

law firm management

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FEELEY & DRISCOLL, P.C.
Certified Public Accountants / Business Consultants

200 Portland Street, Boston, MA 02114-1709 • (617) 742-7788
154 Broad Street, P.O. Box 3158, Nashua, NH 03063-3158 • (603) 889-0444

www.fdcpa.com

To merge or not to merge?

Good question!

Mergers can be difficult, risky and expensive. So why do so many law firms contemplate them?

Most would say they are hoping to achieve a competitive advantage or find a quick fix to a perceived need. Mergers often help firms realize their strategic objectives. However, if not done for the right reasons, they can be a source of frustration and lead to a firm's demise.

The right reasons

A good place to look for the right reasons is your firm's strategic plan. It should contain an analysis of your firm's strengths and weaknesses and the opportunities and threats it faces (also known as SWOT analysis). Armed with this information, construct an action plan to deal with any issues. A merger just may be the best option. For instance, a merger may make sense if your firm wishes to:

Add experience, expertise and depth to an established practice area. Marketing to existing clients is always easier and more cost effective than searching for new business. Therefore, offering clients expanded capabilities is a great way to keep their business and increase your billings.

For example, suppose by way of a merger you're able to increase the size of your intellectual property practice and expand your firm's patent infringement services. This could be important to existing and prospective clients when retaining a firm.

Increase specialization. With law firms becoming more industry focused, a merger could allow your attorneys to expand beyond their traditional roles and become true business advisors. Construction firms, for instance, would rather deal with a trusted advisor who has broad experience in industry-specific areas that matter to them, such as dealing with bonding agents and subcontractors.

Enter a new geographic area. Expanding geographically may allow you to take advantage of



opportunities in underserved markets or to become a regional or national player. Or you may wish to follow an important client into a new locale. In these cases, merging with an existing firm in the desired market may be preferable to starting from scratch.

Correct an internal weakness. Mergers are viable strategies to fix certain internal issues, such as partner groups that have become unbalanced in terms of age or ability. If too many partners are, for example, over age 50, your firm may find itself without a viable succession plan.

Or if your firm was founded by entrepreneurial rainmakers who hired more technically oriented attorneys to service its clients, you may no longer have enough business developers. Merging with the right firm can be a much better answer than trying to quickly develop rainmakers internally.

Other good reasons for merging might be the availability of new cross-selling opportunities or the ability to tap into more profitable lines of business. As many "right" reasons as there are for merging, however, there are wrong reasons as well.

The wrong reasons

Typically, mergers are not the answer to the following issues:

The desire to be bigger. Getting *larger* isn't a good enough reason to merge. Focus on whether the merger will make your firm *better*. Also, it's possible that a merger can reduce profitability. (See "Solve profitability problems" below.)

Dealing with problem partners. Firm management that won't deal with problem partners may want to merge to avoid an uncomfortable situation. Such issues won't go away during the course of a merger. In fact, the problems will probably resurface and cause the newly merged firm to blow apart.

Solve profitability problems. Most profitability issues in law firms are related to the top line (billable hours and realization), not to overhead expenses. There are usually few, if any, economies of scale to be gained in a law firm merger. Combining two underperforming firms will only result in a larger problem.

Minimizing the pitfalls

When contemplating a merger, keep the following in mind:

- ▶ Communicate regularly with partners and staff as the merger progresses. Make sure all parties are aware of expected changes as a result of the merger as well as the benefits.
- ▶ Have a good grasp of your firm identity and culture. Mergers succeed when both firms have the same work ethic and common visions of management, strategic goals, partner compensation and professional standards.
- ▶ Gauge the public and industry perception of your firm. If perception is poor, your firm's attractiveness as a merger candidate will suffer.
- ▶ Solve partner problems first. Going into merger discussions with excess baggage is not a good idea. You will be at a disadvantage at the negotiating table, and the deal may fall apart once the problems become apparent.
- ▶ Make sure all of your partners support the merger, especially if the majority of client relationships belong to a few key partners.

7 WOULD-BE DEAL BREAKERS

Want to make sure your merger doesn't fall apart? Then address these seven issues early and thoroughly:

1. **Capital value differences.** Reconcile the excess of one firm's capital over the other's. If it's paid out, make appropriate financial plans.
2. **Partner compensation.** If compensation methods differ, work out a single approach for the new firm.
3. **Management team.** Discuss early on who will be on the new management team. Try to base decisions on specific merits of various partners, recognizing that you may need to deal with areas of overlap. Expect some fallout from partners who do not make the cut.
4. **Outstanding receivables.** Firms must choose between contributing outstanding receivables to the new firm or liquidating them under the former individual partnerships.
5. **Valuing goodwill.** If goodwill is part of the deal, retain a qualified valuation expert to perform a valuation.
6. **Partner retirement plans.** If plans are funded at different levels, create a new single plan for the merged entity.
7. **Office space.** Evaluate locations, office features, and lease terms of both firms. Then decide whether to keep both offices or move into new quarters.

