

Committee Opinion  
April 19, 1989

LEGAL ETHICS OPINION 1234

CONFIDENTIALITY AND SECRETS –  
SALE OF LAW FIRM – TERMINATION  
OF REPRESENTATION: PROPRIETY OF  
SALE OF COLLECTION PRACTICE TO  
ASSUME BENCH.

You have advised that in preparation for assuming the bench, you are planning to divest yourself of your collection practice which services seven active clients and eight to ten occasional clients.

You have inquired as to the propriety of a proposed method of disposing of this practice, which method would include:

1. Reviewing the practice with prospective purchasers, completely protecting clients' identities, confidences and secrets by reviewing only general forms and techniques, automated systems, and past fee production by numbers assigned to each client;
2. Reaching agreement in principle with a prospective purchaser with price being contingent on client response;
3. Disclosing to each client the name of the prospective purchaser, factual background information about prospective purchaser and your personal opinion of his ability to handle the client's matter, along with an indication that the prospective purchaser knows neither the client's identity nor any of his confidences and secrets, and that the client has an absolute right to direct that his files go to whomever he chooses or to himself; and
4. Requesting each client's written permission to disclose his confidences and secrets to the prospective purchaser including a stamped, self-addressed envelope and a form including the choices: (a) Yes, deliver my files to prospective purchaser; (b) No, return my files to me; and (c) No, deliver my files to \_\_\_\_\_, with a place for the client's signature.

Since the issues involved in such a transaction include matters of a lawyer's appropriate conduct upon termination of client representation, payment for one lawyer's recommendation of another to the former's previous clients, and revelation/use of client's confidences and secrets, the appropriate and controlling Disciplinary Rules are DR:2-108(D), DR:2-103(D), and DR:4-101(B).

Disciplinary Rule 2-108(D) requires that, upon termination of representation, a lawyer shall take reasonable steps for the continued protection of a client's interests. The Committee has previously opined that upon terminating a law practice, it is proper for an attorney to give notice to his clients that a new attorney is taking over the law practice while allowing clients to designate, if they choose to designate, that their files go to that new attorney or to another attorney. (See LE Op. 321, LE Op. 934, and LE Op. 956)

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Although LE Op. 956 does not find any impropriety in an attorney's sale of the physical assets of a law firm, it emphatically found that the sale of the goodwill of a law firm is patently improper. Furthermore, the Committee has also previously opined that it is improper for an attorney to purchase another attorney's active client files or pending litigation as "accounts receivable" or to purchase work in progress of an attorney who has been designated a full-time judge. (See also LE Op. 321 and LE Op. 368)

It continues to be the opinion of the Committee that the sale of a law firm as a going business, or the sale of an attorney's work in progress, is improper. In the proposal you have presented, the sale of the collection forms, procedures manuals and automated systems would be considered a sale of the physical assets of the firm and would thus be permissible under the Virginia Code of Professional Responsibility only if the client's secrets, confidences and choice of attorney were protected as you have described. Of primary importance, the price of such systems and manuals must not be improperly inflated above the fair market value of such materials. To improperly inflate those prices would be to circumvent the prohibition against the sale of a law practice by disguising the sale of the practice as the sale of physical assets. (See Kentucky Legal Ethics Opinion 324)

The Committee is also of the view that the contingent price arrangement you have described, as directly tied to the degree of client acceptance of the new attorney, would further render the arrangement improper since no such contingency would ordinarily apply to the purchase of the collection systems as a physical asset.

Although advisory opinions on the Canons of Judicial Conduct are beyond the purview of the Committee, it directs your attention to that portion of LE Op. 368 which also comments on the impropriety of an attorney's business transactions with a judge before whom the attorney intends to practice regularly.

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**Legal Ethics Committee Notes.** – Rule 1.17 permits the purchase or sale of a law firm's practice, including good will, under certain circumstances.