

Rule Change 2001(2)

**The Colorado Rules of Civil Procedure
Appendix to Chapters 18 to 20
Colorado Rules of Professional Conduct**

The following rules are amended and adopted as of April 18, 2001:

Colo. RPC 1.5(d).	Fees
Colo. RPC 1.15(f)(7).	Safekeeping Property; Interest-Bearing Accounts to be Established for the Benefit of the Client or Third Persons or the Colorado Lawyer Trust Account Foundation; Notice of Overdrafts; Record Keeping
Colo. RPC 1.17(i).	Sale of Law Practice

Amended and Adopted by the Court, En Banc, April 18, 2001, effective July 1, 2001.

BY THE COURT:

**Rebecca Love Kourlis
Justice, Colorado Supreme Court**

**Michael L. Bender
Justice, Colorado Supreme Court**

Rule 1.5. Fees

- (a) [*** NO CHANGE]
- (b) [*** NO CHANGE]
- (c) [*** NO CHANGE]
- (d) Other than in connection with the sale of a law practice pursuant to Rule 1.17, a ~~A~~-division of a fee between lawyers who are not in the same firm may be made only if:
 - (1)-(4) [*** NO CHANGE]
 - (e) [*** NO CHANGE]

Rule 1.15. Safekeeping Property; Interest-Bearing Accounts to be Established for the Benefit of the Client or Third Persons or the Colorado Lawyer Trust Account Foundation; Notice of Overdrafts; Record Keeping

- (a) [*** NO CHANGE]
- (b) [*** NO CHANGE]
- (c) [*** NO CHANGE]
- (d) [*** NO CHANGE]
- (e) [*** NO CHANGE]
- (f) **Required Bank Accounts.** Every attorney in private practice in this state shall maintain in a financial institution doing business in Colorado, in the attorney's own name, or in the name of a partnership of attorneys, or in the name of the professional corporation or limited liability corporation of which the attorney is a member, or in the name of the attorney or entity by whom employed:
 - (1) [*** NO CHANGE]
 - (2) [*** NO CHANGE]
 - (3) [*** NO CHANGE]
 - (4) [*** NO CHANGE]
 - (5) [*** NO CHANGE]
 - (6) [*** NO CHANGE]
 - (7) A lawyer may deposit funds reasonably sufficient to pay anticipated service charges or other fees for maintenance or operation of such account into an account maintained under paragraph (f)(1), (f)(3), or (f)(4). Such funds shall be clearly identified in the attorney's records of the account.
- (g) [*** NO CHANGE]
- (h) [*** NO CHANGE]
- (i) [*** NO CHANGE]
- (j) [*** NO CHANGE]

Rule 1.17. Sale of Law Practice

A lawyer or law firm may sell or purchase a private law practice, including good will, if the following conditions are satisfied:

- (a) [*** NO CHANGE]
- (b) [*** NO CHANGE]
- (c) [*** NO CHANGE]
- (d) [*** NO CHANGE]
- (e) [*** NO CHANGE]
- (f) [*** NO CHANGE]
- (g) [*** NO CHANGE]
- (h) [*** NO CHANGE]

(i) Notwithstanding Rule 1.5(d), the purchase price for the practice may be based upon a portion of the fees collected from the clients of the law practice, even if the division of such fees is not in proportion to the services performed or the responsibilities assumed by the seller and purchaser.

COMMENT

This rule permits a selling lawyer, law firm, or the representatives of a deceased, disabled or disappeared lawyer to obtain compensation for the reasonable value of a private law practice in the same manner as withdrawing partners or shareholders of law firms. See Rules 5.4 and 5.6. This rule does not apply to the transfer of responsibility for legal representation from one lawyer or firm to another when such transfers are unrelated to the sale of a practice. For transfer of individual files in other circumstances, see Rules 1.15(b) and 1.16(d).

