LAW FIRM MANAGEMENT

SPRING 2018

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Keep your partnership agreement current

THE IMPORTANCE OF REVIEWING KEY PROVISIONS

When was the last time you looked at your partnership agreement? In today's rapidly evolving legal industry, regular review is essential to ensure that appropriate amendments are made to address new partner entry, existing partner exit, leadership transitions, equity adjustments and similar issues. Even if your firm doesn't undergo such changes, you should periodically review your agreement to confirm it still aligns with your firm's long-term strategic objectives.

KEY PROVISIONS

Law firms can use their partnership agreement to address a wide variety of issues — some of them potentially divisive. These include:

Partners. Identify the current partners and lay out the process for the admission of new partners, including how to decide to bring on new partners; voting rules; rights and obligations of different partnership tiers (if applicable); and buy-in requirements. If new partners must satisfy a buy-in requirement, your agreement should describe how the buy-in amount will be determined.

Capital. Define the capital structure, document how much capital each partner has contributed and establish the amount of retained earnings required to maintain financial stability. You also may want to provide a method for raising additional capital for emergencies, expansion or other reasons.

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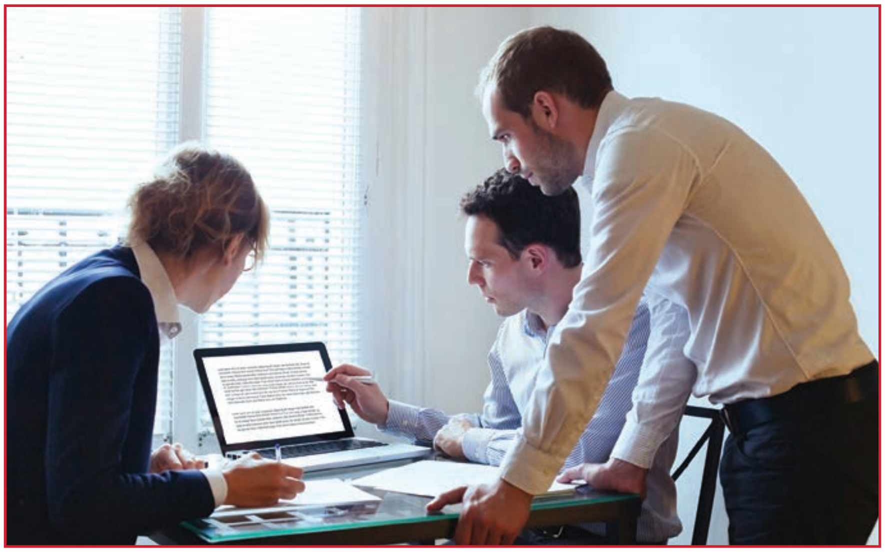
Profits. Most firms are better off not getting into too much detail about profit distribution in their partnership agreement. Rather, outline the profit allocation structure and give partners the flexibility to change relevant factors or alter compensation without formal amendments to the agreement.



Decision making and voting. Will action require a majority, supermajority or unanimous vote? Will votes be granted on a per-capita or weighted interest? Try not to designate a single approach for all matters, but instead base the voting protocol on type of issue. For example, require a supermajority vote on issues too important to hinge on a difference of one vote, such as admitting a new partner or merging with another firm.

VALUING THE LAW FIRM

Partnership agreements often require law firm valuations to determine how exiting partners will be compensated for their interest. To avoid disputes when the time comes, your agreement should specify which of the three common valuation methods will be used:

1. Formula. An agreement might apply a multiplier to the most recent year's earnings, but this approach looks backward and may not reflect your firm's current value. Moreover, it can be hard to incorporate into a formula every factor that might affect earnings in any given year, including discretionary, unusual or one-off expenses.

2. Fixed price. Some agreements identify a fixed price reached through negotiation by the partners. Like a formula, though, a fixed price might not capture your firm's value at the relevant time.

3. Appraisal. An appraisal is much more likely than either a formula or a fixed price to account for current circumstances and more likely to produce reliable results. Your agreement can provide for the use of a single appraiser or two or more appraisers (with a mechanism for resolving significant differences if multiple appraisers disagree with one another).

Expulsion. List reasons for expulsion, such as disbarment, criminal conviction, bankruptcy and/or malpractice. Detail the expelled partner's rights and state whether your firm will return capital.

Death and disability. Describe how payment will be made to a decedent's estate. Will the firm return capital? Will it pay out a pro rata share of the firm's value? For disabilities, state whether the partner will receive full or partial compensation and for how long.

Retirement. Retirement raises many issues. For starters, will retirement be voluntary, or will your firm enforce a mandatory retirement age? What if a partner is still contributing at retirement age? Some firms enforce mandatory retirement at a certain age but offer renewable annual contracts on a case-by-case basis.

Your agreement should address the return of capital (including fixed capital and undistributed earnings) and equity interests to retiring partners. You may need to detail a valuation process and payment schedule for a partner's interest in accounts receivable and work in progress.

Postretirement compensation is another vital issue. In the past, firms regularly paid retired partners a stipend for a limited period, usually an amount based on former compensation. Many firms now use transition agreements that base postretirement compensation on client transfers and, if applicable, continuing part-time work and business generation.

