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THE SEVEN DEADLY SINS OF LAW FIRM MERGERS AND COMBINATIONS

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Dante Alighieri's epic poem *The Divine Comedy* (and earlier theological/biblical references) listed the seven deadly sins of pride, envy, anger, sloth, greed, gluttony, and lust. In coming across this listing while doing some recent research, I clearly had an *"I could have had a V-8"* experience. These seven deadly sins – with a little bit of adjustment and redefinition – can clearly illustrate the problems many law firm managements have in successfully carrying out meaningful mergers and combinations. Thus, the following offers our take on these seven deadly sins of law firm mergers and combinations and what a firm interested in strategically growing can do about them.

Absence of an Articulated, Agreed Upon Growth Strategy

Growth is a capitalistic imperative – businesses have to successfully grow to respond to the dynamics of the marketplace. Law firms have to grow to survive (but, growth is defined by more than simply the number of attorneys).

- Certainly by now, most law firms of any size have had serious or semi-serious discussions regarding merger or combination with other firms.
- Yet, many of these firms have not considered or articulated why they want to grow, whether they want to merge or not (and many firms do not need to merge in order to grow), and, if they do, what they want in a merger partner (i.e. – criteria).
- And, even if firms have articulated a growth strategy, it is not understood, not reinforced, and often not supported within the partnership.

The remedy or antidote for this sin is clear – the development (and regular updating) of a clear straightforward growth strategy (that reflects the Firm's vision) that is shared with and understood by the Firm's partners and can be easily shared with any merger/combination candidate.

Laissez-Faire Approach to Merger Consideration and Execution

Many law firms have an unstructured approach to identifying candidates, determining the viability of a merger, and, ultimately negotiating and executing it. They lurch from step to step (a series of steps, rather than a parallel approach) and this often takes forever. As a result, even well thought out mergers/combinations die of their own weight. Often no one has responsibility other than the CEO/Managing Partner – but often he/she has little help and gets bogged down in the details. Scheduling meetings with key people in the two firms becomes an administrative impossibility or close to it.

If firms have decided they want to grow through merger or combination, then there must be a corresponding process, discipline, and schedule – and adherence to all three. Firms must decide who fits their criteria, who should be contacted, what happens in the initial and following meetings, and when each step has to be completed. Good mergers/combinations do not happen by accident.

Irrational Attachment to the Legacy Firm and an Inability to Focus on the New Firm

In spite of the fact that, intellectually, most law firm managers understand that the value of a merger or combination comes in what is created, not either firm's historical position – many cannot emotionally cope with that fact. We are continually amazed in seeing the representatives of both parties in an apparently solid strategic merger trying to ensure that everything will be done the way their legacy firm did it. Both firms try to duplicate what they had in their legacy firms and very little time and effort is placed on thinking about and planning for *new firm* (i.e. – thinking of a better way to do things).

Even in an acquisition of one firm by another, doing it the way the larger firms it does is not necessarily the right answer. There is usually little attempt to take advantage of what the acquired firm brings to the table.

The antidote to this sin is very simple – get to thinking about and planning for new firm as soon as possible – regardless of the size differences of the two firms. *New firm* strategic plan should be developed early in the discussions, as should *new firm's* name.

The Fatal Need to One-Up Potential Partners, As If You Are Representing a Client

This corollary of the above sin is a particularly difficult one to deal with. Law firms, their managements, and, all too often, their non-lawyer management tend to enter merger negotiations looking for negotiation victories over their potential partner (e.g. – a larger number of people than logical on the Management Committee, control of the major practices, etc.). In fact, one of the biggest problems we have as consultants is to get both parties recognizing that they have to be negotiating relative to the needs of *new firm*, not to one-up the other. Simply put, if you win a victory in negotiating a law firm merger, you create an enemy. That will come back to haunt most firms and is not the way to begin a relationship.

The answer is to be fully transparent in a negotiation process and make a good faith effort to ensure that both firms are fairly represented in *new firm*. Remember, these people are going to be your partners – the golden rule applies.

Selfish Obstructionism

We see selfish obstructionism in virtually every merger we work on. This is where individual partners, small groups of partners, or non-attorney managers clearly get in the way of what the clear majorities in both firms are trying to do.

- That may come from an individual partner or a practice that does not feel the merger materially benefits them – so, rather than having their cheese moved, they put obstacles in the way of the overall merger.

- Often, small groups can have tremendous impact on decisions to merge or combine. Most firms have a super majority regarding merger decisions defined in their partnership agreement – usually 67% or 75%, while others have severely limiting super majorities, as much as 80% or 90%. It does not take much to create a roadblock that severely hurts the best strategic interests of both firms.

We have found that self obstructionism comes from two camps – the highly productive partners (one end of the bell curve) and the underproductive partners (the opposite end of the bell curve). Both see a merger or a combination as a direct threat to their present existence.

Addressing selfish obstructionism requires continuing communications by managements at both firms, isolating the obstructionists and dealing with them (more often than not diplomatically, but less than diplomatically if it is called for), and continuing, as discussed above, to focus on the advantages of *new firm*.

Avoiding Deal Breaking Issues

Another merger capital sin involves both firms avoiding difficult issues that often can be deal breakers. For instance, if the name (which is always an emotional issue) cannot be resolved, firms will put it on the back burner, but it always comes back to bite them when agreement is not achieved early on. Other potential issues that need to be addressed early are the philosophy of partner compensation, major conflicts (client and practice), organizational responsibilities, and major financial issues. Financial issues deserve a comment – often lurking in the firms' respective balance sheets are problems for both the legacy firms and/or for *new firm* (examples include such items as capital accounts, unfunded pension liabilities, etc.).

The appropriate way to deal with the avoidance of deal breaking issues is obvious – deal with them early in the process (as soon as possible). Most of these potential issues can be dealt with rationally early in the process – as time marches on they fester and become emotional issues and are much more difficult to deal with. And, if they cannot be resolved, better to know that before significant time and resources have been poured into unfruitful merger discussions.

Inability to Integrate

The last deadly sin is a real killer. Even if firms have done everything the way it should be up to the closing of the merger, the combination can fall well short of expectations if there is an inability to integrate and execute against the idea of *new firm* and its strategy. Even though every law firm manager knows this to be true, actual integration performance can be very spotty. For example firms often make critical mistakes to avoid controversy – naming co-chairs for all of the practices, leaving practices and offices in one firm independent of the other, creating a management structure where each legacy firm is generally independently managed by its own people, etc.

Other manifestations of this final sin include poor marketing and missing the opportunity to tell the marketplace who *new firm* is and why the two firms have merged, inability to communicate effectively with clients about why the merger is being done and why it is in the clients' best interests, and an *"us versus them"* mentality among the administrative and support staffs of the two legacy firms. We have seen attorneys come together and merge effectively, yet years later there are examples of where the administrative staffs never merged or integrated.

The answers are straightforward and simple. First, a merger needs to be integrated as totally as humanly possible on the first day – no excuses. *New firm* begins on the first day of the merger, it does not slowly but surely emerge over the first year or two. Also, a detailed integration plan with tasks, responsibilities, and timing is essential to get the integration right.

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We hope the above seven deadly sins of law firm mergers and combinations provided some insight to your own consideration of potential strategic growth moves. Our intent was not to be definitive or comprehensive, but to provide some insight to the major pitfalls.

Smock Law Firm Consultants is a focused strategic management consulting firm with a primary industry focus on the legal marketplace. We serve our law firm clients in five areas – overall firm and practice strategy, mergers and combinations, practice group management, firm financial management, and strategic issue resolution.