

Retirement Planning for Lawyers

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1. The Rules of Retirement
 - a. Rules of Professional Conduct, Rule 1.17. Sale of Law Practice
 - b. A lawyer may sell his practice, including good will, if
 - i. The seller (“seller” is defined as an individual lawyer or a law firm that sells a law practice and includes both the personal representative or estate of a deceased or disabled lawyer and the deceased or disabled lawyer, as appropriate.) of the law practice must cease to engage in the private practice of law in PA
 - ii. The seller must sell the practice as an entirety to a single lawyer (“single lawyer” is defined in the rules as an individual lawyer or a law firm that buys the law practice).
 - (1) A practice is sold as an entirety if the purchasing lawyer assumes responsibility for all of the active files, but for clients with a conflict with the buyer of the practice or clients who cannot or will not be represented by the buyer.
 - (2) If some clients take their business elsewhere, this is not a violation of this rule.
 - iii. Written notice with certain conditions must be given to each of the seller’s clients.
 - (1) Client fee agreements will be preserved
 - (2) Records will be retained
 - iv. (f) In the case of a sale by reason of disability, if a proceeding under Rule 301 of the Pennsylvania Rules of Disciplinary Enforcement has not been commenced against the selling lawyer, the selling lawyer shall file the notice and request for transfer to voluntary inactive status, as of the date of the sale, pursuant to Rule 219 (J) thereof.
 - v. Admission to or withdrawal from a law partnership or professional association, retirement plan or similar arrangement 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.
 - vi. Negotiations for the sale of the practice do not violate the confidentiality provisions of Rule 1.6.
 - (1) Client consent is required before information relating to a specific representation is discussed with a purchaser of a law practice.
 - (2) This is covered in the written notice to the client, and if the client does not object to the new representation within 60 days, consent is presumed.
 - (3) The rule permits the purchasing lawyer or law firm to fulfill the notice requirement.
 - vii. The sale may not be financed by increases in fees charged to the clients of the practice.
 - c. Rule 1.1
 - i. The seller of the practice is obligated to exercise competence in identifying a purchaser qualified to

assume the practice and the purchaser's obligation to undertake the representation competently.

- d. Rule 1.0 (E)
 - i. Definition of informed consent
- e. Rules 1.6 and 1.9
 - i. Obligations to protect information relating to the representation
- f. Rule 1.16
 - i. If approval of the substitution of the purchasing attorney for the selling attorney 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.
- g. See Formal Ethics Opinion 2010-100 and Informal Opinion 2009-066 (pabar.org website, ethics opinions)

2. Rules of Disciplinary Enforcement (Rule 301)

- a. Proceedings Where an Attorney Is Declared to Be Incapacitated or Severely Mentally Disabled
 - i. A lawyer is found to be incapacitated
 - ii. Rule 321, A conservator is appointed
 - (1) Statutes of limitations and deadlines are temporarily suspended
 - iii. Rule 322, Duties of Conservator
 - (1) Takes immediate possession of all files
 - iv. Rule 324, Bank Accounts
 - (1) A conservator order authorizes conservator to access bank accounts
 - v. Rule 326, Discharge of Conservator
 - (1) Once all funds and client interests have been protected, the conservator can be discharged.
 - vi. The incapacitated lawyer is placed on inactive status

3. The Personal Rules of Retirement

- a. When should you start to plan
- b. How do you evaluate your plan
- c. Can you get help with this

4. Malpractice Insurance Considerations

5. Further Resources

- a. The Next Chapter: Employment, Retirement or Something Else (PBI 2008-5196)
- b. Retirement Planning for Lawyers (PBI 2007-4944)
- c. Winding up a Legal Career (PBI 2005-4168)
- d. (The above resources are older than Rule 1.17)
- e. Ellen Freedman, Law Practice Management, PBA (lawpractice@pabar.org, (800) 932-0311)
 - i. "Managing Your Practice, Dead or Alive" (Compilation of valuable planning materials)