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LAW OFFICE MANAGEMENT

Consultancies Develop With Specialities, Client Needs

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MANAGEMENT and financial consultants have long been asking law firms to act more like businesses — to be competitive, not complacent, to answer their clients' needs in creative ways, and to find ways to make themselves profitable.

In the past 10 years, law firms have answered this call through a number of unconventional methods, such as advertising, brochures and seminars — and even by hiring in-house marketing coordinators. In addition, a growing number of firms have set themselves apart by recognizing that their clients are businesses with a range of needs, some legal and some not.

They have hired non-lawyers to answer their clients' non-legal needs — a simple idea, but one that did not fit within the traditional framework of a law partnership. And law firms have begun to accept the marketing strategies used by financial institutions and accounting firms, which have for several years provided a broad range of services for their clients. Hence, the birth of the consultancy.

The evolution of consultancies, however, cannot be as easily traced. Some consultancies grew up into subsidiaries and some did not, while others hatched as subsidiaries. In any case, consultancies and subsidiaries will be kept under observation by most mid-sized and large firms.

In an effort to discover the ingredients and conditions essential for a law firm to create and sustain a non-legal professional practice, the authors contacted 30 law firms nationwide that operate either consultancies or subsidiaries. At least 12 of them were begun in the past two years, nine of these in 1987.

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Issues to Consider

The questions and answers below should address many issues of interest to firms that are considering forming a consultancy or subsidiary and to those that are struggling to define and maintain one.

What is a law firm consultancy? It is an entity that includes at least one non-lawyer professional or non-practicing lawyer (such as a lobbyist, economist or financial planner) who provides consulting services to the law firm's clients and who may also provide an independent client base. It can be either integrated or not integrated into the firm for administrative and/or promotional purposes. Rarely do consultancies rely solely on clients outside of those belonging to the law firm.

What is a law firm subsidiary? It can be a consultancy that has been set up as a separate company to provide related non-legal services. Other kinds of subsidiaries are set up to handle the sale of a product. Most subsidiaries either are wholly owned by the law firm or are set up as limited partnerships between one or more individuals and the law firm partnership.

Why or when should a firm consider forming a consultancy? When asked why they formed consultancies, representatives of the law firms responded:

- The new service was an outgrowth of a legal practice area.
- The firm previously had frequently referred out this business.
- The firm wanted to offer one-stop shopping.
- The non-legal services could be provided more cost-effectively by non-lawyers.
- Non-legal expertise was required to meet the clients' needs.
- To recruit experienced professionals, a unique structure had to be organized to give status to non-lawyers in the law firm environment.

According to Robert G. Szabo of Washington, D.C.'s Van Ness, Feldman, Sutcliffe & Curtis, P.C.'s Legislative Services Group, "Our coalition clients somehow feel more comfortable dealing with non-lawyers." Nearly all the firms questioned by the authors cited at least three of the above as factors in their decision to form a consultancy.

Expertise Broadened

A few cited more specific grounds for creating consultancies. David P. Kaplan of D.C.'s Howrey & Simon's Washington Economic Research Consultants notes that having economists to assist lawyers enables the overall team to work faster and more efficiently.

"Bringing together these disciplines also allows the economist to develop industry expertise," says Mr. Kaplan. "In addition, in litigation cases where clients must provide sensitive financial data, it provides total confidentiality to keep everything in-house."

David A. Hartquist of D.C.'s Collier, Shannon, Rill & Scott, which operates Georgetown Economic Services, Georgetown Communications Services and a Legislative Services Division, all in Washington, adds, "We view ourselves as problem solvers for our clients regardless of whether it is legal work or otherwise. We function as a manager of a process."

At Sutherland, Asbill & Brennan's D.C. office, William A. Vaughan, who is of counsel to the firm and who heads its Energy and Environmental Consultants Ltd., says its consultancy began as a promotional concept to capitalize on his government and corporate background as a manager and an engineer.

What kinds of practices or businesses are appropriate for consultancies? Firms report interests in services ranging from actuarial services to international trade consulting, and in products such as conflict-checking software and in producing videotapes for lawyers. The only guidelines suggested were these: If the business is a consulting service, it should be somehow related to an existing legal expertise; if it is a product, it should be marketable — at least initially — to clients or colleagues.

In D.C., many law firms have developed their legislative and lobbying services into consultancies. The most well-known of these is Arnold & Porter's APCO Associates, which performs a range of other business services.

The Choate Group, part of Boston's Choate, Hall & Stewart, offers a range of services similar to APCO's but on

the state and local level. And three other Washington firms — Collier Shannon; Van Ness Feldman; and Verner, Lipfert, Bernhard, McPherson and Hand, Chartered — have non-lawyer professional lobbyists on staff to represent large corporations and associations on Capitol Hill.