And don't overlook postretirement liability obligations. If your firm has large loans with personal guarantees, it may need to institute a capital call or require a pledge of additional collateral from the remaining partners. Tax obligations in the case of a postretirement audit of preretirement tax years also warrant attention.

DON'T WAIT

If yours is like many firms, you probably don't refer to your partnership agreement until a partner is leaving the firm — but that could be a mistake. An out-of-date agreement can throw your firm into tumult at the worst possible moment, so take the time now to review and update it as necessary. •

Is your firm ready to profit from data analytics?

Data analytics is the process of using qualitative and quantitative techniques to increase productivity and business gain. Attorneys are increasingly seeing the value of data analytics when preparing for and trying cases. The potential value of this number-crunching goes much further, though. Law firms also can wield data analysis to run more smoothly and drive profits outside of the courtroom.

RAINMAKING

Data analytics brings vital focus to a business generation process that might otherwise suffer from a scattershot approach. It identifies promising prospects — saving time, effort and frustration. For example, if you decide to pursue a client, you'll have real-time information at your fingertips to develop persuasive pitches.

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Of course, data analytics' usefulness for generating business isn't limited to new clients. You can use it to predict outcomes of existing clients' cases. For instance, you can use it to weigh data related to venue, judge or opposing party. Data analytics also helps identify opportunities for cross-selling and up-selling that might go unnoticed and untapped.

For new and old clients alike, both outcome predictions and the ability to apply data analytics to case preparation activities like document review will help you optimize your pricing. You'll set the right price point to give your firm a leg up on the competition while still positioning yourself to profit.

RECRUITING

Using data analytics, you can obtain a more comprehensive picture of potential hires and better assess how their expertise matches your firm's needs while shielding yourself from potential liability. Social media sites frequently reveal a wealth of information, but browsing the accounts of job candidates in a haphazard manner may expose you to discrimination claims. Data analysis can set boundaries that protect you.

When you're ready to woo the best prospects, data analytics helps you make a compelling case with current numbers on your firm's growth, revenue, clients and professional advancement opportunities.

FACILITIES PLANNING

Thinking about adding space, moving or opening a new office in a different city? Infrastructure decisions generally have a major impact on the bottom line. What's more, they're often hard to reverse. Data analysis reduces the risk involved in such decisions by providing solid evidence — beyond just cost — on the best course to follow.

For example, you can scrutinize different geographic markets to determine whether they have a sustainable demand for your services. If a need does

exist, the numbers will indicate whether it's lucrative enough to justify the associated costs. Data analytics also predicts trends in rent and cost of living.

PROCUREMENT

Inertia is common when it comes to ordering supplies and engaging third-party services. It's easy to simply go with the recognized brand or stick with the products and services you've always used. But that's how firms end up saddled with unnecessary expenses.

Purchasing a software license? Let data analytics estimate how many users you will have. Leasing a printer? The data can tell you whether the extra cost for double-sided printing capabilities offsets the savings in paper when likely demand is factored in. Looking for a cloud service? Turn to data to evaluate the reliability of different providers. After all, a great price is small comfort if you can't access critical files when you need them, where you need them.

SPREAD THE WORD

Incorporating data analytics in the day-to-day operations of your firm can have another significant benefit: It raises "data consciousness" throughout the organization. This leads to sounder decision making all around, whether in litigation strategy or firm management. •

How to deal with an underperforming partner

All firms have productive partners and partners who underperform. But what about those partners who were once top notch and now seem to phone it in? No managing partner likes to deal with this situation. But the sooner you do, the less damage there will be to your firm's profitability and relationships.

DEFINING AN UNDERPERFORMER

What constitutes underperformance depends, in large part, on your firm's written and unwritten expectations, its criteria for evaluating performance, and the terms of your partnership agreement. Increasingly, older partners are being labeled as underperformers not because their contributions have changed, but because their firms and the legal marketplace have raised their standards.

To prove underperformance, a firm needs to define it. In general, underperforming partners consistently bill fewer hours than their peers and are unable to manage engagements and projects profitably or to the client's satisfaction. In addition, they fail to develop a self-sustaining practice, which includes introducing new clients and engagements to the firm. These partners also can't (or won't) adapt to a more competitive and demanding legal marketplace, the firm's changing values and objectives, or even to new technologies. Finally, they show signs of burnout, exhaustion, anxiety or boredom.

Note that unethical behavior or misconduct generally isn't considered evidence of underperformance. You should address such situations separately.

COMPUTING THE COST

Some firms may ignore struggling partners and hope they'll find their own way back to productivity — or leave the firm. Neither scenario is likely. Most underperformers are well aware they have a problem but don't know how to fix it. And few people willingly leave a secure job, even one that offers increasingly diminished returns.

In the meantime, underperformers cost your firm in the form of lost work, weakened client confidence and lower staff morale. The partner may even stand in the way of a deserving associate's promotion, recruitment opportunities or a successful merger with another firm.

