THOMAS E. RUTLEDGE is a member of Stoll Keenon Ogden PLLC resident in the Louisville, Kentucky office.

State Law & State Taxation Corner

Much Ado About Not that Much: RUPA 401(h) and the Unfinished Business Doctrine

By Thomas E. Rutledge*

For some 30 years, the Unfinished Business Doctrine, most famously embodied in *Jewel v. Boxer*,[1] was generally accepted as a proper application of partnership law. Under the Unfinished Business Doctrine,[2] fees generated in connection with projects in effect at the time of the firm's dissolution are to be paid back to the firm in order that they may be shared amongst all of the partners in accordance with their agreement as to sharing ratios. Applying the Uniform Partnership Act as then in effect in California, the *Jewel* court found that, (i) after dissolution, the firm continues for the purpose of completing partnership business[3] and (ii) no partner is entitled to additional compensation (*i.e.*, compensation beyond that agreed to as a sharing ratio under the existing partnership agreement) for completing the partnership's unfinished business.[4] While the *Jewel* case was focused upon matters undertaken on a contingency basis, in no manner was the decision or the principles there embodied so restricted.

Since then, courts across the country have accepted the validity of the Unfinished Business Doctrine and have required, upon a firm's dissolution, that the proceeds earned on matters pending at the time of dissolution, including work being done on an hourly basis, be remitted to the dissolved firm.[5] Of more recent vintage, the Colorado Supreme Court has endorsed the Unfinished Business Doctrine, there in the context of an LLC.[6]

In recent years, the Unfinished Business Doctrine, at least as applied to hourly matters, has been under attack. As major firms have failed,[7] the firms to which attorneys have transferred their practices have rejected the notion that any portion of the fees earned from transferred matters should be remitted to the dissolved firm.

One issue that needs to be understood with respect to the Unfinished Business Doctrine is that the underlying partnership law has, since the time of *Jewel v. Boxer*, changed. Under the Uniform Partnership Act, there existed the rule of no compensation.[8] As such, a partner completing partnership business was not entitled to separate compensation for doing so. Under the more modern partnership law, the Revised Uniform Partnership Act (RUPA), now in effect in more than 36 states, this rule has been significantly altered, allowing "reasonable compensation" for services rendered on transferred matters. This small change in the law militates one argument oft made against the Doctrine.

This column will proceed as follows. First, it will consider how the Unfinished Business Doctrine has of late been attacked, especially as to matters performed on an hourly basis. As a part thereof, various arguments against the Unfinished Business Doctrine will be answered. Second, the recent referral to the D.C. Circuit of what is the right question regarding the Doctrine will be reviewed. Third, the effect of RUPA §401(h) will be considered, it eliminating the argued economic impact of the Doctrine and thereby removing it from the debate.

The Unfinished Business Doctrine and Recent Challenges

Since 2008, firms with nationwide footprints including Heller Ehrmann, Thelen, Howrey and Thacher Proffitt & Wood have fallen by the wayside. Of course, the 2008 economic collapse has not been the sole factor leading to the disappearance of major firms, examples being Mudge, Rose, Gurthrie, Alexander & Ferdon (dissolved in 1995), Altheimer & Gray (dissolved in 2003), Coudert Brothers (dissolved in 2005) and Jenkins & Gilchrist (dissolved in 2007). At least as of this writing, the most recent failure has been Sedgwick, which announced on November 21, 2017, that it was closing down its operations by the end of that December.[9]

One issue that needs to be understood with respect to the Unfinished Business Doctrine is that the underlying partnership law has, since the time of Jewel v. Boxer, *changed.*

Upon the shuttering of any law firm, its constituents, be they partners/members, associates, paralegals, administrative assistants and other support personnel are going to be seeking jobs and will typically be absorbed by other firms. In other instances, a subset of those constituents will form their own new firm. As those attorneys move to new firms, hopefully consistent with the rules of professional conduct, they solicit clients to move their business with them. Clients will typically want to keep their representations with the attorneys already familiar with both the lawsuit or transaction and that client's needs and desires.