A lawyer participating in the sale of a law practice is subject to the ethical standards that apply when involving another lawyer in the representation of a client. These include, for example, the seller's obligation to act competently in identifying a purchaser qualified to assume the representation of the client and the purchaser's obligation to undertake the representation competently, Rule 1.1; the obligation to avoid disqualifying conflicts and to secure client consent after consultation for those conflicts that can be waived, Rule 1.7; and the obligation to protect information relating to the representation, Rules 1.6 and 1.9.

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.

Selling Entire Practice

When a lawyer is closing a private practice, the lawyer may negotiate with a purchaser for the reasonable value of the practice that has been developed by the seller. A seller may agree to transfer matters in one legal field to one purchaser, while transferring matters in another legal field to a separate purchaser. However, a lawyer may not sell individual files piecemeal.

The seller remains responsible for handling all clients' matters until the files are transferred under this rule.

Termination of Practice by the Seller

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 one or more purchasers. The fact that a number of the seller's clients decide not to be represented by the purchaser but take their matters elsewhere, therefore, does not result in a violation. Neither does a return to private practice as a result of an unanticipated change in circumstances 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 practice upon being defeated in a retention election for the office.

The requirement that the seller cease to engage in the private practice does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity which provides legal services to the poor, or as in-house counsel to a business.

The rule permits a sale attendant upon retirement from the private practice of law within the state of ~~colorado~~Colorado. Its provisions, therefore, accommodate the lawyer who sells the practice upon the occasion of moving to another state.

Conflicts

The practice may be sold to one or more lawyers or firms so long as the seller presents all clients with the opportunity to obtain competent representation.

Since the number of client matters and their nature directly bear on the valuation of good will and therefore directly relate to selling the law practice, conflicts that cannot be waived by the client and that prevent the

prospective purchaser from undertaking the client's matter should be determined promptly. If the purchaser identifies a conflict that the client cannot waive, information should be provided to the client to assist in locating substitute counsel. If the conflict can be waived by the client, the purchaser should explain the implications and determine whether the client consents to the purchaser undertaking the representation. Initial screening with regard to conflicts, for the purpose of determining the good will of the practice, need be no more intrusive than conflict screening of a walk-in prospective client at the purchaser's firm.

Client Confidences, Consent and Notice

Negotiations between the seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client can be conducted in a manner that does not violate the confidentiality provisions of Rule 1.6 just as preliminary discussions are permissible 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 fact 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 60 days. If nothing is heard from the client within that time, consent to the transfer of the client's file to the identified purchaser is presumed.

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. The purchaser may represent those clients who cannot be given actual notice of the proposed purchase or are not available to consent to the purchase or direct any other disposition of their files until otherwise notified by the client. The purchaser shall preserve the confidences of the client.

Fee Arrangements Between Client and Purchaser

Paragraph (c) is intended to prohibit a purchaser from charging the former clients of the seller a higher fee than the purchaser is charging the purchaser's existing clients. The sale may not be financed by increases in fees charged the clients of the practice that is purchased. Existing agreements between seller and the client as to fees and the

scope of the work must be honored by the purchaser, unless the client consents after consultation.

Adjustments for differences in the fee schedules of the seller and the purchaser should be made between the seller and purchaser in valuing good will, and not between the client and the purchaser. If a written fee agreement exists between the seller and a client, the purchaser may not refuse to undertake the representation unless the client consents to pay the higher fees the purchaser usually charges. To prevent client financing of the sale, the higher fee the purchaser may charge must not exceed the fees charged by the purchaser for substantially similar service rendered prior to the initiation of the purchase negotiations.

Deceased, Disabled or Disappeared Lawyer

Even though a nonlawyer seller representing the estate of a deceased, disabled or disappeared lawyer is not subject to the ~~eolorado~~Colorado ~~R~~ules of ~~P~~rofessional ~~C~~onduct, a lawyer who participates in a sale of a law practice must conform to this rule. Therefore, the purchasing lawyer must see that its requirements are met.