



Illustration by Barbara Kelley

Leaving Law Firms with Client Fees: *Florida's Path*

by Donald J. Weidner

When a lawyer leaves a firm with a client in tow, who has a right to the fees ultimately paid? The question is the most heated, and generally the most consequential, when a contingent fee is involved, although it also arises in the case of an hourly-fee matter. At a minimum, the firm of origin will be able to recover in quantum meruit for the value of any work it performed before the client left, provided any contingency occurs. The question is whether the firm of origin is *limited to recovery* in quantum meruit or whether it may instead claim the contingent or other fee itself.

Nationally, courts disagree on whether the firm of origin has a right to fees on unfinished business taken by a departing lawyer. The matter is important to the lawyers involved and may also be important to their clients. Many cases have held that departing owners of a firm have a fiduciary duty to the firm to share the contingent fees on unfinished business they take with them. The classic cases awarding former firms the fees from unfinished business arose in the context of partnership dissolutions. The basic idea is simple: The dissolving firm continues until its unfinished business is completed, and the lawyer completing it is under a fiduciary duty to do so for the benefit of the firm. Some cases apply the “unfinished business” doctrine to matters handled on an hourly basis as well as to matters handled on a contingent-fee basis.

Differences in outcomes are often explained by the weight courts give to the client’s right to choose a new lawyer. At one extreme, cases say that a departing lawyer’s duty to the firm is independent of the client’s right to retain new counsel. Other cases say a client’s right to choose new counsel would be impermissibly limited by requiring the

departing lawyer to share fees with the original firm. Some differences in outcome are explained by disagreement on the impact of the Revised Uniform Partnership Act (RUPA), which provides for the first time that partners are entitled to reasonable compensation for winding up.¹

In both New York and California, federal appellate courts have recently certified the question of the right to legal fees to the highest court of the state. The New York Court of Appeals has responded that, because of the client’s right to choose, the firm of origin has no property right in hourly fee matters. The California Supreme Court has not yet responded on either hourly fees or contingent fees. Many Florida lawyers would welcome a definitive ruling from the Florida Supreme Court on the application of the unfinished business doctrine to legal fees in Florida. This article analyzes key Florida statutory and caselaw in the context of important ethical rules. It locates Florida on the national stage in a way that indicates decisions that may lie ahead for the Florida Supreme Court.

Key Florida Caselaw

The two leading Florida cases on the unfinished business doctrine are *Frates v. Nichols*, 167 So. 2d 77 (Fla. 3d DCA 1964), and *Buckley Towers Condominium, Inc. v. Katzman Garfinkle Rosenbaum, LLP*, 519 F. App’x 657 (11th Cir. 2013). *Frates* applied Florida law, including caselaw under the Uniform Partnership Act (UPA),² to the dissolution of a law firm partnership. Forty-nine years later, *Buckley Towers* said *Frates* was still good law, notwithstanding Florida’s adoption of RUPA,³ and applied the *Frates* partnership rule to attorneys leaving professional associations and limited liability companies.

Frates v. Nichols: Florida's "Grand Old" Case

Frates v. Nichols is Florida's "grand old" case on the right to legal fees on the breakup of a law firm. Although the opinion could have contained a more thorough discussion of the issues, it was a Florida case of first impression that has been cited with approval and never overruled. Attorney Frates left his law firm partnership, placing it in dissolution. He took with him 10 clients and their contingent fee negligence cases and started a new firm. He entered into new retainer agreements with the clients, and eight of the cases resulted in fees, which were the subject of the dispute.

The court first disposed of the issue regarding the retainer agreements. Frates had argued that, by signing those agreements, the clients had discharged the old firm, taking it out of the picture. Thus, he argued, any contingent fees would not be the property of the old firm but would instead go to him and his new firm as retained counsel. Under this view, the old firm could recover only in quantum meruit for the services it performed before the clients left with Frates. The court disagreed, calling the new retention agreements a "nullity" and concluding they did not effectively discharge the old firm.

It is true, as Frates contends, that these clients could have discharged the firm at any time and retained new lawyers, but that did not occur here. All these clients, who signed retainer agreements with Frates, did, was to manifest their intention of retaining Frates to fulfill the *continuing* obligation of the [old firm] to them.⁴

As will be discussed more fully below, this dictum should be disregarded. The result in *Frates* should be the same even if the clients discharged the old firm.

