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CLIENT RELATIONS

A Guide to Effective Joint Counsel Relationships

by Robert C. Pearman

As a partner in a small African American owned law firm, I have been involved in a number of joint counsel relationships. Work opportunities derived from these situations are a significant part of our firm's practice.

I have often heard lawyers at firms that are first entertaining the joint counsel concept express uncertainty: What are the protocols and procedures? How should the arrangement be documented? How does one find a partner?, etc. This article is written to help expound on those issues.

A joint counsel (or co-counsel) relationship is simply defined as a situation in which two or more law firms agree to represent a client in a particular legal matter. (A "joint venture" implies a deeper symbiotic partnering wherein two firms jointly market and engage in client representation on a broader scale.)

Goals And Objectives

In a joint counsel relationship, ideally, the work is divided between the law firms equally. In reality, however, the larger firm is frequently the prime contractor and client contact. In such cases, it is important that the share of work initially estimated to go to the secondary firm be treated not as a ceiling, but as a floor. Another objective should be to have each firm ultimately act as the lead, at least on some matters. Otherwise, the smaller firm will be consigned to perpetual second class status. Being the lead on even small engagements helps foster abilities in client relationship building, responsiveness, and the administrative

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aspects of the practice of law.

Regardless of which firm is the lead, both firms benefit. Minority- and woman-owned firms often obtain access to areas of practice that their generally small size would otherwise preclude them from practicing in. Majority firms can also gain entrée: There may be public agencies and municipalities with which the smaller firm already has a contractual or political relationship, and via a joint counsel can bring in the majority firm. New skills can also be added to the joint counsel team from the minority side of the ledger. In our firm's case, for example, our public finance expertise, experience with transportation issues, and engineering knowledge has brought talents to a relationship hat were new to our partner.

A formal written agreement include: manner of case management, budgeting, billing, rates and expenses, insurance, termination, exclusivity, and dispute resolution.

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Finding a Partner

Potential majority law firm partners can be found through: (a) lists maintained by bar association programs such as the ABA Minority Counsel Demonstration Program; (b) clients; and (c) Requests for Proposals (RFPs) for legal services from public agencies, which sometimes list contact persons at firms that receive the proposal.

Minority law firms, in addition to the above sources, can be identified though: (a) minority and women's bar associations; (b) lists of disadvantaged business enterprises maintained by public agencies; and (c) minority and women's business associations and chambers of commerce.

The Agreement

Lawyers universally advise clients who are planning to enter into a business relationship to "get it in writing." That maxim applies equally to joint counsel situations. A writing serves two main purposes:

First, the client has a basis for reviewing and acknowledging the relationship and understanding the expectations of the firms.

Second, the subordinate law firm has a document to rely upon, not merely the memory of the participants, to ensure adherence to agreed minimums of workload, client contact, etc.

Requisite elements of a formal written agreement include: manner of case management, budgeting, billing, rates and expenses, insurance, termination, exclusivity and dispute resolution.

Allocation of Work

Tasks should be clearly defined and allocated between the firms. There are a number of natural demarcations, e.g., areas of skill or geographic location. Depending on the complexity of the assignment, a detailed work plan may be prepared which sets forth the proposed allocation of labor. For example, in a litigation case these elements might include the investigatory stage, drafting of pleadings, motions, discovery, settlement talks, trial and post trial. In our experience, it is quite important to have immediate involvement from both firms. This is particularly true where the minority-owned firm has the lesser percentage of the work. This helps prevent the aforementioned "allocation ceiling" tendency and ensures healthy interaction between each firm and the client.

Costs

Because all clients have budgetary concerns, the firms should take steps to lessen costs and promote uniformity. For example, the firms can agree on uniform formats of memoranda and review a sample of each other's work at the beginning to ensure consistency in approach and presentation. These steps may obviate the need for excessive review and cross-checking and, as importantly, will help develop trust in the professionalism of the other.

Billing

There should be certain consistencies in the methods of billing, e.g., the costs billed by each firm should be on the same basis, similar minimum billing increments should be used, etc. Differing hourly rates

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between the firms, if reflective of each firm's normal rate and assuming no great disparity for the same service provided, are not necessarily a problem. Given that maximum budget ceilings are the vogue in corporate legal practice, hourly rates may become less important anyway.

The client merits a definite and accessible point of contact – one who can readily answer any questions.

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In practice, the smaller law firm can often prove to be an economic advantage to the team: Being able to utilize attorneys who bill at lower hourly rates can help keep the project within budget. Of course, an important proviso is that the smaller firm's rates should not be unilaterally squeezed. Minority firms often rightly perceive that they are getting the worst of both worlds in certain situations: lower hourly rates and little responsibility or client interaction.

Mechanisms have to be arranged to avoid undue delay and interruption of the billing and payment cycle, particularly where one firm receives invoices from the other and forwards them to the client. Larger firms must be particularly sensitive to the effect delays can have on lesser capitalized firms. There should be full copying of invoices submitted by the team members and disclosure of billings by both. As partners, there should be no concerns about sharing the final rates, billings and invoices with each other.

Liability Insurance

If the RFP or the client requires it, each firm should confirm that the other maintains liability coverage. Each should be aware that its coverage pertains only to itself. As long as there is an attorney-client relationship, each firm is legally responsible for its own work. If there is any doubt or uncertainty, the firms should consult their own insurance brokers.

The minimum liability levels will generally have to match those called for in the RFP. A smaller firm may legitimately decline to try to meet (and therefore not pay premiums for) the requisite policy limits of the larger firm, if the work that the smaller firm may be performing and the risk exposure does not warrant it and it would mean a significant increase in its premium payment. The client should be solicitous in this case, as long as the actual exposure is truly below the normal thresholds that it might otherwise insist upon.

The Client's Perspective

There needs to be clarity regarding allocation of tasks and duties, in a manner that gives the client certain knowledge of who will be doing what. The client merits a definite and accessible point of contact – one who can readily answer any questions.

Second, the extent to which training will occur, and whether the client will bear any of the costs thereof, should be addressed. In some cases, training may be an explicit client objective, so that in the long run a valuable and competitive firm can be added to its outside counsel base. In others, the client may decline to foot the bill, even partially, for such efforts.

Training costs can arise in direct and indirect ways, e.g., sending one attorney from each firm to cover regulatory agency meetings. It is my view that given the policy objectives of joint counseling, clients should be flexible and absorb some of these costs.

The impetus behind forming joint counsel relationships may be reduced as a result of the increasingly conservative political climate. Nevertheless, such relationships retain their vitality as useful tools for client service and business development.

The keys to effective development of joint counsel teams are: openness in the formative discussion and client solicitation phases; care in drafting the agreement; a cooperative sharing of client responsibilities; and continual attention to making service to the client a prime objective.❖