The Lawyers Competitive Edge

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IN THIS ISSUE...

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FROM THE EDITOR...

Dr. John W. Olmstead, Jr.

Dear Reader:

This month our articles focus on law firm partnership and business growth and development. We would like to welcome Dennis McCue as a new contributing author. His article, *Why Good Partnerships Go Bad,* discusses some of the inherent problems with adopting the partnership structure as a business model. Joel Rose returns with his article, *Planning For Business Development and Growth*, in which he provides an outline and format for planning for firm development and growth. Other management tidbits are included in the News Releases, Book Notes, and Product Notes sections.

We thank our authors for their contributions. Contributions from outside authors will continue to be the foundation of the journal. While submissions from outside consultants and academia serve a key educational role and are vital to the journal, submissions providing solutions to the day-to-day problems of managing a law practice are also important to our readership. I would like to see more articles, or short solution briefs, from lawyers, administrators, office managers, and other law firm professionals involved in the day-to-day management of law firms. I welcome any suggestions that you may have concerning additional improvements to the journal.

Enjoy the journal.

John W. Olmstead, MBA, Ph.D, CMC

Editor-In-Chief

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Why Good Partnerships Go Bad

Dennis McCue, CMC

Dennis McCue

One of the most common structures for law firms is a business partnership. There are many reasons why, but if you consider that it is probably the most difficult arrangement for doing business, you would think that attorneys—some of whom are the experts in the creation and dissolution of business entities—would avoid them. Yet this is not the case. In fact, some lawyers join and leave partnerships more often than some people buy new cars.

What Is A Partnership?

A partnership is a voluntary relationship between individuals or entities, characterized by cooperation and responsibility and intended to focus on a common goal. It is a contract between competent persons for pooling their money, goods, labor and/or skill with the agreement that profits will be divided between them, and that they will use the partnership entity to conduct business for their mutual benefit.

In the qualitative sense, partnership is characterized by accord, affinity, collaboration, fraternization, support and friendship. Many law firms are known for being viable partnerships that work to represent the interests and skills of each shareholder in the best possible manner. Some firms even evidence that spirit of cooperation that makes a partnership incredible and fun—bringing profit and goodwill to all the participants, including staff and clients. This, obviously, is the ideal firm. However, firms do not usually start out that way, and many never even approach it.

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Why Do So Many Firms Fall Short Of The Ideal?

The short answer, of course, is because there are humans involved. Nevertheless, it might be helpful to consider that the people who become attorneys have a determination that propels them into law school and to do what is necessary to pass the bar exam. This process of education and examination hones their innate drive into a focused, goal-oriented person. This places members of the legal profession among the most educated and trained in our society.

When a new lawyer passes the bar, what does the future hold? Often it is as an associate in a firm. This is where the real training begins. Associates are expected to be able to think on their feet, to do whatever partners do not want to do, to adapt to rigid rules of the court, and to substitute for other attorneys at the last minute with little opportunity to prepare and little knowledge of the case they are representing. All the while, order and decorum must be maintained. This training process helps them to become great client advocates and—when you add the billable hour expectations of many firms—it also builds their endurance (tolerance for pain). Over time, the process yields its likely product…an attorney with a "warrior" persona, prepared to subjugate their own needs in the service of their clients. This is the high and noble calling of the profession.

Concurrent with all this training, the internal motivation of the person continues to develop.

While the qualifying process is taking place, their initial motivation, drive or vision is becoming strengthened as well. Often kept at bay with the promise of future rewards—partnership, private practice, social status and/or better-than-average compensation, this drive must come into self-expression. Goal-driven, status seeking and reward focused, the next logical step for many is either partner or private practice. The strength of character required is similar, but it is at this point that the challenges diverge. Our purpose here is to address the challenges facing the partners in firms. "Making partner" is a goal for most associates and, for them, it is as important—often more so—as marriage. Of course, it also brings all of the obligations, but very different rewards. Like the marriage ceremony, partnership brings on a new era—filled with new duties that have to do with the successful running of the firm itself and with meeting the expectations of the other partners. It is here that the groundwork is laid for the future of the firm.

