

Lee, Mimi

RE: Rule 1.17 [2-300]
11/6&7/09 Commission Meeting
Open Session Agenda IV.C.

From: Kevin Mohr [kemohr@charter.net]
Sent: Wednesday, October 28, 2009 7:14 AM
To: Jerome Sapiro Jr.
Cc: 'Kurt Melchior'; 'Robert L. Kehr'; 'Raul Martinez'; McCurdy, Lauren; Difuntorum, Randall; Kevin Mohr G
Subject: RRC - 2-300 [1.17] - IV.C. 11/16-17/09 Meeting Materials
Attachments: RRC - 2-300 [1-17] - Compare - Rule & Comment Explanation - DFT2.1 (10-28-09)KEM-JS.doc; RRC - 2-300 [1-17] - Dashboard - ADOPT - DFT3 (10-27-09)KEM-JS.doc; RRC - 2-300 [1-17] - Compare - Introduction - DFT2.1 (10-27-09)KEM-JS.doc

Greetings all (and Lauren & Randy):

If the drafters are OK w/ the attachments, then Lauren and Randy can add them to the agenda materials for the November 2009 meeting w/o further input from us.

I've attached the following:

1. Dashboard, Draft 3 (10/27/09)KEM-JS.
2. Introduction, Draft 2 (10/27/09)KEM-JS
3. Rule & Comment Chart, Draft 2.1 (10/27/09)KEM-JS

KEM Comments:

1. I haven't made any substantive changes to items 1 and 2, above. All I've done is rename the files so we (staff) can keep accurate track of which draft we discussed at the November meeting and substitute the correct draft no. & date for the Rule on which the charts are based [Draft #4.1 (10/27/09), which is Draft 4 that I sent the drafters on 10/26 @ 10:00 p.m., with Jerry & Bob's redraft of Comment [11] inserted].

2. On the Rule & Comment Chart, I've done the following:

a. As w/ items 1 & 2, I've renamed the files and substituted the correct draft no. & date for the Rule on which the charts are based

b. I've updated the middle column to reflect the revisions the Commission approved at the October 2009 meeting and which are also reflected in Draft 4.1. The middle column of the draft Jerry circulated contained some but not all of the approved revisions.

c. I've deleted all the footnotes, most of which are misleading as they discuss issues that were resolved at the October meeting. I have, however, retained the two footnotes (4 & 30) Jerry mentioned in his e-mail that circulated to the drafters. They are now numbered notes 1 & 2.

(1) In footnote 1, I express my disagreement w/ Jerry's proposal and offer an alternative. However, I don't think this is an issue that should hold up our submitting the materials to staff. Let's put it to the Commission and attempt to resolve it during the e-mail period.

(2) I deleted my argument from footnote 2 concerning Comment [11] as no one seemed to have paid much heed to it during the meeting and I'd rather not waste meeting time rehashing it.

d. I've offered an alternative to the the Comment [11] Explanation (third column). Again, rather than trying to resolve this and hold up submitting it to the staff, let's put it to the Commission and attempt to resolve it during the e-mail period.

e. Finally, I've made a few changes to the first line of the Explanations for some of the comments to conform to the style we've been using on these charts.

Thanks,

Kevin

Jerome Sapiro Jr. wrote:

Dear Kevin, Bob, Kurt, and Raul:

Attached is a copy of my redraft of the dashboard for Rule 1.17. I have revised the Summary and filled in the box at the bottom of the front page.

With best regards to all of you,

Jerry

(9930.16:536:vy)

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Proposed Rule 1.17 [2-300] “Purchase and Sale of a Law Practice”

(Draft #4.1, 10/27/09)

Summary: Proposed Rule 1.17 regulates the sale of a law practice. It includes provisions recently added by the ABA to Model Rule 1.17 that permit the sale not only of an entire law practice, but also of a substantive field of the practice or a geographic area of the practice. However, the Model Rule provisions concerning the required notice to be given to clients whose matters are included in the sale have been substantially replaced by the counterpart provisions in current rule 2-300 to provide better protection for the interests of the clients. Additions to the rule and changes in the comments have been made for better client protection.

Comparison with ABA Counterpart	
Rule	Comment
<input type="checkbox"/> ABA Model Rule substantially adopted <input type="checkbox"/> ABA Model Rule substantially rejected <input checked="" type="checkbox"/> Some material additions to ABA Model Rule <input type="checkbox"/> Some material deletions from ABA Model Rule <input type="checkbox"/> No ABA Model Rule counterpart	<input checked="" type="checkbox"/> ABA Model Rule substantially adopted <input type="checkbox"/> ABA Model Rule substantially rejected <input checked="" type="checkbox"/> Some material additions to ABA Model Rule <input checked="" type="checkbox"/> Some material deletions from ABA Model Rule <input type="checkbox"/> No ABA Model Rule counterpart

Primary Factors Considered

Existing California Law

Rules	RPC 2-300.
Statute	
Case law	

State Rule(s) Variations (In addition, see provided excerpt of selected state variations.)

Other Primary Factor(s)

The memorandum from Judy Johnson to the Board of Governors and members of the Board Committee on Member Oversight dated June 18, 2008, regarding Appointment of a Career Transition Planning Taskforce, recommended that the Commission consider whether the rule permitting the sale of an entire law practice should be changed to permit the sale of a part of a law practice, to offer greater options for a lawyer to make a smooth transition to retirement.

Stakeholders and Level of Controversy

Minority/Position Included on Model Rule Comparison Chart: Yes No

No Known Stakeholders

The Following Stakeholders Are Known:

Very Controversial – Explanation:

Moderately Controversial – Explanation:

Adopting the Model Rule provision that permits lawyers to sell a geographic area of practice or a substantive field of practice will be viewed by some members of the profession as a lessening of client protection and further commercialization of the practice of law. See Introduction and Minority Dissent, attached.

Not Controversial

COMMISSION FOR THE REVISION OF THE RULES OF PROFESSIONAL CONDUCT

Proposed Rule 1.17* Purchase and Sale of a Law Practice

November 2009

(Draft rule following consideration of public comment)

INTRODUCTION:

Proposed Rule 1.17 regulates the sale of a law practice. California was the first state in the nation to adopt a rule permitting the purchase and sale of a law practice. The American Bar Association copied some of California's rule by amendment to its Model Rules prior to 2002. The 2002 amendments to Model Rule 1.17 permit the sale not only of an entire law practice, but also of a substantive field of the practice or a geographic area of the practice. This proposed Rule adopts those changes. However, the Model Rule provisions concerning the notice required to be given to clients whose matters are included in the sale have been substantially replaced by the counterpart provisions in current Rule 2-300 to provide better protection for the interests of the clients. Further protections have been added to promote protection of the clients of the selling lawyer. For example, (1) the sale of the practice, or of a substantive field of practice, or of a geographic area of practice must include the entire practice or entire field or area of practice; lawyers will not be permitted to "cherry pick" lucrative matters and leave clients with less lucrative matters to fend for themselves; (2) the selling lawyer must cease practice if the entire practice is sold, or cease practice in the particular substantive field or geographic area of practice if only a substantive field or geographic area of practice is sold; (3) although the use of brokers to facilitate a sale is permitted, a lawyer may only sell the practice to a lawyer, not to a broker or other intermediary, ensuring continuity of representation and protection of the seller's clients; (4) fees may not be increased solely by reason of the sale, and clients are protected by requiring the buyer to abide by pre-existing fee agreements; and (5) appropriate protections for confidentiality of the clients have been made part of the rule.

Originally, the Commission circulated two proposed rules for public comment, namely Rule 1.17.1 and Rule 1.17.2. They, respectively, would have dealt with sale of an entire practice and sale of a geographic area of practice or of a substantive area of practice. Those proposals received

* Proposed Rule 1.17, **Draft 4.1 (10/27/09)**.

substantial criticism. In addition, there was substantial dissent within the Commission about those proposals. The proposal now presented to the Board is one rule, dealing with the purchase and sale of an entire law practice, of a geographic area of a law practice, or of a substantive field of practice. This rule moots many of the criticisms of the earlier proposals. In addition, it addresses one of the recommendations of Judy Johnson to the Board of Governors concerning Appointment of a Career Transition Planning Taskforce. In her memorandum, Ms. Johnson suggested that the Commission consider whether the rule permitting the sale of an entire law practice should be changed to permit the sale of a part of a law practice. She pointed out that greater flexibility in the sale of a law practice would offer greater options for a lawyer to make a smooth transition to retirement. This proposed Rule addresses that subject.

