Joe

From: Jack Sheridan [mailto:jack@sheridanlawfirm.com]
Sent: Sunday, June 22, 2014 7:06 AM
To: Joseph R. Shaeffer
Subject: The Deal Confidential

Joe,
My reading of the Transitional Directorship Agreement leads me to conclude that we were boneheads. We did not provide for what happens if we divorce, only marry. As I told you, with my former partner, I agreed to pay him a percentage of our cases based on the hours worked during the partnership. When he left, I kept all the cases and I spent long hours working them, while he took on new cases that did not involve me and kept those profits for himself. After the divorce he did not share in the risks of litigating my cases, he did not do any work on my cases, and he did not pay any costs to bring my cases to conclusion (some of which went on appeal)—yet he got paid a percentage in every case we shared. Had I thought it through, I would have limited his rights to a finite hourly fee that would be measured at the time of the divorce and would not grow as the case grew in value because of my work after the divorce. But that was the deal we made, so I faithfully stuck to it and paid him his cut of the contingent fees when they were collected even many years later. I do not intend to make that mistake again. Here, we have no deal about what to do in the divorce, ***unless the buy/sell agreement says something about it (I've asked for a copy).*** One term in the TDA at first blush seems it could apply. It provides that I get paid a pro rata share of cases I brought to the firm on 1/1/13 when the payout comes in:

> Division of Fees on Cases Brought to MHB: For any current case that Mr. Sheridan brings to MHB, fees from any recovery will be divided pro rata based on the amount of work performed before and after January 1, 2013. Fees generated from work performed prior to January 1, 2013, will be paid to the Law Offices of Jack Sheridan. Fees generated from work performed on January 1, 2013 or later will be paid to the MHB Business account to be distributed per the Director Compensation Plan.

So as an example, under the agreement it appears I get paid in Bichindaritz for my work up to 12/31/13, once we win the appeal and get paid. In that case, and in others I brought to the firm, it appears I'm standing in the shoes of my former partner. That's as far as our agreement goes; its terms are limited to cases I brought to the firm; it says nothing about what to do with current cases in a divorce; and it doesn't seem to require that I do anything more to get my share of those cases, even if MHB puts in substantial work down the road. Having said that, I don't intend to hold MHB to that interpretation. I think we wrote that term believing that I would be a partner when the cases come in, and I think that term was meant to be an adjustment of my bonus to be used during the partnership—not after a divorce. For the rest, let's go through some possible ways to address the cases in the divorce.

The MHB Proposal

You propose that I keep most of the cases I have been working, and that I pay MHB the pro rata portion of whatever I recover whenever the cases resolve. In my view, this is like indentured servitude. You sit back while I do all the work, pay the overhead that supports the work, front all the cash, and take all the risks, and if I win you may get a percentage payout that could be the lion's share of the fee recovery. I, in effect, continue in your employ without any benefits of employment until the last case is resolved—which could be years. It was a bad plan with my former partner and is not one I intend to repeat.

The Law Absent an Agreement

MHB holds all the contracts with the clients. Some of the clients may simply opt to terminate their contracts with MHB and hire SLF or some other firm, which is perfectly acceptable under the law. Barr v. Day, 124 Wash. 2d 318, 329, 879 P.2d 912, 917 (1994) (unlike general contract law, under a contract between an attorney and a client, a client may discharge the attorney at any time with or without cause). For those who do, MHB has a right to collect for hourly work done on the cases—the law does not give MHB the right to collect a contingent fee. "The rule is that, where the compensation of an attorney is to be paid . . . contingently on the successful prosecution of a suit, and [the attorney] is discharged or prevented from performing the service, the measure of damages is not the contingent fee agreed upon, but reasonable compensation for the services actually rendered." Ramey v. Graves, 112 Wash. 88, 91, 191 P. 801, 802 (1920). The MHB contracts with the clients pretty much say the same thing, and Joe, you said you intend to send a letter to each client asking the client to choose MHB or SLF, so you accept the

reality that some clients may want to end their contracts with MHB when they learn I've left the firm, and you accept that they have a right to do so. Since MHB does not have a right to a percentage, only a right to a quantum merit amount, MHB would be wise to cut a deal with me on the cases so MHB may share a percentage of the winnings rather than being limited to the quantum merit amount. I suggest two approaches: one for the bulk of the cases and another for the cases going to trial in 2014.

Proposal 1 for Majority of My MHB Cases

I listed my 30 MHB cases in the earlier email, and suggested which cases should remain with MHB and which should revert to SLF. I tried to be fair, and to leave with MHB the cases that have settlement value now, and those which are being worked by other partners. For those cases, I propose, subject to further discussion, that we each walk away with the designated cases with no strings attached except as specified in my email, realizing that the clients may have their own ideas about who should represent them, which may require some adjustments.

Proposal 2 for the Three Cases Set for Trial in 2014

Three of my MHB cases are going to trial in the fall: Boyer, Hertz Plaintiffs, and Chaussee (Boyer could settle on 7/17). Joe, the position you took at our meeting on Friday was that I should take these cases to trial and if I win, you will pay me my hourly fees for work done after the divorce or a pro rata share of the fee on the same basis (depending on if MHB takes its hourly fees or a percentage). I suggested that your proposal was unfair as to claiming a percentage, because during that time, I'll have overhead, I'll not be billing on other cases because I'll be working on these, I'll be taking all the risks, and I'll be working on some of the cases perhaps for years. Also, you will be spending your time working other cases and not sharing those profits with me. Think about it. It's unfair because it denigrates my status, since I am not your employee and I will not be your partner, and because it's not something you should even be asking for since you have no right to this remedy under the law. It is true that MHB brought these cases forward, but reimbursement for the hourly fees is enough, because under quantum merit, you get back what you put in if we win. Asking for more without doing more is unfair. I cannot believe that you would be that way. I prefer to think that you did not think this through. Why don't you consider this? We can partner, and MHB can share in the upcoming work, share the risks, and share in a big win if we get one—50/50. But if you want to do that, we have to reach agreement on all the cases before I leave on 7/31. Or you can walk away and honorably suggest that you receive a quantum merit payment if I win. I would of course agree to that. You should get back what you put in, because that is what you are owed, and that is what the law allows.

Let's talk next week.
Jack
PS—please forward the buy/sell agreement

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