But what of the all-to-easily-overlooked lingering obligations to the prior firm? Like any business, a law firm, at any time, is going to have a plethora of outstanding obligations.[10] Office rents, library subscriptions, equipment leases, *etc.*, are going to be outstanding. The firm is going to have accrued but unsatisfied obligations to employees for salary, severance, accrued but unutilized vacation pay, and retirement plan contributions. Again, these are typical of any business that might fail. What is different about a law firm is that it is a pure cash flow business. Law firms have little to no hard assets to liquidate to generate cash to satisfy those debts and obligations. What law firms do have are client relationships that generate cash flow consequent to the rendering of legal services. Work is done, invoices go out, and (hopefully) the client promptly pays. The firm then uses that income to satisfy its debts and obligations with, hopefully, something left over to distribute to the partners. But let's assume that the available funds, whether in hand or accounts receivable, are not sufficient to discharge those obligations, much less make any distribution to the partners.[11]

That is where the Unfinished Business Doctrine, sometimes referred to as the *Jewel* Doctrine, comes into play. Under the Unfinished Business Doctrine, income derived from projects pending at the time of the firm's dissolution, irrespective at what firm the work may be completed, constitutes an asset of the firm to be applied first to the dissolved firm's obligations and then shared amongst the partners in accordance with their agreement as to sharing ratios.[12]

Of late, there has been significant dispute as to the application of the Unfinished Business Doctrine, particularly with respect to hourly rate (as contrasted with contingency fee) matters of the now dissolved large firms. In *In re Thelen*,[13] it was held that the Unfinished Business Doctrine did not apply to hourly rate matters. A similar determination that hourly rate matters are not unfinished business was reached in *Heller Ehrmann LLP v. Davis, Wright, Tremaine, LLP*.[14] However, in *LaFond v. Sweeney*,[15] the Colorado Supreme Court found that the Unfinished Business Doctrine does apply to hourly rate matters.

In *Heller Ehrman LLP v. Davis Wright Tremaine LLP*, on appeal from the decision of the Bankruptcy Court,[16] the Ninth Circuit certified the question to the California Supreme Court.[17] The California Supreme Court agreed to decide the question, but it framed the issue as: "[W]hat interest, if any, does a dissolved law firm have 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 to handle the matters on an hourly basis?"[18]

On March 5, 2018, the California Supreme Court answered, holding that the dissolved partnership has no enforceable property interest in hourly rate work for a matter pending at the time of dissolution but later performed at the firms to which the dissolved firm's attorneys have moved with those pending matters. Looking to both section 404 of RUPA[19] and section 21 of UPA,[20] the Court focused upon whether the dissolved firm had a "property" interest in the hourly rate matter such that it would in turn have an interest in the fees paid, post-dissolution and after the matters have been moved to new firms. It held that no such property interest existed.

> A dissolved law firm therefore has no property interest in the fees or profits associated with unfinished hourly fee matters. The firm never owned such matters, and upon dissolution, cannot claim a property interest in the income streams that they generate. This is true even when it is the dissolved firm's former partners who continue to work on these matters and earn the income—as is consistent with our partnership law.[21]

This conclusion was either enhanced or justified on the basis that it facilitated lawyer mobility at the time of firm's dissolution and prevented impediments to client choice in attorneys. As to the former point, the *Heller* court wrote: "Former partners of a dissolved firm may face limited mobility in bringing unfinished matters to replacement firms when those unfinished matter are unattractive because the fees they generate must be shared with the dissolved firm."[22] As to the latter point, the Court reasoned that if there is a claim on the fees earned by the firm to which the attorney and the matter have moved, those "firms will not receive the full fees paid and therefore will not be as incentivized to work on their matters," leaving clients to move those matters to "second-choice counsel."[23] As is discussed below, the California Supreme Court misconstrued the question at hand, namely the obligations *inter-se* the partners *vis-à-vis* the proceeds earned on the transferred files.

Generically, the arguments made against the Unfinished Business Doctrine have been:

- It does not apply to hourly billing engagements;
- It is based on the false premise that the dissolved firm has an enforceable property interest;
- It limits lawyer mobility;[24] and
- It limits the ability of clients to choose attorneys.