Minority. A minority of the Commission strongly disagrees with proposed Rule 1.17, taking the position that adoption of the proposed Rule will unnecessarily add to the commercialization of the legal profession. The proposed Rule is unlike current California rule 2-300, which is narrowly drafted to permit a solo practitioner upon retirement to recoup through a one-time sale of his or her practice the good will developed in the practice over the practitioner's professional lifetime. By permitting the sale of a practice under strictly controlled conditions, the current rule both (i) avoids the former use of sham associations of lawyers to facilitate transfer of a practice, and (ii) provides clients with appropriate notice and protections against potential violations of confidentiality, fee increases, and abandonment of their matters. In addition, the current rule levels the playing field for solo practitioners and lawyers practicing in firms, the latter have been able before the current rule to realize upon retirement the value of the good will developed by the law firm of which they were members. The proposed Rule, on the other hand, while purporting to carry forward the client protections of current rule 2-300, permits not just the sale of a practice by a lawyer upon retirement, but also the sale of a practice by a law firm, or the sale of a "substantive field of practice" or a "geographic area of practice" by either a lawyer or a law firm. As discussed more fully in the Minority's Dissent, below, the minority sees great potential for abuse by lawyers and law firms seeking to capitalize on market perceptions of the value of their lawyer-client relationships. The vagueness of the terms "geographic area" and "substantive field" practically invite clever lawyers to use the rule in ways that will benefit them and risk injury to their clients. Unlike the current rule, which was created to address a genuine concern, no compelling reason for this change has been advanced by its proponents, other than that there might be situations where there could be a genuine special need to carve out some part of an established practice and to sell it. The minority urges that the proposed Rule not be adopted. See Minority Dissent, below.

Variations in Other Jurisdictions. **[KEM to add later]**.

<p align="center"><u>ABA Model Rule</u> Rule 1.17 Sale Of Law Practice</p>	<p align="center"><u>Commission's Proposed Rule*</u> Rule 1.17 <u>Purchase and Sale of a</u> Law Practice</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>A lawyer or a law firm may sell or purchase a law practice, or an area of law practice, including good will, if the following conditions are satisfied:</p>	<p>A lawyer or a law firm may sell or purchase a law practice, <u>a substantive field of practice,</u> or an <u>geographic</u> area of law-practice, including good will, <u>only if the following conditions set forth in paragraphs (a) through (g)</u> are satisfied:</p>	<p>Current Rule of Professional Conduct 2-300 was the first rule in the country to authorize sale of a law practice, including consideration for good will. As now in effect, it is an “all or nothing” rule. It requires sale of all or substantially all of a lawyer’s law practice. It does not permit a lawyer to sell part of his or her practice and continue practicing in a different substantive aspect of the practice or in a different geographic area. Before 2002, the Model Rules were amended to add Rule 1.17, regarding the sale of a law practice. In 2002, It was expanded to permit sale of a substantive field or a sale of a geographic area of law practice, so a lawyer may sell a substantive area of practice or a geographic area of practice and continue practicing in other subjects or in other geographic areas. It also was expanded to govern the sale of a practice by a law firm and not just by an individual lawyer.</p> <p>The introductory paragraph of the proposed new Rule 1.17 is substantially the same as the introductory paragraph of the Model Rule. However, it makes it explicit that a lawyer or law firm may sell or purchase a substantive aspect of a practice or a geographic area of practice, and not just an entire practice, so that permission to do so is not merely inferred. In addition, the introductory paragraph of the proposed rule adds to the Model Rule the word “only,” to make explicit that a sale other than in accordance with the provisions of the rule is not permissible.</p> <p>A majority of the Commission voted to adopt the approach of the Model Rule to permit sale of a geographic area of practice or of a substantive practice area. When lawyers or law firms need to</p>

* Proposed Rule 1.17, **Draft 4.1 (10/27/09)**. Redline/strikeout showing changes to the ABA Model Rule.

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		<p>adapt their practices in anticipation of retirement, for economic reasons, for client needs, or for other reasons, allowing them to be flexible regarding what aspects of the law practice are sold gives them greater options. For example, if a lawyer finds himself or herself no longer able to practice litigation effectively, he or she could sell the litigation aspect of his or her practice and continue to practice law in non-litigation areas. Similarly, if a lawyer has a practice in both northern and southern California, he or she might choose to sell one aspect of the geographic area of practice in order not to have to commute to different parts of the state.</p> <p>As stated in the introduction, a minority of the Commission disagrees.</p>
<p>(a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, [in the geographic area] [in the jurisdiction] (a jurisdiction may elect either version) in which the practice has been conducted;</p>	<p>(a) The seller ceases to engage in the private practice of law <u>entirely</u>, or in the <u>area of practice that has been sold, [in the substantive field or geographic area] [in the jurisdiction] (a jurisdiction may elect either version)</u> in which the <u>practice has been</u> seller conducted; <u>the portion of the practice being sold.</u></p>	<p>Proposed paragraph (a) is substantially the same as Model Rule 1.17(a). A majority of the Commission favor opting into the Model Rule's alternatives of a sale of a substantive aspect of the practice or of a geographic area of a practice, and not just require sale of an entire law practice. Wording changes have been recommended for clarity in stating the options available to a lawyer or law firm under the proposed rule.</p>
<p>(b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;</p>	<p>(b) The <u>seller makes the</u> entire practice, or the entire <u>substantive field or geographic</u> area of <u>the</u> practice, <u>is sold to one available for sale, and the purchase and sale includes all</u> or <u>more lawyers</u> <u>substantially all of the practice, or law</u></p>	<p>Proposed paragraph (b) is similar to Model Rule 1.17(b). However, the Commission recognizes that a sale of an entire practice or entire area of practice may not be possible. For example, a buyer may have conflicts of interest that preclude the buyer from representing some of the seller's clients. Thus, as with</p>

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	<p>firms; of the substantive field or geographic area of the practice.¹</p>	<p>current Rule 2-300, the Commission recommends that the rule only require the seller to make the entire practice, or entire substantive field or geographic area of the practice, available for sale, and recommends that the actual transaction include all or substantially all of the practice. As reflected in proposed Comment [2], if not all of the seller's clients are willing to retain the buyer, that does not destroy the validity of the transaction.</p> <p>Paragraph (b) has also been reworded to make clear that the transaction may encompass the entire practice, the entire substantive field of practice, or the entire geographic area of the practice, consistent with the introductory paragraph and with paragraph (a).</p>
	<p>(c) <u>The entire law practice, the entire substantive field of practice, or the entire geographic area of practice is sold to one or more lawyers or law firms.</u></p>	<p>Proposed paragraph (c) is substantially the same as paragraph (b) of the Model Rule. However, it has been made more explicit by expressly referring to the three alternatives, namely sale of the entire practice, sale of the entire substantive field of practice, or sale of the entire geographic area of practice. The paragraph has been re-lettered because of the addition of new paragraph (b), <i>supra</i>.</p>

¹ **Drafters' Note:** Jerry recommends that from the point of footnote 4 the text of paragraph (b) be deleted. He finds the end of that paragraph duplicative of paragraph (c) and thinks paragraph (c) is better worded. KEM does not think that the second clause of paragraph (b) is duplicative of paragraph (c). It states that "substantially all" of the practice or area/field (vs. the "entire" practice or area/field) must be sold. Perhaps we would be better off combining (b) and (c) as does the Model Rule:

(b) The seller makes the entire practice, or the entire substantive field or geographic area of the practice, available for sale to one or more lawyers or law firms, and the purchase and sale includes all or substantially all of the practice, or of the substantive field or geographic area of the practice.

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<p>(c) The seller gives written notice to each of the seller's clients regarding:</p>	<p>(c) The seller gives written notice to each of the seller's clients regarding: (ed) <u>If the purchase or sale contemplates the transfer of responsibility for work not yet completed or responsibility for client files or information protected by Rule 1.6 and Business and Professions Code section 6068(e), then:</u></p>	<p>Model Rule paragraph 1.17(c) requires notice from the seller of merely the proposed sale, the client's right to other counsel or to take possession of the file, and the presumption that client consent to the transfer will be presumed if the client does not object within ninety days. Current California Rule 2-300 is far more protective of client rights and contains more explication of the contents of the notice that must be given to clients. In addition, the current California rule recognizes that, if the seller is deceased or incapacitated, he or she may not be able to give the required notice. Accordingly, proposed paragraph (d) and its subparagraphs continue the substance of the notice requirements under current Rule 2-300, spelling out in more detail what the notice must contain and distinguishing between the circumstance in which the seller is deceased or incapacitated (in which case the purchaser gives the required notice) and all other sales (in which the case the seller gives the required notice). The Commission concluded that the California approach gives more protection for the clients of the seller and is more realistic.</p>
<p>(1) the proposed sale;</p>	<p>(1) the proposed sale; (1) <u>If the seller is deceased, or has a conservator or other person acting in a representative capacity, and no lawyer has been appointed to act for the seller pursuant to Business and Professions Code section 6180.5, prior to the transfer the purchaser:</u></p>	<p>See Explanation of Changes for paragraph (d).</p>
	<p><u>(A) shall cause a written notice to be given to the client stating that the interest in the</u></p>	<p>See Explanation of Changes for paragraph (d).</p>