Services Offered

Several firms in Washington also offer consulting services in international trade, including the D.C. office of Dallas' Akin, Gump, Strauss, Hauer & Feld; Crowell & Moring's C&M International; and Heron, Burchette, Ruckert & Rothwell's Pacific Trade and Investment Corp. New York's Kaye, Scholer, Fierman, Hays & Handler operates the Kaye Scholer China Business Consulting Group Ltd. out of the firm's Washington office.

Collier Shannon also operates Georgetown Economic Services, and Howrey & Simon has Washington Economic Research Consultants. In addition, New York's Skadden, Arps, Slate, Meagher & Flom has a division of economists.

In the health care field, consulting services are offered by Hogan & Hartson's The Lash Group in Washington; the Austin office of Houston-based Fulbright & Jaworski; and Phoenix's Jennings, Strouss and Salmon. The latter two have hired registered nurses to assist health care providers with quality assurance, cost control and physician peer review.

Financial services are offered by Arnold & Porter's The Secura Group; New York's Shearman & Sterling affiliate Golembe Associates in Washington; and Duane, Morris & Heckscher's Wescott Financial Planning Inc. in Philadelphia.

Other types of services include education consulting such as that offered by The McKenzie Group of Hogan & Hartson, and Sutherland Asbill's Energy and Environmental Consultants, both in Washington, D.C. Collier Shannon's Georgetown Communications Services provides public relations services.

In the real estate field, Arnold & Porter's MPC & Associates handles development projects for non-profit

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organizations, and New York's Le-Patner, Gainen & Block provides management consulting to architectural and real estate firms. Through the in-house assistance of an architectural historian and an urban planner, D.C.'s Wilkes, Artis, Hedrick & Lane, Chartered enhances its planning and land use expertise.

Law firms that have developed products to sell and subsidiaries to handle the business the products generate include Van Ness Feldman, whose Policy Communications Inc. develops videotapes relating to legislative issues; and Fulbright & Jaworski, whose F&J Systems — located in the firm's Houston office — markets its conflict-checking computer software.

Prospective Clients

Where should a law firm expect its new consultancy's clients to come from? It is wise to be certain that the new service is one that is already being used — or, at least, could be used by existing clients. About 70 percent of the consultancies or subsidiaries who responded to the survey depend on their law firm clients for all or the majority of their business.

However, one of the oldest, most established consultancies, APCO Associates, founded in 1983 by Arnold & Porter, has been able to build a more independent client base.

According to Margery Kraus, APCO's president and chief operating officer, only 30 percent of its business at present comes from law firm clients. One of Arnold & Porter's other subsidiaries, The Secura Group, also depends on the law firm for only 30 percent of its business.

If the existing legal niche has synergy with the non-legal services, cross-selling will provide a constant and vital flow of business. Even within the ethical constraints, if the services are marketed properly, the consultancy and the law firm should be able to refer clients to each other regularly.

How should this entity be set up? As a consultancy or as a subsidiary? Generally speaking, the success of a non-legal practice does not depend on its setup. Firms have been successful with both.

Some argue that certain kinds of consulting, such as lobbying and legislative services, work better if they are integrated into the law firm rather than made a separate and distinct company. This enables the lawyers to work on the substantive issues hand-in-glove with the lobbyists who handle the tactical maneuvers.

Forming Subsidiaries

An example of such a consultancy is Van Ness Feldman's Legislative Services Group. This group was formed as a result of legal work for coalition clients. Some members were trained in the law firm; others had gained expertise on Capitol Hill. The law firm decided to unify these non-lawyers by giving the group a name.

Since the law allows only lawyers to be partners in law firms, the formation of a subsidiary creates an attractive opportunity for other professionals to become principals — or at least share in profits. One non-lawyer consultant who is lobbying for his firm to form a subsidiary asserts that a subsidiary would provide a career path for him and his staff.

Mr. Kaplan, a partner in Howrey & Simon, who has a law degree and a masters degree in economics, started the firm's subsidiary in 1977. He is economic counsel in the subsidiary, a position that parallels being partner in a law firm. Although Mr. Kaplan is to be a lawyer, other Howrey & Simon economists who are not lawyers can aspire to this position.

Forming a subsidiary may provide the consultancy with the distinction from the law firm that is needed to get business from competing law firms. Another law firm may feel less threatened about dealing with a company with a different name.

In a consultancy, the inevitable questions will arise: What happens when a non-lawyer consultant brings in a new client? Who will manage or control this client? How will the firm compensate this person for his or her business development?

It is understandable that the consultant who recruits a client would want to have control over that client; however, the law firm structure requires that every matter be assigned to a billing partner.

According to one consultant, this situation creates a disincentive to do marketing. In this case, the formation of a subsidiary would allow the consultants to be more independent from the lawyers. Unfortunately, many lawyers are still reluctant to give this kind of autonomy to non-lawyers working for a business that carries the firm's name.

An alternative to forming a consultancy or subsidiary is to form an affiliation with another firm. Shearman & Sterling established such a relationship with Golembe Associates when it opened its D.C. office in March 1987. With neither firm having any financial interest in the other, the potential for conflicts was eliminated.

