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Comment: A Departed Partner's Liability for the Post-Departure Malpractice of Her Ex-Colleagues—A Practical Approach

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TABLE OF CONTENTS

I. INTRODUCTION

Lawyers usually practice in law partnerships, and regularly, and with increasing frequency, join and depart these law firms. Commentators have only recently begun to examine the law governing the departure of partners from law firms.[1] The purpose of this Comment is to examine one small aspect of the law governing this mobility: the post-departure liability of departed lawyers for malpractice committed by the remaining, servicing (to the client), ex-partners. The discussion will demonstrate how a too rigorous application of partnership law to the law firm situation leads to bad law. The Comment will suggest that the client-law firm retainer agreement, which of course commits the firm to provide each of its clients appropriate legal services, also presumptively authorizes the law firm to manage its personnel for all

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1. *See* Jensen, *Partners at Peril*, NAT'L L.J., Apr. 23, 1990 at 1, col. 3.

its clients' best interests. The Comment will further suggest that any understanding among the departed lawyer and her ex-colleagues with respect to the firm and all its clients' best interests should normally result in the departed lawyer's discharge from liability for her ex-colleagues' post-departure malpractice. This should protect all interests without placing excessive and unnecessary burdens on large law firms.[2]

Part II will briefly illustrate the problem. Part III will discuss important precedent establishing that the departed lawyer remains liable for the post-departure malpractice of her ex-colleagues. Part IV demonstrates how this result, which is a surprise to many commentators, is poor policy (section A), unfair to the departed lawyer (section B), and inconsistent with client expectations (section C). Part V builds on Professor Hillman's recommended solution to satisfy all interests. Part VI briefly summarizes.

II. THE PROBLEM

On Day 1, Client A retained Lawyer A and his firm, A, B & Z, in a legal matter. On Day 2, Lawyer Z, one of the firm's partners, departed firm A, B & Z. Lawyer A and firm A & B continued to represent Client A. Under a first scenario, Client A had no expectations whatsoever with respect to Lawyer Z. Under a second scenario, Client A expected Lawyer Z to represent him or to attend to some aspect of his case. This expectation would have been explicit in the client-law firm agreement or implied from the client-firm relationship.

On Day 975, Lawyer A or some other lawyer in firm A & B engaged in an act or omission which constituted legal malpractice and which damaged Client A.[3] Is Lawyer Z liable under either scenario?

III. THE LAW

The leading case is *Redman v. Walters*.[4] Redman retained attor-

2. This Comment will not examine more far-reaching reforms, such as a revision of the Uniform Partnership Act, which might give greater entity status to the partnership organization as discussed in UPA Revision Subcommittee on Partnerships and Unincorporated Business Orgs., *Should the Uniform Partnership Act Be Revised?*, 43 BUS. LAW. 121 (1987); Ribstein, *A Statutory Approach to Partner Dissociation*, 65 WASH. U.L.Q. 357 (1987).
3. This Comment focuses explicitly on malpractice committed after the departed lawyer has left the firm.
4. 88 Cal. App. 3d 448, 152 Cal. Rptr. 42 (1979).

   The principle was followed more recently in Palomba v. Barish. 626 F. Supp. 722 (E.D. Pa. 1985). Clients retained Lawyer Barish of the Adler-Barish law firm. Lawyer Daniels then withdrew from the firm. Two years later Lawyer Barish purportedly committed malpractice. The court reasoned as follows:
   a. The clients' contract was unfinished business.
   b. The Adler-Barish firm remains in existence for the purpose of completing

ney Brunsell and the law firm of MacDonald, Brunsell & Walters to commence and maintain a law suit. Shortly thereafter, Walters, who had "never met" client Redman, was not "aware he existed," and had "[n]ever discussed or in any way participated in any review of the [subject] legal services," departed the law firm.[5] Attorney Brunsell continued to represent client Redman. Five years later Redman's suit was dismissed; Brunsell had allegedly committed malpractice by failing to bring the suit to trial within the requisite time. The California Court of Appeal imposed liability on the departed lawyer Walters. This will be referred to as the *Redman* principle. The court rigorously reasoned as follows:

