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News

Private Firm – Panel Finds That Meaning of 'Partner' Varies According to Reason for Asking

March 2, 2011

***This article, published in the March 2, 2011, Volume 27, Number 5, edition of the ABA / BNA Lawyers' Manual on Professional Conduct: Current Reports, is a summary of a session at Hinshaw's 2011 Legal Malpractice & Risk Management Conference, "Private Firm – Panel Finds That Meaning of 'Partner' Varies According to Reason for Asking.*" It is posted with permission of the American Bar Association (ABA) and the Bureau of National Affairs, Inc. (BNA).**

When a lawyer has no ownership interest in a law firm, doesn't share in the firm's profit, doesn't vote on its management, and can be fired at will, there can be a variety of consequences if the firm chooses to call that lawyer a "partner."

So said panelists at a program on "The Meaning of 'Partner' in the Changing Law Firm," presented Feb. 17 at the 10th Annual Legal Malpractice & Risk Management Conference in Chicago.

Examples they discussed are whether a nonequity "partner" has the right to examine the law firm's books, the circumstances in which a nonpartner lawyer may be expelled, the extent to which the firm and its true owners are responsible for the nontraditional partner's actions, and the potential disconnect between nonequity partners and obligations that ethics rules impose on "partners."

In explaining the impact of using the "partner" title, the speakers distinguished between jurisdictions that have adopted the Revised Uniform Partnership Act (RUPA)—which is most of them—and a small group of states—Delaware and two others—that don't require partners to have an economic interest. Nonequity partners are not even mentioned in RUPA but are specifically allowed in the Delaware model, according to panelist Robert W. Hillman, a law professor at the University of California, Davis.

Hillman and his fellow panelists discussed four contexts in which the meaning of "nonequity partner" may become an issue:

- figuring out rights and duties among lawyers in a law firm;
- understanding employment law protections;
- analyzing relationships with third parties; and
- figuring out ethical responsibilities. The chameleonic concept of "partner" plays out differently in each one, the speakers explained.

RUPA Has No Bananas. Because RUPA doesn't refer to nonequity partners, "we could call them 'bananas,' " Hillman joked. The name stuck and his fellow speakers used it in their comments too.

Hillman emphasized that RUPA does not even define the term "partner," much less nonequity partner. He explained that Section 101(6) of RUPA defines "partnership" as an association of two or more persons to carry on as co-owners a business for profit, and Section 202(a) states that a partnership is formed by the association of two or more persons to carry on as co-owners a business for profit.

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From these sections, Hillman suggested, it can be inferred that a "partner" is one of these people populating a partnership. But "not a nanosecond of thought" was given to the subject of nonequity partners during the development of RUPA, he said.

"Law firms have moved away from the traditional view of partner," he noted, and now use the "nonequity partner" label for a variety of situations, such as lawyers who are permanent associates, older partners who are reducing their practices, and lawyers in transition to becoming partners.

Nonequity partners are an important part of law practice, but "partnership law is behind the curve" in not recognizing this status, said Hillman, author of Hill-man on Lawyer Mobility (2d ed. 2010) and Law, Culture and the Lore of Partnership: Of Entrepreneurs, Accountability, and the Evolving Status of Partners,40 Wake Forest L. Rev. 793 (2005). He also is co-author of The Revised Uniform Partnership Act (2010-2011 ed.)

Delaware Model. Delaware takes a different approach, as does Colorado, and Texas "sort of" follows it, according to panelist Allen Sparkman of Sparkman + Foote in Denver, who is also of counsel to Houston-based Bond & Smyser.

According to materials accompanying the panel discussion, the key part of the Delaware model is Delaware Code Section 15-205, which addresses admission to a partnership without contribution or partnership interest. It defines "partner" as "a person who is admitted to a partnership as a partner of the partnership," and allows admission as a partner "without acquiring an economic interest in the partnership."

In other words, a partnership is specifically allowed to have partners who are "bananas," Sparkman remarked.

Read the full article, ABA / BNA Lawyers' Manual on Professional Conduct: Current Reports, including the summaries on the following 2011 Legal Malpractice & Risk Management Conference sessions:

- Panelists Explore Ins and Outs Of Well-Drafted Engagement Letters
- Checklist for Engagement Letter
- Components of End-of-Representation Letter
- Disengagement/Nonengagement Letters
- Nonequity Partners—Risk Management
- Panelists Review Practicality of Inserting Breach of Fiduciary Duty Counts Into Suit
- Panelists Review Recent Developments On Duty to Nonclients, Patent Malpractice
- Experts on Insurance Marketplace See Low Prices, but High Costs, Cuts in Limits

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