

Model Partnership Agreements

For New York Law Firms

Peter A. Giuliani

New York State Bar Association Continuing Legal Education publications are intended to provide current and accurate information to help attorneys maintain their professional competence. Publications are distributed with the understanding that NYSBA does not render any legal, accounting or other professional service. Attorneys using publications or orally conveyed information in dealing with a specific client's or their own legal matters should also research original sources of authority.

We consider the publication of any NYSBA practice book as the beginning of a dialogue with our readers. Periodic updates to this book will give us the opportunity to incorporate your suggestions regarding additions or corrections. Please send your comments to: CLE Publications Director, New York State Bar Association, One Elk Street, Albany, NY 12207.

Copyright: 2008
by
New York State Bar Association
All rights reserved
ISBN: 1-57969-249-4
Product Number: 41358

PREFACE

Peter Giuliani has served as an advisor to lawyers, law firms and the legal profession for more than three decades. He was one of the authors of a groundbreaking series on law firm financial management for the American Bar Association Law Practice Management Section. Over the years, he has spoken and written on a variety of topics related to law practice management, and has served on a variety of committees at both the national and state levels. For the past several years, he has served actively on the New York State Bar Association Law Practice Management Committee.

When the Committee was asked by State Bar leaders to revise its publication, *Model Partnership Agreements for New York Law Firms*, Mr. Giuliani was a natural choice, and he quickly agreed to take on the project. Relying on his vast experience, he took what was useful from the earlier publication and added new elements reflecting trends in law firm organization today. He has produced an easy-to-use model agreement, with alternative clauses reflecting the different choices that different firms make, along with easy-to-understand text accompanying the model agreement and clauses.

A number of other resources exist for lawyers and law firms desirous of creating a partnership to govern their law practice. Some of these are comprehensive treatise-length publications, while others—like this guide—are simpler and more straightforward. The difference between these other guides and Peter Giuliani’s *Model Partnership Agreements* is that this book was created with New York law practice in mind, while the other publications are national in focus. This is not a criticism of these other works, but rather a testament to Peter Giuliani’s effort to create model agreements for New York lawyers operating under New York law.

The author points out the fact that many law firms do not have a formal written partnership agreement. The lawyers either operate under an informal “handshake” agreement or work in an office-sharing arrangement that looks like a law firm to the outside world, but operates like a series of independent practices internally. Although informal partnerships are contemplated under the Uniform Partnership Act, the absence of a written agreement can, and often does, lead to disputes among the partners, and consequent litigation. For office-sharing arrangements, the specter of an implied partnership being imposed by a court in a malpractice action suggests that the need for lawyers occupying a common office—a building or a suite—might be better off recognizing the reality of their practice

situation, and then creating a formal agreement that defines the rights and obligation to the organization.

Although lawyers can choose among several different organizational forms, the truth is that the choice of form affects the allocation of risk among the partners, capitalization, compensation, governance, and the steps associated with dissolving a practice, as well as other matters. Different organizations will require different solutions. Mr. Giuliani's book provides explanations for the options that attorneys may choose among, and specific language that they can use to create a business entity that will work for their needs, both as individual partners and as an organization.

For ease of use and reference by the user—this book is divided into three parts:

- Part I is the Model Partnership Agreement Guide, Mr. Giuliani's narrative that details the issues covered in the actual agreement.
- Part II is the sample Model Partnership Agreement itself that attorneys can use to create agreements for their own firms.
- Part III contains corresponding portions of the Guide from Part I on left-hand pages next to the related pages of the agreement on right-hand pages.

For every lawyer who has wondered whether it makes sense to establish a partnership or other business form, here is the book for you. For every law practice with no formal structure, this book will help you decide whether and how to formalize your relationship. For every solo practitioner contemplating the benefits and risks of group practice, this book is must reading. The Law Practice Management Committee commends Peter Giuliani for his excellent work in creating an accessible and accurate tool for practitioners in New York State.

