

**RESOLUTIONS ADOPTED BY  
GENERAL PRACTICE, SOLO AND SMALL FIRM SECTION  
OF THE STATE BAR OF TEXAS**

WHEREAS, approximately 37% of all Texas lawyers in private practice are solo practitioners.

WHEREAS, following the lead of the American Bar Association, forty-seven states and the District of Columbia have all adopted a rule permitting the sale of a law practice, including good will.

WHEREAS, only three states, Alabama, Louisiana, and Texas, have failed to adopt a rule that would provide a safe harbor for the sale of a law practice.

WHEREAS, it is common place and accepted practice for lawyers to form partnerships, to transfer their practices from one firm to another, and to provide benefits to retiring partners, associates, and the families of deceased partners and associates.

WHEREAS, the profession has accepted the foregoing activities as complying with the Disciplinary Rules relating to preservation of client confidences, avoiding barratry and solicitation, the unregulated division of fees within a firm, and paying compensation to non-lawyers (members of the family of deceased lawyers who had been associated with the firm).

WHEREAS, seemingly impenetrable barriers exist to impede, if not to prohibit, the sale of the practice of a solo practitioner based on literal interpretations of Rules requiring strict confidentiality, Rules prohibiting certain divisions of fees, and even defining misconduct so broadly as to restrict or even prohibit payments to the non-lawyer family members for anything beyond the fair market value of the law books, furniture, equipment, and other tangible assets of the a deceased lawyer's practice.

WHEREAS, additional arguments against the sale of a practice have included claims that clients have no control over the selection of the purchasing lawyer, that the selling lawyer would seek to sell to the highest bidder and not necessarily to the best lawyer, and finally, that clients are not commodities that can be bought and sold.

WHEREAS, clients of the larger firms ordinarily have no control over the selection of lawyers who join the practice with those firms; that those clients cannot require a particular lawyer to personally perform the services requested; that the seller, the buyer, and the client have mutually beneficial interests that the client will be well represented by someone who has paid for the privilege of representing that client; that the buyer is acquiring the potential right to earn the practice of the clients of the seller; and that lawyers should not be prohibited from realizing financial benefit accruing from years of their efforts in building and maintaining successful practices; and that buying and selling clients, as commodities or otherwise, is not involved.

WHEREAS, with law firm mergers announced on an almost daily basis, all with the potential of disqualifying conflicts of interest, it is clear, especially for the largest firms, that even the mere comparison of client names necessarily involves the disclosure and exchange of confidential information; that clients have no control over the details of the merger or over personnel decisions, and that when the practices of lawyers in smaller firms are merged into the practice of a much larger firm, those small firm lawyers effectively “monetize” their practices in the form of interests in the surviving partnership and in greatly increased compensation.

WHEREAS, the different standards are so glaring as to amount to discrimination in favor of one group of lawyers (those in firms, particularly large firms) over a significant but different group of other lawyers (solo and small firm practitioners).

WHEREAS, the application of differing standards reinforces the widespread perception that the “big firms control the Bar” and that their lawyers are exempt from the sanctions of the Disciplinary Rules the application of which seemingly appear to be limited to misconduct by solo and small firm lawyers.

WHEREAS, in order to provide equal protection to all lawyers regardless of their practice setting, a new Rule should be added to the Disciplinary Rules to expressly permit the sale of a law practice.

WHEREAS, the General Practice, Solo and Small Firm Section of the State Bar of Texas has approved the following resolutions and hereby requests the Board of Directors of the State Bar of Texas to adopt a new provision, the terms of which are contained on the pages attached and designated as Exhibit One, to be added to the Disciplinary Rules

BE IT RESOLVED, that the Board of Directors of the State Bar of Texas petition the Supreme Court of Texas to exercise its inherent power to amend and add to the Texas Disciplinary Rules of Professional Conduct by adding a new provision, the terms of which are contained on the pages attached and designated as Exhibit One and in doing so, adopt the following resolution.

BE IT RESOLVED, the Board of Directors of the State Bar of Texas has determined that the foregoing resolution has merit and has approved such resolution and hereby submits the same to the Supreme Court of Texas for adoption pursuant to the Court’s inherent power.

# EXHIBIT ONE

## PROPOSED DISCIPLINARY RULE PERMITTING SALE OF A LAW PRACTICE

### **Rule Sale of Law Practice**

(a) As used in this Rule:

- (1) "Buyer" means an individual lawyer or a law firm;
- (2) "Seller" mean an individual lawyer, the guardian of the estate of a disabled lawyer, the executor, administrator, heir, or beneficiary of a deceased lawyer, a trustee of a trust for the benefit of an individual lawyer, or an agent acting pursuant to a power of attorney from an individual lawyer.