<p align="center"><u>ABA Model Rule</u> Rule 1.17 Sale Of Law Practice</p>	<p align="center"><u>Commission's Proposed Rule*</u> Rule 1.17 <u>Purchase and</u> Sale of <u>a</u> Law Practice</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
	<p><u>law practice is being transferred to the purchaser; that the client has the right to retain other counsel and might have the right to act in his or her own behalf; that the client may take possession of any client papers and property in the form or format held by the lawyer as provided by Rule 1.16(e); and that, if no response is received to the notice within 90 days after it is sent or, if the client's rights would be prejudiced by a failure of the purchaser to act during that time, the purchaser may act on behalf of the client until otherwise notified by the client; and</u></p>	
	<p><u>(B) shall obtain the written consent of the client, provided that the client's consent shall be presumed until the purchaser is otherwise notified by the client if the purchaser receives no response to the paragraph (c)(1)(A) notification within 90 days after it is sent to the client's last address as shown on the records of the seller, or to the extent that the client's rights would be prejudiced by a failure of the purchaser to act during the 90-day period.</u></p>	<p>See Explanation of Changes for paragraph (d).</p>
<p>(2) the client's right to retain other counsel or to take possession of the file; and</p>	<p>(2) the client's right to retain other counsel or take possession of the file; and <u>In all other</u></p>	<p>See Explanation of Changes for paragraph (d).</p>

<p align="center"><u>ABA Model Rule</u> Rule 1.17 Sale Of Law Practice</p>	<p align="center"><u>Commission's Proposed Rule*</u> Rule 1.17 <u>Purchase and</u> Sale of <u>a</u> Law Practice</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>(3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.</p>	<p><u>circumstances, not less than 90 days prior to the transfer:</u></p> <p>(3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.</p>	<p>See Explanation of Changes for paragraph (d).</p>
	<p><u>(A) the seller, or the lawyer appointed to act for the seller pursuant to Business and Professions Code section 6180.5, shall cause a written notice to be given to the client stating that the interest in the law practice is being transferred to the purchaser; that the client has the right to retain other counsel and might have the right to act in his or her own behalf; that the client may take possession of any client papers and property in the form or format held by the lawyer as provided by Rule 1.16(e); and that, if no response is received to the notice within 90 days after it is sent, or to the extent that the client's rights would be prejudiced by a failure of the purchaser to act during the 90 day period, the purchaser may act on behalf of the client until otherwise notified by the client; and</u></p>	<p>See Explanation of Changes for paragraph (d).</p>

<p align="center"><u>ABA Model Rule</u> Rule 1.17 Sale Of Law Practice</p>	<p align="center"><u>Commission's Proposed Rule*</u> Rule 1.17 <u>Purchase and</u> Sale of <u>a</u> Law Practice</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
	<p><u>(B) the seller, or the lawyer appointed to act for the seller pursuant to Business and Professions Code section 6180.5, shall obtain the written consent of the client prior to the transfer, provided that the client's consent shall be presumed if the purchaser receives no response to the paragraph (c)(1)(B) notice within 90 days after it is sent to the client's last address as shown on the records of the seller, or to the extent that the client's rights would be prejudiced by a failure of the purchaser to act during the 90 day period, unless the purchaser is otherwise notified by the client.</u></p>	<p>See Explanation of Changes for paragraph (d).</p>
<p>(d) The fees charged clients shall not be increased by reason of the sale.</p>	<p>(d) The fees Fees charged to clients shall not be increased <u>solely</u> by reason of the sale <u>purchase</u>, <u>and the purchaser assumes the seller's obligations under existing client agreements regarding fees and the scope of work.</u></p>	<p>Proposed paragraph (e) is identical to Model Rule 1.17(d). However, it adds for client protection a requirement that the buyer must assume the seller's obligations under existing client agreements regarding fees and the scope of work. In this regard, the proposed rule provides more protection for clients than does the Model Rule.</p>
	<p><u>(f) If substitution is required by the rules of a tribunal in which a matter is pending, all steps necessary to substitute a lawyer shall be taken.</u></p>	<p>For client protection, and to assure that the procedural requirements of tribunals are protected, current California Rule 2-300(C) requires that, if substitution is required by the rules of a tribunal, all steps necessary to substitute a lawyer shall be taken. The Model Rule contains no such prerequisite. The Commission concluded that this requirement should be continued in the new</p>

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		<p>rule. The only change is that the current California rule uses the word "member" while this proposed rule substitutes for that word the word "lawyer." Because out of state lawyers may be admitted to practice here, this change permits greater flexibility.</p>
	<p>(g) A lawyer shall not disclose confidential client information to a non-lawyer in connection with a purchase or sale under this Rule.</p>	<p>Current California Rule 2-300(E) requires that confidential information not be disclosed to someone who is not a member of the California bar. The Model Rule contains no counterpart. The Commission concluded assuring that confidentiality is protected is an essential aspect of client protection if a practice is sold. However, because the sale of a practice may be made to a law firm or lawyer from outside the state, in this proposed rule the Commission substituted "lawyer" for the word "member" and "non-lawyer" for the word "non-member."</p>
	<p>(h) This Rule does not apply to the admission to or retirement from a law partnership or law corporation, retirement plans and similar arrangements, or sale of tangible assets of a law practice.</p>	<p>Current Rule 2-300(F) does not apply to admission to or retirement from a law partnership or law corporation, retirement plans, or similar arrangements nor to the sale of tangible assets of a practice. The Model Rule contains no such exclusion. The Commission concluded that this exclusion from the scope of the rule should continue in effect in order to avoid such transactions having to comply with the burdens and prerequisites of this rule.</p>

<p align="center"><u>ABA Model Rule</u> Rule 1.17 Sale of Law Practice Comment</p>	<p align="center"><u>Commission's Proposed Rule</u> Rule 1.17 <u>Purchase and Sale of a</u> Law Practice Comment</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>[1] The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer or an entire firm ceases to practice, or ceases to practice in an area of law, and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See Rules 5.4 and 5.6.</p>	<p>[1] The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer or an entire firm ceases to practice, or ceases to practice in an area of law, and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See Rules 5.4 and 5.6.</p>	<p>Comment [1] is identical to Model Rule 1.17, cmt. [1].</p>
	<p>[1A] As used in this Rule, a selling "lawyer" includes the personal representative of the estate of a deceased lawyer, the trustee of a trust of which a law practice is an asset, an attorney in fact under a lawyer's durable power of attorney, a conservator of the estate of a lawyer, or a lawyer appointed to act for the seller pursuant to Business and Professions Code sections 6180, 6185 and 6190.4.</p>	<p>Comment [1A] has no counterpart in the Model Rule. The Commission concluded that this rule should permit and apply to sales of practices by certain fiduciaries acting for a lawyer or lawyer's estate. Current California Rule 2-300 expressly applies to sales by such fiduciaries. Rather than including an enumeration of all such fiduciaries in the introductory paragraph of the proposed rule, the Commission elected to include them by defining the word "lawyer" in this Comment. There is no counterpart of this definition in the Model Rule, which leaves unclear whether the Model Rule applies to and permits sales by such fiduciaries. This comment makes the proposed rule clearer than the Model Rule. In addition, by spelling out the types of fiduciaries who may act on behalf of the lawyer or his or her estate, this Comment avoids the risk that a generic word such as "fiduciary" could be interpreted to include purchases and sales of law practices by brokers, which the Commission would not approve.</p>

<p align="center"><u>ABA Model Rule</u> Rule 1.17 Sale of Law Practice Comment</p>	<p align="center"><u>Commission's Proposed Rule</u> Rule 1.17 <u>Purchase and Sale of a Law Practice</u> Comment</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>Termination of Practice by the Seller</p> <p>[2] The requirement that all of the private practice, or all of an area of practice, be sold is satisfied if the seller in good faith makes the entire practice, or the area of practice, available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation. Return to private practice as a result of an unanticipated change in circumstances does not necessarily 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 private practice upon being defeated in a contested or a retention election for the office or resigns from a judiciary position.</p>	<p>Termination of Practice by the Seller</p> <p>[2] The requirement that all of the private practice, or all of a a <u>substantive field or geographic</u> area of practice, be sold is satisfied if the seller in good faith makes the entire practice, or the <u>entire substantive field or geographic</u> area of practice, available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, <u>or refuse to discharge the selling lawyer</u>, therefore, does not result in a violation. <u>If a client does not agree to retain the buyer, the selling lawyer is not relieved from responsibility for the representation unless the seller is permitted to withdraw from the representation. in accordance with</u> See Rule [1.16].</p>	<p>Proposed Comments [2] and [2A] are based on Model Rule 1.17, cmt. [2]. However, the proposed comments divide the Model Rule comment into two parts. The first is shown here as proposed Comment [2]. It is substantially the same as the first part of the Model Rule comment. The Commission added the phrase "substantive field or geographic" to modify the phrase "area of practice" to make explicit that the comment applies to the sale of the entire practice or to sales of substantive fields of practice or to sales of geographic areas of practice. In addition, the proposed comment recognizes that clients have the right to refuse to discharge the selling lawyer, by adding that concept to the second sentence.</p> <p>The Commission added the last sentence to proposed Comment [2] to highlight that the selling lawyer is not relieved from responsibility unless he or she is substituted out, or has permission to withdraw, in accordance with Rule 1.16.</p>
	<p><u>[2A]</u> Return to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation. For example, a lawyer who has sold the a 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 private practice upon being defeated in a contested or a retention election for the office or resigns <u>or retires</u> from a judiciary ry position.</p>	<p>Comment [2A] is the second half of Model Rule Comment [2]. The word "the" has been changed to the word "a," because, in the second sentence, a sale of a specific practice is not at issue. The words "or retires" have been added in the last sentence because a judge may elect to retire and return to private practice. The word "judiciary" has been changed to "judicial" because that is the appropriate adjective to modify "position."</p>

