



## Alerts

### Unfinished Business Doctrine No Longer Applicable To New York Law Firms

July 8, 2014

*Lawyers for the Profession® Alert*

*Matter of Thelen*, No. 136; *Matter of Coudert Brothers LLP*, No. 137 (July 1, 2014)

#### Brief Summary

In a unanimous decision, the New York Court of Appeals held that hourly fees earned on client matters after attorneys switch firms are not the "property" of their old partnerships — a landmark holding that makes the "unfinished business" doctrine inapplicable to lawyers and their clients.

#### Complete Summary

The bankruptcy representatives of two dissolved law firms brought suit on behalf of the firms to recover legal fees earned by their former attorneys for work performed after dissolution. The representatives argued that under the "unfinished business" doctrine espoused in New York's 1919 Partnership Law, such future profits on hourly matters originating at the former firms were still considered partnership "property," which entitled the dissolved partnerships (and their creditors) to share in those future profits. The district court in *In Re: Coudert Brothers LLP* agreed with that argument, whereas the court in *In Re: Thelen LLP* came to the opposite conclusion.

The matters were appealed, and the United States Appellate Court for the Second Circuit certified two questions to the New York Court of Appeals in order to resolve the district court split. Although two questions were certified, both revolved around whether attorneys who leave firms in the process of dissolution must share future profits earned on hourly fee matters that were transferred to their new firms.

The court unanimously answered that question in the negative, determining that the "unfinished business" doctrine does not apply to attorneys and their clients. Specifically, the court found that attorneys do not owe a continuing obligation to their former partnerships for work they perform for clients after moving to a new firm for two overarching reasons. First, the court explained that "[n]o law firm has a property interest in future hourly legal fees because they are 'too contingent in nature and speculative to create a present or future property interest, given the client's unfettered right to hire and fire counsel.'" Second, lawyers are only "entitled to be paid for services actually rendered," and allowing a former firm to retain an interest in future fees for which it provides no

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services would run afoul of that rule and would create an "unjust windfall" contrary to public policy.

In other words, upon partnership dissolution, a lawyer is free to transfer his or her clients' hourly or contingent fee matters to his or her new firm without having to share any future profits with the former firm.

### **Significance of Opinion**

The case is a significant decision for lawyers and clients alike. For lawyers involved in partnership dissolutions, the decision eliminates the need for complicated "unfinished business" waivers, and makes it easier for attorneys to make lateral movements between firms because the new firm can be assured that it will get paid for the attorneys' work. For clients, the decision safeguards their right to retain counsel of their choosing — a choice that would likely have been burdened had attorneys' new firms been required to perform the client's work at a loss.

Ultimately, the court's decision confirmed the basic premise that the client controls the attorney-client relationship, while simultaneously prohibiting unreasonable restrictions on a lawyer's mobility — even in the face of partnership dissolution or unpaid creditors.

For more information, please contact [Terrence P. McAvoy](#).

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