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As seen in the Case Notes Commercial Litigation section of the
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The recent Superior Court decision in *Ignelzi v. Ogg, Cordes, Murphy & Ignelzi, LLP*, 2013 Pa.Super. 268 (2013), highlights the importance of ensuring that all partnerships clearly set forth the terms of the partnership agreement, including clearly defining the rights and obligations of its members in the event of a dissolution. Plaintiff, Philip A. Ignelzi ("Ignelzi") was a partner of Defendant law firm partnership Ogg, Cordes, Murphy and Ignelizi ("OCMI") until its dissolution on December 31, 2009. At that time, Ignelzi became a sitting judge on the Allegheny County Court of Common Pleas. Ignelzi and his former partners were unable to agree as to the valuation and distribution of OCMI's assets, and accordingly, Ignelzi brought suit alleging, *inter alia*, breach of contract, breach of fiduciary duty, unjust enrichment, conversion, demand for an accounting, and breach of the Uniform Partnership Act, 15 Pa.C.S.A. §8301 *et seq*. ("UPA"). Even though there was no written partnership agreement, Ignelzi alleged that there was an agreement that a departing partner would be entitled to an amount equal to his total interest in the firm, and that a long-standing course of conduct at the firm entitled him to a 25% share in the proceeds of all active cases pending at OCMI at the time of his departure.

The appeal was taken by the Defendants from the lower court's order issued in response to Ignelzi's Petition pursuant to §8332 of the UPA, wherein Ignelzi requested a right of access to the books and records of OCMI in order to support his claim that he was entitled to a proportionate share of any contingent fee cases that were pending at OCMI at the time of his departure. The lower court granted Ignelzi's petition to the extent it sought an inspection of OCMI's books. The lower court further stated that, unless there was an agreement to the contrary, contingent fee cases that were pending at OCMI at the time of dissolution were to be taken into account in determining the distribution. Accordingly, the lower court also held that unless the partners had agreed otherwise, the former partners of OCMI would be required to account for all contingent fee cases that were pending at OCMI upon dissolution.
On appeal from the aforementioned order, the issue was whether Ignelzi was entitled to a share of contingent fees earned subsequent to OCMI's dissolution. First, the Superior Court noted that while the appeal was pending, an *en banc* panel of the Superior Court issued its opinion in *Huber v. Etkin*, 58 A.3d 772 (Pa. Super. 2012). In *Huber*, the Court recognized that where there is no partnership agreement or where the agreement is silent on the issue, a partnership dissolution is controlled by the provision of the UPA at §8352, which provides that a partnership does not terminate upon dissolution but continues until the affairs of the business are wound up. *Huber* held that the contingency fee cases that were brought into the partnership were partnership assets, and therefore, it did not matter whether the contingency fees were realized at the time of the dissolution, since the partnership business had yet to wind up.

However, the Court in *Ignelizi* held that *Huber* did not control the situation at bar, because, in contrast to *Huber*, Ignelzi had alleged the existence of an agreement that governed post-dissolution contingent fees. If this was correct, the Court held, the terms of this agreement would be controlling. However, the

Court further noted that the existence and scope of any such agreement had not yet been litigated in the lower court. Therefore, the Court held, this issue should have been litigated in the lower court prior to the issuance of an order compelling an accounting.

Moreover, the Court in *Ignelzi* also noted that it was distinguishable from *Huber* since in*Huber*, the former law partners continued to practice law. In contrast, Ignelzi did not continue to practice law insofar has he had become a trial court judge. See Code of Judicial Conduct Canon 5(F), which provides that "Judges should not practice law". Therefore, the Court found that Ignelzi was "no longer a licensed, practicing attorney", which was significant in that Pennsylvania Rule of Professional Conduct 5.4(a) prohibits the sharing of legal fees with a "nonlawyer". On this point, the Court further took note of an opinion of the Ethics Committee of the Pennsylvania Conference of State Trial judges, which stated that a judge may receive a commission from the judge's former law firm for generating a contingent fee matter prior to joining the bench, provided that the agreement was entered into before there was any consideration of becoming a judge. However, the Court held that it was presently unable to assess the import of Rule 5.4 and "the attendant ethical considerations" because the lower court record was underdeveloped.
Accordingly, the Court affirmed the portion of the lower court order which granted Ignelzi's petition for an inspection of OCMI's books pursuant to UPA at §8332, insofar as such a right is provided for by statute. However, the Court held that the trial court erred in ordering an accounting of OCMI's contingent fee cases prior to litigation of underlying issues involving the terms of any pre-existing partnership agreement, and vacated that portion of the trial court order.

In sum, the foregoing opinion should demonstrate to all practitioners and law firms the importance of ensuring that any partnership agreement clearly sets forth the rights and obligations of its members, including any provisions for partnership dissolution and/or withdrawal of a member. This may be particularly important for law firms where the monetary value of the partnership assets at the time of dissolution, e.g. contingent fee cases, might not be clearly definable at the time of dissolution. Finally, this opinion raises the question of whether it is consistent with the practical realities of forcing a lawyer, who ascends to the bench, to forfeit the possibly substantial contingent fees to which he/she may otherwise have been entitled.