Partnership Pitfalls: What New Partners Need to Know About Partnership Liability Risks
By Patrick B. Minter and Rachel C. Cushing

November 2010

Enjoy the increased responsibilities and perks that accompany the rank of partner, while also minimizing potential liability as a newly-appointed representative of your firm.

Congratulations! Working all those late nights and weekends has finally paid off. You've made partner and will soon reap the many benefits that go along with this career milestone – increased pay, prestige, your own parking spot. Before you sign the Partnership Agreement though, stop and ask yourself, “Do I know the risks associated with this new title?” While in most business settings, the corporate structure protects its owners from liabilities of the entity including the negligent acts of others, such is not typically the case in a law firm setting. This article is intended to provide a general summary of the potential liability exposure faced by new partners, along with ways to limit your exposure to these risks.

Generally, there are three types of corporate entities under which a law firm may be organized. They are a professional corporation ("PC"), a limited liability company ("LLC") and a limited liability partnership ("LLP"). A fourth alternative business structure is a general partnership, which is not a corporate entity and will be referred to as a "general partnership" throughout this article. Your Partnership Agreement and firm's corporate or business structure typically govern your liability exposure. Your potential new liability risks are also state specific. However, in many states, uniform rules have been adopted. With regard to partnerships, 38 states have adopted some form of the Uniform Partnership Act. Also relevant are your state's code of ethics and rules governing the practice of law.

When you make the move from associate to partner, your responsibilities change and your potential liabilities do as well. In a general partnership, each partner is typically liable jointly and severally for all obligations of the partnership unless otherwise agreed or provided for by law. Partners of general partnerships have the greatest exposure risk and can be held personally liable for both contractual obligations of the partnership, such as rent payments and vendor payments, as well as all legal malpractice claims against the partnership. A general partnership may also be liable for the fraudulent and intentional acts committed by its partners. Even innocent partners in a general partnership may be held vicariously liable for the fraudulent conduct of their partners. Therefore, general partnerships are the strongest example of increased responsibility and liability placed upon partners compared to that of associates.

While each jurisdiction varies with respect to the scope of individual partner liability under a PC, LLC or LLP model, there are some general principles that govern depending on the jurisdiction. The general rule in most jurisdictions is a partner will not be liable for general creditor or vendor obligations and may be either personally or vicariously liable for professional services rendered. In some jurisdictions only the firm and individual tortfeasor are liable for negligent acts so long as the statutorily mandated malpractice insurance requirements are met. An alternative model followed in a majority of states is that a partner may be personally liable only for his or her own acts of negligence or for negligent acts...
committed by any person under his or her direct supervision and control. This is a critical distinction between a partner and associate. As a new partner, you will be expected to supervise the work of others and can face personal liability if the lawyers you supervise commit malpractice.

Don’t be intimidated by all of this. Practically speaking, partners will only face personal liability for the negligent acts of others if and when the law firm’s legal malpractice insurance and assets are exhausted. Of course no attorney wants to face a legal malpractice suit. Here are a few basic tips to help you avoid exposure to claims for malpractice. As a new partner, we hope using these tips as guidelines will let you sleep at night and enjoy the many benefits that come with your new title.

*Say "No" to What You Don’t Know.* Young partners face increased pressure to generate new business for the firm. They face this pressure at a time of unprecedented competition as the number of attorneys continues to increase. Remember that when you work to cultivate new clients, make sure that you or others in your firm have the capability and the expertise in the specific area of the law at issue. Dabbling in an area of law in which you have no expertise, such as bankruptcy or estate planning, is a recipe for a malpractice claim in today’s climate.

*Embrace your new Role as a Supervisor.* In many law firm settings, a new partner will be expected to become a supervisor of other less experienced lawyers. Some attorneys shy away from this responsibility and try accomplish their work without delegating to others. This is not profitable for your firm or cost effective for its clients. Setting up a "system" of supervision is critical both to effectively achieving your client's goals and protecting you from liability exposure. One key change that comes with your move to partner is that you may have personal exposure for any errors committed by those that you supervise. Your system of supervision should, at a minimum, incorporate means for you to monitor the activities of associates you supervise. This should include a requirement that you are copied on all correspondence and emails generated by associates. Additionally, consider holding weekly meetings with those that you supervise to discuss the status of the matters on which they are working.

*Hone your Communication Skills.* Often the move from associate to partner comes with an expectation that you will have greater contact with the firm's clients. It is vital to communicate effectively with these clients because an uninformed or misinformed client is a malpractice case waiting to happen. Continuous, prompt and truthful communication is the cornerstone of good client relations. This can be accomplished through a few easy methods. First, copy the client on every letter you send, no matter how innocuous. This will give the client a chronological, real-time record of everything that is occurring in the matter. Cost is not a factor here because there is no postage expense in the age of email attachments. On the subject of email, get in the habit of communicating regularly by email with your clients about key events which have occurred. Finally, don't procrastinate when it comes to delivering bad news. In transactional work and, of course, in litigation, there are a series of battles which occur. Some are won and some are lost. As difficult as it may be, it is critical to promptly and truthfully report the "bad news." A good client will understand and, more importantly, respect your forthrightness.

*Billing is Critical.* Now that you're on the management side, you realize more than ever that getting bills out the door – and getting them paid – is the key to profitability. On the other hand, poor billing practices lead to decreased profits and client dissatisfaction. It is a fact that an enormous percentage of
claims for legal malpractice are brought as counterclaims in reaction to a law firm's suit for fees. Good billing practices should include precise time descriptions which educate the client about what you did and what you are asking them to pay for. The second component of a good billing practice is to ensure that you send your bills out every month. In addition to increasing your chances of getting paid, monthly billing with concise entries is an effective means of enhancing communication with your client. Finally, once the bills are out, track your accounts receivable. Do not let a client get so far behind on its obligation that you are tempted to sue for your fees because a claim for fees invites a retaliatory claim for legal malpractice.

Now you can begin your partnership journey with eyes wide open. You can assess both the benefits and the risks that come along with your new title. Plus you have a few tools in your belt to help limit your exposure. Enjoy the moment. You've earned it.

Learn more from Minter and Cushing at the New Partner and In-House Counsel Conference, February 25 - 26, 2011, in Philadelphia.

About the Author

Patrick Minter is a partner at Graham Curtin, P.A., a Morristown, New Jersey law firm. Mr. Minter regularly defends attorneys and other professionals facing claims for legal malpractice, fraud, and ethical violations.

Rachel C. Cushing is associated with the law firm Graham Curtin, P.A. located in Morristown, New Jersey. Ms. Cushing concentrates her practice on general liability defense, with an emphasis on professional liability defense. Ms. Cushing routinely defends professionals against malpractice and breach of contract claims.