The *Heller Erhmann* decision, like others as to similar points, is highly questionable. In a manner similar to the *In re Thelen*[25] decision, in *Heller Erhmann* there is both a focus on a stilted interpretation of "property" and an unjustified emphasis of client choice. The matter belongs to the client, and the client has an unfettered right to transfer the file as they see fit. On this basis it was held that the firm has no property interest in the file. Which is well and good, but it does not go to the question at hand. While there may not exist an enforceable property interest in the matter, as amongst the partners there certainly can be an enforceable agreement as to the proceeds of the work performed.[26] That agreement, embodied in partnership law where there is no partnership agreement to the contrary, applies through the firm's winding up and termination. Projects came about consequent to the now-dissolved firm's activities; "lawyers often leverage the preparatory work and reputation of an entity in which they have a shared stake, and to which they owe a shared fiduciary duty."[27] If that firm reputation is firm property, and the matter is "derived from a use by a partner of partnership property,"[28] then how can there not be an obligation to account for the fees realized? Further, under RUPA, the duty to account for those fees is only to the extent they exceed reasonable compensation for completing the work.[29] Partnership law in no manner distinguishes between hourly and contingency matters in the application of these rules.

Likewise, client choice/lawyer mobility are red herrings. As was observed previously, then focusing on the *Thelen* decision:[30]

- Any number of factors may preclude a client following one or more attorneys to a new firm.[31]
- As to the argument that clients may be, consequent to the Unfinished Business Doctrine, locked out of the counsel they desire, it is only that, an argument.[32]
- The reasoning that, inter-se, business organization law be damned if it might impact upon an attorney's ability to relocate to a new firm after another's dissolution flies in the face of partnership law.[33]
- The reasoning that the attorney's attention on client matters should not be limited by financial obligations to former partners and the old firm places the interest of the client in a position superior to the partner's inter-se agreement, affording the client the right to dictate the partnership's disposition of the fees it receives.

If the *Jewel* Doctrine was keeping lawyers of failed firms from transitioning to new firms, or if it kept clients from being able to transition files as they see fit, it would be expected that there would be lawsuits and ethics opinions addressing these concerns. The absence of that record compels that conclusion that these "arguments" are pretectual.

Hogan Lovells—Finally the Right Question

On February 27, 2018, the Ninth Circuit Court of Appeals certified to the District of Columbia Court of

Appeals a trio of questions with respect to DC partnership law.[34] There, *finally*, the correct question has been asked, namely:

> [D]oes a dissociated partner owe a duty to his or her former law firm to account for profits earned post-departure on legal matters that were in process but not completed at the time of the partner's departure, where the partner's former law firm had been hired to handle those matters on an hourly basis and where those matters were completed at another firm that hired the partner?

The focus is not upon whether the firm has a property interest in the client's file—that the answer to that question is "no" has never been in dispute. But it is also irrelevant to the application of the Unfinished Business Doctrine. Rather, it reaches the proceeds of performing services on the transferred file.

RUPA 401(h) and Reasonable Compensation

Which brings us to consideration of the correct question[35] against the backdrop of the law governing the relationships among the partners, that of partnerships. [36] As noted previously, the law under UPA was that the partners were not entitled to separate compensation for completing the firm's business as it stood at the time of dissolution. Rather, any proceeds exceeding those necessary to satisfy partnership obligations would be distributed among the partners in accordance with their prior agreement as to sharing ratios. RUPA intentionally modified this rule to allow all partners reasonable compensation in connection with completing the firm's business as it stood at the time of dissolution. Under RUPA §401(k), is now provided that:

> A partner is not entitled to remuneration for services performed for the partnership, *except for reasonable compensation for services rendered in winding up the business of the partnership*.[37]

At first blush this differential between the partnership acts could indicate that partnerships governed by the new law[38] should not be subject to the *Jewel* Doctrine. This viewpoint overstates the case. In a partnership governed by RUPA §401(h), a partner completing partnership business as part of its winding up is entitled to "reasonable compensation."[39] Seldom if ever will "reasonable compensation" equal all proceeds of that engagement. In effect, RUPA §401(h) militates objections to the *Jewel* Doctrine to the extent it impacts upon the firm to which an attorney transitions her or his practice. By eliminating the no compensation rule and adding a "reasonable" component, RUPA invites the dissolving firm and the new firms to which its lawyers move the opportunity to negotiate an appropriate division.

