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COMMENTARY

10 Things to Consider When Drafting Law Firm Partnership Agreements

A well-drafted partnership agreement among law firm partners is often the initial step to long-term success.

April 08, 2024 at 09:51 AM

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By Harold Lewis and Roger Slade | April 08, 2024 at 09:51 AM



Does your law firm have a signed partnership agreement among the partners? Many law firms do not. Despite the fact that attorneys routinely advise their clients to “get it in writing,” many lawyers do not follow their own advice. The result is often that partners are uncomfortable with how day-to-day decisions are made that can cause significant stress and unhappiness when the time comes to divide money at the end of the year, to promote associates to partnership or to bring in lateral partners.

Here are some items to consider when drafting law firm partnership agreements.

Hire Outside Counsel. Yes, even lawyers need lawyers. Law firm partnership agreements, particularly those that deal with the division of profits, have a tendency to ratchet up emotions about which partner has made the greatest contribution, how profits are divided and who is going to manage the firm. A dispassionate draftsman can help navigate and resolve these thorny issues.

Compensation. There are myriad methods to determine compensation for law firm partners. How your firm determines compensation, and to what extent your system is subject to hard and fast rules, a “formula” or is totally discretionary is a matter of individual choice to be decided by the partners. The drafting process is the right time to consider these difficult issues. A competent draftsman, with no “skin in the game” can help resolve these issues as will the inclusion of a skilled tax adviser.

Who Is Going to Run the Show? Is your law firm going to be run by a single managing partner, a committee, several committees, or some combination of the above? And what decisions are to be made by a managing partner or committee and what is decided solely by the partners?

Capital Contributions. These should be spelled out in advance, particularly the amount to be funded at the start of a new firm. Every partner needs to know what their financial commitment is going to be. Plus, this forces the issue of percentage ownership of the firm which can impact many other issues under the partnership agreement.

Major Decisions. What do the partners consider to be “major decisions” and who is going to make them. The decision to take on debt, absorb or merge with other firms or open another office are examples of these types of decisions.

Noncompete Agreements. This is where things get tricky. Can you have your lawyers sign a noncompete agreement? The Florida Bar certainly does not think so. Nonetheless, creative lawyers have spent considerable time trying to draft their way around these restrictions. The question of whether this can be accomplished without violating the bar rules is

yet another reason to consult with outside counsel.

Retirement. How long are you going to continue working and what happens when you stop working. Can you work part time ? What happens to your clients ? Do you continue to get paid and, if so, how much and for how long ?

Expulsion. There may come a time when you no longer want to work with a particular partner for various reasons. How do you plan for that partner's exit (or your own) and how is this decided? Hoping that bad things don't happen and thinking that it is easier to resolve them when they invariably do rather than addressing them in advance in a partnership agreement—is not the best approach to solving this highly sensitive issue.

Dissolution. How and under what circumstances does a partnership dissolve? What happens following dissolution? How is the remaining money and property divided?

Disputes. Lawyers argue for a living and lawyers in law firms do not always agree on things. How are disputes resolved? Is there a method in place to resolve disputes? What about something more serious, like a lawsuit ? Do you want to be in court or in arbitration? Airing your dirty laundry will hurt everyone in the partnership.

Many law firms are content to roll merrily along without having hard conversations among the partners about the above (and other) issues. Nonetheless, like any marriage, successful law firm partnerships take work, compromise, conversation and persistence. Postponing the work it takes to complete a well-drafted partnership agreement only serves to weaken the fabric of the partnership, making lateral defections more likely. Not only that, the execution of a well-drafted partnership agreement provides the next generation of younger lawyers with something to aspire to and is likely to lead to greater retention.

In sum, a well-drafted partnership agreement among law firm partners is often the initial step to long-term success.

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