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LAW FIRM MANAGEMENT

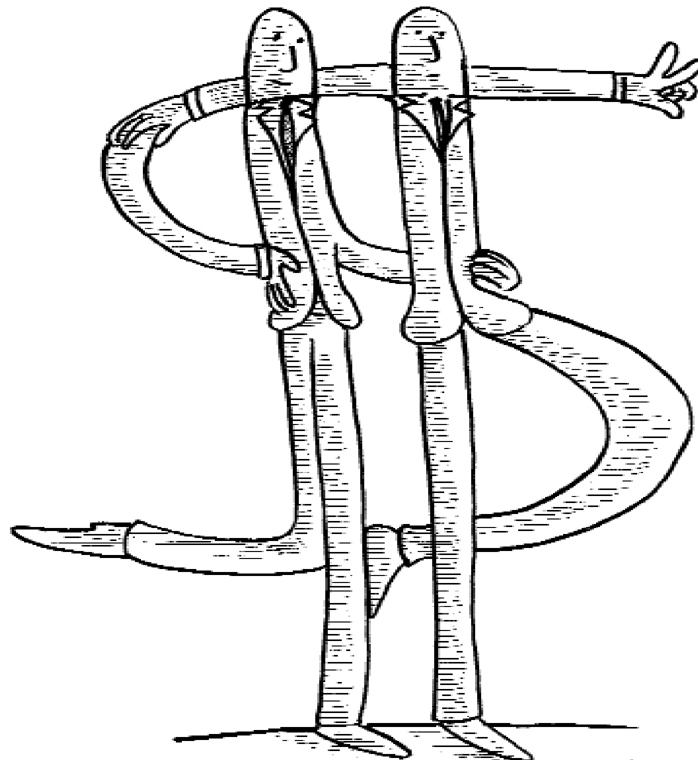
Perfect Union

A partnership cannot survive without a firm foundation that sets terms and goals for everyone and helps to avoid potential problems.

By Dennis McCue

When attorneys decide to practice law together, partnerships are the most common structure they choose. Some of these "partnerships," however, are simply facades for several individual attorneys engaging in their own private practices. Those attorneys never intended to have a true partnership. The attorneys established the partnership merely to share overhead expenses and minimize business risk.

The problem with these, and other kinds of partnerships, is that the parties never defined the terms. And inevitably, a time will come when one or more partners must decide whether the preservation of the firm will take precedence over their differences or whether their personal goals are more important. If the attorneys do not address and resolve these problems in a workable fashion, they can put a partnership in serious danger.



One major source of these problems for law partnerships is the failure to draft a comprehensive partnership agreement. This lack of an agreement will become a significant problem, although at the outset it may seem inconvenient or unnecessary. Unfortunately, by the time these firms recognize their need for help to resolve the issues, that agreement cannot be put into place until the damage has been repaired.

Firms that have comprehensive partnership agreements have given their enterprises the best possible foundation. While an attorney is the appropriate person to draw up the agreement, firms should consider hiring a management consultant before drafting the agreement to address the myriad issues that may arise. These consultants are experts at building, maintaining and growing businesses, and thus also can help the new partnership avoid many potential problems.

The following are important points to consider before constructing a partnership agreement:

■ Ascertain whether you can trust your potential partners. If previous experiences with a potential partner make you doubt his or her trustworthiness, seriously consider keeping that person out of the partnership, regardless of the perceived advantages of including him or her. Similarly, if you find yourself setting up legal entities and agreements to protect yourself from the liabilities of your partners, then you should rethink the whole partnership idea. This is not appropriate behavior for partners.

■ Discuss mutual expectations and what each partner is expected to bring to the partnership.

■ Have a shared vision for the future of the firm. Successful partnerships share more than the simple desire to practice law and make money.

■ Discover whether you have a common philosophy of work and firm management. Without them, the partnership is likely doomed to failure.

■ Make sure everyone involved has the ability and willingness to commit substantial resources — including money, time and effort — to the new enterprise.

■ Decide if a partnership is, indeed, the best business model. Although this is what many attorneys desire, it is sometimes not the best vehicle for business longevity and vitality. Often, a corporation with good profit-sharing arrangements works much better.

■ Designate the person who will act as managing partner, unanimously if possible.

The partners that "pass" these requirements and want to go forward with the partnership should put the following elements into the final agreement:

■ Partnership name. Include a description of the circumstances — such as how, when and why — under which the name may be changed.

■ Contributions of each partner. Describe each partner's work responsibilities, as well as the initial capital and property contribution.

■ Compensation levels. Specify how the firm will determine compensation (if it is to fluctuate according to performance) and any other conditions under which it may change, increase or decrease.

■ The means for resolving partnership problems. Decide what approach shall be used for addressing major and minor disputes, such as a mediator. This, hopefully, will obviate the need for an arbitrator or judge.

■ Authority of each partner. Partnerships work best if each partner has authority in her area of competence, but no partner should have the authority to obligate the partnership to anything.

■ Responsibilities to the firm. Designate who will initially handle partner communications, staff management, bookkeeping, client relations, marketing, rainmaking, purchasing, etc. Also, describe how these designations can be changed.

■ The firm's approach to admitting new partners and the departure of existing partners.

Even partnerships that start out well and under a comprehensive, well-drafted partnership agreement can run into unforeseen problems. In fact, often the profitable firms have underlying, serious partnership problems that are overlooked because of the intoxicating effects of success.

Many partnership problems, however, can be addressed easily and definitively.

Others, such as the ones listed below, can signal more serious underlying issues. If more than two or three of these exist in your firm, they need to be addressed immediately. Left unresolved, they can spell future disaster for even the most profitable firms:

■ Rigidity of attitude or approach, often accompanied by an attitude of self-righteousness.

■ Avoidance, hostility or outright anger directed toward others.

■ Substantial inequity in partner relations or compensation.

■ A long-term, substantial lack of interest or involvement in firm affairs.

■ High-level of resistance to firm policy and procedures.

■ A highly overbearing attitude.

■ Stalling or blocking constructive forward firm momentum.

■ Decisions being made by one partner that bind others without previous agreement or authority.

■ Partners learn about firm matters through the grapevine, by accident or only when a problem arises.

■ A consistent unwillingness to attend partnership meetings or discuss important issues.

■ Unrealistic expectations for work performance of other partners, associates or staff.

■ Compensation issues being discussed repeatedly, with little resolution of the problem.

■ Senior partners asking that other partners or associates do a substantial portion of senior partners' work.

■ Failure to focus on bringing in new clients.

■ Attention inordinately directed to a few large clients.

■ Poor advance planning.

■ Workflow not well coordinated, managed or understood.

■ Senior partners generate less revenue and work product, but feel entitled to significant profits due to tenure, knowledge and experience.

What can be done if these problems exist?

First, senior management must ask that all partners assess their needs and expectations.

Second, senior partners must have all partners — and affected associates, if appropriate — begin to communicate their dissatisfaction to each other. All partners must ultimately discuss these expectations and how they relate to the firms' objectives.

An objective, professional facilitator can be invaluable in helping such a process.

Third, establish and maintain a schedule of regular meetings to address concerns about partner relations, staff management and firm operations. Contributions to the agenda should be solicited in advance. The agenda then should be distributed in advance of the meeting. Keep minutes of the meeting and have them distributed within a day or two. The minutes should summarize what decisions were made, in order to keep the entire partnership aware of each other's commitments. Doing this will keep your firm healthy for years to come.

Dennis McCue is a certified management consultant and the principal of Dynamic Firm Management in Newport Beach, which helps firms address partnership, rainmaking and strategic planning concerns.