While there is to date a dearth of case law on the interpretation of RUPA §401(h), one paradigm would be to consider the claim as in the nature of a quantum meruit action by the partner against the firm.[40] Once the value of the services rendered in completing the partnership business has been thereby determined, that amount is "reasonable compensation." The remaining balance of the fees collected will then be remitted to the prior (dissolved) firm to be divided among all of the partners in accordance with the sharing ratios set forth in the partnership agreement.[41] In addition, the "reasonable compensation" provided for in RUPA §401(h) provides for disparate treatment among the partners who oversee and conclude the firm's unfinished business. Partners who undertake the more onerous tasks will be compensated for doing so while those who complete the less strenuous tasks will receive proportionally less compensation for the services rendered on the partnership's behalf.[42] In consequence, RUPA's adoption of a compensation rule, in opposition to UPA's no compensation rule, only adds another step in the process but does not otherwise alter the Unfinished Business Doctrine, even as it militates a perceived negative consequence of the prior law.[43]

In the alternative, and preferably, the former and the new firm may (and should) negotiate a fee division on the transferred projects. In the past, these discussions may not have been fruitful because the dissolved firm had, under UPA section 18(f), an absolute right to all proceeds of the transferred projects. Under the new flexibility afforded by the "reasonable compensation" rule of RUPA, there is a more level playing field, and the firms can effectively negotiate a viable settlement both as to which projects will be treated as continuing and the formula(s) to be applied in dividing fees as received. Those formulas could and should as well address the period of time for which they will apply. When agreement cannot be reached, the dissolved firm will have the protection of filing a *lis pendens* against the fees collected by the new firm and the ability to bring an action for the determination of what is "reasonable compensation." Hopefully, it will not come to that.

As for the firms to which lawyers and projects transfer, it is true that for some period of time on certain projects the new firm will not fully capture all of the proceeds of the work performed by a lateral attorney. But this is an economic cost of bringing on that lateral attorney that is no different than that attorney requesting a guaranteed minimum distribution, a special payment into his or her retirement plan, or any number of other special arrangements that have been agreed to across innumerable law firms. Returning to the now dissolved firm fees above "reasonable compensation" is indistinguishable from the new firm, which has a higher rate structure, permitting the grandfathering of the prior (lower) rates for clients that follow a lateral attorney. As commonplace as are those sorts of arrangements, and firms continue to flourish, then RUPA §401(h) will likewise do no harm.

It can only be hoped that the DC Circuit will avoid falling into the *Thelen/Heller Ehrmann* trap and look anew at this question in the light of substantive partnership law. The Unfinished Business Doctrine is a natural and foreseeable consequence of partnership law. If the partners did not contract out of its application, there is no injury in its application.

ENDNOTES

* A frequent speaker and writer on business organization law, Thomas E. Rutledge has published in journals including THE BUSINESS LAWYER, the DELAWARE JOURNAL OF CORPORATE LAW, the AMERICAN BUSINESS LAW JOURNAL and the JOURNAL OF TAXATION, and is an elected member of the American Law Institute. He blogs at *Kentuckybusinessentitylaw.blogspot.com*.

1 *Jewel v. Boxer*, 156 Cal. App. 3D 171 (Cal. Ct. App. 1984).

