

Supreme Court

In Re: Amendment to Supreme Court :
Rules of Professional Conduct :
(Rule 1.18 - Sale of a Law Practice) :

ORDER

Article V of the Supreme Court Rules, entitled "Rules of Professional Conduct," are hereby amended by adding thereto the following Rule 1.18 providing for the sale of a law practice:

Rule 1.18 - Sale of law practice

A lawyer or a law firm may sell or purchase 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 jurisdiction in which the practice has been conducted;
- (b) The entire practice is sold to one or more lawyers or law firms;
- (c) Actual written notice and a written request for consent to transfer the client's representation is given 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 representation of that client may be transferred to the purchaser upon entry of an order so authorizing by a court having jurisdiction if the client does not return the signed

consent to the proposed transfer or does not otherwise object within ninety (90) days of receipt of the notice.

If a client cannot be given notice or fails to return a signed consent, 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.

Commentary

[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. 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.

[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 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.

Sale of Entire Practice

[5] The Rule requires that the seller's entire practice be sold. The prohibition against sale of less than the 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

[6] 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, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction.

[7] 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 or fail to respond to the request for consent. Since clients who cannot be located or who fail to respond to a notice requesting their consent to the proposed transfer 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.

[8] 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

[9] 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

[10] 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 the obligation to protect information relating to the representation (see Rules 1.6 and 1.9).

[11] 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 1.17).

Applicability of the Rule

[12] 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.

[13] 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.

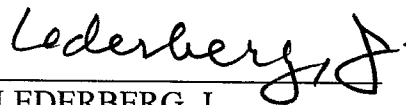
[14] This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice.

Entered as an Order of this Court this 31st day of *January* 2002.

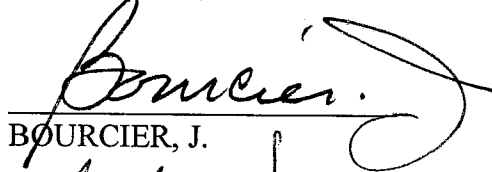
By Order,



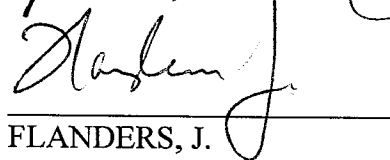
WILLIAMS, C. J.



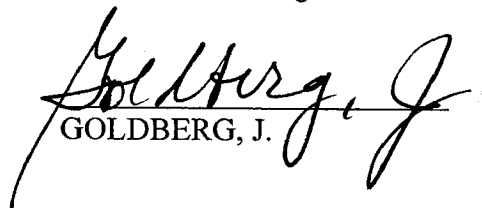
LEDERBERG, J.



BOURCIER, J.



FLANDERS, J.



GOLDBERG, J.