

representation, 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.

A registered practitioner 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 disposition of their files, § 11.117 would permit 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*.

All the elements of client autonomy, including the client's absolute right to discharge a practitioner and transfer the representation to another, survive the sale of the practice.

*Fee arrangements between client and purchaser.* A sale of a practice could not be financed by increases in fees charged the clients of the practice. The purchaser must honor existing agreements between the seller and the client as to fees and the scope of the work, unless the client consents after full disclosure. The purchaser would, however, advise the client that the purchaser will not undertake the representation unless the client consents to pay the higher fees the purchaser usually charges. To prevent client financing of the sale, the higher fee the purchaser may charge would not exceed the fees charged by the purchaser for substantially similar service rendered prior to the initiation of the purchase negotiations.

The purchaser could not intentionally fragment a practice that is the subject of the sale by charging significantly different fees in substantially similar matters. Doing so would make it possible for the purchaser to avoid the obligation to take over the entire practice by charging arbitrarily higher fees for less lucrative matters, thereby increasing the likelihood that those clients would not consent to the new representation.

Registered practitioners participating in the sale of a law practice are subject to the ethical standards applicable to involving another practitioner 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* § 11.101); the obligation to avoid disqualifying conflicts, and to secure client consent after consultation for those conflicts which can be agreed to (*see* § 11.107); and the obligation to protect information relating to the representation (*see* §§ 11.106 and 11.109).

Applicability of § 11.117. Section 11.117 applies to the sale of a law practice by representatives of a deceased, disabled or disappeared registered practitioner. Thus, the seller may be represented by a non-lawyer representative not subject to these Rules. Since, however, no registered practitioner 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 practitioner can be expected to see to it that they are met.

Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, would not constitute a sale or purchase governed by proposed § 11.117. Section 11.117 also would not apply to the transfers of legal representation between registered practitioners when such transfers are unrelated to the sale of a practice.

Section 11.201 would introduce a rule addressing the practitioner's role in providing advice to a client.

*Section 11.201—Scope of Advice.* A client is entitled to straightforward advice expressing the practitioner's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a practitioner endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a registered practitioner should not be deterred from giving candid advice, including advice as to patentability or unpatentability, by the prospect that the advice will be unpalatable to the client.

Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a practitioner to refer to relevant moral and ethical considerations in giving advice. Although a practitioner is not a moral advisor *per se*, moral and

ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

A client may expressly or impliedly ask the practitioner for purely technical advice. When such a request is made by a client experienced in legal matters, the practitioner may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the practitioner's responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology, or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent practitioner would recommend, the practitioner should make such a recommendation. At the same time, a practitioner's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

*Paragraph (a) of § 11.201—Offering Advice.* Under paragraph (a) of § 11.201, in general, a practitioner would not be expected to give advice until asked by the client. However, when a practitioner knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, duty to the client under § 11.104 could require that the practitioner act as if the client's course of action is related to the representation. A practitioner ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a practitioner might initiate advice to a client when doing so appears to be in the client's interest.

*Paragraph (b) of § 11.201* would address a practitioner providing patentability opinions to clients referred by an invention promoter.

Section 11.202 would provide rules for a practitioner acting as intermediary between clients. A practitioner acts as intermediary when the practitioner represents two or more parties with potentially conflicting interests. For instance, representation of a client referred by an invention promoter may result in the practitioner having two clients, the inventor and invention promoter. A key factor in defining the relationship is whether the parties share responsibility for the practitioner's fee,