2 Sometimes referred to as the "*Jewel* Doctrine."

3 CAL. CORP. CODE §15030 (repealed 1999) (verbatim adoption of UPA §30 (1914)).

4 CAL. CORP. CODE §15018(f) (repealed 1999) (verbatim adoption of UPA §18(f) (1914)).

5 *See* Michael D. DeBaecke and Victoria A. Guilfoyle, *Law Firm Dissolutions: When the Music Stops, Does Anyone Need to Account for Any Unfinished Business?*, 14 DEL. L. REV. 41, 47, n. 38 (2013); *Dev. Specialist, Inc. v. Akin Gump Strauss Hauer & Feld LLP* (*In re Coudert Bros., LLP*), 480 BR 145, 163–164 (S.D.N.Y. 2012) (collecting cases); *In re Labrum & Doak*, 227 BR 391, 410 (Bankr. E.D. Pa. 1998) ("[H]ourly-fees derived from work-in-progress pending at the time of dissolution are clearly property [of the firm]."); ROBERT W. HILLMAN, LAW FIRM BREAKUPS: THE LAW AND ETHICS OF GRABBING AND LEAVING §4.4.3 (1990); ROBERT W. HILLMAN, HILLMAN ON LAWYER MOBILITY: THE LAW AND ETHICS OF PARTNER WITHDRAWALS AND LAW FIRM BREAKUPS §4.6.1.2 (2nd Ed. 1998 & Supp. 2014 supp.) ("[T]here is no basis under partnership law for treating a matter billed on an hourly basis as something other than the unfinished business of a law partnership.") (italics deleted).

6 *LaFond v. Sweeney*, 343 P3d 939 (Colo. 2015).

7 *See* Thomas E. Rutledge and Tara A. McGuire, *Conflicting Views as to the Unfinished Business Doctrine*, 46 TEXAS J. BUSINESS LAW 1, n. 1 (2015).

8 *See* UNIF. PART. ACT §18(f), 6 (pt. II) U.L.A.101 (2001); KY. REV. STAT. ANN. §362.235(6).

9 Details as to many of these failures are collected in Rutledge and McGuire, *Conflicting Views, supra* note 7 at 1, n. 1. With respect to Sedgwick, *see, e.g.*, Kathleen Pender, *85-Year-Old San Francisco Law Firm Sedgwick Plans to Shut Down*, SAN FRANCISCO CHRONICLE (Nov. 22, 2017), available at *www.sfchronicle.com/business/networth/article/85-year-old-San-Francisco-law-firm-Sedgwick-plans-12378614.php*.

10 *See, e.g.*, Douglas R. Richmond, *Migratory Law Partners and the Glue of Unfinished Business*, 39 N. KY. L. REV. 359, 362 (2012).

11 At one time these obligations would be satisfied because the partners, *inter-se*, were personally liable for those debts and obligations. *See* UPA §15, 6 (pt. III) ULA 331 (2015). To the extent that the firm was not able to generate revenue sufficient to satisfy its obligations, the partners were required to contribute toward that deficit. *See* UPA §§40(a) II, 40 (d), 6 (pt. IV) ULA 427 (2015). This all changed with the advent of the LLP and to a lesser degree the LLC, forms which protected the partners/members from personal liability for the firm's debts and obligations. *See, e.g.*, RUPA §306(c), 6 (pt. II) ULA 388 (2015) ("A debt, obligation, or other liability of a partnership incurred while the partnership is a limited liability partnership is solely the debt, obligation, or other liability of the limited liability partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the limited liability partnership solely by reason of being or acting as a partner."); KY. REV. STAT. ANN. §362.220(2). With this change in the law the risk of unsecured claims was shifted to the creditors.

Admittedly, the Professional Services Corporation ("PSC") long pre-dated the LLP/LLC, and it afforded the shareholders therein limited liability. *See generally* Thomas E. Rutledge, *The Place (If Any) of the Special Purpose Professional Structure in Entity Rationalization*, 58 BUS. LAW. 1413 (Aug. 2003); *see also* H. Bradley Jones, *The Professional Corporation*, 27 FORDHAM L. REV. 353, 354–55 (1958). While used by generally smaller firms that sought to utilize the advantageous treatment of employee and retirement benefits for which the form was originally designed, a combination of limitations on S corporation elections and the spectre of double taxation and in certain instances the absence of limited liability, as well as professional inertia, limited the use of the PSC. *See generally* Robert W. Hillman, *Organizational Choices of Professional Service Firms: An Empirical Study*, 58 BUS. LAW. 1387, notes 30, 31, 54–60 and accompanying text (August, 2003); *see also* Robert W. Hillman, Allison Rhodes and Peter Tran, *Organizational Choices of Law Firms*, 16 BUSINESS ENTITIES 16 (July/Aug. 2014).

