

Easing the Path Toward an Involuntary Law Firm Break-Up



By John C. Sciacotta and Benjamin E. Haskin

Attorney partnerships are often created with the optimism that the partnership will be productive and mutually beneficial. Yet there is no obligation to remain partners indefinitely, and a time may come when it is necessary to part ways with one of the partners. The roadmap toward an involuntary separation with a partner, or expulsion, begins at the time of drafting the partnership's governing agreement, such as a partnership agreement, LLC operating agreement, or other contractual arrangement that dictates the general terms of the partnership. The founding partners must decide the grounds upon which a partner may be expelled and the procedure by which the firm or partners may purchase the expelled member's interest. Failure to provide for a specific procedure may cause needless ambiguity if the time comes for an involuntary separation, and opens the possibility for prolonged litigation by the expelled member for breach of the underlying agreement and breach of fiduciary duty.

A firm's governing agreement may address expulsion in three different ways: (1) by authorizing expulsion without cause upon a vote of a specified majority of the partners, usually either 51% or 75%; (2) by authorizing expulsion for specified reasons upon a vote of a specified majority; or (3)

by prohibiting any involuntary expulsion, thereby requiring the parties to work out their own resolution. Each clause carries with it drastically different ramifications if expulsion becomes necessary.

No-Cause Expulsion

A provision for expulsion without cause gives the firm the greatest discretion to expel a partner if the firm deems such an action necessary to protect its own reputation or its relationship with clients. It is very difficult for an expelled partner to challenge an expulsion without cause, as courts most often defer to a firm's judgment that the expulsion was necessary and warranted. See *Bohatch v. Butler & Binion*, 977 S.W.2d 543, 546 (Tex. 1998) (citing courts in various jurisdictions that have held that partnerships may expel partners for business reasons, to protect relationships with clients, and to resolve partnership schism). Courts analyze a firm's right to expel pursuant to a no-cause rule similar to the application of the business judgment rule, and they recognize that any legitimate business purpose may support the decision to expel a partner.

The contractual right to expel is constrained by the duty of good faith. *Winston & Strawn v. Nosal*, 279 Ill. App. 3d 231, 240 (1st Dist. 1996); *Holman v. Coie*,

11 Wash. App. 195, 211 (1974). In this context, "good faith" equates to matters that have a bearing upon a firm's business aspects, because partners are the owners of a firm and have an obligation to act in its best interest. *Holman*, 11 Wash. App. 195 at 209; *Rhoads v. Clifton, Gunderson & Co.*, 89 Ill. App. 3d 751 (3d Dist. 1980).

Expulsions have been upheld where the partner being expelled had a history of harming client relations, not collecting bills or equally contributing; where the firm provided evidence that it had lost faith in the expelled partner due to the development of a "schism" among the partners; and where the expelled partner failed to cooperate, to bill enough hours, to go to the office on Saturdays, to write legal articles, or to participate in firm administration. *Begy v. Kaplan*, 2012 IL App (1st) 102382-U; *Holman*, 11 Wash. App. 195 at 211 (1974); *Reid v. Bickel & Brewer*, 1990 U.S. Dist. LEXIS 11589.

A partner challenging a no-cause expulsion has the difficult task of proving that the expulsion was motivated by the other partners' desire for self-gain. *Heller v. Pillsbury Madison & Sutro*, 50 Cal. App. 4th 1367, 1387 (1996). It is not enough that the other partners' distributional share increased, but rather the expelled partner must prove that self-gain motivated

the decision over the business purposes articulated by the firm. This can be a very difficult task, as courts are reluctant to second guess a firm's decision.

Expulsion for a Stated Purpose

A firm may specify particular conduct that supports the right to expulsion. In doing so, a firm should pay particular attention to the enumerated grounds, as that language will govern whether expulsion is appropriate. A broadly worded provision for expulsion—such as for reasons detrimental to the firm—will provide the firm with the discretion to expel in a similar fashion to a no-cause expulsion. *Rhoads v. Clifton, Gunderson & Co.*, 89 Ill. App. 3d 751 (3d Dist. 1980) (affirming expulsion of a law partner under a provision that permitted expulsion when the “partner’s affiliation with [the] firm has become detrimental to the best interest of the firm . . .”). A narrow clause for expulsion that sets forth specified bad acts—such as misappropriation or disclosure of confidential and privileged information—will severely limit the firm’s right to expel in circumstances that may not have been anticipated at the time the governing document was drafted.

No Expulsion

A firm is not obligated to permit expulsion, as a small firm may agree that no partner may be expelled. Younger lawyers may lean toward such an approach with the optimism that their partnership will sustain for the duration of their career, but this is not a recommended approach, as the firm will be required to dissolve if the partners no longer wish to be affiliated with one another. It is better to address the issue at the beginning of a partnership as opposed to the end.

Purchase of Interest

In addition to providing the grounds for expulsion, a firm should provide a procedure for the firm or partners to purchase the expelled partner’s interest. If the firm cannot reach a voluntary agreement with the partner, the governing agreement should specify the exact timing and procedure for a buy-out. Absent a specific procedure, the expelled member may continue to have rights to distributions and to inspect the firm’s books and records, which could cause continued disruptions for a firm that prefers to move on.

The partners of a newly created firm may

not contemplate the circumstances and events leading to an expulsion. But proper planning will give a firm the greatest protection and tools to part ways with a partner when such an action is in the best interest of the firm. Younger lawyers will also benefit by being able to preserve the relationship with a departing partner, who could later become a valuable referral source. ■



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