If possible, quantify these costs and present them, as well as other "objective" evidence such as average profit per partner, to the attorney during his or her compensation review or in a more casual one-on-one meeting. Don't blame or accuse the partner, but instead express concern and ask how you and other partners can help get the underperformer back on track.

SETTING FUTURE GOALS

If the underperforming partner is willing to accept help (and you believe rehabilitation is possible), develop a performance management plan. Start by setting specific and measurable objectives, such as increasing billable hours by a set percentage or engaging a specific number of new clients in the next year. Then provide the partner with the support he or she needs to achieve them.

Unethical behavior or misconduct generally isn't considered evidence of underperformance; address such situations separately.

Support can include:

- Mentoring by your firm's top rainmaker,
- Continuing legal education,
- Networking, financial management or computer courses,
- A personal organization or career coach, or
- If the primary issue is burnout, a vacation or short sabbatical.

Make sure you meet regularly with the partner to assess progress and discuss possible obstacles.

EXITING GRACEFULLY

Not every underperforming partner is capable of — or interested in — being rehabilitated. In such situations, make sure the partner's exit is handled sensitively.

Passive techniques, such as reducing the partner's share until he or she is forced to quit, can be as detrimental as aggressive ones, such as giving a partner the boot on short notice. Both can damage firm morale and your reputation with clients and prospective hires. Also, unless the partner is guilty of misconduct, you owe this formerly trusted colleague courtesy and respect.

NEXT STEPS

Try to be flexible and patient as you work with an underperforming partner. However, it's important to know when to cut your losses. If the partner exhibits little progress or commitment to change after a predetermined period (a year is typical), it's probably time to ask him or her to leave. Although asking a once productive and admired colleague to step aside is a tough decision to make, it's in your firm's best interest to move forward with those partners who *are* productive. •

Predictive coding: It's not just for big cases and firms

A 2016 survey conducted by the American Bar Association's Legal Technology Resource Center highlighted a common misconception in the legal industry about predictive coding: that it's useful only in large cases. Predictive coding, also known as technology-assisted review (TAR), isn't just for sprawling or complex cases. It also can pay off for small or medium-size cases and firms.

HOW IT WORKS

Predictive coding is an example of a "learning technology," combining human input with computer-driven algorithms to train software to recognize relevant electronically stored information (ESI). In contrast to keyword searches, predictive coding identifies documents based on concept similarity, not simply on the words they include.

First, attorneys must manually identify and code a statistically significant sample of documents (the seed set) as relevant or not relevant. Next, the software applies algorithms to the seed set to identify relevant documents, and its results are compared with the attorneys' coded documents.

The software is then retrained using an iterative process with additional sets of documents and the comparisons to improve its ability to properly identify relevant documents. Once the software's results match the attorneys' results at the desired rate (say, 95% of the documents), the process can be applied to the remaining document population to rank the documents by relevance.

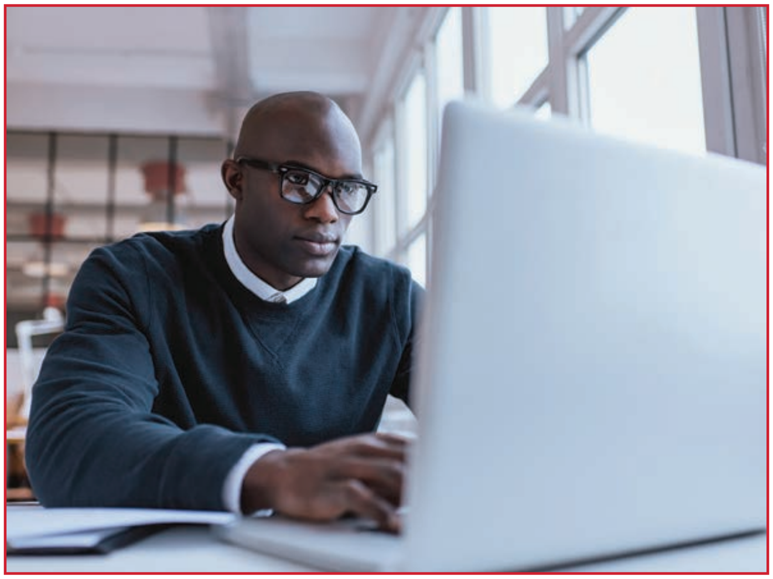
WHY IT'S WORTH CONSIDERING

For starters, predictive coding can help smaller firms by leveling the playing field, improving their chances of success against bigger firms with greater resources. In large part, this is because it reduces the need for timely and costly manual document review. Predictive coding also might lead to the early identification of critical discovery documents that can help attorneys formulate litigation or settlement strategies before engaging in extensive document review. And, of course, TAR can cut discovery costs, which benefits everyone.

Predictive coding comes with some potential drawbacks, though. Requisite training of the software calls for an investment of time by attorneys — time they won't be generating revenue. In addition, while the process is well suited for text-based documents, it's less so for spreadsheets and other ESI without searchable text. Inadvertent production of privileged documents also could occur, but that's also a risk with traditional document review.

THE FUTURE IS NOW

With courts increasingly accepting predictive coding, it's likely to become more common in litigation. Forward-thinking law firms of all sizes should get on board and start reaping the benefits now. •



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