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<p>[3] The requirement that the seller cease to engage in the private practice of law does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to a business.</p>	<p>[3] The requirement that the seller cease to engage in the private practice of law does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to a business.</p>	<p>Comment [3] is identical to Model Rule 1.17, cmt. [3].</p>
<p>[4] The Rule permits a sale of an entire practice attendant upon retirement from the private practice of law within the jurisdiction. Its provisions, therefore, accommodate the lawyer who sells the practice on the occasion of moving to another state. Some states are so large that a move from one locale therein to another is tantamount to leaving the jurisdiction in which the lawyer has engaged in the practice of law. To also accommodate lawyers so situated, states may permit the sale of the practice when the lawyer leaves the geographical area rather than the jurisdiction. The alternative desired should be indicated by selecting one of the two provided for in Rule 1.17(a).</p>	<p>[4] This Rule permits a sale of an entire practice attendant upon retirement from the private practice of law within the jurisdiction<u>this state or within a defined geographic area of this state. A seller does not violate this Rule by either (i) selling a California practice but continuing to practice in other jurisdictions; or (ii) selling a practice in one geographic area of this state but continuing to practice in another geographic area of this state, as agreed to by seller and buyer.</u> Its provisions, therefore, accommodate the lawyer who sells the practice on the occasion of moving to another state. Some states are so large that a move from one locale therein to another is tantamount to leaving the jurisdiction in which the lawyer has engaged in the practice of law. To also accommodate lawyers so situated, states may permit the sale of the practice when the lawyer leaves the geographical area rather than the jurisdiction. The alternative desired should</p>	<p>Much of the Model Rule Comment [4] is a form of "use note" for guidance to states that choose to follow the Model Rule. The Commission deleted irrelevant parts of it and added explicit language explaining the rights of a seller who sells a part of a practice located in a defined geographic area. Because this rule is adopted in this state, much of the use note is not needed, but guidance about the rights of a seller in a sale of a geographic aspect of a practice is appropriate.</p>

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	<p>be indicated by selecting one of the two provided for in Rule 1.17(a).</p>	
<p>[5] This Rule also permits a lawyer or law firm to sell an area of practice. If an area of practice is sold and the lawyer remains in the active practice of law, the lawyer must cease accepting any matters in the area of practice that has been sold, either as counsel or co-counsel or by assuming joint responsibility for a matter in connection with the division of a fee with another lawyer as would otherwise be permitted by Rule 1.5(e). For example, a lawyer with a substantial number of estate planning matters and a substantial number of probate administration cases may sell the estate planning portion of the practice but remain in the practice of law by concentrating on probate administration; however, that practitioner may not thereafter accept any estate planning matters. Although a lawyer who leaves a jurisdiction or geographical area typically would sell the entire practice, this Rule permits the lawyer to limit the sale to one or more areas of the practice, thereby preserving the lawyer's right to continue practice in the areas of the practice that were not sold.</p>	<p>[5] This Rule also permits a lawyer or law firm to sell an <u>a substantive area-field</u> of practice. If an <u>a substantive area-field</u> of practice is sold and the lawyer remains in the active practice of law, the lawyer must cease accepting any matters in the <u>substantive area-field</u> of practice that has been sold, either as counsel or co-counsel or by assuming joint responsibility for a matter in connection with the division of a fee with another lawyer as would otherwise be permitted by Rule [1.5(e)]<u>1.5.1</u>. For example, a lawyer with a substantial number of estate planning matters and a substantial number of probate administration cases may sell the estate planning portion of the practice but remain in the practice of law by concentrating on probate administration; however, that practitioner may not thereafter accept any estate planning matters. Although a lawyer <u>or law firm who that sells the practice in this state or in</u> leaves a jurisdiction or a <u>geographical area of this state must make the entire practice in this state or in the geographic area available for purchase</u> typically would sell the entire practice, this Rule permits the seller<u>lawyer</u> to limit the sale to one or more <u>substantive areas-fields</u> of the practice, thereby preserving the lawyer's right to continue practice in the areas of the practice that were not sold.</p>	<p>Comment [5] is substantially the same as Model Rule 1.17, cmt. [5]. "Substantive field" has been substituted for the word "area" because the Commission concluded that there could be confusion between the word "area" in reference to a geographic location of the practice and the word "area" in the sense of a substantive aspect of the practice. As a result, the Commission concluded that the recommended wording is more explicit. The reference to Rule 1.5 has been changed to Rule 1.5.1 because that is the counterpart of Model Rule 1.5(e) in the proposed new California rules.</p> <p>The Commission revised the third sentence for clarity and to conform it with the California approach to this rule. If a lawyer makes the entire practice in this state or in a geographic area available for purchase, he or she will have complied with this rule, even if buyers cannot be found for the entire practice or entire practice in this state or in a geographic area.</p>

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<p>Sale of Entire Practice or Entire Area of Practice</p> <p>[6] The Rule requires that the seller's entire practice, or an entire area of practice, be sold. The prohibition against sale of less than an entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice or practice area, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.</p>	<p>Sale of Entire Practice or Entire Area of Practice</p> <p>[6] The Rule requires that the seller's entire law practice, or an entire geographic or substantive area of practice be sold. The prohibition against sale of less than an entire law practice, entire geographic area of practice or entire substantive field of practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the law practice, geographic area of practice, or substantive field of practice area, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest or because one or more clients refuse to retain the purchasers.</p>	<p>Comment [6] is based on Model Rule 1.17, cmt. [6]. However, sentences within it have been expanded to make clear that it applies regardless of whether the sale is of an entire practice, of an entire geographic area of practice, or of an entire substantive field of practice.</p> <p>The last phrase has been added to the last sentence of this Comment because a conflict of interest is not the only circumstance under which the purchaser may not be able to undertake a particular client matter. Clients always have the option to refuse to retain the purchaser.</p>
<p>Client Confidences, Consent and Notice</p> <p>[7] Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Model Rule 1.6 than do preliminary discussions</p>	<p>Client Confidences, Consent and Notice</p> <p>[7] Disclosures in confidence of client identities and matters during Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client for the purpose of ascertaining</p>	<p>Comment [7] is based on Model Rule 1.17, cmt. [7]. However, the first sentence has been reworded for clarity. Not all aspects of negotiations between seller and prospective buyer are necessarily confidential. In preliminary discussions, the seller should be able to disclose in confidence client identities and</p>

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<p>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 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 90 days. If nothing is heard from the client within that time, consent to the sale is presumed.</p>	<p>actual or potential conflicts of interest no more violate the confidentiality provisions of Model Rule 1.6 than do preliminary discussions 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 confidential information relating to the representation or and to the file, however, requires client consent. This 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 contemplated sale, including the identity of the purchaser purchasing lawyer or law firm, and must be told that the decision to consent or make other arrangements must be made within 90 days. If nothing is heard from the client within that time, consent to the sale is presumed. However, confidential information may be disclosed to the purchaser if necessary to protect a client from harm, damage or loss of rights unless the client has made known that the client does not want to retain the purchaser or unless the seller and purchaser have ascertained that the purchaser has actual or potential conflicts of interest that preclude the purchaser from representing the client.</p>	<p>matters, so the buyer has an understanding of the scope of the practice and can check for conflicts of interest. However, the seller should not at that stage disclose specific confidential information relating to the representation nor give the buyer access to the file. Those should only be provided by the seller with the consent of the client. The first sentence has been reworded to make those concepts explicit, and the word “confidential” has been added to the second sentence for that same reason.</p> <p>The third sentence has been modified [“purchaser” deleted and “purchasing lawyer or law firm” substituted for it] in order to make explicit that the concept applies regardless of whether the buyer is an individual lawyer or law firm.</p> <p>In an emergency situation, it may be necessary for the seller to disclose confidential information to the buyer, in order to allow the buyer to protect a client from harm, damage, or loss of rights. The last sentence has been added to this Comment in order to permit a buyer to get access to confidential information if necessary to protect a client in such an emergency.</p>
<p>[8] 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. Since these clients cannot themselves consent to the purchase or direct any other</p>	<p>[8] [RESERVED] 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. Since these clients cannot themselves consent to the purchase or direct</p>	<p>The Commission deleted Model Rule Comment [8] because it is substantively wrong. Under California law and rules, a seller may not withdraw from representation unless he, she, or it has first complied with Rule 1.16 or the client has agreed to the discharge or has substituted the seller with new counsel. In addition, a</p>

