

NEW YORK STATE BAR ASSOCIATION  
**Committee on Professional Ethics**

Opinion 707 – 9/15/98 (28-98)

Topic: Sale of portion of law practice

Digest: A lawyer may not sell a portion  
of a law practice

Code: DR 2-111  
EC 4-6 (former)

**QUESTION**

May a lawyer who contemplates limiting the fields of law in which he or she practices sell the part of the practice from which the lawyer is withdrawing?

**OPINION**

Prior to the adoption of DR 2-111 in 1996 a lawyer in New York could not sell a legal practice. EC 4-6 (as in effect prior to 1996); N.Y. State 319 (1973); N.Y. State 366 (1974); N.Y. State 561 (1984); J. Sterrett, *The Sale of a Law Practice*, 121 U. Pa. L. Rev. 306, 308-310 (1972). DR 2-111(A) now provides in pertinent part:

A lawyer retiring from a private practice of law ... may sell a law practice, including good will, to one or more lawyers or law firms, who may purchase the practice. ... Retirement shall include the cessation of the private practice of law in the geographic area, that is, the county and city and any county or city contiguous thereto, in which the practice to be sold has been conducted.

DR 2-111 was adopted by the Appellate Divisions and added to the Code on May 22, 1996, and resolves many years of debate over whether lawyers should have the right to sell their law practices. According to the Report and Recommendations approved by the New York State Bar Association's House of Delegates on January 26, 1996, DR 2-111(A) is designed to "address the disparate treatment of sole practitioners and members of law firms with respect to the 'good will' of their respective practices".

"A lawyer retiring from the private practice of law" as used in DR 2-111(A) refers to a lawyer who is planning to retire completely from the private practice of law in a given geographic area. A lawyer may not "retire" from one part of a law practice and continue in another part of the practice in the same geographic area. Simon's New York Code of Professional Responsibility Annotated 148 (1998 ed.).

The definition of "retirement" under DR 2-111(A) is that "[r]etirement shall include the cessation of the private practice of law in the geographic area". We note that the use of the word "include" appears to transform the definition into an example. Despite this possible ambiguity, the intent of DR 2-111 is that a lawyer who sells a law practice must cease practicing law in the "geographic area" where the practice has been "conducted".

The New York State Bar Association's Special Committee to Review the Code of Professional Responsibility, in its two Reports and Recommendations to the Association's House of Delegates concerning proposed DR 2-111, dated September 26 and November 27, 1995, proposed to permit a lawyer to sell a discrete portion of his or her practice provided the lawyer confined practicing thereafter to limited or specific areas. This proposal was rejected by the House of Delegates. It is therefore not part of the 1996 Report and Recommendation of the New York State Bar Association to the Appellate Divisions nor of the rule as adopted by the Appellate Divisions and in force today.

### **CONCLUSION**

A lawyer may not sell a portion of the lawyer's practice and continue practicing in other limited or specific fields in the same geographic area.

---