Forming and Dissolving Partnerships

by Hudaidah Bhimdi, Mitch Wexler, and Becki Young

Hudaidah Bhimdi is a partner at Murray Osorio PLLC. Throughout her legal career, Ms. Bhimdi has successfully represented thousands of corporate and individual clients in various circumstances, including business and investor visas, employment visas, family visas, deportation, asylum, naturalization and citizenship matters. She has appeared in hundreds of cases before multiple immigration judges, successfully representing clients in matters ranging from removal proceedings and bond hearings to claims for political asylum, cancellation of removal, hardship waivers, temporary protected status, NACARA and adjustment of status. She is also appointed as a Board member for the Virginia Asian Advisory Board and has served as a Board member and Secretary for the Pakistani Association of Central Virginia, and for the Asian American Society of Central Virginia.

Mitch Wexler is a Partner with Fragomen, Del Rey, Bernsen & Loewy, LLP (Fragomen Worldwide), an international firm dedicated to the practice of immigration law and advice. He manages the firm's Los Angeles and Irvine, California offices. Mitch serves on the firm's national Executive Committee. He has been practicing employment based immigration law for 30 years. Mitch represents individuals and employers from start up to Fortune 500 companies in managing their visa/immigration programs and foreign national portfolios. He is a Specialist in Immigration & Nationality Law, certified by the State Bar of California, Board of Legal Specialization and a past AILA Southern California chapter Chair. He is also a frequent lecturer, writer and teaches an annual module on business immigration law, including EB5, at the University of California, Irvine Law School.

Becki Young, a Partner at Hammond Young Immigration Law, LLC in metropolitan Washington, DC, is a seasoned business immigration attorney with 20 years of experience in the field. She regularly advises clients on the complex legal issues involved in immigration options based on investments and employment in the United States and is well-known for creativity, profound legal knowledge and an outstanding record of bringing her cases to successful conclusion. Her clients hail from many industries, including investment banking and securities; information technology; nonprofit; manufacturing; and healthcare. Ms. Young also has represented more than 100 of the world's most prominent hotels and restaurants, and facilitated the sponsorship of foreign professionals, trainees, interns and individuals of "extraordinary ability."

****

This article will discuss important issues to consider when forming and dissolving partnerships, including how to creatively draft partnership agreements that address issues before they become problems.

According to a 2012 AILA survey,[1] approximately 40 percent of AILA members are solo practitioners. Of the remainder, about 35 percent practice in immigration-only firms, while 15 percent are at multi-practice firms (the remainder work in-house, in legal services, teaching, or other areas). In small firms, approximately half of the attorneys who start as associates eventually become partners, while at large firms that number is closer to 30 percent.[2]

For immigration attorneys who eventually ascend to partnership, whether at a small firm or a large one, negotiating a partnership agreement is a critical skill. And, like many of the business skills needed to succeed as a lawyer, it is not something that is taught in most law schools.

THE BIG THREE: WHAT DOES EACH PARTNER CONTRIBUTE, WHO WILL MANAGE, AND WHAT WILL THE COMPENSATION BE?

[1] www.aila.org/about/leadership/reports/annual/aila-member-needs-assessment-survey-results.
[2] http://career-advice.monster.com/career-development/getting-promoted/law-partnership/article.aspx.

The majority of AILA members practice in small firms, where negotiating a partnership agreement is likely to be done on an ad hoc basis. Though some established small and medium-sized firms have experience bringing on new partners, the majority of AILA members who create partnership agreements will be doing so from scratch.

Drafting an agreement from scratch has its pros and cons. On the one hand, you will not be forced to sign an agreement where the terms and conditions are entirely set by the firm, and you have little or no ability to negotiate more favorable terms. On the other hand, you will have to invest the time and money to create a contract that truly reflects the intentions of both parties. What is the first rule of negotiating a partnership agreement? Get yourself a lawyer!

As we all know, a lawyer who represents himself has a fool for a client.

Find a lawyer who has experience specifically in helping lawyers negotiate partnership agreements. A general corporate or employment lawyer might do a perfectly competent job, but is not likely to be well-versed in the pitfalls of legal partnerships. For example, although all lawyers should be familiar with the Rules of Professional Conduct, only someone with experience drafting legal partnership agreements will know how the Rules play out in that context.

Next, you and your partner need to sit down and hash out the Big Three questions:

What Does Each Partner Contribute?

Clearly you have good reasons for coming to the negotiating table in the first place. Do the attorneys each have complimentary practice areas – for example, one practices business immigration while the other does removal work? Does one lawyer have expertise that the other wants to gain? Is one lawyer a great rainmaker? Superb at client relations? A skilled people manager? A talented law firm administrator? Does one lawyer have a huge book of business that s/he needs help servicing? Is one lawyer looking to grow her/ his practice? Is the partnership part of a succession plan for a retiring lawyer?

Before you outline your partnership agreement, make sure that you and your partner(s) are clear on what each attorney beings to the table.

Who Will Manage?

The skills that make someone a good lawyer (precise attention to detail, cautious thinking) are not necessarily the same skills that make a good manager. Further, management skills are not taught in most law schools, so lawyers learn them "on-the-job." Finally, many lawyers are loath to spend time managing a law practice, when they could be practicing law.

Yet, *someone* has to manage the law practice, and the partnership will only be successful if this person is competent, knowledgeable about management, and enthusiastic about administering the firm. Even if the firm hires a professional Administrative Manager or another non-legal

professional to oversee day to day operations, one of the firm's lawyers will still need to devote a percentage of her/his time to management issues.

For these reasons, it is important to identify one partner who has both the propensity and the willingness to serve as the managing or administrative partner, and to ensure that this partner is properly compensated for the non-legal time that will be spent on behalf of the partnership.