Which subsidiary formats are the most advantageous? The law firm can, of course, set up the subsidiary as wholly owned. However, the individual who will be managing the subsidiary may want to be a partner in the venture.

According to Mr. Vaughan, he and his partners at Sutherland Asbill spent several months investigating formats for Energy & Environmental Consultants. They found the limited partnership the easiest to set up, as it was closest to the existing partnership structure and the forms required were more simple to fill out. However, there were no appreciable tax advantages to any format.

Compensation

How should law firms compensate non-lawyer professionals? One firm whose non-lawyer professionals do not hold post-graduate degrees uses a system in which non-lawyer consultants start at rates lower than law firm associates.

Their salaries can be raised above those of associates, but they are prevented from making more than law firm partners.

In a subsidiary, the senior level professionals often receive some profit sharing or bonus in addition to their salary. If the firm is committed to maintaining high-quality professionals, it must offer competitive salaries and benefits.



How does management ensure that non-lawyers will be treated well? Collier Shannon's Mr. Hartquist admits, "At first, lobbyists were sometimes treated as second-class citizens, but after a few dramatic successes on their part this problem was solved."

At Washington Economic Research Consultants, economists are fully integrated into Howrey & Simon not only physically (in terms of office space and support services) but also culturally. Duncan J. Cameron, an economist there, emphasizes that they are treated the same as lawyers in all respects.

Should non-lawyers be integrated with the lawyers or should the office space and support services be separate? Firms have proved both environments productive. In the beginning, it can be argued, it is more efficient not to staff a consultancy separately but to staff jobs so that support staff is never underused.

Service Agreements

In such cases, service agreements are made between the law firm and the consultancy in which the consultancy pays a percentage of costs for space, staff, the use of machines, etc.

However, both of Collier Shannon's subsidiaries have separate office spaces, separate entrances and separate support staffs. (Both operations were immediately profitable.) All three of Arnold & Porter's subsidiaries are located in a building separate from their parent firm's.

Will there be problems with conflicts of interest? None of the firms surveyed indicated that conflicts had been of much consequence. They simply and smartly turned down the business when conflicts arose.

Nearly all the firms noted that every new matter goes through the law firm's conflict-checking system.

Will there be problems obtaining professional liability insurance for non-lawyers under the present firm policy? Yes, quite possibly. One may assume that the firm can attach the new consultant as a rider on its liability insurance package, but certain types of consultants who give advice in such stigmatized areas of risk as securities or environmental law can experience what one consultant called "a debilitating, irritating dilemma."

Insurance companies are often not willing to even discuss coverage of a consultant dealing in areas such as these, even though the consultant's record and the law firm's may be unblemished. They simply refuse to assess the real risk. Early investigation of this concern will save many headaches.

How should a law firm promote a consultancy or subsidiary? Law firms used to hide the fact that they ran another business on the side, but today they are discovering the benefits of telling their clients about their other services. Consultancies are also working to get the word out to promote their new services to prospective clients independent of the law firm and to alert prospective recruits.

Promotional Methods

In some ways, consultancies and subsidiaries are promoting themselves in the law firm's traditional manner by relying on word-of-mouth, networking, recognized results and known expertise.

Brochures are more commercial-looking, and they are more apt to refer

More Firms Are Creating Subsidiaries

to their services as a business. If the number of law firms that have brochures for their consultancies and subsidiaries is any indication that brochures are useful and necessary tools for marketing this type of service, then the results of the survey would show them to be a prudent investment.

Van Ness Feldman designed a brochure to educate clients about its other coalitions and to identify its coalition practice with the firm's legal services. The partners say they are proud of the brochure, and they use it regularly.

Patrick J. Magrath of Georgetown Economic Services notes that his marketing efforts include speaking at seminars and going on the road to visit law firm clients.

Less formal methods of marketing work just as effectively. For instance, in a pitch for a prospective client, the lawyer can bring along the consultant if it appears that his or her expertise may be relevant.

One consultant claims that his firm's best marketing strategy is to aggressively hire quality people by offering attractive compensation and professional development opportunities. This firm recruits through networking and newspaper advertisements.

Internal marketing is one method cited by nearly all the firms surveyed. Cross-selling is essential, and it can be one of the most fertile areas in which to concentrate efforts.

For a consultant, making regular tours around the office to ask lawyers whether they could use his or her services can result in not only a strengthened case for the client but a more efficient use of resources and time.

Forming a consultancy or a subsidiary is not the right move for every law firm. Success will depend upon the rationale, the need for the particular service, the client base, the management culture, and the commitment to the concept.

It is crucial to perform some market research and a feasibility study in advance. The key is to address the proper issues by asking questions like those above early on in the decision process. Those consultancies or subsidiaries that are already established but are still struggling with their identity may need to take a step back to determine what questions went unanswered.