(b) A lawyer or a law firm may sell or purchase all or a portion of a law practice, including goodwill, if the conditions of this Rule are met.

(c) Prior to the exchange of information between buyer and seller, the parties must enter into a non-disclosure agreement to maintain in confidence any information derived from such exchange.

The parties must compare client lists in order to identify conflicts of interest, to determine if any such conflicts are waivable, and to obtain written waivers from affected clients prior to transferring their files to buyer. When conflicts are not or cannot be waived, those matters may not be transferred to buyer.

Buyer and seller may also exchange information regarding the nature and extent of each other's practice, the status of all pending matters and other work in progress, their financial records including IOLTA and other trust accounts, engagement agreements, accounting, tax, and other internal records.

These disclosures by buyer and seller are exceptions to the traditional requirements of strict confidentiality and, as so limited, are not violations of this or other Rules.

(d) If a sale and purchase is agreed upon, written notice is to be given to those of seller's clients:

- (1) for whom seller is currently providing a service;
- (2) for whom seller reasonably anticipates providing a service within the next 12 months, and
- (3) for whom seller has performed a service within the prior 12 months.

The notice must state:

- (1) whether seller is completely or only partially ceasing to practice or will continue to practice with buyer;
- (2) the identity of the buyer along with details regarding buyer's background including bar admissions, qualifications, experience, and practice areas and the location where the buyer intends to maintain seller's practice;
- (3) that no change will be made to the fee arrangement without the client's prior consent;
- (4) that the client retains the right to retain other counsel at any time and, if the matter involves pending litigation, that written substitution of counsel and approval by the court first must be obtained;
- (5) that the client retains the ongoing right to possession of the client's files;
- (6) when and where the client's files are and will be available for retrieval, that a written receipt will be required, and that seller and buyer are entitled to make copies at their own expense;
- (7) that funds belonging to the client that are on deposit in seller's IOLTA or other client trust account will be transferred to buyer who will be responsible for such funds;
- (8) that if the client terminates the attorney-client relationship, the client is entitled to a refund of all the unearned portion of any funds held by seller for the client's benefit;
- (9) that client's consent to buyer's having possession of client's files will be presumed if client makes no written objection within 30 days after the giving of the notice; and
- (10) that buyer will assume all professional obligations to seller's clients.

A notice from any lawyer to that lawyer's clients, is a permitted communication and is not a violation of these Rules. If such a notice is sent by buyer due to the inability of seller to give the notice, it is not subject to compliance with the Rules regarding advertisements or communications with non-lawyers nor is it an event that constitutes barratry or solicitation.

If notice cannot be given to a client, a district court or a court exercising probate jurisdiction, as applicable, can determine whether or not to permit the transfer of representation to buyer.

(e) The purchase of seller's practice or part thereof carries with it the obligation of buyer to assume the professional obligations of seller's practice and to take possession and preserve all of seller's active, inactive, and closed client files. Buyer shall have access to all of such files and other records relating to seller's practice and shall preserve confidentiality to the same extent as though having been originally retained by each client.

(f) Except for emergencies, due dates, and deadlines requiring immediate response, buyer may not perform and will not be responsible for performing services for seller's clients until the expiration of the 30 day notice period or until receiving specific authorization from the client, whichever occurs first.

The court in which a matter is pending shall determine whether to permit buyer to assume representation of seller's client.

Other proceedings relating to the sale or proposed sale of seller's practice are to be brought in a district court or a court exercising probate jurisdiction, as the case may be and venue is in the county in which seller most recently maintained an office for the practice of law.

(g) Payments for the purchase of the practice of seller

(1) may be made to seller even though other Rules would:

(i) require consent of the client,

(ii) require the fees to be allocated between the parties based on services rendered or on responsibility assumed, or require buyer and seller to practice in the same firm,

(2) may be paid to a trustee of a trust for the benefit of seller, to the guardian of seller's estate, to seller's agent acting under a power of attorney, and to the executor, administrator, heirs, and beneficiaries of a deceased seller.

Payments to such non-lawyer payees are permitted notwithstanding the fact that other Rules might be regarded as prohibiting such payments.

(h) In addition to satisfying the provisions of this Rule, buyer and seller must comply with the applicable provisions of Rules 13.01, 13.02, and 13.03 of the Texas Rules of Disciplinary Procedure.