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<p>disposition of their files, the Rule requires an order from a court having jurisdiction authorizing their transfer or other disposition. The Court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered in camera. (A procedure by which such an order can be obtained needs to be established in jurisdictions in which it presently does not exist).</p>	<p>any other disposition of their files, the Rule requires an order from a court having jurisdiction authorizing their transfer or other disposition. The Court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered in camera. (A procedure by which such an order can be obtained needs to be established in jurisdictions in which it presently does not exist).</p>	<p>lawyer may not disclose confidential information to a tribunal, even <i>in camera</i>, because that may waive confidentiality of the information.</p>
<p>[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 or area of practice.</p>	<p>[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 <u>law practice, or of a geographic area of the practice, or a substantive area field</u> of practice.</p>	<p>Comment [9] is based on Model Rule 1.17, cmt. [9]. The revisions are to make explicit that it applies regardless of whether the sale is a sale of an entire practice, of a geographic area of practice, or of a substantive field of practice.</p>
<p>Fee Arrangements Between Client and Purchaser</p> <p>[10] The sale may not be financed by increases in fees charged the clients of the practice. Existing arrangements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.</p>	<p>Fee Arrangements Between Client and Purchaser</p> <p>[10] <u>The Paragraph (e) provides that the</u> sale may not be financed <u>solely</u> by increases in fees charged the clients of the <u>law practice</u>. Existing arrangements between the seller and the client as to fees and the scope of the work must be honored by the purchaser. <u>The purchaser may be required to enter into new fee agreements with each client. See, e.g., Business and Professions Code sections</u></p>	<p>Comment [10] is based on Model Rule 1.17, cmt. [10]. However, the first sentence has been modified so that it expressly calls the reader's attention to paragraph (e); to add the word "solely" because that is contained in the black letter rule; and to add the word "law" to make explicit that this rule applies to the sale of a law practice, not of other lines of business.</p> <p>The last sentence has been added to remind buyers under this</p>

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	<p>6147 & 6148.</p>	<p>rule that they must comply with California requirements regarding fee agreements, such as Business & Professions Code sections 6147 and 6148.</p>
<p>Other Applicable Ethical Standards</p> <p>[11] Lawyers participating in the sale of a law practice or a practice area are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.1); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent for those conflicts that can be agreed to (see Rule 1.7 regarding conflicts and Rule 1.0(e) for the definition of informed consent); and the obligation to protect information relating to the representation (see Rules 1.6 and 1.9).</p>	<p>Other Applicable Ethical Standards</p> <p>[11]² Lawyers participating in the sale of a law practice or a practice area are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.1); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent for those conflicts that can be agreed to (see Rule 1.7 regarding conflicts and Rule 1.0(e) for the definition of informed consent); and the obligation to protect information relating to the representation (see Rules 1.6 and 1.9). <u>Lawyers participating in the sale of a law practice, a geographic area of practice, or a substantive field of practice must act in accordance with all applicable ethical standards. These include, for example, the following: The buyer is obligated to check for potential conflicts of interest so as to avoid conflicts of interest (see, e.g., Rule 1.7 regarding concurrent conflicts and Rule 1.9 regarding conflicts arising from past representations)</u></p>	<p>Proposed Comment [11] contains the substance of its Model Rule counterpart. However, the Commission modified the first sentence to make explicit that this comment applies regardless of whether the sale is of an entire practice, a geographic area of practice, or a substantive field of practice. The last part of the second sentence has been modified to make explicit that both Rule 1.7 and Rule 1.9 apply, so that a buyer is cautioned that he, she, or it must heed both conflicts of interest regarding concurrent clients and conflicts of interest regarding past representation of clients.</p> <p>KEM's proposed Explanation: Comment [11] is based on Model Rule 1.17, cmt. [11], but has been substantially revised to correct an apparent error in the Model Rule comment. The examples in the Model Rule comment focus on the seller's ethical duties in connection with the sale of a law practice. The Commission concluded, however, that most of the examples described duties that a buyer incurs in connection with a sale. The Commission has clarified which duties a buyer has and which duties a seller has in its revision of the Comment. Finally, the Commission has deleted the reference in Model Rule Comment concerning a seller's "obligation to exercise competence in identifying a purchaser qualified to assume the practice," as there is no civil</p>

² **Drafters' Note:** Adapted from Model Rule 1.17 Comment [11]. This proposal is the result of a dialog between Bob and Jerry.

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	<p>and thereafter to provide legal services competently (see Rule 1.1). Following a sale, the seller is obligated to continue to protect confidential client information (see Rule 1.6 and Business & Professions Code section 6068(e)(1)) and to avoid new representations that are in conflict with their continuing duties to the former clients (see Rule 1.9).</p>	<p>liability potential for making a bad referral in California.</p>
<p>[12] If approval of the substitution of the purchasing lawyer for the selling lawyer 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 (see Rule 1.16).</p>	<p>[12] If approval of the substitution of the purchasing lawyer for the selling lawyer is required by the rules of any tribunal in which a matter is pending, the matter may be included in the sale, but such the approval of the tribunal must be obtained before the seller may be relieved of responsibility for the matter. matter can be included in the sale (see Rule 1.16).</p>	<p>Comment [12] is based on Model Rule 1.17, cmt. [12]. However, it has been revised because the Model Rule comment does not make contractual sense. A sale may contemplate including a given matter in the scope of the sale, and the parties will have to enter into a contract for sale before they can implement it. Nevertheless, if the approval of a tribunal is required before the purchaser may be substituted for the seller, both paragraph (f) of this proposed rule and this comment now make explicit that the tribunal's approval must be obtained before the seller is relieved of responsibility for the matter.</p>
	<p>[12A] Although the services of a broker may be used to assist in a purchase and sale under this Rule, the Rule does not permit such a sale to a broker or other intermediary. Whether a fee may be paid to a nonlawyer broker for arranging a sale or purchase of a law practice under this Rule is governed by the terms of the sale agreements and other law. Other Rules may also apply. See, e.g., Rule [5.4(a)] (prohibiting sharing legal fees with a nonlawyer), and Rule [7.2(b)] (prohibiting a lawyer from giving anything of value to a person for</p>	<p>Proposed Comment [12A] has no counterpart in the Model Rule. The Commission concluded that a sale to a broker should not be permitted. Instead, a sale should be directly to a lawyer or law firm. A seller or a buyer may utilize the services of a broker, if permitted by other law. However, this rule does not permit a sale to a broker or other intermediary. In addition, other rules and other law govern whether a fee may be paid to a non-lawyer broker for arranging a sale or purchase of a law practice or any aspect of it. For example, proposed Rule 5.4(a) will prohibit sharing legal fees with a non-lawyer, and proposed Rule 7.2(b) will prohibit a lawyer from giving anything of value to a person for</p>

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	<p>recommending the lawyer's services).</p>	<p>recommending the lawyer's services. Lawyers and the public should be made aware of these restrictions. Therefore, the Commission spelled them out in this proposed Comment.</p>
<p>Applicability of the Rule</p> <p>[13] This Rule applies to the sale of a law practice 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.</p>	<p>Applicability of the Rule</p> <p>[13] This Rule applies to the sale of a law practice of a deceased, impaireddisabled or disappeared lawyer, <u>or by a trustee</u>. Thus, the seller may be represented by a non-lawyer representative not subject to these Rules, <u>or the seller may be a lawyer acting in a fiduciary capacity</u>. Because<u>Since</u>, however, no lawyer may <u>assist in participate in</u> a sale of a law practice that<u>which</u> does not <u>comply with conform to the requirements of</u> this Rule, <u>a nonlawyer fiduciary who is represented by counsel, a lawyer selling in a fiduciary capacity, and the representatives of the seller as well as</u> the purchasing lawyer will<u>must all have to comply with this Rule</u>can be expected to see to it that they are met. <u>See, e.g., Rule [8.4(a)]</u>.</p>	<p>Proposed Comment [13] is based on Model Rule 1.17, cmt. [13]. The word "impaired" has been substituted for "disabled" because the selling lawyer may be physically disabled for still able to participate in the sale, and the intent is to apply this rule to a sale on behalf of a selling lawyer who is incapacitated. In addition, the phrase "or by a trustee" has been added because a lawyer, for estate and tax planning purposes, may hold the ownership of his or her practice in a trust.</p> <p>In the second sentence, the alternative of a seller being a lawyer acting in a fiduciary capacity has been added because a lawyer may be the attorney-in-fact, conservator, or trustee for another lawyer.</p> <p>In the third sentence, the word "because" has been substituted for "since, however," to rectify the temporal implication. The phrase "assist in" has been substituted for "participate in" in order to make clear that a lawyer need not be a buyer or seller in order to violate this rule. A lawyer for a buyer or seller must assure that the sale of the practice complies with this rule. Accordingly, the balance of the third sentence has been revised to make these concepts explicit.</p>
<p>[14] Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of</p>	<p>[14] <u>[RESERVED]</u> Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a</p>	<p>Model Rule 1.17, cmt. [14] has been deleted because the substance of it has been moved into paragraph (h) of the black letter rule. If an exception will be made to a rule, it should appear</p>