Having set aside the new retention agreements, the court applied traditional partnership doctrine. The dissolution of the partnership "did not put an immediate end to the partnership, it continued for the purpose of winding up its affairs."⁵ As a partner in a dissolved firm, Frates owed a duty to the clients⁶ and to the firm to wind up client matters: "Although never having been passed on by a Florida court, the proposition is universally

accepted that a law partner in dissolution owes a duty to his old firm to wind up the old firm's pending business, and that he is not entitled to any extra compensation therefor."⁷ The source of the "no-extra-compensation" rule was UPA §18(f): "No partner is entitled to remuneration for acting in the partnership business...."⁸ The theory behind the rule was that a partner's services are presumed to be adequately compensated through his or her normal share of profits.

In sum, the basic rationale of *Frates* is simple. The old firm, with Frates still a member, continued to operate after its dissolution and through its winding up. Frates remained a member of the old firm for purposes of its winding up, despite his contemporaneous membership in the new firm. The unfinished business and resulting fee were the old firm's business and fee, and Frates shared in any resulting profits under the old firm's partnership agreement. Because there was no agreement to the contrary, Frates was bound by the UPA default rule that, even though he did all the work to wind up the case, he was not entitled to any extra compensation.⁹

Most of the court's discussion focuses on the obligations of the firm and of Frates to complete the client matter. Its language supports the inference that the fee follows the continuing obligation to the client. However, the court also referred to the property rights of the initial firm. The court said the cases were "assets of the old firm being wound up by Frates for them" and Frates was "entitled to receive his partnership share...of the net fee in each such case."¹⁰ One basic question is whether the holding in *Frates* is limited by the court's reasoning that Frates was working to satisfy an obligation of his old firm. Under this rationale, if the client had signed a slightly modified retention agreement that explicitly and effectively discharged the old firm from its obligations, a different result might have been reached. However, if the unfinished business was an asset or opportunity of the firm, neither Frates nor the client should be permitted to unilaterally contract away his duty to account for it.

Buckley Towers Extends *Frates* to Dissociations, LLPs, PAs, and PLLCs

Buckley Towers is the second, and perhaps the most significant case, applying Florida law to an award of legal fees after a lawyer leaves a firm with a client in tow. The 11th Circuit concluded *Frates* was still good law and extended it to a dispute over a contingency fee involving three law firms: one was a professional association (PA); one was a limited liability partnership (LLP); and the third was a professional limited liability company (PLLC).¹¹

Buckley Towers Condominium hired law Firm One, a PA, to represent it after its insurer refused payment for 2005 hurricane damage. Firm One, which was originally retained on an hourly-fee basis, prepared and filed Buckley Towers' complaint. Firm One later agreed to represent Buckley Towers on a contingency-fee basis. Attorney Rosenbaum, an equity shareholder in Firm One, led the litigation team that handled the Buckley Towers litigation.

Several months later, Rosenbaum left Firm One to form Firm Two, an LLP in which he was a named partner. Buckley Towers followed Rosenbaum to Firm Two and signed a contingency-fee agreement with it. Firm Two completed the remaining pretrial proceedings and represented Buckley Towers through a 10-day jury trial, which resulted in a judgment for Buckley Towers in excess of \$24 million. Insurer filed an appeal, and Firm Two represented Buckley Towers through the briefing of the case on the appeal.

Rosenbaum then left Firm Two and formed Firm Three, a PLLC in which he was a named member. Buckley Towers followed Rosenbaum to Firm Three and signed a contingency fee agreement with it. Firm Three represented Buckley Towers at oral argument. The appellate court in the action against the insurance company affirmed in part and reversed in part, awarding Buckley Towers a partial amended final judgment of over \$12 million. The insurer issued one check to Buckley Towers and one check to the court's registry to cover the amount of

the fee contested by the three firms.¹²

The district court awarded Firm Three “its 38.5 [percent] contingency fee from the partial final judgment, less the quantum meruit of” Firm One and Firm Two. The 11th Circuit reversed, saying the contingency fee should have gone to Firm One, and remanded on the issue of the quantum meruit of Firm Two.¹³

The 11th Circuit’s Analysis in *Buckley Towers*

The 11th Circuit’s per curiam opinion summarized the facts as follows: “This case involves the distribution of a contingency fee among law firms when an equity-holding attorney changes law firms multiple times during the course of litigating a single matter and the client follows the existing attorney to each new firm.” The court stated that, in Florida, “a firm’s right to contingency fees earned after the attorney-client contract is terminated varies depending on the relationship between the initial firm and the subsequent firm representing the client.” If there is no connection between the initial firm and the successor firm, the initial firm is only entitled to a quantum meruit award, limited by any agreement setting a maximum fee.¹⁴ For example, if the case was handled on a contingency-fee basis and there was no recovery, the initial firm is not entitled to any recovery. On the other hand, “when a partner exits the initial firm and the client follows, the initial firm is entitled to the entire contingency fee, less the former partner’s partnership share.”