Large firms have developed cultures that incubate associates to fit in. Those who do become partner. The others leave the firm. Smaller firms, however, are made up of lawyers who either did not fit into the mold of the larger firms or wanted more control over their destiny.

Law school friends, who trained in different firms and disciplines, may decide to begin a practice together. A few associates in a practice area of a large firm may opt to begin a boutique firm. Regardless of the course of their arrival, the attorneys who become the partners of small and medium firms, immediately face two new challenges in addition to the need to generate and service their own book of business—cooperation with the other partners to mutual objectives and fulfilling their share of the obligations of managing the practice.

Law school does little to prepare attorneys for the business necessities of running a practice. Most law firms do not train the associates in it either. Up to the moment of becoming a partner, the attorney's career has been largely a solitary performance and the rewards have been commensurate with it. It is at this time that the repressed, but strong internal motivators—combined with the "warrior" persona tend to rise to the surface.

However, nothing in their training has prepared them for meeting the shared, yet sometimes clashing interests and expectations of their partners. Law school does little to prepare attorneys for the business necessities of running a practice. Most law firms do not train the associates in it either. Up to the moment of becoming a partner, the attorney's career has been largely a solitary performance and the rewards have been commensurate with it. It is at this time that the repressed, but strong internal motivators—combined with the "warrior" persona tend to rise to the surface. Without the training for business, this personality does not bend easily toward cooperation—even when appropriate and beneficial to his or her own interests.

Partnerships are formed for a variety of reasons, usually based more on hope than research. As partners, financial rewards are based upon the shared performance of all partners. However, often the partners do not share the same objectives or circumstances. Sometimes the approach to fees is similar. Other times it is drastically different. Firms are founded where the partnership may consist of a litigator, a family practice attorney, a personal injury lawyer and an insurance specialist. In firms like this, the issue of how to compensate the partners becomes a major issue due to the differences in cash flow and funding requirements. Even in boutique firms where fee structures are not a concern, the necessity of managing the practice still exists. Determining who is best suited to handle the various issues of conducting the regular business of the firm; hiring, managing and terminating staff; and keeping the books is not an option, but a requirement.

In these situations, the responsibilities may be parceled out, but usually little reward is given for doing the management work. In smaller firms, rainmaking is power. The best rainmaker often shirks other responsibilities because it is necessary to bring in the cash to keep the firm operating. The other partners end up carrying more of the management load. This means their opportunities to bring in new cases further declines. Soon, non-alignment, resentment and disrespect set in.

Combine that with the warrior inclination and the lack of training in cooperative communication and you have fertile ground for growing troubles. This is often complicated by the inability of the partners to find convenient times to discuss the issues, so they get put off and the resentment may turn into discord or repressed hostility. If one of the partners is particularly successful in bringing in cash, resentment and discord quickly become antagonism and outright warfare. These are the antithesis of true partnership.

Recognition, Resolution and Growth

All firms must face these challenges at one time or another. The largest firms have confronted them and designed solutions to address them, enabling growth and prosperity for partners with a divergence of talent and skills. Smaller firms have a harder time due to the perception of a lack of time and funds to overcome the problems.

The keys to passing through this phase: recognition, telling the truth about it, a commitment to the growth of the firm above self-interests, communication with your partners so that everyone wins, finding the right combination of new business generation, client service, firm management and partner relations.

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Unfortunately, there is no guaranteed winning formula. Each partnership must face the challenges and design its own solutions. Generally, when mutual respect and acknowledgment of the value of all aspects of work done for the firm are the rule, solutions can be designed to enable firms to grow beyond these difficulties. As with most things, the earlier this is recognized and accomplished, the greater the likelihood of success and growth.

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