

QUESTIONS THAT MUST BE ASKED WHEN FORMING A FIRM

By Pat Yevics

In last month's column, we gave a checklist for starting a new solo practice that focused on both business and personal aspects. This month, we will tackle the questions that need to be asked if you decide to stop being a solo and want to either partner with another solo or join forces with a small firm.

There is not enough space in this article to address all the answers, but at the end of the article I will list some resources that we can make available to you if you need additional assistance.

Joining forces with another solo or small firm is not unlike getting married. It all looks so good in the beginning, but if the reasons for the partnership are not well thought out, it will usually end badly.

What is Your Definition of an Ideal Firm?

Even while you are a solo practitioner you should start thinking about your definition of an ideal firm. Failure to do this now may result in many problems later. A firm is not just a collection of solo practitioners; if that is your goal, then it would simply be better to share office space and retain your autonomy. Joining forces simply to save money is never a good reason to form a partnership.

Some items to consider when defining an ideal firm:

- How do you define quality client service?
- What is your commitment to pro bono activities?
- What is your definition of leadership?
- What is your leadership style?
- How do you define success - monetarily, quality of life, quality of clients, etc?
- How do you think decisions should be made?
- How should staff be treated?
- Are you willing to put the firm ahead of the individual?

Let's Talk

Once you decide that you want to discuss the possibility of joining forces with another solo or going with a firm, there are many topics which must be discussed, some of them personal and uncomfortable. It is very important not to gloss over some of these touchy subjects because they are usually the ones that will cause the most trouble later.

Although you may not want to do this at the initial meeting, I think it is critical to have an independent third party involved in many of the discussions. This can be a CPA, a business or tax attorney or a consultant who has worked with small firms. The person should be as neutral as possible and agreeable to both sides. This will help eliminate any misunderstandings about what is or what is not said.

After all the questions and answers, it is important that all the details are put in writing. Even if the partnership does not last forever, the agreement will make certain that the relationship between the members of the firm does.

Let's Talk Business Issues

- What type of entity will the firm be? This is clearly something that requires the help of a tax attorney and/or CPA. The concerns involve taxes and liabilities.
- How much capital is each new partner willing to contribute for the brand-new firm?



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- How much capital is each partner capable of contributing? Will this contribution be a severe hardship on any of the partners?
- If new partners have existing clients, what is the billing and collection history of the clients of each of the partners?
- How will compensation be determined? Will the plan that is originally established be reviewed annually?
- How will profits be distributed? Will it be an equal split? Will it be determined by billings? If both partners are bringing equal billings to the new firm and profits will be split equally to start, how will this change if one begins to bring in more business and generates more billings?
- What benefits will be available for partners?
- What benefits will be available for employees?
- Are there any conflicting issues in combining clients from different individuals?
- If there are substantial outstanding a/r or contingency fees before the joining of the firms, will these fees go to the new firm or go to the original firm/partner?
- How certain are new partners that all clients will follow them to the new firm? If some clients do not go to the new firm, how will this affect the cash flow? How will this affect the salary of the partner losing clients?

Let's Talk Management Issues

- How will the firm be managed? Will one of the partners be given the title of Managing Partner? If this is the case, it is important to write a job description of the MP. How much time will this partner be expected to spend managing the firm? How will this time be accounted for since it will not be billable?
- How will new partners be admitted to the firm?
- How will decisions be made about accepting new clients? What are the criteria for new clients?
- How will decisions be made about billing clients and collecting fees? How will these decisions be implemented? What problems will result if one partner collects all a/r and another has clients with a/r problems? What will the billing and collecting policies be?
- What are the expectations for billable hours for partners and associates?
- What additional hours for non-billable activities will be expected?
- How will malpractice insurance be handled?

Let's Talk Administrative Issues

- Where will the firm be located? Is location very important for either of the new partners? If one partner does litigation, it is important to be near the court house, whereas if one does business law, this may not be as important.
- Will there be need for additional staff? Who will make the hiring and firing decisions?
- How will work be produced? Will partners be expected to be computer-literate and do much of their own work?
- How will computer data be merged? How will client lists be merged?
- Are the practice areas of the new partners an emerging or growing area or is there a glut of attorneys in one of these areas?

Let's Talk Cultural/Personal Issues

- What will the firm's position be on pro bono activities, bar association activities, professional activities, marketing activities?



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- Are the practice areas of the various practices compatible? Are the various practice areas similarly profitable?
- Are the work habits of the new partners compatible? Is one a single workaholic and the other a parent with young children?
- How capable are all of the new partners of the firm at weathering any dry spells when there are smaller or no draws? What is the personal financial stability of each of the new partners? This can be a sensitive topic but it is important to know because forming a new firm is not always financially smooth sailing. If a new partner has no ability to withstand a financial setback or dry spell, it can cause serious management issues.

There are many times when less discussion is better than more, but not in the case of forming a partnership. The more questions you ask and the more honest the answers, the more likely that the firm will be prosperous and successful for many years.

Resources for Additional Information

If you would like copies of any of these resources, please send an e-mail to pyevics@msba.org and list the number or name of the article. Please provide your name and mailing address. You may also call (800) 492-1964, ext 3039. Please indicate which articles you want and your mailing address.

1. Ownership Options When Forming a Firm
2. Selecting a Legal Form to Conduct Business in Maryland
3. How to Pick the Right Form for Your Firm
4. Estate Planning for Your Firm
5. Creating the Financial Plan for a New Firm
6. Partner Compensation and Evaluation Plans
7. Model Partnership Agreement

