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CONSIDERING THE HUMAN ELEMENT IN LAW FIRM MERGERS

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It is difficult to pick up a legal trade publication without reading news of yet another law firm merger or seeing an article describing the defection of a practice group from one firm to another. Following corporate trends, law firms have been eager participants in the recent movement toward the creation of so-called "megafirms." A booming economy with legal work scaled to the benefit of larger firms' personnel resources, the lure of economies of scale in an increasingly competitive market, the desire to expand into new geographic markets, and an eroding sense of the traditional loyalty once felt among partners are among the factors that have and will continue to contribute to the recent "merger mania" within the legal world.

For the most part, larger firms *are* often able to be competitive in ways that small firms are not. And firms with a broader range of practice specialties offer clients the ease of providing a "single source", something not available from a boutique law firm. Well-planned, strategically appropriate mergers or practice group acquisitions can be a profitable way for a firm to grow, expand its practice areas, or establish branch offices. So merge if you must, but before you do, look at more than just the bottom-line profitability equation. Be certain to include your *people* in the planning equation. Firms often neglect the most critical pre-merger analysis of all--a careful review of the many ways in which a merger will effect the greatest asset of the professional services firm, the attorney personnel and the management systems within which they work.

COURTSHIP AND MARRIAGE

The joining together of two law firms is a marriage of sorts. The two entities usually take part in a "courting" ritual of some sort, involving the sharing of intimate details (*read* financial statements, client information, etc.) about each other. They learn more about the goals each has for the future and discuss how they might meet such goals together. They often find many similarities in purpose and substance, but they may also find they are as different as individual entities often are. Each will have its own unique personality, way of doing things, reputation among peers, and set of values and beliefs. Because of this, a bit of "pre-marital counseling" may be in order. Most firms could benefit from a structured review of all aspects of the coming nuptials, including an intense look at the *people factor*, the merging of two groups of attorneys and the processes that manage them.

Talk to any lawyer who has lived through a merger of one sort or another and he or she will probably groan. Probably quite loudly. Both the *merger* and the *mergee* (if I may coin such a word) suffer a personal loss. Most law firms today are still collegial enough that partners know one another by face, if not by name, and most have a fondness for the overriding *culture* of the firm. In the wake of a merger, you sometimes find you have the difficult combination of radically different cultures colliding with one another and a firm full of

attorneys who do not (and may not care to) know one another.

IMPACT OF POOR PLANNING

The most common effects of a firm merger that failed to consider the unique dynamics of the attorney culture and address questions regarding personnel management philosophies and systems as a part of the strategic merger plan include the following:

- A loss of firm-wide identity and feelings of belonging
- Power struggles among internal factions
- Attrition due to a perceived lack of stability
- Misunderstandings regarding performance standards, compensation, and requirements for progress
- Attorneys who feel powerless to affect their own future

As you may imagine, results such as these are not the foundation upon which you will be able to build a strong, viable business entity. These results speak to the importance of considering the human element of a proposed merger in conjunction with consideration of the strategic and financial impact.

If your firm is thinking about merging with another firm, you have much work to do. If you have already merged and have experienced some of the disturbing results noted above, take heart--it is not too late to address these concerns. But you cannot wait too long, lest the best and the brightest decide to seek stability elsewhere, while the firm suffers through its growing pains.

PRE-MERGER DUE DILIGENCE: THE HUMAN SIDE

If your organization is considering a merger with another, consider these elements that have impact on the management of attorney personnel. Not only do you need to consider the differences that exist in the philosophies and systems of both firms, but even more importantly, you must try to predict the requirements of the new merged entity. The following represent the most critical attorney personnel management systems and key issues for consideration:

- **RECRUITMENT**

What are the selection criteria used in the hiring process by each firm? Most firms have developed a list of attributes they hope to find in candidates who will come to the firm. They have chosen these characteristics as what may be called predictors of success in their firm. How are these criteria weighted and applied? *For example, are grades more important for one firm and*

personality the key in the other? Or does one firm prefer hiring only students from a particular law school, while the other firm prefers hiring only laterals?

