

# Best Practices When Selling a Practice

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One of the most misunderstood “non-rules” in the Texas Disciplinary Rules of Professional Conduct (TDRPC) is the so-called ban on selling a legal practice. There simply is no such ban. There are no rules that prohibit lawyers from selling all or part of their practices.

That being said, there are TDRPC Rules that impact the sale of a law practice, and lawyers need to be familiar with them. For purposes of selecting applicable Rules, “sale of a law practice” refers to the conveyance of client matters from the lawyer who has an attorney-client relationship with the client (“selling lawyer”) to an acquiring lawyer. The relevant TDRPC Rules include the following:

## Rule 1.01 Competent and Diligent Representation

The acquiring lawyer needs to have the competence to render legal services and represent the clients in the particular matters previously handled by the selling lawyer. This presents a challenge when the acquiring lawyer may not know enough about the matters in the files to determine competence to represent particular clients. See Rule 1.05 below, “Confidentiality of Information.”

## Rule 1.02 Scope and Objectives of Representation

If the acquiring lawyer intends to change the scope, objectives, or general methods of representation from those agreed upon with the selling lawyer, the acquiring lawyer should seek to clarify with the client within a reasonable time and enter into a new representation agreement.

## Rule 1.03 Communication

The selling lawyer should provide notice to affected clients. The notice should include the following information:

- (A) the selling lawyer’s intent to sell all of the lawyer’s practice or an entire subject area of the lawyer’s practice;
- (B) the client’s right to retain other counsel or take possession of the client’s file;
- (C) the identity of the acquiring lawyer and the location where that lawyer intends to practice;
- (D) the location of the client’s file and when it will be available for retrieval, that a written receipt will be required, and that the selling lawyer is entitled to make and retain copies of the file at the selling lawyer’s expense;

## Rule 1.03 Communication (continued)

(E) the selling lawyer's intent to handle funds on deposit in the selling lawyer's IOLTA or other client trust account and any other client property by transferring them either to the acquiring lawyer, who will be responsible for such funds and property, or to the client, if the acquiring lawyer's representation is not accepted by the client;

(F) whether the acquiring lawyer intends to represent the client on the same basis as that between the selling lawyer and the client or the acquiring lawyer intends to alter the terms of the engagement in the future; and

(G) the selling lawyer's and acquiring lawyer's intent to presume the client's consent to the transfer of the client's file if the client does not take any action or does not otherwise object within 45 days of the receipt of the notice.

In addition, the acquiring lawyer should consider that the client may have communication expectations based on the selling lawyer and attempt to adjust those expectations as needed.

## Rule 1.04 Fees

The acquiring lawyer should establish the basis or rate of fees with the new clients, preferably in writing, before or within a reasonable time after taking over the representation.

In addition, the selling lawyer is not permitted to sell individual client matters. The sale price for an individual client matter is effectively a referral fee earned for simply turning the matter over to another lawyer while retaining no responsibility for the matter. Whether a selling lawyer is engaged in a "sham sale" in violation of Rule 1.04 depends on the specific facts and circumstances of the transaction. See Rule 5.06 below, "Restrictions on Right to Practice."

## Rule 1.05 Confidentiality of Information

Before disclosure of information relating to a specific representation of an identifiable client, the selling lawyer should secure consent from the client and an agreement to maintain client confidences from the acquiring lawyer.

## Rule 1.09 Conflict of Interest: Former Client

An acquiring lawyer who ultimately decides not to purchase all or a part of the selling lawyer's practice must consider conflicts of interest. Specifically, the information learned during review of the selling lawyer's client matters may prohibit future representation and require withdrawal from current representation if adverse to clients in the matters being sold.

## **Rule 1.14 Safekeeping Property**

The acquiring lawyer should verify with the clients, and with other interested parties, the nature of any property the lawyer will be safekeeping and the means of doing so.

## **Rule 1.15 Declining or Termination of Representation**

The selling lawyer should provide notice to affected clients regarding the termination of their representation. See Rule 1.03 above, “Communication.”

## **Rule 5.06 Restrictions on Right to Practice**

The selling lawyer and the acquiring layer may enter a negotiated non-compete agreement pursuant to the sale of all or part of a law practice. In fact, the sale may be conditioned on the selling lawyer ceasing to engage in the private practice of law or some particular subject area of practice for a specified period within the geographic area in which the practice has been conducted (or within some other geographic area agreed to by the selling and acquiring lawyers). This type of agreement is not within the scope of Rule 5.06 and may provide evidence that the transaction is not a “sham sale” under Rule 1.04.