The court cited *Frates* as the controlling authority and said the contingency fee should have gone to Firm One. The fiduciary duties that “the exiting attorney” owes to wind up the initial partnership’s business “are at the heart of *Frates*.” In short, under *Frates*, the exiting partner is still a member of the initial firm for purposes of winding up, and *winds up the case as a partner of the initial firm*. Therefore, the initial firm’s partnership agreement determines his or her share. Firm Two would in turn receive the departing partner’s share from Firm One. Or, as the court put

it: “Applying a ‘*Frates* within *Frates*’ analysis, the common law solution seems to indicate that the second and third firms would share the exiting partner’s share, with the third firm’s fee being determined by the second firm’s partnership agreement.”¹⁵

This fiduciary duty rationale would not apply if the client moved to a firm that was unrelated to the initial firm. As the court put it: “When a firm with no fiduciary duties to wind up another firm’s affairs works on a matter for a contingency fee, and the contingency occurs during another firm’s representation, the amount of the firm’s fee in the matter is determined by quantum meruit.”¹⁶ The court also stated that a client move to a departing associate would be treated the same as a client move to an unrelated firm. The court did not address the fact that a departing associate, unlike an unrelated firm, is under a fiduciary duty to the firm.¹⁷

The 11th Circuit correctly concluded that *Frates* is still good law notwithstanding Florida’s subsequent adoption of RUPA.¹⁸ RUPA did not change the substance of the fiduciary duties of partners that were the basis of *Frates*.¹⁹ As the court put it, RUPA’s “enactment did not change the existing law as it relates to the fiduciary duties of a withdrawing partner.” The key partnership principle animating *Frates* is that a departing partner owes a fiduciary duty regarding unfinished business. The UPA’s “no extra compensation rule” was not the basis for the decision. The “reasonable compensation” rule in RUPA §401(h)²⁰ merely provides that a partner rendering services in connection with a firm’s winding up may be compensated more generously than under the UPA.

Indeed, RUPA’s reasonable compensation rule actually makes the *Frates* result even more appealing than the UPA rule denying “extra” compensation. It authorizes courts to award the lawyer who does all the post-dissolution work greater compensation than he or she would have received under the normal pre-dissolution sharing ratio. Applying the reasonable compensation rule would be especially appealing, for example, if the partner who did all the work to earn the fee was not benefitting from

similar efforts by former partners on other matters.

Buckley Towers Extends *Frates* from Dissolution to Dissociation

The result in *Buckley Towers* is nationally significant because it extends *Frates* to situations in which the firm has not dissolved.²¹ Although the 11th Circuit discussed the dissolution rules that were at the heart of *Frates*, its shift to dissociation is clear in its explanation of why RUPA embraces the *Frates* approach. It stated that a “key change introduced by RUPA is that partnerships are not automatically dissolved when a partner withdraws.”²² Stated differently, partner dissociations do not necessarily result in dissolutions. The court quoted RUPA §603(b)(3),²³ which provides that, upon a dissociation, a partner’s duty to account for profits from the use of partnership property, including the diversion of partnership opportunities, continues “with regard to matters arising and events occurring before the partner’s dissociation....” It stated that the RUPA §603 Official Comment supports *Frates*: “[T]he uniform commentary clearly supports the continuation of the *Frates* rule by stating that dissociated partners must account to the partnership for any fees from ongoing client transactions that are received after dissociation.”²⁴

In shifting the focus from dissolution to dissociation, *Buckley Towers* shifted the focus from the fiduciary duty to wind up for the benefit of the firm to a general fiduciary duty to account for a benefit received from the use of a partnership property or opportunity. It discussed a portion of the comment applying the new dissociation rule to a departure from a brokerage firm:

The commentary goes on to provide an example of a partner leaving a brokerage firm, confirming that the withdrawing partner “may immediately compete with the firm for new clients, but must exercise care in completing on-going client transactions and *must account to the firm for any fees received from the old clients on account of those transactions*.”²⁵

Consistent with this comment, the court concluded that the dissociating Rosenbaum had a duty to account to Firm One for the contingent fee.²⁶

Frates Applies to Law Firms Organized in Other Forms

Buckley Towers analogized to the fiduciary duty of a departing partner to conclude that the contingent fee should have gone to the professional association Rosenbaum left behind, Firm One. The 11th Circuit did what others have done and applied the partnership rule to professional associations:

[W]e believe Florida courts would follow the majority of states and require the same fiduciary duties be owed to other attorneys and former law firms, whether the firm was a partnership or professional corporation. Thus, we apply *Frates* equally to law firms formed as partnerships and those formed as professional corporations.²⁷

To emphasize: It applied a rule developed in the context of partnership dissolutions to a professional association that apparently did not dissolve.

There are several reasons it is reasonable to analogize to partnership law to craft a uniform default rule that applies across all law firm entities. First, the statutory fiduciary duties of partners are based on a significant body of caselaw and, thus, are as well understood as fiduciary duties can be. Second, the fiduciary duties of partners are default rules that can be varied by contract. Across all entities, the modern law of business associations embraces broad freedom of contract to draft around default rules. Third, the default fiduciary duties of partners are contextual, and, in this case, based on the relationships among lawyer, firm, and client. These relationships are peculiarly within the province of the highest court of each state, which is the arbiter of the balance between the rights of the firm and the rights of the client.

Buckley Towers made clear that the *Frates* rule is a default rule rather than a mandatory rule.²⁸ Therefore, lawyers who are equity owners can contract around *Frates* in their firm agreements. They can contract for either a lesser duty²⁹ or a greater duty for the departing lawyer, within the limits of client choice. They may also contract to expand or to contract the fiduciary duties of associates. Although most of the caselaw involves agreements with equity owners, a court might uphold an employment

agreement that subjects an associate to the same fiduciary duties as a departing partner with regard to the clients and fees he or she takes.³⁰ Without mentioning the general policy favoring freedom of contract, *Buckley Towers* suggested that more than one fiduciary duty of a departing equity owner might support a recovery by the initial firm.

Ethical Rules and a Client's Right to Counsel of Choice

In addition to the significant fiduciary duties among lawyers and their firms, there are significant ethical issues implicated in law firm breakups. For example, the Florida Rules of Professional Conduct contain extensive provisions on how clients are to be informed of attorney departures and firm dissolutions, with specific rules on who has the right to client files. Although a thorough discussion of the rules is outside the scope of this article, the basic provisions on client choice are critical. In general, two things are clear: First, the legal rules in this area are informed by a lawyer's ethical obligations to the client; and second, courts nationally vary on how to balance a firm's right to fees against a client's right to counsel of his or her choice.

The rules provide that the relationships between the client and the law firm and between the client and individual members of the law firm are defined by the contract for legal services. They also provide that nothing in the rules "creates or defines those relationships."³¹ The comment to Rule 4-5.8 elaborates by providing that whether individual members of a firm have any obligations to a client "is a matter of contract law, tort law, or court rules that is outside the scope of rules governing lawyer conduct."³² In general, "individual lawyers have such obligations only if provided for in the contract of representation."³³ Despite these protestations to the contrary, the rules specifically provide for mandatory client rights and correlative attorney obligations.

Rule 4-5.8(b) provides that clients "have the right to...choose counsel when legal services are required

and, with few exceptions, *nothing that lawyers and law firms do shall have any effect on the exercise of that right*."³⁴ Similarly, Rule 4-5.6(a) prohibits an agreement "that restricts the rights of lawyers to practice after termination of the relationship, except an agreement concerning benefits upon retirement."³⁵ The comment to Rule 4-5.6 explains that an agreement restricting the right of lawyers to practice after leaving a firm is problematic both because it limits the freedom of clients to choose a lawyer and because it limits the professional autonomy of lawyers.³⁶ However, Rule 4-5.6 is not a per se prohibition. Severance agreements may contain "reasonable and fair compensation provisions designed to avoid disputes requiring time-consuming quantum meruit analysis."³⁷ On the other hand, severance agreements "that contain punitive clauses, the effect of which are to restrict competition or encroach upon a client's inherent right to select counsel, are prohibited."³⁸