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<p>tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.</p>	<p>sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.</p>	<p>in the rule itself, and not just in the comment. Because this exception appears in the proposed rule, repeating it in the comment is not necessary.</p>
<p>[15] This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice or an area of practice.</p>	<p>[15] This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice, <u>a geographic area of practice</u>, or a substantive area <u>field</u> of practice.</p>	<p>Proposed Comment [15] is identical to its Model Rule counterpart. Words have been to make clear that it applies regardless of whether the sale is of an entire practice, of a geographic area of practice, or of a substantive field of practice.</p>
	<p><u>[15A] Lawyers who engage in a transaction described in this Rule also must comply with Rules 1.5.1 and 5.4 when applicable.</u></p>	<p>Comment [15A] has no counterpart in the Model Rule. This Comment has been added to help assure that lawyers who engage in a transaction under this rule are alerted to the requirement of complying with proposed Rules 1.5.1 and 5.4.</p>
	<p><u>[15B] If the lawyer whose practice is sold is deceased, his or her estate must also comply with Business and Professions Code section 6180, et seq., including but not limited to the notice requirements therein.</u></p>	<p>Comment [15A] has no counterpart in the Model Rule. The Commission recommends addition of this Comment so that people who endeavor to conduct a sale of a practice of a deceased lawyer are alerted of the necessity of complying with the State Bar Act.</p>

Proposed Rule 1.17 Purchase and Sale of a Law Practice Minority Dissent

A minority of the Commission strongly disagrees with this proposed Rule. The proposed rule will create a sea change in the practice of law, commercializing it beyond anyone's prior imagination.

The current rule was created by this Commission in the 1980s and adopted by the Supreme Court of California on recommendation of the Board of Governors for the specific purpose of allowing senior lawyers in solo practice, facing retirement or appointment to a public position such as a judgeship, or their estates after their deaths, to realize the value of their practices by the sale of those practices without the use of transparent devices such as pretended last minute "partnerships;" see *Geffen v. Moss* (1975) 53 Cal.App.3d 215, 125 Cal.Rptr. 687. To avoid the use of these pretend relationships and to give single practitioners the same opportunity to realize the value of what they created over a lifetime – as was routinely provided where lawyers had been practicing in legal groups such as partnerships (see *Howard v. Babcock* [citation]), the State Bar proposed the current rule, which was the first authority ever that allowed the one-time sale of such a practice -- under stringent conditions which protect the clients of that practice through provisions for confidentiality during the sale negotiations and against fee increases by reason of the transfer.

The American Bar Association later adopted a version of this Rule at the instance of the California State Bar

delegation. It was promoted on the floor of the ABA House of Delegates by the then President of the State Bar, Terry Anderlini.

But the current proposal has transformed this modest and reasonable provision into one which will permit and cause the commercial exploitation of a law practice in ways heretofore undreamed of. Under the proposed rule, a lawyer (and thus, a law firm as well) may sell a substantive field of practice or a geographic area of practice. And unlike the current rule, there is the anticipation that the selling lawyer may even return to the practice he or she has merchandised. See proposed comment 2: "Return to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation."

The dissenters can see a sea change in the practice if this rule is adopted. Since the rule contains no definition of either the concept of "geographic area" or "substantive field" of practice and since probably no limiting definition is possible, an imaginative or greedy lawyer can sell a case or matter, or a set of a few cases or matters, by describing the sales package in a way which excludes the lawyer's other cases in the field, or in other geographic areas of the state or nation.

As some examples, suppose that a lawyer is consulted about a major personal injury case, beyond the lawyer's normal skills and capacities. Can the lawyer sell his or

her “major personal injuries” practice instead of handling the case him- or herself or associating a more skilled lawyer with client consent per current rule 2-200? Suppose that the lawyer has no background in intellectual property law but is consulted by a current client about a major patent infringement case which may well produce a contingent fee in 7 or even 8 figures? Instead of finding a lawyer competent in the field and referring the matter to that lawyer, can the lawyer now sell his or her “intellectual property practice,” consisting of a single matter, to the highest bidder, as long as the confidentiality provisions of this proposed rule are observed? Why would the temptation to sell be any less if the “big winner” case was one of several, where the seller might be quite willing to give up the others in order to cash in on the one “big deal”?

Or consider the case of a “national” law firm which opened a California office with considerable fanfare, spent a fair amount on the facility, on recruitment of lawyers and on promotion of the practice, but found the branch unprofitable. There have been such instances in the past, and the offices were simply closed. If this rule is adopted, the law firm could hire a marketer and would probably succeed in selling the unprofitable practice to another law firm, since its days in California were numbered in any event.

And what is a geographic area of practice? A county? A region? A neighborhood? And why are we proposing to limit the restrictions on reentry only to those which apply

to all businesses, i.e., Business & Professions Code sections 16601 et seq.? What is to preclude the seller from claiming extraordinary circumstances and coming back to the old neighborhood after cashing in on the prize case, except B&P Code section 16601?

We stop the iteration of possibilities here; but the potential changes which this rule will bring about in the merchantization of the practice of law, at all levels of size and activity of any practice, are endless. We are seeing a major evolution in the practice of law, particularly in the larger law firms, where the business element of the law practice has become the driving force and professional services are simply the commodities which such a business produces and sells. No compelling reason for this change has been advanced by its proponents, other than that there might be situations where there could be a genuine special need to carve out some part of an established practice and to sell it. Where these changes will eventually lead is unknown and there is considerable division as to whether the changes are good or bad for the profession and for the public it serves; but it seems clear that the proposed rule will create an enormous change in the business side of the law practice and will encourage the further commercialization of our profession, without any known necessity other than the weak thought that an older litigator might want to maintain a small estate planning practice (in which he/she presumably had little experience) while giving up on the pressure of a litigation practice.

**Rule 1.17.2 Purchase and Sale of a Geographic Area or Substantive Field of a Law Practice.
[Sorted by Commenter]**

TOTAL = 5 Agree = 1
 Disagree = 2
 Modify = 2
 NI =

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
2	Los Angeles County Bar Association (Toby A. Rothschild)	M			<p>Definition of “extraordinary circumstances” should not include the lawyer’s resuming practice when returning to private practice after government service.</p> <p>Extraordinary circumstances should apply equally to resuming practice in a substantive area and a geographic area.</p>	Commission deleted the reference to “extraordinary circumstances”, but see new Comment [2A] stating, in part, that: “Return to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation.”
3	Orange County Bar Association (Trudy Levindofske)	M			<p>By not requiring the inclusion of goodwill in a sale, together with subdivisions (3), (9), (10), and (11) thereof, potentially embody a restraint of trade prohibited by B&P 16601.</p> <p>Paragraph (a)(8) prohibition on compensation to any broker, finder or middleman for the purchase and sale of a geographic area or substantive field of law practice is not warranted and should be removed.</p>	<p>The introductory paragraph of the proposed Rule includes the concept of selling “good will.”</p> <p>The rule language addressing broker compensation has been deleted. Comment [12A] now states: “Although the services of a broker may be used to assist in the sale of a law practice, a geographic area of practice, or a substantive field of practice to another lawyer or law firm, this Rule does not permit such a sale directly to a broker or other intermediary. Whether a fee may be paid to a nonlawyer broker for arranging a sale or purchase . . . is governed by the terms of the sale agreement and other law. Other rules may also apply. See, e.g., Rule 5.4(a) (prohibiting sharing legal fees with a nonlawyer) and Rule 7.2(b) (prohibiting a lawyer from giving anything of value to a person for</p>