In most cases, tackling these issues upfront will remove many obstacles once the merger process begins.

Think it through

Proper planning and an honest evaluation of your firm's current strengths and weaknesses can help ensure a successful merger that solves more issues than it creates. ☐

E-filing: Catching on quickly

When it was first introduced a few years ago, electronic filing of court documents seemed like a promising, albeit remote, idea. Instead, e-filing has caught on quickly with courts across the country and appears to be here to stay. So if your firm isn't already e-filing, it may be wise to learn e-filing's process and implications.

Benefits of e-filing

In general, e-filing uses Internet browser-based systems that allow users to electronically file, store and retrieve documents, as well as access various case management and statistical reports. The systems reduce the need for physical space, the risk of lost or misplaced files, and docketing and filing time. Users can process their own document requests and search vast amounts of text with keywords.

Your firm can enjoy savings in messenger fees and copying and mailing costs. The systems allow 24-hour access to documents and eliminate the possibility of delays while another party is reviewing the only documents available in a paper file. And e-filing makes judges' and court clerks' jobs much easier.

The numerous benefits associated with e-filing are driving its increasing popularity with both courts and attorneys. According to the U.S. Courts Web site (www.uscourts.gov), Case Management/Electronic Case Files (CM/ECF) systems "are now in use in 57 district courts, 79 bankruptcy courts, the Court of International Trade and the Court of Federal Claims... Over 16 million cases are on CM/ECF systems. And over 130,000 attorneys and others have filed documents over the Internet." Motions, pleadings and appearances have been the documents most commonly filed electronically.

4-step filing process

In CM/ECF systems, document filing is a four-step process:

1. The user prepares the document as a regular word-processing document in Word or WordPerfect.



2. The user saves the document as a PDF file. This format maintains the document's integrity, preserving all fonts and graphics, and displaying it exactly as it appears in print. Properly saved PDF files aren't readily altered.
3. The user logs onto the court's Web site with a court-assigned password and enters basic information about the court and the document. The user then attaches and submits the document.
4. The user receives an automatically generated notice verifying the court's receipt. The other parties to the case also receive an automatic e-mail notice of the filing. Notices of judgments and orders also are e-mailed to the parties. No additional filing fees are charged for electronic filing.

To retrieve an electronic court document, users typically visit the court's Web site, where they can select the applicable case docket. The docket lists all of the available documents, and users click on the documents of interest.

Litigants receive one free copy of documents filed electronically. Additional copies are available to the public or the parties for viewing or downloading at a nominal per page charge.

Compatible with most systems

Most law firms already work on computer systems compatible with e-filing systems. CM/ECF requires a personal computer with a Windows® or Mac OS® operating system, a PDF-compatible word processing program, Internet access, PDF conversion software, and Adobe® Reader® software (available for free on the Adobe Web site, www.adobe.com).

The filing and retrieval processes tend to be similar across systems, but check local rules for individual courts' procedures and rules.

Boosting your bottom line

E-filing has been a hot topic at conferences for court personnel, including meetings of the National Association for Court Management and the National Center for State Courts. With such growing acceptance, e-filing soon could become the predominant method for filing court documents. This should be welcome news, because e-filing can reduce costs and increase efficiency, boosting your firm's bottom line. ☐

12 ways to develop rainmaking skills in your associates

Rainmakers are still treated as mystical beings at many law firms. While some believe that rainmakers are born that way, the truth is: Rainmaking is a *learned* skill that virtually every lawyer can master. And given that business development success is the main difference between becoming an equity or nonequity partner, becoming a rainmaker is always a hot topic among associates.

Here are 12 proven ways you can help your associates sharpen their rainmaking skills and get on the right business development track.

- 1. Make sure associates don't buy in to the rainmaking personality myth.** Many associates believe they need to be an extrovert to be a successful marketer. The image of the guy who's a scratch golfer and always buying the next round comes to mind. In reality, many highly technical and analytical lawyers are excellent marketers. The trick is finding a marketing activity that fits their comfort zone and skills.
- 2. Encourage them to do good work and provide clients with world-class service.** Existing clients are still your greatest source of



potential business. So encourage your associates to strive for excellence in their work and to ask clients for feedback. If every lawyer is responsive and attuned to client needs, then your existing clients will request expanded services. And it's likely they will become your best referral sources of new clients.

