

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE ADOPTION OF A  
NEW RULE TO BE DESIGNATED AS RULE  
1.17 OF THE RULES OF PROFESSIONAL  
CONDUCT  
(APPENDIX TO SDCL 16-18)

RULE 98-16

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A hearing having been held on February 20, 1998, at Pierre, South Dakota, relating to the adoption of a new rule to be designated as Rule 1.17 of the Rules of Professional Conduct (Appendix to SDCL 16-18), and the Court having considered the proposed new rule, the correspondence and oral presentations relating thereto, if any, and being fully advised in the premises, now, therefore, it is

ORDERED that the following new rule (Appendix to SDCL 16-18), be and it is hereby adopted to read in its entirety as follows:

**Rule 1.17 Sale of Law Practice.**

A lawyer or his or her law firm may sell or purchase a law practice, including good will, if the conditions set forth in this Rule 1.17 are satisfied. The seller or purchaser may agree to restrictions on the practice of law by the seller, which shall be set forth in a written agreement. The estate of a deceased lawyer may be a seller. This rule shall not apply to the disposition of the physical assets of a law office that is or will be closed.

(a) The practice is sold as an entirety, except in cases in which a conflict is present or may arise, to another lawyer or law firm.

(b) Written notice shall be given to each of the seller's current clients stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel; that the client has the right to take possession of the client's file and property; and that if no response to the notice is received within sixty days of the sending of such notice, or in the event the client's rights would be prejudiced by a failure to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client.

RULE 98-16

- (1) If the seller is the estate of a deceased lawyer, the purchaser shall cause the notice to be given to the client, and the purchaser shall obtain the written consent of the client to act on the client's behalf. Such consent shall be presumed if no response to the notice is received within sixty days of the date the notice was sent to the client's last known address as shown on the records of the seller or the client's rights would be prejudiced by a failure to act during such sixty day period.
- (2) In all other circumstances, not less than sixty days prior to the transfer the seller shall cause the notice to be given to the client and the seller shall obtain the written consent of the client to act on the client's behalf prior to the transfer. Such consent shall be presumed if no response to the notice is received within sixty days of the date of the sending of such notice to the client's last known address as shown on the records of the seller.
- (3) The purchaser shall cause an announcement or notice of the purchase and transfer of the practice to be published in a newspaper of general circulation within the county in which the practice is located at least thirty days in advance of the effective date of the transfer.

(c) The fees charged to clients shall not be increased by reason of the sale of the practice. The purchaser may, however, refuse to undertake the representation unless the client consents to pay the purchaser fees at a rate not exceeding the fees charged by the purchaser for rendering substantially similar services prior to the initiation of the purchase negotiations.

(d) If substitution of purchasing lawyer or law firm in a pending matter is required by the tribunal or this Rule 1.17, the purchasing lawyer or law firm shall provide for same promptly.

(e) Admission to or withdrawal from a partnership or professional corporation, retirement plans and similar arrangements or a sale limited to the tangible assets of a law practice is not a sale or purchase for purposes of this Rule 1.17.

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therefore decides to retain other counsel, the seller must return unearned portions of any retainer to the client (see Rule 1.1 6(d)).

*Applicability of the Rule*

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.


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.

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

IT IS FURTHER ORDERED that this rule shall become effective July 1, 1998.

DATED at Pierre, South Dakota, this 10th day of March, 1998.

BY THE COURT:

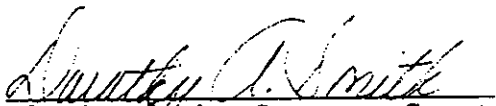
  
Robert A. Miller, Chief Justice

SUPREME COURT  
STATE OF SOUTH DAKOTA  
**FILED**

MAR 10 1998

  
Clerk

ATTEST:

  
Clerk of the Supreme Court  
(SEAL)