Florida has many additional ethical rules concerning the dissolution of a firm and the departure of a lawyer. Rule 4-1.4(b) states that lawyers "have particular responsibilities in communicating with clients regarding changes in firm composition."³⁹ In the case of an attorney leaving a firm, for example, Rule 4-5.8(d)(1) states that unilateral contact with clients must give notice of the departure "and provide options to the clients to choose to remain a client of the law firm, to choose representation by the departing lawyer, or to choose representation by other lawyers or law firms." Moreover, a lawyer whose representation is terminated has an affirmative obligation to assist the client in the transition to new counsel. Rule 4.1.16(d) states that, upon termination of representation, "a lawyer shall take steps to the extent reasonably practicable to protect a client's interest...."⁴⁰ The comment to Rule 4-1.16(d) makes clear that even a lawyer who has been unfairly discharged "must take all reasonable steps to mitigate the consequences to the client."

A Few National Highlights

• *Jewel v. Boxer* — Neither *Frates* nor *Buckley Towers* discussed whether or how a former firm's right to legal fees is limited either by a client's right to choose new counsel or the professional autonomy of the departing lawyer. *Jewel v. Boxer*, 156 Cal. App. 3d 171 (Cal. Ct. App. 1984), which cited *Frates*, is nationally-known because of its thorough discussion of the unfinished business doctrine and the interplay among these three competing concerns.

In *Jewel*, four attorneys created a law firm partnership without a written partnership agreement. They subsequently dissolved the original law firm, also without a dissolution agreement, and formed two new law firms. Each partner contacted the clients whose cases he had handled for the old firm to alert them of the dissolution and offer them "substitution of attorney" forms. The old clients signed the forms *discharging the old firm* and "retaining the attorneys who had handled the case for the old firm." The new firms represented the clients under the same fee agreements as the old firm. Plaintiffs, two of the partners, filed a complaint against Boxer and another partner who left with him, for an accounting of fees they received from clients initially retained during the former partnership.

Like *Frates*, *Jewel* concluded that "attorneys' fees received on cases in progress upon dissolution of a law partnership are to be shared by the former partners according to their right to fees in the former partnership, regardless of which former partner provides legal services in the case after the dissolution."⁴¹ *Jewel* awarded *net* post-dissolution income to the former partners, not *gross* post-dissolution income, because "the former partners will be entitled to reimbursement for reasonable overhead expenses (excluding partners' salaries) attributable to the production of post dissolution partnership income."⁴²

Unlike *Frates*, *Jewel* accepted that the substitution agreements both *discharged the initial firm* and *substituted the new firm*. Nevertheless, it reached the same result as in *Frates*: "The fact that the client substitutes

one of the former partners as attorney of record in place of the former partnership does not affect this result." To hold otherwise "would permit a former partner of a dissolved partnership to breach the fiduciary duty not to take any action with respect to unfinished partnership business for personal gain."⁴³ A partner "may not seize for his [or her] own account the business which was in existence during the terms of the partnership."

Jewel said that it was not unfair to the departing partner to limit his share of the fee to the profit share he would have had at the old firm. First, that was all he would have received had the firm not dissolved. Second, just as the other partners would benefit from his work on the cases he took and completed, he would benefit from their work on the cases that they took and completed.⁴⁴ Any hardship these rules might cause in a particular situation would be minimized by the fiduciary duties among all the partners that require them to share in the winding up obligations.

Jewel also said its approach would advance "sound policy reasons." First, it would prevent partners "from competing for the most remunerative cases during the life of the partnership in anticipation that they might retain those cases" in the event of dissolution. It would also discourage former partners "from scrambling to take physical possession of files and seeking personal gain by soliciting a firm's existing clients upon dissolution."⁴⁵

Boxer argued that the *Frates* rule undermined client choice. He said it would "discourage" continued representation by the client's chosen attorney because "former partners will not want to perform all of the post-dissolution work" while receiving only a portion of the income generated. Although some have accepted Boxer's argument,⁴⁶ *Jewel* simply concluded that the client's right to choose and "the rights and duties as between partners with respect to income from unfinished business are distinct and do not offend one another." Once a client pays his or her fee to an attorney, "it is of no concern to the client how that fee is allocated among the attorney and his or her former partners."⁴⁷

• *New York and California Fraudulent Transfer Developments* — Recall that the *Frates/Jewel* rule is a default rule rather than a mandatory rule. Partners, and presumably lawyers practicing in other business forms, are free to agree how they will share the risks and rewards upon dissolution, provided there is no violation of the ethical rules. What are known nationally as "*Jewel* waivers" essentially provide that a firm waives its right to recover fees under the unfinished business doctrine of *Jewel*. These waivers raise the issue of the rights of the firm's creditors.