a. The court based its reasoning on state partnership law. Although Walters' departure caused the dissolution of the MacDonald, Brunsell & Walters law firm, it did not terminate the firm's existence. The firm remained in existence to complete its contractual obligations. Final termination would only occur when the firm had completed this winding up.[6]

b. The court observed that MacDonald, Brunsell & Walters was committed to complete the unfinished business related to the Redman case. This commitment was a firm liability.[7]

c. Since " 'MacDonald, Brunsell & Walters' continued as a partnership and Walters as a partner," it followed that Walters' "liability in such a case [would] not be terminated except by performance of the agreement creating the liability" or by an explicit discharge from such liability by Redman.[8]

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its unfinished obligations. "The dissolution of a partnership will not relieve an individual partner of a duty under a contract entered into before the partnership was dissolved." *Id.* at 725.

c. Each partner of the dissolved firm remains liable for the negligent acts of his partners. "[T]he fact that Daniels' withdrawal from Adler-Barish two years prior to the purported negligent act is of little moment to whether or not Daniels can be held liable for the malpractice of his former partners." *Id.* *See also* Blackmon v. Hale, 1 Cal. 3d 548, 463 P.2d 418, 83 Cal. Rptr. 194 (1970).

Not all cases follow the *Redman* principle. *E.g.*, Gibson v. Talley, 156 Ga. App. 593, 275 S.E.2d 154 (1980); Collins v. Levine, 156 Ga. App. 502, 274 S.E.2d 841 (1980). Both these Georgia cases, however, might have depended on a peculiar wrinkle in the Georgia partnership law as discussed in Ribstein, Smith, & Carssow, *The Uniform Partnership Act as Adopted in Georgia*, 21 GA. ST. B.J. 56 (1984); Ribstein, *An Analysis of Georgia's New Partnership Law*, 36 MERCER L. REV. 443 (1985). *But see* Burnside v. McCrary, 384 So. 2d 1292 (Fla. Dist. Ct. App. 1980).

5. Redman v. Walters, 80 Cal. App. 3d 448, 451, 152 Cal. Rptr. 42, 43 (1979). Moreover, he never had a "communication of any nature from . . . [nor] participated in nor received any compensation whatsoever for any services purportedly rendered on behalf of Fred Redman." *Id.*

6. *Id.* at 453, 152 Cal. Rptr. at 45.

7. *Id.*

8. *Id.*

The *Redman* court's assumption in this line of logic was that the law firm's commitment to a client is a "liability" which dissolution does not, *ipso facto*, discharge. This assumption is not self-evident. Obviously, this unfinished business is different in important respects from a typical financial liability. A debt only requires a money payment; a law firm's unfinished commitment requires the rendering of professional services. The financial creditor may be primarily concerned with the financial solvency of the partners, while the law firm's client will be more directly concerned with the partners' professional capabilities. Finally, most financial liabilities can be wound up in a reasonably short period of time; the unfinished business of a contingent fee lawsuit can take years.

Regardless, once the *Redman* court deemed the client-law firm agreement as a liability, the court believed that a logical application of partnership law in the situation required that the departed partner could not be released from liability without an explicit client discharge. In lieu of this discharge each partner of the dissolved firm remained jointly and severally liable for his colleagues' malpractice.

IV. BAD LAW

In light of this authority, it is surprising that most lawyers, and at least one prominent commentator, Professor Geoffrey Hazard, Jr., believe that the departed lawyer has no financial liability for post-departure malpractice. At most, they assert, the departed lawyer owes the client the continuing obligations of confidentiality and limited loyalty.[9] As Hazard has written: "In the absence of any indications to the contrary, an exiting lawyer can assume the need to be concerned only for his or her clients, that is, assume that the remaining lawyers will take care of the clients they served."[10] Hazard's confident assumptions reflect sound policy; judicial application of the *Redman* principle is poor policy, is unfair and is not consistent, in most circumstances, with client expectations.

