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**For Sale by Owner:
Selling a Law Practice**

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In his leading treatise of the day published in 1953, *Legal Ethics*, Henry Drinker succinctly summarized (at 161) the ability sell a law practice: “A lawyer’s practice and good will may not be offered for sale.” Times have changed. In 1990, the ABA amended its influential Model Rules of Professional Conduct to permit the sale of law practices. Oregon followed in 1995. Oregon DR 2-111 was patterned closely on the corresponding ABA Model Rule, 1.17. When Oregon moved to professional rules based on the ABA Model Rules in 2005, we retained former DR 2-111 in the form of Oregon RPC 1.17. Although our rule continues to include nuances that vary from the ABA Model Rule, it remains in close overall continuity with the ABA formulation.

The legislative history from the ABA reflects an effort to put retiring solo practitioners in rough parity with law firm partners by allowing them a way to extract the economic goodwill developed over a practice lifetime. Despite this goal, for many years the sale of law practice rule was comparatively dormant. For example, there are few appellate cases nationally—and none in Oregon—interpreting state versions of the Model Rule. With the so-called “graying of the legal profession” as the “baby boom” generation heads toward retirement,

however, Model Rule 1.17 and its state equivalents have begun receiving renewed attention nationally.

In this column, we'll survey three facets of Oregon RPC 1.17. First, we'll look at just what can be included in the sale. Second, we'll examine the required notice that must go to the clients affected. Finally, we'll discuss the extent to which restrictive covenants can be included in the sales agreement.

Although we'll approach these areas from the practical perspective of a retiring lawyer, it is important to note that the Oregon rule varies from its ABA Model Rule counterpart by not being predicated on the selling lawyer actually leaving practice.

What Can Be Included

Physical assets such as office furniture and computer systems can, of course, be included in the sale. In fact, physical assets could be sold even before the rule changed. A key component that can be valued now, however, is goodwill. In the only regional appellate case touching on a state version of RPC 1.17, the Washington Court of Appeals in *Dixon v. Crawford, McGilliard, Peterson & Yelish*, 262 P3d 108, 112 (Wash App 2011), cogently defined "goodwill" in this context: "Essentially, goodwill is the monetary value of a reputation." With a law practice, this facet of RPC 1.17 allows a retiring lawyer to harvest the reputational value of the practice built-up over many years.

RPC 1.17 also allows a lawyer to sell either “all or part of a law practice.” The ability to sell “part” may be particularly attractive to a lawyer who would like to “downsize” an overall practice while easing into semi-retirement.

Notice to Clients

RPC 1.17(b) requires that clients receive very specific notice that a sale is contemplated, including the identity of the purchasing lawyer or firm and a description of the purchasing lawyer’s practice or firm. RPC 1.17(c) also allows the notice to include the equivalent of an endorsement of the purchaser by the seller as long as the seller “has made a reasonable effort to arrive at an informed opinion.”

Although a client cannot veto a sale, a client is under no obligation to continue with the purchasing lawyer. In this regard, RPC 1.17(b) requires that each client be told that the client can go elsewhere. RPC 1.17(b)(4), however, does allow a file to be transferred to the purchaser if the client involved does not object within 45 days after the required notice has been mailed.

In the process of evaluating a potential sale, RPC 1.6(b)(6) allows the selling lawyer to reveal the identity of the clients involved, the general nature of their work and their fee arrangements as long as doing so will not prejudice the clients.

If a file is transferred, RPC 1.17(g) prohibits fees from being raised “by reason of the sale” but does permit them to be increased “upon agreement of the

client.” Comment 10 to the corresponding ABA Model Rule explains that this limitation is intended to prevent the sale from being financed by increasing the fees to the clients affected.

Restrictive Covenants

Restrictive covenants when a lawyer departs a law firm are ordinarily prohibited under RPC 5.6(a) and associated case law (*see, e.g., Gray v. Martin*, 63 Or App 173, 181-82, 663 P2d 1285 (1983)). RPC 1.17(h), however, makes an exception in the context of selling a law practice. Under that provision, a sale may be conditioned on the selling lawyer “ceasing to engage in the private practice of law or some particular area of practice for a reasonable period within the geographic area in which the practice has been conducted.” The ABA recently concluded in Formal Ethics Opinion 468 (2014), however, that the selling lawyer can still assist in orderly transition of active matters.

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