12 *See* UPA §30, 6 (pt. IV) U.L.A. 259 (2015) ("On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed."); RUPA §802, 6 (pt. I) U.L.A. 197 (2001).

13 *In re Thelen*, 20 NE3d 264, 268 (N.Y. 2014).

14 *Heller Ehrmann LLP v. Davis, Wright, Tremaine, LLP*, 527 BR 24, 26 (Bankr. N.D. Cal. June 11, 2014).

15 *LaFond v. Sweeney*, 343 P3d 939 (Colo. 2015).

16 *See Heller Ehrmann LLP v. Davis, Wright, Tremaine, LLP*, 527 BR 24 (N.D. Cal. 2014).

17 *See Heller Ehrman LLP v. Davis Wright Tremaine LLP*, CA-9, 830 F3d 964, 966 ("We ask the California Supreme Court to resolve a question of state law: whether a dissolved law firm has a property interest in legal matters that are in progress but not completed at the time the law firm is dissolved, where the dissolved law firm had been retained to handle the matters on an hourly basis.").

18 *Heller Erhmann LLP v. Davis Wright Tremaine LLP*, No. S236208, 2016 Cal. LEXIS 7131, at *1 (Cal. Aug. 31, 2016).

19 Adopted in California in 1996.

20 CALIF. CORPS CODE §15021 (repealed 1996) and *id.* §16404.

21 *Id.*, slip op. at 12.

22 *Id.*

23 *Id.*, slip op. at 13.

24 Whether there is a basis for a policy in favor of lawyer mobility, in contrast for a policy in favor of law firm stability, is highly debatable. *See, e.g.*, Robert W. Hillman, *Law Firms and*

Their Partners Revisited: Reflections on Three Decades of Lawyer Mobility, 96 TEX. L. REV. 788, 801 (2018):

> Cases like *Thelen* and *Heller* elevate lawyer mobility to the level of public policy that courts should encourage. *Thelen* was explicit on the point, noting that "[u]ltimately, what the trustees ask us to endorse [are] conflicts with New York's strong public policy encouraging client choice and, concomitantly, attorney mobility." Unquestionably, the freedom of clients to choose their lawyers has long been a policy advanced by law. But the link between client choice and lawyer mobility is attenuated, and the elevation of lawyer mobility to the level of a worthy public policy objective in its own right is dubious, particularly when the same concerns are not expressed over the professional mobility of physicians and other professionals.

(footnotes omitted).

[25] *In re Thelen*, 20 NE3d 264, 268 (N.Y. 2014).

[26] *See, e.g.*, Rutledge and McGuire, *Conflicting Views, supra* note 7, at 14; Brief for Various Practitioners and Academics as Amicus Curiae in Support of the Appellant, Diamond, Ch. 7 Trustee for *Howrey LLP v. Hogan Lovells US LLP*, Case No. 15-16326 (9th Cir., June 2, 2016) ("In joining a firm and undertaking work on a particular file, an attorney commits that those proceeds in the form of attorney fees will be remitted to the firm and shared amongst its partners in accordance with the partnership agreement and, where the partnership agreement is silent, the underlying partnership law.").

[27] *Heller Erhmann*, slip op. at 11.

[28] *See* RUPA §404(b)(1).

[29] *Compare* REV. UNIF. P'SHIP ACT §401(h) ("A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership") *with* UNIF. P'SHIP ACT §18(f) ("No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs."). *See also* Rutledge and McGuire, *Conflicting Views, supra* note 7, at 10, n. 48.

[30] *See* Rutledge and McGuire, *Conflicting Views, supra* note 7, at 13–14.

[31] *See also* Robert W. Hillman, *Client Choice, Contractual Restraints, and the Market for Legal Services*, 36 HOFSTRA L. REV. 65, 66–67 (2007) ("That said, a variety of circumstances may impede the exercise of client choice, with the result that the client is unable to retain her preferred lawyer. The lawyer may be uninterested in the matter, have conflicts (schedule or client) that preclude representation, doubt the potential client's ability or willingness to stay current in fee payments, or for some other reason elect not to establish a professional relationship with the potential client. In short, there are no guarantees that the lawyer of first choice is the lawyer that the client will eventually have.") It would be an interesting exercise to ask the proponents of the "client choice" attack on the *Jewel* Doctrine how many of them would be willing to reduce their hourly fees by say 50% in order to facilitate the ability of potential clients to select them as counsel.