A. Policy Considerations

It is a principle of vicarious liability, inherent in partnership law, that the law firm and each partner may be jointly and severally liable for the malpractice of each firm lawyer. This principle encourages partners to monitor and, where appropriate, control the professional behavior of their colleagues. This is an important aspect of law firm

9. *See* Hazard, *Ethical Considerations in Withdrawal, Expulsion and Retirement*, in SECTION OF ECONOMICS OF LAW PRACTICE, AM. BAR ASS'N, WITHDRAWAL, RETIREMENT AND DISPUTES: WHAT YOU AND YOUR FIRM NEED TO KNOW, 32, 37 (1986).
10. *Id.* at 35.

cooperation. Not only will partner to partner assistance not be perceived as unwarranted interference with the lawyer providing the services, but also the sharing of information among firm lawyers will not be a violation of client confidentiality. The Code of Professional Responsibility and the Model Rules of Professional Conduct reflect these collegial and cooperative premises.

The *Redman* principle applies this concept of vicarious liability to the departed lawyer during the winding up period. This application does not serve the goal of effective monitoring. First, the departed lawyer will not be able to control the servicing lawyer. In providing professional services to a client, the servicing lawyer must remain independent from outside influences. Any effort by the departed lawyer to control the professional service of her ex-colleague(s), which the *Redman* principle encourages, would constitute unwarranted interference with the servicing lawyer's independence. Second, the departed lawyer will not be able to monitor the servicing lawyer's activities. Information relating to the servicing lawyer's client will be confidential vis-a-vis anyone, including a lawyer, who is not a firm member at that time. The departed lawyer will, therefore, not be able to discover sufficient facts to make a judgment about whether the servicing lawyer is providing competent service. The *Redman* principle unwisely encourages the departed lawyer to be an unprofessional snoop.

Another important aspect of vicarious liability is that it encourages each partner to choose her colleagues with care. If all firm members may be liable for each other's malpractice, it behooves them to choose their colleagues carefully. Among other things, this provides an endorsement to future clients that the firm, and all its members, are competent. Arguably, the *Redman* principle achieves the same end. If a lawyer knows that she may be vicariously liable for her colleagues' malpractice both when they are in practice together and after she departs, she will have an additional reason for initially choosing her colleagues with particular care.

This argument, however, is strained. First, the *Redman* principle only adds marginally to the liability risk and is therefore unlikely to encourage additional caution in initial choice situations. Second, the principle may actually discourage appropriate disclaimers (*e.g.*, the opposite of an endorsement) of lawyer competence. A competent partner may believe that her colleagues are no longer able practitioners. In an effort to minimize her liability, she may wish to depart the firm. Her departure might serve as a public suggestion of their incompetence.

If the *Redman* principle applies, however, she will remain liable for the unfinished business of the dissolved firm. Since, as a departed partner, she will not be able to monitor her ex-colleagues, she may be reluctant to withdraw and to leave her colleagues to their own incompetent devices. In these circumstances, there would be no helpful warning, and future clients might be jeopardized.

B. Fairness

A law firms may, of course, profit from its agent's activities. It therefore seems appropriate that the firm, in the first instance, should bear the costs of its agent's negligence committed in the scope of the agent's employment. This is the enterprise theory of vicarious liability. It satisfies a rough concept of justice. The firm that stands to gain by the activity will bear the cost of the activity.

This principle does not work well for partners in a dissolved, but not terminated, law firm.[11] The departed lawyer remains a member of the dissolved firm for the purpose of winding up the firm's unfinished business. The firm's unfinished business is an asset of the dissolved firm, and the lawyer who winds up the business, for example, the servicing lawyer, is not entitled to any special remuneration for his work.[12] If the departed lawyer were a twenty percent partner of the firm while with the firm, she would be entitled to a twenty percent share of any fee generated by the unfinished business.[13] Since, therefore, the departed partner may gain from the completion of unfinished work, it is arguably fair, as the *Redman* principle maintains, to hold her, as a member of the dissolved firm, liable for the post-departure malpractice of its agents (her ex-colleagues).

