STATE BAR ASSOCIATION OF NORTH DAKOTA
ETHICS COMMITTEE
OPINION NO. 15-08

THIS OPINION IS ADVISORY ONLY

QUESTION PRESENTED

Whether an attorney who has offices in two North Dakota communities can sell one of the offices and the practice associated with the office and continue to practice law in the same fields and in the same geographic area as the practice to be sold?

OPINION

An attorney who has offices in more than one North Dakota community cannot sell the attorney's practice that is associated with one of the offices and continue to practice law in the same fields and in the same geographic area as the practice to be sold.

APPLICABLE NORTH DAKOTA RULE

Rule 1.17 of the North Dakota Rules of Professional Conduct: Sale of a law practice.

FACTS PRESENTED

The requesting attorney has offices located in two North Dakota communities and is considering selling the part of the attorney's practice associated with one of the offices. The attorney proposes not to retain any client files that are in the office to be sold nor represent any clients who have files with that office. The attorney has one primary and two lessor practice fields that are not specific to either of the offices. After the sale, the attorney proposes to continue to practice in these fields and do so in the same geographic area in which the attorney practiced previously, including the county where the office to be sold is located.

DISCUSSION

Rule 1.17 contains the requirements for the sale the requesting attorney has proposed. Here is the rule in its entirety:

> A lawyer or a law firm may sell or purchase all or part of a law practice, including good will, if the following conditions are satisfied:
>
> (a) <u>The seller ceases to engage in the private practice of law or some particular area of the practice of law within an agreed upon geographic area in which the practice has been conducted</u>;
>
> (b) <u>The practice or particular area of practice is sold as an entirety to another lawyer or law firm</u>;
>
> (c) Actual written notice is given by certified mail, return receipt requested, to each of the seller's clients regarding:
>
> (1) the proposed sale;

(2) the terms of any proposed change in the fee arrangement authorized by paragraph (d);
(3) the client's right to retain other counsel or right to take possession of the file; and
(4) the fact that the client's consent to the sale will be presumed if the client does not take any action or does not otherwise object within ninety days of receipt of the notice.

If written notice by certified mail is ineffective, the seller should take all reasonable steps to see that notice of the sale is received by the client. If after all reasonable steps have been exhausted, notice has still not been received by the client, representation of the client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court *in camera* information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(d) The sale may not be financed by increases in fees charged the clients of the practice. Existing agreements between the seller and the client as to fees and the scope of the work must be honored by the purchaser, unless the client consents in writing after consultation.

(e) Any sale of any particular area of practice arising out of the selling lawyer's cessation of practice in an area of practice must include all of the selling attorney's files in the area of specialty or practice.

(emphasis added).

The sale proposed by requesting attorney would violate Rule 1.17 in two respects:

1) the requesting attorney would not be ceasing to practice law, or ceasing the practice of a specific field, in an agreed upon geographic area, and
2) the sale would not include the attorney's entire practice or a particular field of practice.

This opinion was drafted by Rob Forward, and was unanimously approved by the Ethics Committee on the 11th day of December, 2015.

Ethics Committee Chairperson

This opinion is provided under Rule 1.2(B), North Dakota Rules for Lawyer Discipline, which states:

> A lawyer who acts with good faith and reasonable reliance on a written opinion or advisory letter of the ethics committee of the association is not subject to sanction for violation of the North Dakota Rules of Professional Conduct as to the conduct that is the subject of the opinion or advisory letter.