attendant to cessation of practice if the lawyer later resumes private practice upon being defeated in a contested or a retention election for the office 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 on the occasion of moving to another state. Some states, like Illinois, 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, the Rule also permits the sale of the practice when the lawyer leaves the geographic area rather than the jurisdiction. In such cases, it is advisable for the parties’ agreement to define the geographic area.


Sale of Entire Practice

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

[9] All 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 arrangements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.
Other Applicable Ethical Standards

[11] Lawyers participating in the sale of a law practice are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller’s obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser’s obligation to undertake the representation competently (see Rule 1.1); the obligation to avoid disqualifying conflicts, and to secure the client’s informed consent for those conflicts that can be agreed to (see Rule 1.7 regarding conflicts and Rule 1.0(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 includes the sale of a law practice of a deceased or disabled lawyer. Thus, the seller may be represented by a nonlawyer 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.

RULE 1.3: DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client.


Comment

[5] To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. See Illinois Supreme Court Rule 776, Appointment of Receiver in Certain Cases.

RULE 1.15: SAFEKEEPING PROPERTY

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be deposited in one or more separate and identifiable interest- or dividend-bearing client trust accounts maintained at an eligible financial institution in the state where the lawyer's office is situated, or elsewhere with the informed consent of the client or third person. For the purposes of this Rule, a client trust account means an IOLTA account as defined in paragraph (i)(2), a separate, interest-bearing non-IOLTA client trust account established to hold the funds of a client or third person as provided in paragraph (f). Funds of clients or third persons shall not be deposited in a non-interest-bearing or non-dividend-bearing account. Other, tangible property shall be identified as such and appropriately safeguarded. Complete records of client trust account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.

Maintenance of complete records of client trust accounts shall require that a lawyer:

(8) make appropriate arrangements for the maintenance of the records in the event of the closing, sale, dissolution, or merger of a law practice
PLANNING FOR SALE OF PRACTICE

☐ Read Rule 1.17 and the Comment.

☐ Identify an attorney acquaintance or friend who will “cover” for you temporarily (this could be the same attorney who covers for you when you are on vacation or otherwise unavailable and, assuming a sale, it can be the attorney that you consider to be a candidate to purchase your practice). Talk to this attorney ahead of time and confirm his or her willingness to “cover” for you in the event of your death or disability. Agree on how the attorney will be compensated for work during transition. This attorney, if not the purchaser, can be invaluable in negotiating the sale.

☐ Identify the staff person or third party you will want to take charge of the office and make the necessary decisions in order to supervise the sale transition. Make sure this person has your password(s), and can write checks on your business and trust accounts, or arrange contingent or supplemental authority for an appropriate third party to handle your accounts.

☐ Identify potential “buyers”, and make a list of them. Office sharing partners are good candidates. Introduce yourself to the placement director at a nearby law school. Consider assistant state’s attorneys or assistant public defenders known to you, or young lawyers in other firms who may have an interest in going out on their own. Prepare a physical list of such lawyers. Be aware of possible conflicts. Consider identifying lawyers to whom the practice should not be sold.

☐ Decide whether your representative should be instructed to consider selling different parts of the practice (family law, real estate, wills and estate planning) to different offices or different lawyers. Be mindful of the requirement that the entire practice must be sold. (See Comment [6] to the Rule)

☐ Begin or continue putting meaningful follow up notes in all files (so that staff or new attorney will know what needs to be done next).

☐ Begin or continue using a good case management system (Amicus, Time Matters, Abacus) which will greatly facilitate the transition to a new lawyer. (Good organization can allow you to omit this step.)

☐ Consider incorporating client “consents” for another attorney to work on their files and review confidential information into your retainer agreements and your retention letters. It could be something as simple as:

\[
\text{In the event attorney becomes disabled or dies unexpectedly, or retires, client consents to another lawyer, chosen by attorney or attorney’s legal representative, reviewing the file and handling the file until a successor attorney is chosen by client. For this limited purpose, client waives confidentiality and consents to the other lawyer's access to client's file.}
\]
Consider incorporating language into your retainer agreements and retention letters, authorizing the transfer of unearned retainers, trust account funds, etc. to another attorney. For example:

In addition, client consents to the transfer of any of client’s funds held by attorney to another lawyer, chosen by attorney or attorney’s legal representative, and the retention of those funds by the other lawyer until a successor attorney is chosen by client.

Prepare list of usual vendors; prepare, so that your staff can provide, a list of assets and liabilities, (including furniture and fixtures), and a balance sheet. Update periodically. Make sure your staff person knows where the information is.

Make an "estimate" of an appropriate purchase price as a guideline to family and staff. Update periodically.

Consider drafting a letter to local law firms advising them that the practice will be for sale, thereby creating a larger market. Identify in advance those lawyers likely to be interested, and even consider discussing fee arrangements (for the transition) with them ahead of time.

Decide whether professional liability “tail” policy should be purchased.

Determine whether existing professional liability policy provides “transition” coverage.

Prepare draft of letter to be sent to clients notifying clients of proposed transfer of file, their rights, deadline to object.

Decide how closed or inactive files will be handled, if buyer or buyers will not take.

Decide what should be done with original wills, if buyer or buyers will not take.

Decide what should be done with open files that buyer or buyers will not take. (Conflict of interest files.)

Consider organizing critical information into one source.