The usual facts of law firm dissolutions undermine this analysis. In most law firm dissolutions, the firm members will agree who will wind up, that is, service, which client's cases. They will often explic-

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11. This enterprise theory may not even work well in an existing law partnership arrangement. In the law firm situation, for example, the partners will probably have agreed to a disproportionate profit division. For example, the law firm may give one of two partners a 20% interest in all profits generated by the firm. His liability for a colleague's malpractice (after the firm's assets are reached and the plaintiff determines to sue him) may ultimately be for 100% of the damages. If this were the case, there would be little parity between profits and potential losses, and the basic principle that the person who stands to gain ought to bear the loss would be undermined.
12. R. HILLMAN, LAW FIRM BREAKUPS, 78 n.2; Comment, *Barefoot Shoemakers: An Uncompromising Approach to Policing the Morals of the Marketplace When Law Firms Split Up*, 19 ARIZ. ST. L.J. 509 (1987); Comment, *Winding Up Dissolved Law Partnerships: The No-Compensation Rule and Client Choice*, 73 CALIF. L. REV. 1597 (1985).
13. This is, concededly, a controversial application of partnership law to law firms. For the purposes of this Comment, however, it will be accepted. Since it applies to clients the departing lawyer takes with her, it discourages the grabbing of clients. Moreover, it encourages the trusting assignment of work within the firm and discourages partners positioning themselves to take clients with them in the event the firm dissolves.

itly agree among themselves that the lawyer who does service the client will be entitled to the fee generated by the unfinished business. Although no lawyer may force himself on a client, these intralawyer decisions as to fee allocation may be made without client participation.

Clients who remain with the law firm, either after deliberate decision or by inertia, will continue their original fee arrangement with the firm; they will probably be unaware of the fact that the departed lawyer will often get zero percent rather than twenty percent of the fee (pursuant to an intra-lawyer agreement which will give the departed lawyer one hundred percent of the fees on client cases which she took with her). The end result is that there will usually be no match between the departed lawyer's expected gain from unfinished business (zero percent) and her potential *Redman* liability on this unfinished business (one hundred percent).

Of course, one answer to this concern is to claim that the departed lawyer, if she were held one hundred percent liable for the malpractice of her former colleagues, should have some form of indemnification against the servicing lawyers who committed the malpractice. Principles of partnership law as well as general equity principles support this claim.[14]

There are, however, several reasons to suspect that the departed lawyer would be denied this reimbursement. Although nonclients are frequently permitted to sue lawyers for negligence, courts may be reluctant to permit these suits if the servicing lawyer's loyalty to his client will be jeopardized. This could be the situation if the departed lawyer were permitted indemnification. If the departed lawyer's ex-colleagues could be held liable to the departed lawyer for malpractice committed while servicing a client, the servicing lawyer might compromise his duty to his client for fear of his own liability to a nonclient (*i.e.*, the departed lawyer).[15]

Second, the courts are often reluctant to permit lawyers to sue each other. The public should have confidence in the legal system and its professional participants. Without this confidence, persons might try and resolve disputes in other less desirable ways. Litigation among

14. The UPA supports this notion. It states that if a lawyer is required to pay more than his proportionate contribution, he has the right to contributions from the remaining partners. This seems fair in that not only were the remaining partners at fault, but they, under this described scenario, stood to gain.