[32] *See also* Richmond, *Migratory Law Partners, supra* note 10, at 418 ("Regarding the lock-out problem, there is similarly no evidence that it exists.").

[33] *See also* Hillman, *supra* note 11, at n. 6 and accompanying text ("For the most part, [professional ethics rules] are unconcerned with fiduciary duties of participants within firms to each other, but their lack of concern does not negate the existence of duties to colleagues that may conflict with duties to clients.").

[34] *See Diamond v. Hogan Lovells US LLP*, Case: 15-16326, 2018 WL1076760 (9th Cir. Feb. 27, 2018).

[35] "There are no right answers to wrong questions." Ursula K. Le Guin, 15 Great Quotes on the Importance of Asking the Right Question, available at *www.ideachampions.com/weblogs/archives/2012/02/1_its_not_that.shtml*

[36] The surviving partner of a partnership was entitled to compensation for services rendered in winding-up and terminating the partnership. *See* UPA §18(f), 6 (pt. II) ULA 101 (2001).

[37] REV. UNIF. PART. ACT §401(h), 6 (pt. 1) ULA 133 (2001) (*emphasis added*). ACCORD KY. REV. STAT. ANN. §362.1–401(8); DEL. CODE ANN. tit. 6 §15–401(h). *Compare* UNIF. P'SHIP ACT §18(f) (1914), 6 (pt. II) U.L.A. 101 (2001) ("No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs.").

[38] RUPA has been adopted in 36 states, the District of Columbia and the Virgin Islands. *See* REV. UNIF. P'SHIP ACT, 6 (pt. I) U.L.A. (Supp. 2014) 1. RUPA §401(h) has been adopted in the District of Columbia. D.C. CODE §29–604.1(k).

[39] *See also* Official Comment to RUPA 401(h):

> Subsection (h) continues the UPA Section 18(f) rule that a partner is not entitled to remuneration for services performed, except in winding up the partnership. Subsection (d) deletes the UPA reference to a "surviving' partner. That means any partner winding up the business is entitled to compensation, not just a surviving partner winding up after the death of another partner. The exception is not intended to apply in the hypothetical winding up that takes place if there is a buyout under Article 7.

[40] The comments to RUPA provide no guidance as to how this "reasonable compensation" is to be determined. *See also* Mark I. Weinstein, *The Revised Uniform Partnership Act: An Analysis of Its Impact on the Relationship of Law Firm Dissolution, Contingent Fee Cases and the No Compensation Rule*, 33 DUQ. L. REV. 857, 859 (1995) ("[T]he drafters did not provide or articulate a standard, formula, or methodology to be utilized by courts faced with this issue of reasonable compensation.").

[41] *See also id.*, at 879–84 (setting forth a paradigm for determining adequate compensation under RUPA §401(h)).

[42] *See also id.,* at 875 ("The phenomenon of 'lock out' can be avoided by the RUPA Section 401(h). The financial disincentive of completing a particular client's contingent fee case which requires a disproportionate amount of time and effort, is eliminated by awarding compensation to an attorney who has excessive winding up burdens.").

[43] *See also* Joan C. Rogers, *Profits from Finishing Bankrupt Firms' Cases Belong to Law Firms that Complete Them*, Bloomberg BNA (July 16, 2014), *www.bna.com/profits-finishing-bankrupt-n17179892367/* ("Under RUPA, he explained, partners are entitled to reasonable compensation for winding up a dissolved firm's business; accordingly, former partners of a dissolved firm and their new firms would not be deprived of all recompense for their work if the unfinished business doctrine were applied. Because RUPA furnishes a way out from the dilemma that lawyers and firms face in UPA states by allowing firms to finish business but be compensated, courts applying RUPA may be more likely to accept the unfinished business doctrine for hourly fee matters that former partners of dissolved firms take to other firms, Hillman said.").