Plan, plan, plan!
Rule 776. Appointment of Receiver in Certain Cases

(a) Appointment of Receiver. Where it comes to the attention of the circuit court in any judicial circuit from any source that a lawyer in the circuit is unable properly to discharge his responsibilities to his clients due to disability, disappearance or death, and that no partner, associate, executor or other responsible party capable of conducting the lawyer's affairs is known to exist, then, upon such showing, the presiding judge in the judicial circuit in which the lawyer maintained his practice, or the supreme court, may appoint an attorney from the same judicial circuit to serve as a receiver to perform certain duties hereafter enumerated. Notice of such appointment shall be made promptly to the Administrator of the Attorney Registration and Disciplinary Commission either at his Chicago or Springfield office, as appropriate. A copy of said notice shall be served on the affected attorney at his or her last known residence.

(b) Duties of the Receiver. As expeditiously as possible, the receiver shall take custody of and make an inventory of the lawyer's files, notify the lawyer's clients in all pending cases as to the lawyer's disability, or inability to continue legal representation, and recommend prompt substitution of attorneys, take appropriate steps to sequester client funds of the lawyer, and to take whatever other action is indicated to protect the interests of the attorney, his clients, or other affected parties. A copy of the appointing order shall be served on the affected attorney at his or her last known residence.

1. The attorney appointed to serve as receiver shall be designated from among members of the bar from the same judicial circuit who are not representing any party who is adverse to any known client of the disabled, absent or deceased lawyer, and who have no adverse interest or relationship with that lawyer or his estate which would affect the receiver's ability to perform the duties above enumerated.

2. An attorney appointed as receiver may decline the appointment for personal or professional reasons. If no available members of the bar from the same judicial circuit can properly serve as receiver as a result of personal or professional obligations, the Administrator of the Attorney Registration and Disciplinary Commission shall be appointed to serve as receiver.

3. Any objections by or on behalf of the disabled, absent, or deceased lawyer, or any other interested party to the appointment of or conduct by the receiver shall be raised and heard in the appointing court prior to or during the pendency of the receivership.

(c) Effect of Appointment of Receiver. Where appropriate, a receiver appointed by the court pursuant to this rule may apply to the court for a stay of any applicable statute of limitation, or limitation on time for appeal, or to vacate or obtain relief from any judgment, for a period not to exceed 60 days. An application to the court setting forth reasons for such application shall constitute a pleading sufficient to toll any limitations period. For good cause shown, such stay may be extended for an additional 30 days.

(d) Liability of Receiver. A receiver appointed pursuant to this rule shall:

1. not be regarded as having an attorney-client relationship with the clients of the disabled, absent or deceased lawyer, except that the receiver shall be bound by the obligations of confidentiality imposed by the Rules of Professional Conduct with respect to information acquired as receiver;

2. have no liability to the clients of the disabled, absent or deceased lawyer except for injury to such clients caused by intentional, willful or gross neglect of duties as receiver; and
(3) except as herein provided, be immune to separate suit brought by or on behalf of the
disabled, absent, or deceased lawyer.

(e) Compensation of the Receiver.

(1) The receiver shall normally serve without compensation.

(2) On application by the receiver, with notice to the Administrator of the Attorney
Registration and Disciplinary Commission, and upon showing by the receiver that the
nature of the receivership was extraordinary and that failure to award compensation
would work substantial hardship on the receiver, the court may award reasonable
compensation to the receiver to be paid out of the Disciplinary Fund, or any other fund
that may be designated by the supreme court. In such event, compensation shall be
awarded only to the extent that the efforts of the receiver have exceeded those normally
required in an amount to be determined by the court.

(f) Termination of Receivership. Upon completion of the receiver's duties as above
enumerated, he shall file with the appointing court a final report with a copy thereof
served upon the Administrator of the Attorney Registration and Disciplinary
Commission.

Adopted October 20, 1989, effective November 1, 1989; amended March 25, 1991,
effective immediately.
Thinking About Getting Out of Your Firm?

Questions to think about

1. When do you want to retire and leave your firm? Or do you want to work forever?
2. What amount of cash or annual cash flow do you need when you exit?
3. Do you presently have a retirement plan and how much income do you project that it will provide at different exit times?
4. To whom do you want to transfer your interest?
5. Based upon future cash flow do you know how much the firm is worth today?
6. Do you know how to best maximize the income stream generated by the firm—in the years ahead while you are still with the firm and after you leave the firm?
7. Have you been able to institutionalize the firm—or is it uniquely you?
8. Is the firm even marketable?
9. Do you have a succession/exit plan?
10. Do you have a plan for your firm if the unexpected happens to you? Have you taken steps to protect your family’s wealth?

To exit their practices successfully law firms owners need:

- A road map—exit planning is a process that helps owners decide where they want to go as well as how to get there.
- Experienced guides—Owners must assemble a team of trained and experienced advisors to guide them through choices and decisions as they work toward their exit goals.
- Implementation—Success depends upon a disciplined timetable keyed to the firm owner’s exit plan.

How We Can Help

To help you create your Exit Plan we coordinate your advisors and implement your plan on your timetable.

Deliverables Include:

- Financial and non-financial firm review & Exit Plan Project Plan
- Development of an owner centered Exit Plan
- Exit Plan Implementation

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John:

Here are a couple article in a reprint format that might look nicer if you want to use them.

Here is a link to the blog.


http://blog.olmsteadassoc.com/services/blog/6a00d83519624753ef00d8354ec51c69e2/searchfilter.q=succession

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