



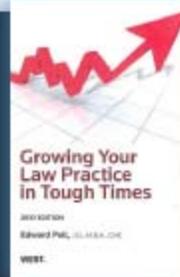
Week of **April 6, 2010**

"There You Go Again"

Televised debates between presidential candidates have produced few memorable phrases. One exception came in 1980, when Ronald Reagan, exasperated by Jimmy Carter's assertions, shook his head and declared, "There you go again." Members of the State Bar of California know the feeling exactly. Nearly two decades after the ABA adopted Model Rule of Professional Conduct 1.17 which affirmed that an entire practice could be bought or sold, and eight years after it modified the Rule in 2002 to permit the sale of part of a practice, the Bar has proposed four pages of changes to its rules on buying and selling a practice that make the process harder for both sides ([see proposed rules](#)). Among other things the proposals require the selling lawyer to divest all of a practice or field of practice, and to cease engaging in the private practice of law once the sale is complete.

Once again the issue is raised - why can't lawyers reap the financial value of what they have built up over the years by their own hard work, creativity and ethical conduct? I have an emotional stake in this issue because I'm proud to say I was the catalyst for the ABA's 2002 change that allows a lawyer to sell a practice area and still remain in practice, but not in the area sold. For example, a probate and estate planning lawyer may sell the estate planning segment, but retain the probate segment. This will allow the lawyer to work less, reduce marketing and still make a contribution to the law. Any other course would require selling or closing the entire practice and waiting for death, or continuing the practice while serving clients with less vigor because of aging - to the detriment of the clients.

By seeking to revise its rules, the Bar will make buying and selling lawyers jump through more hoops and cause further delay to complete a sale, the net result of which will likely be lawyers finding ways around the rule to the clients' detriment. The change unquestionably targets the sole and small firm



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practitioner. Only they are involved, to the extent this happens, in the sale of their practice. Large firms don't sell their practice. They can break up, merge, combine, move entire practice groups from one firm to another - but they don't "sell" their practice.

Of course, not every older sole practitioner is perfectly positioned to sell a profitable practice, But the fact remains that the sole practitioner has definitely built something of value and can be in the position to enjoy the fruits of those labors, unless the Bar Association prohibits it or inserts too many barriers. Unquestionably there are state bar associations that look out for their members, Minnesota's being a good example. Such proposals as California's, however, illustrate that far too many bar associations (especially those in which membership is mandatory) fail to understand the economic realities of sole and small firm practitioners who are the majority of their members.

Today's Topic:
Q3 2009



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Personal Commentary

Reminder: If you want to have breakfast with me during my trip to Chicago this week, [contact me](#) directly.

How was your April 1st? Did you play any Fool's prank, or a victim thereof? In 1957, the best practical joke of all time (other than telling your spouse you're pregnant when you're not!) was [played by the BBC](#). I actually saw it, and worse, believed it for several years! Not until a blurb in the 1995 edition of USA Today did I learn this was the most watched April Fool's Day joke.

Also, [check out LawBizBlog's new contest](#) in celebration of my new book Growing Your Law Practice in Tough Times. The contest will run for the entire month of April. At the end of the month, participants' names will be drawn out of a hat raffle style to determine the first, second, and third place winners.

FIRST PRIZE: Fujitsu ScanSnap S1300 Instant PDF

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SECOND PRIZE: 1/2 hour coaching session with Ed

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Remember, you have all month to enter (but that doesn't mean you should wait)!

Best wishes,

Ed Poll

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