Gary A. Munneke, Chair
New York State Bar Association
Law Practice Management Committee

CONTENTS

Part I

Model Partnership Agreement—Guide	1
I. Introduction	3
II. Why Do You Need a Partnership Agreement?	3
III. Classes of Partner	4
IV. Governance, Compensation and Retirement	6
V. Model Partnership Agreement Structure	6
VI. General Provisions	8
A. Firm Name	8
B. Purpose	8
C. Continuation	9
D. Office Location(s)	9
E. Partnership Accounts	9
F. Governance and Management	10
G. Voting Provisions	11
VII. Admission of New Partners	11
A. Classes of Partner	11
B. Partnership Elections	12
VIII. Capital	12
A. Capital Contributions / Assessments	12
B. Return of Capital	13
IX. Income Allocation and Distribution	14
A. General Provisions	14
B. Setting Partner Compensation	14
X. Termination or Interruption of Interest	15
A. General Comments on Termination of Partnership Interests ...	15
B. Death / Disability Provisions	15
C. Retirement	16
D. Withdrawal	18
E. Involuntary Withdrawal	18
F. Expulsion for Cause	19
G. Inactive Status	20
XI. Limitations on Payments to Former Partners	20
A. Contingency Fees	20
B. Equity Fees	21

XII. Duties of Partners	21
A. Active Partners	21
B. Inactive Partners	22
C. Former Partners	22
XIII. Dissolution, Termination and Liquidation	22
XIV. Consolidation or Combination with Other Firms	23
XV. Indemnification	23
XVI. Miscellaneous	24
XVII. Final Thoughts	24

Part II

Model Partnership Agreement	25
-----------------------------------	----

Section Subject

1. Recitals	27
2. General Provisions	27
3. Admission of New Partners	30
4. Capital of the Partnership	32
5. Partnership Income Allocation and Distribution	34
6. Termination of Partnership Interest by Reason of Death	36
7. Termination of Partnership Interest by Reason of Disability	36
8. Termination of Partnership Interest by Retirement	37
9. Termination of Partnership Interest by Withdrawal	39
10. Termination of Partnership Interest by Expulsion for Cause	41
11. Interruption of Partnership Status	43
12. Limitations on Payments to Former / Inactive Partners	44
13. Duties of Partners	46
14. Dissolution, Termination and Liquidation of Partnership	48
15. Consolidation or Combination with Other Firms	50
16. Indemnified Acts or Omissions	51
17. Miscellaneous	52

Part III

Model Partnership Agreement with Guide	55
--	----

PETER A. GIULIANI

Peter Giuliani is a partner in the firm of Smock Sterling Strategic Management Consultants and works out of the firm's Weston, CT office. Smock Sterling is a nationally recognized leader in providing strategy consulting services to law firms and other commercial enterprises.

Prior to joining Smock Sterling, he was the Executive Director of Cummings & Lockwood, a law firm headquartered in Stamford, CT. Peter is a frequent speaker at seminars and conferences sponsored by the New York State Bar Association and other regional Bar Associations. He also has written extensively on law firm management topics for the New York State Bar Association *Journal*, *The American Lawyer Magazine*, *The National Law Journal*, the *New York Law Journal*, the *Journal of the American Bar Association*, the *Connecticut Law Tribune*, and many other law-related periodicals. Among his publications are two ABA monographs on subjects relating to law-firm financial management.

For nearly 30 years prior to "going in-house," Peter was a management consultant who specialized in serving law firms, corporate law departments and other professional-service firms. He has completed consulting assignments for 750-lawyer firms, mid-sized and small firms, and solo practitioners. His clients have included plaintiff-oriented practices, as well as more traditional general practice firms. He has also served as an expert witness in several cases involving law-firm valuation, "goodwill" issues, lawyer compensation and earning power.

Peter is a Fellow of the College of Law Practice Management, a past Chairman of the Practice Management Section of the Stamford/Norwalk Regional Bar, and a member of the New York State Bar Association Committee on Law Practice Management. He is a CPA and Certified Management Consultant.