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1) General Partnership (GP)

A General partnership is formed when two or more people decide to engage in or form a business for profit, and split the profits equally. When a GP is formed, each partner has unlimited personal liability and is liable for other contracts entered into by other partners, unless they have an agreement, in writing, stating otherwise.

Here, a general partnership was formed with Andrew (A), Bob (B), and Christine (C) formed a law firm. This is the type of entity they formed to conduct their business because they filed no documents with the Secretary of State or any other state office. They equally share the firm's profits after paying all expenses and make all business and management decisions equally.

Therefore, a partnership was formed.

Professional Corporation

A professional corporation is a corporation formed by professionals, including attorneys and doctors.

Here, A, B, and C could argue they formed a professional corporation, but the court will not likely find there was a professional corporation because there were no articles of incorporation signed.

Therefore, there was no professional corporation.

2) Constituents of the Organization - Employees

A Shareholder (SH) is an individual who owns a share of the company. A SH may be a majority or minority SH, so long as they own a share of the company, then they are Shareholders. A SH may file derivative suits on behalf of the corporation against the Board of Directors or direct suits against the corporation itself.

Employees are individuals who have been hired by the company/organization, to carry out the business on behalf of the corporation. Employees are usually hired for a fixed salary, subject to increase based on the company's policies and/or the employees performance.

Partners are those who founded the GP and make business decisions for the GP.

Members are similar to employees, but members, if considered as a board member, have

more powers than an employee does. A member of the board of directors may vote on the partnership/corporations business transactions. Members may also be those who work for the company or have an interest in the company/GP/corporation. The member may or may not be an agent of the organization.

Here, the Associate attorneys are paid a fixed salary, plus 24% of gross billings for any clients they bring to the firm. The associate attorneys are likely considered employees of the law firm because they are paid a fixed salary, and the 24% gross billings for any clients they bring to the firm. There are no indications that the employees own any shares to the firm to qualify as shareholders, nor are there facts to show that the associate attorneys are named as partners or founded the GP.

Therefore, the associate attorneys are likely considered employees of the law firm.

3) Constituents of the Organization - Partners

See Rules above for Employees, shareholders, partners, and members.

Here, the Senior attorneys are likely considered partners. Senior attorneys are paid based upon the number of hours they bill plus an annual bonus if they bill more than 2,000 hours in a year. The senior attorney bonus pool is equal to 5% of the firm profits, which is split equally by the number of qualifying senior attorneys each year. Additionally, the firm's website and business cards for senior attorneys list their title as "partner." A, B, and C also agreed to bestow the title "non-equity partner" on senior attorneys even though senior attorney have no management authority. The senior associates are therefore likely considered partners of the law firm.

It could also be argued that the senior attorneys are shareholders because their bonus pool is equal to 5% of the firm's profits, and split equally. However, the

The senior attorneys could also simply be members of the GP and have the ability to act as agents of the GP/corporation.

4) Agreement between Nancy and Martha

To determine whether the firm is bound by the agreement that Martha signed by Nancy, the court must find that Martha, a senior attorney of the firm, had the authority (actual, apparent, or ratification) to enter into the contract on behalf of the law firm.

For purposes of authority, agents include employees and members, and the principals includes partners and shareholders.

Actual Authority

Actual authority may be express or implied. Actual express authority is authority through words (written or oral) that allows the agent to know and understand that he/she has actual authority to act on behalf of the principal. Implied authority is authority the principal has granted to the agent through conduct that allows a reasonable person in the Agent's position to understand that he/she has the authority to act on behalf of the principal.

Here, the firm's website and business cards for senior attorneys list their title as "partner." Martha is a senior attorney who met Nancy at a social function. Nancy told Martha about her business legal problems. Martha gave Nancy her business card. Martha's business card state that Martha is "partner" and after looking at the card, Nancy asked Martha if as a "partner" she can agree to the firm handling her legal problems at a reduced hourly rate for a promise of future business. Martha was aware that the firm had a strict policy of not reducing hourly rates, but signed a written agreement for it to handle Nancy's legal matters at a reduced hourly rate. It can be inferred that the senior employees are aware of their title as "partner" both from their business card, and the firm's website, and thus believe they have both actual expressed and implied authority to act on behalf of the law firm. If the senior attorneys are considered partners, then they likely do not need consent or actual authority to act on behalf of the GP. However, all partners are liable for all contracts entered into by other partners, and are unilaterally, jointly, and severally liable

If the senior attorneys are merely considered members or employees, they still likely would believe they have the authority to act, both impliedly, and expressly, and would be able to bind the principal.

Therefore, the Martha, as a senior attorney, likely had authority to enter into the contract with Nancy and the firm would be bound by the agreement. However, there likely would be consequences because she was aware of the firm's strict policy of not reducing hourly rates and likely did not authority to enter into the agreement in such a manner. The firm is likely bound by the agreement entered into by Martha.

Apparent Authority

Apparent authority arises when the principal holds itself out to third parties that the agent may act on behalf of the principal and the third party mistakenly believes and relies on the principal that the agent had the authority to to do so.

Here, the firm and its partners (principal) has held itself out to any third parties who visit their website or meet the senior attorneys and get a copy of their business cards, that the senior

attorneys are considered partners of the law firm and likely have the authority to act on behalf of the firm. Martha is a senior attorney who met Nancy at a social function. Nancy told Martha about her business legal problems. Martha gave Nancy her business card. Martha's business card state that Martha is "partner" and after looking at the card, Nancy asked Martha if as a "partner" she can agree to the firm handling her legal problems at a reduced hourly rate for a promise of future business. Martha was aware that the firm had a strict policy of not reducing hourly rates, but signed a written agreement for it to handle Nancy's legal matters at a reduced hourly rate. Martha was fully aware that the firm has held her out to be a partner and that third parties may reasonably rely on that title when entering into business with her.

Under apparent authority, liability depends on whether the principal as been disclosed and identified to the third party. If the principal is identified then the principal and agent are usually liable. If the principal is not identified or undisclosed, then usually only the principal is liable.

Here, it can be implied that the business card identifies the law firm (the principal) and Martha, a senior attorney, and either a partner, member, or employee, is disclosed to Nancy and had authority to enter into the contract on behalf of the the law firm. Therefore, because the law firm is disclosed, the law firm is bound and liable under the agreement.

Therefore, Martha will likely be held to have apparent authority to act on behalf of the GP and the firm is likely bound by the agreement entered into by Martha.

Ratification

Ratification occurs when the agent did not have the authority to act on behalf of the principal and actually performs/acts on behalf of the principal, and the principal ratifies the agent's conduct. Ratification occurs when the principal is aware of the agent's conduct, allows it to occur, and a third party reasonably relied on the agent's authority.

Here, there is a weaker argument as to whether the law firm ratified Martha's actions because she was aware that the firm had a strict policy of not reducing hourly rates, but decided to sign the written agreement for it to handle Nancy's legal matters at a reduced hourly rate, but still entered into the agreement. If the firm ratified Martha's actions, then the firm would be bound and liable for the agreement.

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