What Will the Compensation Be?

The final of the Big Three questions – and likely the one that will take up the most amount of time in negotiations – is compensation. Some partnerships implement an "eat what you kill" model, where each partner receives the profits from her/his work, minus an agreed-upon amount for administrative/ overhead expenses. In other partnerships, each partner receives a certain percentage of the fees from origination (cases s/he brought in to the firm) and a certain percentage of the fees from production (hours billed). Still other partnerships – often at larger firms - have complex systems where the profits are pooled and then distributed according to an agreed-upon formula (which could include factors such as seniority, origination, hours worked, and non-legal contributions to the firm).

Your lawyer should be able to explain the pros and cons of the various compensation models, and recommend one that makes the most sense in your specific case.

EFFECTIVE TIPS ON HOW AND WHEN TO NOTIFY CLIENTS OF A DISSOLVING PARTNERSHIP

All good things must come to an end, and that often includes even the most carefully negotiated partnerships.

When a partner leaves a law firm, two primary directives must be followed: lawyers have a duty to tell "their" clients that they are leaving; and clients may decide whether to stay with the firm or go with the departing lawyer. ABA Formal Opinion 99-414 states, "The departing lawyer and responsible members of the law firm who remain have an ethical obligation to assure that prompt notice is given to clients on whose active matters she currently is working."

Which Clients to Tell?

A departing lawyer who has had "significant personal contacts" with the client should inform the client that the lawyer is leaving the firm.

When a lawyer leaves a firm, both the firm and the departing partner have an obligation to give appropriate notice to clients, so as to give effect to the principle of client choice. ABA Formal Opinion 99-414 provides specific guidelines for such notices. Among other things, ABA Formal Opinion 99-414 proposes specific methods, times and content for communicating to clients the departure of a partner.

In situations where the firm is dissolving, absent a specific agreement otherwise, a lawyer involved in the dissolution of a law firm shall not unilaterally contact clients of the law firm unless, after bona fide negotiations, authorized members of the law firm have been unable to agree on a method to provide notice to clients.

How to Tell Clients?

It is anticipated that in most instances a lawyer leaving a law firm and the law firm will engage in bona fide, good faith negotiations and craft a joint communication providing adequate information to the client so that the client may make a fully informed decision concerning future representation. A joint communication in the form of a letter from the firm and the departing partner is strongly preferred.

The letter should be sent prior to the departure of the lawyer and needs to state the following:

- When the lawyer is leaving;
- That the client has the option of going with the lawyer, staying with the firm, or getting a new firm; and
- How any advance fee deposit will be treated.

There should be a place for the client to sign and return the letter, with instructions on where their file should go.

If the law firm is being dissolved and no procedure for contacting clients has been agreed upon, members of the law firm shall unilaterally give notice to clients that the firm is being dissolved and provide options to the clients to choose representation by any member of the dissolving law firm, or representation by other lawyers or law firms.

CLIENT INTERESTS AND FILES

Right to Fees?

While clients have the right to choose counsel, such choice may implicate obligations, including a requirement to pay for legal services previously rendered and costs expended in connection with the representation as well as a reasonable fee for copying the client's file.

Courts generally will enforce the contract and quasi-contract rights of attorneys to be paid for their services, provided those rights do not substantially interfere with a client's right to choose. Clients that have given the firm an advance fee or advance cost deposit take the money with them (less earned fees and costs), if they go with the departing lawyer.

Files?

Model Rule 1.16(d) requires that the client's interests not be prejudiced when the attorney/ client relationship is terminated. You cannot hold the file hostage even if the client owes the law firm money and is choosing to go with the departing lawyer. You may also request that the departing

lawyer file a substitution of counsel or at least notification of address change with the appropriate agency/ court, to assure that the old firm is still not listed as counsel of record. It is also appropriate to have the client sign for the file if it is going to the new firm.

HOW TO WIND UP THE BUSINESS AND DISTRIBUTE ASSETS

Winding up an immigration law practice can either be a good thing or a bad thing. If a lawyer winds up her practice at the end of a fruitful career, having helped many individuals, families and businesses achieve their objectives through the immigration system and, if the practice provided for a good quality of life for the lawyer and her family, it will be a positive exercise. On the other hand, if a reasonable living could not be eked out or if there is a fatal rift among partners, it will likely be negative experience.

The overarching premise when winding up an immigration law practice or any law practice for that matter is to get to "net" assets. This will be the amount actually available for distribution. Sometimes liabilities exceed assets in which case there is nothing to distribute and the owners would be on the line to pay outstanding liabilities.

The form of entity is important when winding down a practice as it will dictate how any assets and liabilities are to be allocated:

- Solo Practice: All of the net assets or net debts belong to the solo practitioner.
- Corporation: Net assets are distributed according to shares owned.
- Partnership or LLP: All partners or LLP members have capital accounts that start with the initial investment made when establishing the practice. The capital account increases with profits allocated and decreases with profits distributed. If there is insufficient cash to pay each owner the balance of her capital account, what is left gets distributed based on relative size of each owner's account.

Other items to be addressed include:

- Collect all outstanding accounts receivable.
- Liquidate all assets such as furniture, computers, books, etc.
- Pay employees all accrued compensation such as vacation time.
- Cancel or wait out any leases for office space or equipment such as copy machines or other leased technology.
- Cancel company credit cards.
- Close company bank accounts but not too soon as invariably, bills will trickle in.

Once all of the above tasks are performed there will either be assets or debts to distribute as appropriate. Many states prohibit the distribution of assets if the entity cannot pay all its debts so it is critical to be thorough in the winding up exercise. In the vast majority of cases, it is recommended to get subject matter advice during this process as the skill sets developed in an immigration law practice do not transfer well to this type of exercise.