15. This is not to suggest that nonclients will never be able to sue a lawyer for his negligence. The courts have breached the citadel of privity in the legal profession as well as in other domains. The courts, however, have expressed some reluctance to permit lawyers to sue each other. Apparently, the nonclient-lawyer is not only a less sympathetic figure, but she is also a potentially more litigious activist. This potential activism may unduly influence the servicing lawyer's duty to client.

lawyers could easily inhibit this public confidence.[16]

C. Client Expectations

The *Redman* principle does not support normal client expectations. Clients, of course, expect different things from different firms. This Comment, however, suggests that the usual client expectations include two elements. The client expects that the lawyers assigned to his case, for example, the servicing lawyers, will provide the appropriate legal services. This is a commonly accepted obligation. The client also expects that the firm's partners will manage the firm's personnel in order to advance his and other clients' interests. In order to do this, the firm must make work assignments carefully among all relevant firm members.

Commentators rarely focus on this management obligation, but it is inherent in the fact that it is a firm, rather than an individual lawyer, which provides the legal services. It is inconceivable that clients could expect anything else. They are aware that lawyers are frequently busy; that they charge at variable rates; that sometimes work can be done more efficiently by a different status lawyer; that law has become more specialized; and that particular jobs can be more fruitfully examined by particular specialist. It is this coordinated cooperation which supports the principle that lawyers are presumptively authorized to share confidences with firm colleagues.

The Model Rules of Professional Conduct most clearly reflect this emphasis on the firm's management function. Rule 5.1 is entitled "Responsibilities of a Partner or Supervisory Lawyer," and it clearly mandates that a firm shall be responsible for assuring that all its members conform to the rules. In other words, the firm must manage its personnel in such a way that each servicing lawyer acts competently, diligently, and in accord with the rules of ethics. Civil lability also reflects this management obligation, and courts have held supervisory lawyers responsible for the negligence of their subordinates.

In sum, the client normally does not expect any particular lawyer to provide his legal services. He expects the firm to assign appropriate lawyers to do the work. Although he may anticipate that the firm will financially stand behind its members' professional work, it is unlikely that the client would expect a departed lawyer to guarantee his excolleagues professional work. Judicial application of the *Redman* principle is a windfall to the normal client. Of course, in some circumstances, the client has the legitimate right to expect that the firm will manage his case in a particular way. This may be made clear in an agreement. The client may insist that a particular senior partner liti-

16. R. MALLEN & V. LEVITT, LEGAL MALPRACTICE, 392 (1977); Comment, *Liability Among Attorneys in Legal Malpractice Actions*, 34 S.C.L. REV. 733 (1983).

gate his case or that a certain level of associate write his brief. This understanding may also be implicit. For example, if client A retained a particular law firm because lawyer X was its chief litigator, and if the client communicated directly with lawyer X about his case, then a court could find that there was an implicit agreement that the firm must assign Lawyer X to client A's case. It is only in these second scenario circumstances that the *Redman* principle makes sense.

V. SOLUTION

The *Redman* principle holds that the firm's unfinished business is a firm liability. As such, the court held that the departed partner could only be released from liability if the client knew of the firm dissolution and discharged the lawyer. In *Redman* the court held that the client did not have knowledge of the departure and dissolution, that there had been no discharge, and that, therefore, the departed lawyer remained liable.

Professor Hillman, one of the leading commentators on this issue, has interpreted *Redman* to mean that in all circumstances the firm must give notice of the departure of *any* partner to *all* the firm's clients if the client is to have the opportunity to discharge the departed lawyer from this liability. He enthusiastically seizes this principle as an opportunity to encourage lawyers to communicate with clients during dissolution. He believes that notice helps clients, and he is critical of those courts which perceive client notification in these circumstances as an unwarranted solicitation of business or the inappropriate first step in the misappropriation of a firm asset.[17] Hillman states that the notice requirement forces the client to make an "informed, unequivocal" choice with respect to who—the departed lawyer, the firm, or a different lawyer—will represent him in the future. This choice would convert "cases from the status of winding-up business to that of new business."[18] He argues that this result would not only release the departed lawyer from any liability, but would also assure that future income would be allocated to the client's "new" lawyer.[19]