Consider, for example, a heavily indebted LLP that is having difficulty meeting its obligations. All of the partners agree to dissolve the firm and leave with the clients they have been serving. As part of a "dissolution plan," they sign a *Jewel* waiver on behalf of the firm. The clients sign substitution agreements discharging the LLP, which then fires all its associates, paralegals, and other employees, and defaults on its obligations. This scenario has played out in several high-profile law firm bankruptcies. Creditors have had some success persuading bankruptcy courts that a *Jewel* waiver was a fraudulent transfer of firm assets, first to the partners and thence to their new firms. On the other hand, if state law does not give the firm a right to recover fees, there is no asset to transfer, fraudulently or otherwise. In this context, the U.S. Court of Appeals for the Second Circuit certified the application of the unfinished business doctrine to hourly fee matters to the New York Court of Appeals, and the U.S. Court of Appeals for the Ninth Circuit certified virtually the same question to the California Supreme Court.⁴⁸ California has not yet responded, but New York has.

In response to the Second Circuit's certification, *In re Thelen*, 20 N.E.3d 264 (N.Y. 2014), held that the unfinished business rule of *Frates* and *Jewel* does not apply to an hourly-fee matter: "[W]e hold that pending hourly fee matters are not partnership 'property' or 'unfinished business' within the meaning of New York's partnership law [which is still the UPA]. A law firm does not own a client or an engage-

ment, and is only entitled to be paid for services actually rendered.”⁴⁹

The “client’s unfettered right to hire and fire counsel” meant that the firm’s interest in future hourly fees was “too contingent in nature and speculative to create a present or future property interest.”⁵⁰ The New York Court of Appeals was concerned about both “client choice and, concomitantly, attorney mobility.” Lawyers might tell clients they could no longer afford to represent them and clients “might worry that their hourly fee matters are not getting as much attention as they deserve if the law firm is prevented from profiting from its work on them.”⁵¹

Conclusion

No single opinion of the Florida Supreme Court will be able to address all the issues concerning the right to legal fees when equity owners leave law firms. It should follow the precedent of *Frates*, as mirrored nationally in *Jewel* and its progeny, and hold that client choice does not override an equity owner’s fiduciary duty to account to a dissolving law firm, at least as to contingency-fee matters. The issue with regard to hourly-fee matters is more difficult. It is ultimately an empirical question whether the application of the unfinished business doctrine to hourly-fee matters significantly burdens client choice. Unless the court is persuaded that a significant burden exists, it should do what the leading Florida cases have done with respect to contingent fees in law firm dissolutions: Treat departing equity owners in law firms the same as it treats equity owners in other firms.

Another fundamental question is whether to follow *Buckley Towers*, which moved beyond the partnership dissolution rule to apply RUPA’s new partnership dissociation rule. That rule requires dissociating partners to account for any profit derived from a use of partnership property, including the appropriation of a partnership opportunity. The 11th Circuit applied this rule to require a dissociating shareholder to account for a contingent fee. It is unclear how many courts will extend the unfinished business doctrine to dissociations. Awarding fee-sharing on matters taken on dis-

sociation would be consistent with *Jewel*’s extension of *Frates* to cases in which the client effectively discharged the initial firm. It also would eliminate the anomaly that partners who exit before their firms dissolve receive more favorable treatment than those who wait. Ironically, a focus on the general fiduciary duty to account on a dissociation calls into question the 11th Circuit’s own dictum that favors associates who exit before making partner.

The considerable uncertainty over the path of Florida’s default rules suggests that firms should carefully draft the exit rules that best suit them, both as to departing equity owners and to associates. Certainty over the ground rules will facilitate bargaining when firms dissolve or lawyers leave. It also will help lawyers satisfy their ethical obligation to advise clients about the consequences of changes in firm composition. Advance planning also reduces the possibility that an 11th-hour waiver of the right to fees will be deemed a fraudulent transfer. □

¹ As discussed below, cases also disagree on whether a firm’s creditors may claim that a “*Jewel* waiver” of its rights under the unfinished business doctrine is a fraudulent transfer.

