Are We Finally Finished With the Unfinished Business Rule?

A recent case from the D.C. Court of Appeals[1] has finally put what appears to be an end to the much litigated (and maligned) unfinished business rule, often called the unfinished business doctrine, whose genesis was a 1984 California Court of Appeals case[2] holding that the unfinished work of a dissolved or a dissolving law firm partnership remains an asset of the firm.

At the risk of oversimplifying the issue, *Jewel v. Boxer* based its holding on what the court there saw as a partner's continuing duty to wind up the firm's affairs without being entitled to extra compensation for so doing. In short, the fees generated from the continuing work for the firm's former clients belong to the firm, and the partner who does the work simply gets what she would have received as if the firm had kept operating.

We previously examined the rule some years ago,[3] noting that it was already generating litigation, especially in the bankruptcy context, at a time when an unusual number of firms were dissolving and seeking bankruptcy protection.

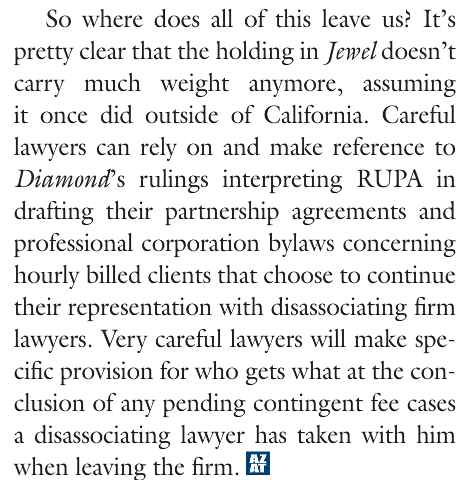
The doctrine moved front and center when the trustee in a national law firm's bankruptcy tried to "claw back" the profits generated by the continuing work of the partners who had jumped ship and from the firms to which they had migrated. The firm involved was the Washington D.C. firm Howrey LLP, which operated under the District of Columbia's partnership law, which in turn was adopted from the Revised Uniform Partnership Act (RUPA).[4] In 2013, when the Howrey firm, its former partners, and the firms to which they had migrated ended up in the Bankruptcy Court for the Northern District of California, the trustee attempted to claw back the profits generated by former Howrey partners who continued working on hourly billed client matters that were pending before the firm dissolved and that they took to other firms when they left. When the Bankruptcy Court allowed the trustee to proceed,[5] appeals ensued, with conflicting results, eventually ending up in the Ninth Circuit. The Court of Appeals punted,[6] certifying the questions raised in the appeal to be decided by the D.C. Court of Appeals in accordance with the substantive law of the District.

Ethics Opinions and the Rules of Professional Conduct at https://azbar.org/for-lawyers/ethics/

For those who may consider those days as ancient history and who this topic to be a bit of a yawn, remember that it wasn't so long ago that many prominent firms were in financial difficulty, were overextended, and were shedding partners who were then taking clients with them to greener pastures. Please note that there are aspects of the issues which were considered in those cases that remain relevant today in a legal world filled with migrating lawyers.

The D.C. court wasted no time in coming to the same conclusions arrived at by several other courts, particularly in New York and California. Stated briefly, it held:

1. Hourly billed clients are not the property of the law firm, nor are the post-dissolution fees generated for those clients by the former partners. These conclusions are logically based on the client's absolute right to discharge a lawyer in favor of other counsel, with or without cause. The court held that the dissolved firm had no more than a "unilateral expectation," and no claim of entitlement, to future fees earned on client matters.
2. A partner who disassociates from a firm—that is, no longer a partner of an undissolved firm (or is a former partner in a firm that has dissolved)—owes no continuing duty to the former firm to account for "new profits" earned on hourly billed matters that might have commenced at the former firm. The former partner's duty of loyalty continues only with regard to matters arising and events occurring before her disassociation. Thus, her duty to account back to the former firm is limited to fees earned from work performed prior to her disassociation.
3. As for contingency fee matters, the court noted that its decision applied only to hourly billed matters and that its view was that RUPA required that contingent fees earned post-dissolution be remitted back to the dissolved firm for distribution among partners as part of the winding up process.[7]



So where does all of this leave us? It's pretty clear that the holding in *Jewel* doesn't carry much weight anymore, assuming it once did outside of California. Careful lawyers can rely on and make reference to *Diamond*'s rulings interpreting RUPA in drafting their partnership agreements and professional corporation bylaws concerning hourly billed clients that choose to continue their representation with disassociating firm lawyers. Very careful lawyers will make specific provision for who gets what at the conclusion of any pending contingent fee cases a disassociating lawyer has taken with him when leaving the firm.

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endnotes

1. *Diamond, Trustee etc. v. Hogan Lovells US LLP et al.*, 224 A.3d 1007 (D. D.C. 2020).
2. *Jewel v. Boxer*, 203 Cal. Rptr. 13 (Ct. App. 1984).
3. David Dodge, *Unfinished Business, Migrating Lawyers*, ARIZ. ATT'Y, July/August 2014, at 10.
4. Arizona's version of (RUPA) is found at A.R.S. §§ 29-1001 *et seq.*
5. *In re Howrey*, 515 B.R. 624 (Bankr. N.D. Cal. 2014).
6. *Diamond v. Hogan Lovells US LLP*, 883 F.3d 1140 (9th Cir. 2018).
7. 224 A.3d at 1018 *et seq.*