Although Professor Hillman's conclusion makes sense in those instances in which the client expected the particular departed partner to represent him or to attend to an aspect of his case, as in the second scenario referred to in Part II, Professor Hillman recognizes that to give *all* clients notice of *each* partner's departure would, in the case of a large law firm, be an "expensive and excessive response to the threat

17. The court in Vollgraff v. Block, 117 Misc. 2d 489, 458 N.Y.S.2d 437 (N.Y. Sup. Ct. 1982), required that, at the very least, lawyers must notify clients of firm dissolutions. Professor Hillman called the opinion enlightened. R. HILLMAN, *supra* note 12, at 108 n.34.

18. *Id.* at 107.

19. *Id.* at 106-10.

of vicarious winding-up liability."[20] This is certainly true when the client has no expectations whatsoever with respect to the particular departed lawyer, as in the first scenario in Part II.

This Comment suggests that since the client expects the firm to manage its personnel in all the clients' best interests, courts should hold, in first scenario situations, that the client has presumptively authorized firm partners to discharge departed lawyers from any continuing civil liability for her ex-colleagues' post-departure malpractice.[21] Unless there is some indication otherwise, any intralawyer understanding with respect to the dissolution should, *ipso facto*, act as such a discharge.[22]

The departure of a partner is tantamount to a personnel adjustment. The firm lawyers who remain to service the client routinely manage the firm's personnel for all the clients' best interests. The goal is coordinated cooperation. Judicial application of the *Redman* principle encourages the departed lawyer to monitor and to attempt to regulate the servicing lawyer's practice; this might result, at best, in uncoordinated cooperation, and, at worst, unprofessional interference. In order to avoid these problems, the courts should presume that the servicing lawyers are authorized to discharge, and in fact, do routinely discharge the departed lawyer from *Redman* type liability.

The *Redman* court wrote that "[h]ere, the unilateral decision of the partnership to dissolve, and continue the representation of Redman by two of its members, was patently not within the authority granted it by Redman."[23] This statement misconceives the client-law firm agreement. Its focus is myopically on the firm's agreement to provide legal services, and therefore, dissolution is irrelevant to this agreement. If, as is suggested here, the courts would recognize the management obligation as an important element of the agreement, then the firm would have presumptive authority to manage reassignments, departures, and even hirings as appropriate firm activities.

It is, of course, arguable that even if the remaining lawyers have the authority to discharge the departed lawyer, they should not do so unless they determine that it is in each individual client's best interest. It would be impossible, however, to meet this standard. Each client

20. *Id.* at 109 n.36.
21. Of course, the presumption would not apply in second scenario situations. In those cases, the client and the firm have either explicitly or implicitly agreed that a particular lawyer(s) will attend to the case. In those circumstances, the firm would not be authorized to discharge that lawyer from liability without an express discharge by the client.
22. However, one commentator has suggested that "[n]o coherent theory seems likely to explain the results of all cases that have raised the question of the scope of a lawyer's authority to act for a client. C. WOLFRAM, MODERN LEGAL ETHICS, 150 (1986).
23. Redman v. Walters, 88 Cal. App. 3d 448, 454, 152 Cal. Rptr. 42, 45 (1979).

would, of course, want as many persons as possible liable for any malpractice. The presumed authorization must be for the firm to manage its personnel in all its clients' best interests. Of course, each client would want the best lawyer working on his case, but no one seriously argues that the firm cannot make reasonable assignments to serve all clients' interests. The case of the departed lawyer is analogous. It is tantamount to a personnel decision, and therefore, if there has been an intralawyer agreement as to what is best for the firm and the clients in the aggregate, this should discharge the departed lawyer from liability with respect to any particular client.