² Rather than directly cite the U.P.A., *Frates* cited both cases discussing it and 24 FLA. JUR., *Partnership* §§146-47.

³ FLA. STAT. §§620.81001, *et seq.* (2016).

⁴ *Frates*, 167 So. 2d at 80.

⁵ *Id.* at 80. The dissolution of a law firm does not terminate it. Rather, the dissolution simply results in a contraction in the scope of the firm. The firm continues for the limited purpose of winding up its business and only terminates when the winding up is complete. The partners are not “out” simply because they say they are out. They remain partners until the winding up is complete.

⁶ *Id.* at 81 (“We adopt the rule recognized by our sister states that the retention of a law firm obligates every member thereof to fulfilling that contract, and that upon a dissolution any of the partners is obligated to complete that obligation without *extra* compensation.”).

⁷ *Id.* at 80.

⁸ U.P.A. §18(f); 6 Unif. Law. Ann., Parts III and IV (2015). The exception is that “a surviving partner is entitled to reasonable compensation for his [or her] services in winding up the partnership affairs.” *Id.* These rules are merely default rules, and the partners can contract for whatever compensation agreements they choose. See Florida’s Uniform Partnership Act, FLA. STAT. §§620.56-620.77 (1997) (repealed 1995).

⁹ The partnership agreement included provisions for payments to partners on their withdrawal. The court held that these provisions did not address the situation in which a withdrawing partner leaves with and completes pending cases. *Frates*, 167 So. 2d at 82.

¹⁰ *Id.*

¹¹ See FLA. STAT. §§621.01, *et seq.*, Professional Service Corporation and Limited Liability Company Act, authorizing the formation of “professional limited liability companies.”

¹² All three firms filed charging liens to protect their interest in the fee.

¹³ Ironically, Firm One had already settled for a lesser amount with Firm Three. The 11th Circuit said the excess could be refunded to Buckley Towers.

¹⁴ See *Rosenberg v. Levin*, 409 So. 2d 1016 (1982).

¹⁵ *Buckley Towers*, 519 F. App’x at 664-65. On remand, the district court noted apparent inconsistencies within the 11th Circuit’s opinion. *Buckley Towers Condo, Inc. v. Q.B.E. Ins. Corp.*, 2014 WL 1319307 (S.D. Fla. 2014). Among other things, it is unclear under the 11th Circuit’s general statement why Firm Two should receive quantum meruit and not Firm Three.

¹⁶ *Id.* at 664-65.

¹⁷ An associate is an agent and hence a fiduciary. According to the leading treatise on law firm breakups, the RESTATEMENT (THIRD) OF AGENCY “offers little in the way of helpful guidelines to balance the interests of firms, departing lawyers, and clients. The absence of guidelines and undeveloped assumptions concerning property rights of firms’ information may simply reflect an aversion to the activities of ‘disloyal’ agents and, therefore, sympathy to the plight of principals victimized by such actors.” Robert W. Hillman, *LAWYER MOBILITY: THE LAW AND ETHICS OF PARTNER WITHDRAWAL AND LAW FIRM BREAKUPS* §3.2.1 (2008 Supp.).

¹⁸ *But see In re Heller Ehrman LLP*, 830 F.3d 964 (9th Cir. 2016), certifying this question to the California Supreme Court.

¹⁹ Donald J. Weidner, Cadwalader, *RUPA and Fiduciary Duty*, 54 WASH. & LEE L. REV. 877 (1997).

²⁰ FLA. STAT. §620.8401(8).

²¹ Andrew B. Ryan, *The Evolution of Unfinished Business Claims*, 41-3 LITIGATION 50, 53-54 (ABA 2015). Compare *Hogan Lovells US LLP v. Howrey LLP*, 531 B.R. 814, 827 (N.D. Cal. 2015), *appeal pending*, No. 15-16329, (9th Cir. July 1, 2015) (dealing with hourly-fee matters) (“A pre-dissolution dissociating partner’s duty to account is limited to such work, and does not include work performed at her new firm.”).

²² *Buckley Towers*, 519 F. App’x at 662.

²³ FLA. STAT. §620.8603(2)(c).

²⁴ *Buckley Towers*, 519 F. App’x at 662.

²⁵ *Id.* at fn. 6 (emphasis by the court).