¹ A = AGREE with proposed Rule

D = DISAGREE with proposed Rule

M = AGREE ONLY IF MODIFIED

NI = NOT INDICATED

**Rule 1.17.2 Purchase and Sale of a Geographic Area or Substantive Field of a Law Practice.
[Sorted by Commenter]**

TOTAL = 5 Agree = 1
 Disagree = 2
 Modify = 2
 NI =

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
						recommending the lawyer's services).
4	San Diego County Bar Association (Heather L. Rosing)	A			Proposed rule tracts ABA Model Rule 1.17.2 and should be adopted in entirety.	No response necessary.
1	San Francisco, Bar Association of (Minkus)	D			1.17.2, by precluding the seller of a portion of a practice from returning to the practice of law without establishing that there are "extraordinary circumstances," creates a rule of discipline that is inconsistent with 1.17.1, which does not preclude the seller of an entire practice of law from returning to the practice of law.	This conflict has been eliminated by merging the Rule 1.17.1 and 1.17.2 drafts into a single Rule. Also, the Commission has deleted the reference to "extraordinary circumstances", but see new Comment [2A] stating, in part, that: "Return to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation."
5	Santa Clara County Bar Association (Christine Burdick)	D			Too narrowly restricts the purchase or sale of a law practice.	Commission deleted the reference to "extraordinary circumstances."
				(a)	Delete prohibitions of what a seller can do after the sale; these provisions violate B&P 16600, <i>et seq.</i>	Commission disagrees and did not make the requested revision. Section 16600, <i>et seq.</i> restrict private agreements rather than professional regulation.
				(d)(1)(A)	90 day-period waiting period to act on behalf of new clients should be shortened to 30 days.	The Rule does not require the buyer to wait 90 days before providing services. It states that "... if the client's rights would be prejudiced by a failure of the

**Rule 1.17.2 Purchase and Sale of a Geographic Area or Substantive Field of a Law Practice.
[Sorted by Commenter]**

TOTAL = 5 Agree = 1
 Disagree = 2
 Modify = 2
 NI =

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
						purchaser to act during that time [the 90-day period], the purchaser may act on behalf of the client until otherwise notified by the client."

**Rule 1.17.1 Purchase and Sale of a Law Practice.
[Sorted by Commenter]**

TOTAL = 5 Agree = 1
 Disagree = 2
 Modify = 2
 NI =

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
2	Los Angeles County Bar Association (Toby A. Rothschild)	M			Change "may be sold by a lawyer or law firm" to "may be sold to a lawyer or law firm." A lawyer or small firm may have several specialties which would necessitate the sale of each specialty to a separate buyer. Why can't the seller be "a lawyer or law firm"?	The Commission agreed to the extent of clarifying that the Rule is bilateral in that it generally applies to buyers and to sellers. As a result, the introductory phrase says: "A lawyer or a law firm may sell or purchase a law practice, a substantive field of practice, or a geographic area of practice . . ."
3	Orange County Bar Association (Trudy Levindofske)	M		(d)	Modify paragraph (d) to make clear that "confidential information" is confidential client information and not general financial information or due diligence information pertaining to the law practice being offered for sale. Comment [10] appears to address the issue, but the distinction should be included in the body of the Rule.	The Commission agreed and paragraph (d) (now paragraph (f)) has been changed to: "A lawyer shall not disclose confidential client information . . ." Comment [10] is now Comment [7].
4	San Diego County Bar Association (Heather L. Rosing)	A			Proposed rule clarifies the existing rule.	No response necessary.
1	San Francisco, Bar Association of (Minkus)	D		(g)	Comment [12] is inconsistent with paragraph (e). Paragraph (e) exempts transactions by which a sole practitioner creates a partnership with a proposed purchaser of the practice. Comment [12] adds the additional requirement that the formation of the firm be done "in good faith...and not for the purpose of avoiding the limitations of the rule." This	Paragraph (e) now is paragraph (g), and it reads: "This Rule does not apply to the admission to or retirement from a law partnership or law corporation, retirement plans and similar arrangements, or sale of tangible assets of a law practice." The Commission agreed with the comment, and the language regarding "good faith" previously in Comment [12] has been deleted.

¹ A = AGREE with proposed Rule

D = DISAGREE with proposed Rule

M = AGREE ONLY IF MODIFIED

NI = NOT INDICATED

**Rule 1.17.1 Purchase and Sale of a Law Practice.
[Sorted by Commenter]**

TOTAL = 5 Agree = 1
 Disagree = 2
 Modify = 2
 NI =

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
					undermines the ability of an attorney to understand the obligations by reading the rule itself.	
5	Santa Clara County Bar Association (Christine Burdick)	D		(d)(1)(A)	90 day waiting period to start acting on behalf of clients is too long. A shorter period (30 days suggested) not only accommodates the intent of the seller and purchaser, but also provides more protection to the client whose rights might be prejudiced while his or her matter is in a holding pattern.	Commission did not make the requested revision, which is based on a misreading of the Rule. The Rule does not require the buying lawyer or law firm to wait 90 days before providing services. It states that "... if the client's rights would be prejudiced by a failure of the purchaser to act during that time [the 90-day period], the purchaser may act on behalf of the client until otherwise notified by the client."

**RRC – Rule 1.17 [2-300]
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**RRC – Rule 1.17 [2-300]
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October 26, 2009 Kehr E-mail to KEM, cc Drafters (Sapiro, Martinez & Melchior), cc Chair & Staff:

I see that there are 10/1/09 versions of the public commenter charts, which I assume are not identical to the 9/29/09 versions that I have in Word. If that's right, can you send me Word versions of the 10/1 versions? Your 10/2 message says that you were going to send the Word versions, but I cannot locate them if you did.

October 26, 2009 Sapiro E-mail to Drafters, cc KEM:

In the version of the spreadsheet Randy sent me this morning, paragraph (b) ends with “and the purchase and sale includes all or substantially all of the practice, or of the substantive field or geographic area of the practice.”

However, paragraph (c) copies the Model Rule and says: “The entire law practice, the entire substantive field of practice, or the entire geographic area of practice is sold to one or more lawyers or law firms.”

I think the end of (b) is duplicative of (c) and is less clearly worded. I think that part of (b) should be deleted. Do you agree with me?

October 26, 2009 Sapiro E-mail to Drafters, cc KEM:

On looking at the spreadsheet, our proposed (c) is the equivalent of Model Rule (b). If you agree with my suggestion in the last email I sent, I would move the model rule paragraph down to the row in which our (c) appears and leave our (b) with no model rule equivalent. I still think the last half of our (b) and our (c) are redundant.

October 26, 2009 KEM E-mail to Kehr, cc Drafters, cc Chair & Staff:

Here is the 10/1/09 version of the public commenter chart. In addition, I've attached the 10/1/09 versions of the Introduction and Rule & Comment Comparison Chart. Finally, I've also attached Draft 2 of the Dashboard (10/2/09). All in Word.

October 26, 2009 Kehr E-mail to KEM, cc Drafters, cc Chair & Staff:

The public comment chart has 9/29 in its title, so I assume it is the same one that Randy sent to me earlier this afternoon.

October 26, 2009 KEM E-mail to Kehr, cc Drafters, cc Chair & Staff:

That's correct. The 9/29/09 drafts of the 1.17.1 and 1.17.2 Public Comment charts were what were included in the single PDF file that I sent out on 10/2. Nearly all the other documents, however, were dated 10/1/09. Sorry for any confusion.

October 26, 2009 Kehr E-mail to Sapiro, cc Drafters, cc Chair & Staff:

Here are drafts of the public comment charts.

October 26, 2009 KEM E-mail to Drafters, cc Chair & Staff:

I've attached the following:

1. Rule 1.17, draft 4 (10/26/09), redline, compared to Draft 3.3 (9/29/09), the draft considered at the 10/16-17/09 meeting. In Word.
2. My 10/16-17/09 meeting notes for 1.17. In PDF.

KEM Notes:

1. Please revise Comment [11] on this Draft as well as any nit changes to the Rule. Please do not make any changes to the middle column of the comparison chart. There is no easy way for us to recreate a clean version of the Rule from that chart. I've also left the drafters' notes, which I hope will be of some help
2. I've kept the "Drafters' Notes" in most of the footnotes to the comments in the hopes they may be of help in drafting the explanations.
3. If you can agree on the "final" draft, then I can create a comparison to the Model Rule and insert it in the Chart and get you the chart for drafting the explanations.

Please let me know if you have any questions.

October 27, 2009 Kehr E-mail to Drafters, cc Chair & Staff:

Thank you for getting this out. My quick initial glance found one error, which is that the Comment reference at your paragraph 7A should be to Comment [11] rather than [10] – correct?

Jerry: Now that I have Kevin's notes I'll look at your redraft of Comment [11] shortly.

October 27, 2009 KEM E-mail to Drafters, cc Chair & Staff:

Thanks for catching that. I'll make the appropriate change.