Of course, this presumptive authority may be exercised negligently. In such cases, all firm partners at the time of the negligence should be vicariously liable for the resultant damages. The most obvious instance of such malpractice is firm abandonment of the client. In *Vollgraff v. Block*,[24] the client retained the law firm of Hull, Block and Grundfast. Grundfast withdrew and the firm dissolved. The client subsequently brought a malpractice action, alleging that the complaint had not been filed in a timely manner. No one in the firm had given the client notice that the firm was dissolving, and no lawyer continued to represent the client. In other words, the firm, and all its members, simply abandoned the client. Under these circumstances, the New York Supreme Court held each partner, including Grundfast, liable for the resultant damages.

Most commentators have focused on the court's language suggesting that it was the firm's failure to give notice to the client that was the gravamen of the case. One commentator criticized the court for suggesting that "a law partnership can terminate its fiduciary obligation to clients by notifying them of the partnership's dissolution."[25]. Professor Hillman, on the other hand, stated that the opinion was enlightened.[26] Both commentators, however, unduly focused on the issue of notice. A better interpretation of the court's opinion is the simple one that the firm managed its personnel negligently. The firm's failure to notify the client of the dissolution was only one aspect of this negligence. The court's last paragraph states:

> In the case at bar, there is no indication that plaintiffs were notified of the partnership's dissolution and that the dissolved partnership could no longer represent plaintiffs in their personal injury action. *Nor is there any proof of retainer between plaintiffs and a former member of the firm.* Under these circumstances, the Court holds that mere dissolution of the defendants's law partnership was ineffective to terminate the partners' obligations as attorneys

24. 117 Misc. 2d 489, 458 N.Y.S.2d 437 (N.Y. Sup. Ct. 1982).

25. Comment, *Dissolution of a Law Partnership: Effect on Representation of the Firm's Clients*, 9 J. LEGAL PROF. 189, 191 (1984).

26. R. HILLMAN, *supra* note 12, at 108 n.34.

toward partnership clients.[27]

This Comment suggests that the key to the case was the firm's failure to meet its management obligation. *If* client Vollgraff did not legitimately expect that Grundfast would attend to his case, and *if* the remaining, servicing lawyer had competently continued to represent him, *then* there would have been no breach of the firm's management obligation, and the court should have found Grundfast discharged from any post-departure liability.

The right of an attorney to withdraw from a case presents an helpful parallel. The Model Rules and the Code of Professional Responsibility suggest that a lawyer must withdraw from representation if she cannot cooperate with her co-counsel.[28] This is an analogous situation to the departure of a firm's partner. Both Codes, however, insist that the terminating lawyer "take steps to the extent reasonably practicable to protect a client's interests"[29] or takes "reasonable steps to avoid foreseeable prejudice to the rights of his client."[30] What is of importance here is the emphasis on reasonableness and the suggestion, made explicit in the Model Rules, that giving reasonable notice to the client is merely one way, but not an absolutely necessary way, of assuring that the client's interests will be protected.

VI. SUMMARY

This Comment has focused on an obscure area of law. It has examined the implications of the *Redman* case. It has suggested that the unduly rigorous application of partnership law resulted in bad law. It has endorsed Professor Hillman's suggestion that when a client retains a firm with either an explicit or implicit expectation that a particular lawyer will attend to his interests, then that lawyer should remain liable for post-departure malpractice unless the client is notified of her departure and discharges her from any continuing responsibility. It is, however, unnecessary and impracticable for a law firm to notify *all* clients of *each* lawyer's departure merely to assure that the departed lawyer will not be responsible for her ex-colleagues' post-departure negligence. This Comment has suggested that since the client-law firm retainer agreement implicitly incorporates a firm's obligation to manage its personnel, the agreement presumptively authorizes the firm's lawyers to discharge departed lawyers in the routine first scenario situations. Any intrafirm agreement with respect to the dissolution which considers the firm's and all its clients' best interests should, *ipso facto*, act as such a discharge.

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27. Vollgraff v. Block, 117 Misc. 2d 489, 493, 458 N.Y.S.2d 437, 440 (1990)(emphasis added).
28. MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 2-110(C)(3)(1969).
29. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.16(d)(1983).
30. MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 2-110(A)(2)(1969).