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TO MERGE OR NOT TO MERGE? THAT IS THE QUESTION!

by

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July 28, 2015

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Mergers can be difficult, risky and expensive. So why do so many law firms contemplate them? Most would say they're 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. For instance, a merger may make sense if your firm wishes to:

Add experience and depth to an established practice area. 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. 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. 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.

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.

Solving 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.

MINIMIZING THE PITFALLS

When contemplating a merger, keep the following in mind:

- Communicate regularly as the merger progresses.
- Have a good grasp of your firm culture — mergers succeed when both firms have the same work ethic and common visions of management, strategic goals, partner compensation and professional standards.
- If the public and industry perception of your firm is poor, its attractiveness as a merger candidate will suffer.
- Going into merger discussions with partner problems isn't a good idea, because you'll be at a disadvantage at the negotiating table.
- Make sure your partners support the merger, especially if the majority of client relationships belong to a few key partners.

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.

SEVEN 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 don't 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.

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ABOUT THE AUTHOR

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