- 3. Tell your associates not to be afraid to ask for business.** Help young lawyers understand that



they provide something people really need, and if they don't provide the service, someone else will.

4. Explain that simply being a good lawyer isn't enough. Potential clients typically don't judge on technical skills alone. Help associates realize that clients want to do business with someone who makes them feel comfortable.

5. Don't let them waste effort on the wrong people. Many lawyers waste time on people who may never become clients. If your practice is in the bankruptcy area, most of your referrals will tend to come from other lawyers. In this case, joining Rotary International or the Lions Clubs won't do a lot for the firm's business development efforts. Help your associates understand what works — and what doesn't.

6. Ensure associates realize it takes time. You know that developing effective rainmaking skills takes time, energy and patience. It's pretty rare to go to a single networking event and come away with new business. Associates must pursue many to land a few. And the more they can pursue, the better. Make sure they understand that fact and are comfortable cultivating relationships for the purpose of bringing in new clients. Aside from the benefit of putting them on the partner track, rainmaking can be a very rewarding experience in itself. Encourage them to enjoy the journey.

7. Suggest they work on an area of expertise. Writing articles, attending conferences and

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8. Find mentors for associates. Encourage associates to work out a personal marketing strategy with someone who's been there before. Ask your successful rainmakers to offer support in whatever ways practicable — such as inviting associates to social gatherings with clients and prospects, or getting them involved in a favorite charity.

9. Help them cultivate relationships within their peer group. Today's staff lawyers are tomorrow's general counsels. And those that don't become clients can be great referral sources. So help associates develop lasting relationships by forming project teams, hosting after-hours social functions and including biographical writeups of their personal information in internal newsletters.

10. Teach them not to take "no" personally. Associates need to know that not getting a client often has little to do with them. Internal company policies and politics can often be the determining factors. Associates should view each opportunity as part of an ongoing business development plan for that client. Help them remain optimistic.

11. Make sure associates keep in regular touch with new contacts that specialize in their area of expertise. Whether it's lunch, drinks after work or just a phone call to say "hello," all go a long way toward making sure a contact knows your firm cares and is the one to call when the need arises. Teach this fundamental principle to associates.

12. Remind them the best way to get business is to make referrals to other professionals. If you give new business to your accountant, banker or insurance agent, you are in a position to ask for new business. □

Technology traps

Make sure you know the rules

Cell phones, personal digital assistants (PDAs) and laptop computers have become an indispensable part of almost every lawyer's professional life. And, if used properly, they can be a huge boost to productivity. But before you rush out to buy everyone in the firm the latest BlackBerry, you need to consider the actual cost of the technology.

Measure the cost ...

The cost of technology falls into two categories: 1) basic equipment and 2) ongoing service and support. For cell phones and PDAs, this would also include monthly usage plans.



The cost of equipment has come down a great deal recently, but it's still not cheap. For instance, if your firm were to supply each associate with a laptop, cell phone, PDA and pager, the initial equipment costs could be anywhere from \$2,000 to \$6,000.

Multiply that upfront cost by the number of associates and you're facing a huge expense. The cost of the initial investment, however, pales in comparison to ongoing support and monthly service plans.

... vs. the deductibility

Because these costs can skyrocket, many firms reimburse associates for the business use of their cell phones and PDAs, instead of purchasing them outright.

While this sounds simple enough, you must require proper documentation for reimbursement. Otherwise, funds reimbursed to your associates could be considered additional compensation — subject to applicable payroll taxes. Consider putting in writing

what qualifies for reimbursement as well as the documentation required by the firm and the IRS.

On the other hand, if the firm purchases the unit primarily for the associate's business use, then the tax code considers the purchase to be for the convenience of the employer and, therefore, not a taxable benefit to the employee.

Create a policy

There really is no rule of thumb as to which way — ownership of the equipment or employee reimbursement — is better for your firm. But whichever policy you implement, make sure you consider these issues:

- ▶ The degree of difficulty to track costs and monitor usage and reimbursements;
- ▶ Who should be included in the policy — just partners, partners and senior associates, or all attorneys;
- ▶ The firm's technology goal, whether it's cost savings, increased productivity, competitive advantage or all of the above; and
- ▶ The tax consequences of the policy — can the firm depreciate the basic equipment costs? Will amounts paid to employees as reimbursements be tax deductible or considered additional compensation?

Creating a policy that addresses these issues head on will ensure maximum technology usage at the lowest cost.

Keep productivity high

In today's world you must keep up with changing technology to maintain high productivity and open communication lines. So take time now to consider how your firm should handle these ever-increasing costs. And then develop a firmwide policy that best fits your technology needs and tax goals. □

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