October 27, 2009 Kehr E-mail to Sapiro, cc Drafters Chair & Staff:

I've attached your draft of revised Comment [11] with line numbers added. The draft already is multi-colored, which makes me think this will be easier for everyone if I don't change your draft but instead make drafting suggestions with line number references. As a preliminary comment, there is little in Model Rule Comment [11] that I like. It seems to me to be a good practices

pointer rather than an explanation of anything found either in Rule 1.17 or in other Rules, as I will try to explain ---

1. The word “the” line 2 suggests that all of the ethical considerations applicable when using a contract lawyer or recommending a co-counsel also apply when a lawyer makes a practice sale under Rule 1.17. I don’t believe that is correct. See COPRAC’s opinion 2004-165. It says that a lawyer who contemplates the use of contract lawyers at the outset of an engagement should address the subject in the fee agreement – are we saying that a lawyer who contemplates selling a practice must say so at the outset? That would be a new requirement. That opinion also speaks of the first lawyer’s continuing duties with regard to competence (based on the duty to supervise) and confidentiality (again, based on the first lawyer’s duty to supervise although that word is not used). If we keep the sentence, I would at least remove “the”, which could be explained as follows: “The Commission has removed ‘the’ from the sentence because it would not be correct to suggest that the selling lawyer has the same set of duties as a lawyer who brings in a contract lawyer or a co-counsel to assist in the representation of a client. The selling lawyer has only those duties to a former client that are stated in Rule 1.9. This does not include, for example, any continuing duty with respect to the competence of the buyer’s future legal services to a client. Compare to Cal. State Bar Formal Opn. 2004-165 regarding lawyers’ use of contract lawyers to make appearances.”
2. However, I don’t think the first sentence should be retained because I don’t believe that the sale of a law practice can be equated to the situation discussed in 2004-165 in which the first lawyer has continuing duties to the client. The only duties of the seller discussed in the draft Comment are with respect to Rule 1.9 (beginning at line 8), which I would retain as a separate sentence, and with respect to conflicts, which I discuss in the next paragraph.
3. The second sentence, beginning in the middle of line 3, says that the selling lawyer has a duty to make certain the buyer has no disqualifying conflicts. I disagree. Rule 1.7 says that a lawyer shall not “accept or continue” a representation without obtaining the client’s informed written consent (where consent is possible). It imposes no duty on a referring or selling lawyer. I believe this is as it should be because the selling or referring lawyer has no ability to address the second lawyer’s conflicts except by the formalistic act of mentioning the topic (which is no trick b/c the buyer and seller could not conceivably comply with the requirements of Rule 1.17 without having it on the table). Thus, it is my view that this sentence is wrong in its suggestion. Also, Opn. 2004-165 does not suggest that the referring lawyer has any conflicts obligation. It discusses conflicts only when examining the duties of the contract lawyer. Finally, the MR Comment does not suggest that the seller has any duty with regard to the buyer’s conflicts. I would remove the second sentence. No explanation is needed for this because it is not found in the MR.
4. Beginning at the end of line 4, this says that a lawyer may not “undertake” a representation that the lawyer cannot perform competently. I don’t think this is quite right b/c Rule 1.1 doesn’t speak to the acceptance of a representation but rather the quality of work actually performed.

5. I'm concerned about the broad reference to confidentiality beginning at line 9, which by itself might lead a reader in a direction that would conflict with Comment [7]. I therefore would remove that reference.
6. I would reverse the order of the conflicts and competence discussion b/c the conflicts check precedes acceptance of a new client and the competence standard to services provided to the new client.

Here, without any marking, is my suggestion:

Lawyers participating in the sale of a law practice, a geographic area of practice, or a substantive field of practice must act in accordance with all applicable ethical standards. These include, for example, the following: The buyer is obligated to check for potential conflicts of interest so as to avoid conflicts of interest (see, e.g., Rule 1.7 regarding concurrent conflicts and Rule 1.9 regarding conflicts arising from past representations) and thereafter to provide legal services competently (see Rule 1.1). Following a sale, the seller is obligated to continue to protect confidential client information (see Rule 1.6 and Business & Professions Code section 6068(e)(1)) and to avoid new representations that are in conflict with their continuing duties to the former clients (see Rule 1.9).

I must return to the clients.

October 27, 2009 Sapiro E-mail to Drafters & KEM:

Attached is a copy of my redraft of the dashboard for Rule 1.17. I have revised the Summary and filled in the box at the bottom of the front page.

October 27, 2009 Sapiro E-mail to Drafters & KEM:

Attached is a proposed revision of the Introduction for Rule 1.17. I have expanded it somewhat, but the substance is the same. I have not changed the statement of the minority position.

October 27, 2009 Sapiro E-mail to Drafters & KEM:

Attached is my attempt to draft an explanation of changes for the black letter rule and comments of Rule 1.17. I apologize that I was not able to get this to you before now. If you can, please give me the benefit of your comments and criticisms.

Please note my recommendation in new footnote 4, the new Comment [11], and the revision of footnote 30.

If you cannot give me your comments and criticisms before noon, I will send this to Randy with a disclaimer indicating that this draft may not reflect your opinions.

October 28, 2009 KEM E-mail to Drafters, cc Staff & Chair:

If the drafters are OK w/ the attachments, then Lauren and Randy can add them to the agenda materials for the November 2009 meeting w/o further input from us.

I've attached the following:

1. Dashboard, Draft 3 (10/27/09)KEM-JS.
2. Introduction, Draft 2 (10/27/09)KEM-JS
3. Rule & Comment Chart, Draft 2.1 (10/27/09)KEM-JS

KEM Comments:

1. I haven't made any substantive changes to items 1 and 2, above. All I've done is rename the files so we (staff) can keep accurate track of which draft we discussed at the November meeting and substitute the correct draft no. & date for the Rule on which the charts are based [Draft #4.1 (10/27/09), which is Draft 4 that I sent the drafters on 10/26 @ 10:00 p.m., with Jerry & Bob's redraft of Comment [11] inserted].

2. On the Rule & Comment Chart, I've done the following:

a. As w/ items 1 & 2, I've renamed the files and substituted the correct draft no. & date for the Rule on which the charts are based

b. I've updated the middle column to reflect the revisions the Commission approved at the October 2009 meeting and which are also reflected in Draft 4.1. The middle column of the draft Jerry circulated contained some but not all of the approved revisions.

c. I've deleted all the footnotes, most of which are misleading as they discuss issues that were resolved at the October meeting. I have, however, retained the two footnotes (4 & 30) Jerry mentioned in his e-mail that circulated to the drafters. They are now numbered notes 1 & 2.

(1) In footnote 1, I express my disagreement w/ Jerry's proposal and offer an alternative. However, I don't think this is an issue that should hold up our submitting the materials to staff. Let's put it to the Commission and attempt to resolve it during the e-mail period.

(2) I deleted my argument from footnote 2 concerning Comment [11] as no one seemed to have paid much heed to it during the meeting and I'd rather not waste meeting time rehashing it.

d. I've offered an alternative to the the Comment [11] Explanation (third column). Again, rather than trying to resolve this and hold up submitting it to the staff, let's put it to the Commission and attempt to resolve it during the e-mail period.

e. Finally, I've made a few changes to the first line of the Explanations for some of the comments to conform to the style we've been using on these charts.

October 28, 2009 KEM E-mail to Drafters, cc Staff & Chair:

I've attached Draft 4.1 (10/27/09) which, as I described in the e-mail I just sent, is Draft 4 that I sent the drafters on 10/26 @ 10:00 p.m., with Jerry & Bob's redraft of Comment [11] inserted.

This is simply intended to complete your records on this Rule. The attached should not be included in the agenda materials. Including it in the agenda materials would cause unnecessary confusion if some members submit comments by reference to the chart and others by reference to the Rule draft (this has happened several times). The chart has all the information.

I've copied Randy & Lauren so their records are also complete.

Please let me know if you have any questions.

October 28, 2009 Kehr E-mail to Drafters, cc Staff & Chair:

I won't have time this morning to look at this package or at Jerry's message from the wee hours, so this should go out as far as I'm concerned.

October 28, 2009 Melchior E-mail to Drafters, cc Staff & Chair:

Because I disagree totally with the way this rule is going, I'm really only interested in the dissent. I see the reference to it in the introduction, and assume that it will be with the final materials.

October 28, 2009 KEM E-mail to Drafters, cc Staff & Chair:

Yes, your full dissent will be in the final materials. I've attached it to this e-mail. Perhaps Lauren can include it in the agenda materials.

I plan on completing the State Variations section before the meeting, and hopefully before the expiration of the e-mail deadline so you will all have time to review it.

November 1, 2009 Sondheim E-mail to RRC:

A nit on page 447: In the Commission's proposed rule, 6th line, the word "their" should be changed to "his/her" because the word "seller" in the second line is singular.