Usually, the unique aspects of an organization's recruiting process are tied to past predictors of success in that firm. In addition, managers have the difficult task of predicting the demands presented by the new organization (the merged entity) and determining what factors will influence the success of its attorneys. Firm managers will want to look at a profile of their current attorney group and view them from the perspective of future demands. Will attorney responsibilities be changed? Will new demands be placed upon individuals for practice development or team management? Will the firm require new performance standards (e.g. billable hours minimums) that are currently left to an attorney's discretion?

PERFORMANCE APPRAISAL

Performance appraisal is always an issue for attorneys because it is inextricably tied to progress in the firm and compensation decisions. Each firm has its own manner and style of evaluating its attorney personnel. Some firms do it biennially, some once per year. In some firms it is a rudimentary discussion of salary and progress, and in some it is a developmental discussion of goals and timelines. Some firms use an associates committee, some have supervising attorneys evaluate their subordinates directly.

Because it is one of the most important elements of a firm's attorney management process, timely decisions should be made regarding both the philosophy and process by which attorneys will be evaluated in advance of the merger.

TRAINING AND DEVELOPMENT

Most attorneys would agree that a firm's commitment to a high level of professional development for all legal staff is a key factor in continued job satisfaction. Ranking professional development as more important than money and career advancement in job satisfaction, most associates in law firms seek and demand a comprehensive plan to develop their legal skills, to enhance their ability to take on greater responsibilities, and to allow them to rise to new challenges.

Firms must take a careful look at the types of professional development programs each has in place, with an eye toward integrating the best elements of each into a new comprehensive program.

Administrators charged with professional development responsibility can use this opportunity to evaluate the effectiveness of their current program, to compare both its structure and level of effectiveness to that of the merger partner, and to design a new program that will meet the combined needs of the new attorney body.

PROGRESS TO PARTNERSHIP

Does your firm have a ten-year track to partnership, while the other firm makes these decisions at the seven-year mark? Are you still making equity partners? In all practice areas? How will the influx of new practice specialties or new partners affect the potential for current associates in both firms to be extended partnership offers? What are each firm's partnership criteria? Are there both

equity and non-equity partners?

What about Of-Counsel and contract lawyers, part-timers and telecommuters, or any special agreements or unique personnel arrangements that may set precedents for the new organization? Do you have a nepotism policy and they don't? Are Of-Counsel allowed to remain on partnership track?

MANAGEMENT AND SUPERVISION

To what extent are partners and senior associates expected to manage or supervise more junior associates in each firm, and how skilled are they in carrying out this responsibility? The best attorney managers in each firm will be critical to the success of any merger as they communicate on-going news of the merger with their attorneys and team members, as they recognize and address signs of concern and discomfort among attorneys, and as they build the new combined team of skilled practitioners.

Firms would be wise to single out these key managers in advance. Give them visible roles in assessing the impact of the proposed merger and in making certain of the successful implementation of a coming merger. There will have to be agreement on how each firm views a *competent* manager, and the way in which such individuals are to be rewarded in the new organization. It will be important to consider the means to motivate as many partners and senior associates as possible to manage effectively.

FIRM CULTURE

Whether a formal firm culture exists or not, each firm has its own nature and workplace identity. One firm may be very "laid back," having casual Fridays, or an atmosphere in which all attorneys call each other by first name. The other firm may eschew casual dress policies in favor of dark pinstripes and wingtips, meeting the demands of frequent in-office client visits. One firm may thrive in a culture of shared personal intimacy, where everyone knows everyone else's personal business, while another may be a place that encourages friendly, but distant personal connections. The halls of one firm may be noisy and busy, while the corridors of another may be silent as attorneys work in solitude.

All of these factors make up a firm's unique *culture* and should be given serious consideration in the joining of the two groups. It is not that dissimilar cultures cannot exist in harmony or create a unique new culture by their union. The point is more importantly that firms must become *aware* of their uniqueness, and recognize the value that individuals who work there place upon those environmental characteristics. It will be important to learn which elements of the firm's culture are most highly prized by those who work there. Failing to consider the feelings of the group may result in a culture "collision" that will be unpleasant for everyone.

SUMMARY

These are a few of the considerations that will be critical to the success of your merger or group acquisition. Given their appropriate place in the decision-making process, equal consideration of the human element of

a monumental organizational change will pay long-term dividends for all involved.

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