²⁶ *But see* Robert W. Hillman, Donald J. Weidner & Allan G. Donn, *THE REVISED UNIFORM PARTNERSHIP ACT 508-509* (Thomson Reuters 2017), referring to this comment as “unhelpful” and “confusing”: “If the drafters mean that the duty to account for the use of partnership information is the same between the U.P.A. and R.U.P.A.,

then the dissociated partner must account for profits and benefits on the basis of confidential partnership information received pre-dissociation and used in new ventures post-dissociation.”

²⁷ *Buckley Towers*, 519 F. App’x at 663. Compare *LaFond v. Sweeney*, 343 P.3d 939, 946-47 (Colo. 2015) (applying *Jewel* to an LLC in dissolution) (“The [case in progress] was business of [the LLC], and the contingency fee and statutory fees are profits derived from winding up [the LLC’s business]. Therefore, under the plain language of the statute [which tracks RUPA’s fiduciary duty rules], these profits belong to [the LLC] to be distributed according to the profit sharing agreement that existed at the time of dissolution.”).

²⁸ *Id.* at 663 (“The *Frates* court applied the common law, but clearly indicated that law firms can change the fee award a withdrawing attorney is entitled to by agreement.”).

²⁹ “*Jewel* waivers,” named after the famous California case that cited and elaborated on *Frates*, are agreements that waive the right of a firm to fees from cases departing attorneys take with them.

³⁰ Compare Fla. Bar Adv. Ethics Opin. 93-4 with *Miller v. Jacobs & Goodman, P.A.*, 699 So. 2d 729 (Fla. 5th DCA 1997).

³¹ FLA. R. PROF. CONDUCT 4-5.8(a).

³² FLA. R. PROF. CONDUCT 4-5.8, Comment.

³³ *Id.*

³⁴ FLA. R. PROF. CONDUCT 4-5.8(b) (emphasis added).

³⁵ FLA. R. PROF. CONDUCT 4-5.6.

³⁶ FLA. R. PROF. CONDUCT 4-5.8(b), Comment

(emphasis added).

³⁷ *Id.*

³⁸ *Id.*

³⁹ FLA. R. PROF. CONDUCT 4-1.4(b), Comment (referencing detailed provisions in FLA. R. PROF. CONDUCT 4-5.8 on communications with a client when a firm dissolves or a lawyer leaves).

⁴⁰ FLA. R. PROF. CONDUCT 4-1.16(d).

⁴¹ *Jewel*, 156 Cal. App. 3d at 174.

⁴² *Id.* at 180. After R.U.P.A. §401(h), former partners may also be entitled to extra compensation, although the amount is unclear.

⁴³ *Id.* at 178.

⁴⁴ The court could have added that “the attorney’s former partners, through their work on the firm’s other matters, may well have provided financial and other support allowing that attorney to handle contingent fee cases.” *Horner v. Bagnell*, 154 A.3d 975, 986 (Conn. 2017) (quoting *Jewel* extensively and favorably and explaining that the *Jewel* approach is particularly appropriate in contingent fee cases).

⁴⁵ *Jewel*, 156 Cal. App. 3d at 179.

⁴⁶ *Welman v. Parker*, 328 S.W.3d 451, 457 (Mo. Ct. App. 2010).

⁴⁷ *Jewel*, 156 Cal. App. 3d at 178. Accord *Gonzales v. Maggio*, 500 S.W.3d 656, 669 (Tex. Civ.App. 2016) (“[T]he post-dissolution formation of an attorney-client relationship between [p]artnership clients and either [of the two partners], even if accompanied by a new fee agreement omitting mention of the [p]artnership, would not alter the status of these cases as [p]artnership work in progress or the duties [the two partners]

owed to the [p]artnership and each other in completing those cases.”).

⁴⁸ *In re Heller Ehrman LLP*, 830 F.3d 964 (9th Cir. 2016). The precise question certified was: “Under California law, does a dissolved law firm have a property interest in legal matters that are in progress but not completed at the time the law firm is dissolved, when the dissolved law firm had been retained on an hourly basis.” *Id.* at 966. “If [the firm] has no such property interest, then [it] cannot claim that the dissolution agreement constituted a transfer of the property interest.” *Id.* at 973.

⁴⁹ *In re Thelen*, 20 N.E.3d at 266-67.

⁵⁰ *Id.* at 270.

⁵¹ *Id.* at 273.

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