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JUNE 2016

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Below left to right: Molly Cox, Joe Curcillo, Bruce Weinstein, PhD, Jill Schiefelbein and Jeff Korhan, MBA







THE PARTNERSHIP ISSUE

PERFECT PARTNERS?

Steps you should take before entering into a business relationship

BY JOE CURCILLO



Daniel pushes back in his office chair and rubs his eyes. He spent four hours on his computer drafting a proposal to a client. He realizes he has missed his family dinner once again, and will be going home after his children are in bed. At that moment, his iPhone sounds a chirp. He glances down to see a photo of his partner holding a golf trophy with the message: "What a great day networking."

It is at that moment he realizes not only is his partnership failing, but he now despises his partner who was once a friend.

Much like a marriage, a business relationship is a sensitive and delicate balance of different personalities, obligations and commitments. Many times, friends walk into my law office telling me of their dreams and plans for a successful business venture. Often, they will leave without wanting to pay legal fees. They want my blessing, and tell me I don't understand their dreams and how well they work together.

Several years later, one of those two friends will inevitably walk into my office to tell me how much he hates his partner, how the business is failing, and he needs my help to bail him out.

It sounds so much like a divorce, because *it is like a divorce.* Dreams are what the world is built upon, and litigation is what tears it down.

How do you avoid being a casualty of a bad business partnership? The short answer is you take the time upfront to define your goals, your business plan, your obligations and your expectations in writing.



"Take the time to define your goals, your business plan, your obligations and your expectations in writing," says speaker and lawyer Joe Curcillo.

WHY DO YOU WANT TO PARTNER?

Before you do anything, ask yourself why you are entering into the partnership. Many times, partnerships are born because the parties feel another person has something they lack. It may be because you do not have the capital. Maybe you lack a certain skill, and partnering with a person who has that skill solves your problem. It may be because the other person has resources you do not possess. Or another speaker brings more business marketing knowledge. Or has the online seminar experience you lack. Ultimately, you need to evaluate what you stand to gain against that which you stand to lose.

For example, is insecurity or fear driving you to seek a partnership? Maybe you have a lot of product ideas, but think you need someone on the business or marketing end. You might be right, but do not undervalue your intellectual-property rights, and don't underestimate your own creativity and ability to create future valuable products.

Ask yourself: Is the trade-off worth the risk? Surely, you can get capital without giving away your enterprise ability. By taking on a partner, are you giving away half of your resources, money, information or property? Hiring someone to do what you cannot do is less risky than partnering with someone only to absorb their expenses and share possibly undeserved profits.

Another client has come to my office on a number of occasions to ask that I make adjustments to the ownership of his business. His lack of desire to put in his own capital—or leverage his assets—has put him in a position where he has offered people percentages of his business to avoid hiring. Over time, he sold pieces of his dream to his various would-be employees or contractors.

The last time we met several years ago, I realized he could not do math, as he was only 5 percent away from losing control of his own company. What he did not realize was ownership included all of his books and training programs. If he toned down his lifestyle slightly and chose not to give away shares, but instead contract and hire, his intellectual property would not be at risk.

Often, partnerships are formed because individuals do not possess self-confidence in their own abilities to do it alone. Partner for the right reasons!

GET ON THE SAME PAGE

A viable partnership can be a great pathway to success. One of the greatest partnerships was that of Orville and Wilbur Wright. Orville was the technical talent and engineer, while Wilbur had the vision. Together, they invented and created, but they also kept accurate records. It was the unglamorous methodical planning and record keeping that eventually led to the first plane capable of controlled flight. With the same methodical planning and far-from-glamorous "working out the details," your new company can be capable of controlled flight.

So, how do you go about getting on the same page? Give consideration to those matters that are truly important to you and what you want to achieve. Consider the following:

Values. Do you share common values with your proposed partner? Just like a good friendship, people are held together when they have a similar belief structure and purpose. Get to know what your proposed partner does for fun and how they are committed to the community or social responsibility. Learn what motivates your partner. The closer two partners' value structures are aligned, the more aligned the company values will be.

Personality. Get to know your partner's personality. How do they handle themselves when confronted with adversity? How do they handle themselves when they are confronted with challenges? Do you complement each other? What will your working relationship feel like in five years? Ten years? Twenty?

Contribution. Discuss with your partner each person's contributions. Make sure you respect each other's contribution to the partnership before it begins. I have seen partnerships where a partner values their community connections more than they valued the hundreds of thousands of dollars the other partner put into the company. Do not allow this disparity to destroy your relationship.

Intellectual property. While in some cases it is safe to commit to a belief that you both maintain rights to any intellectual property you bring into the business, the waters get murky when intellectual property develops into something new. As you develop your talk, your training program or written and video material, how will you divide the new material when you part ways?

For example, one of my clients developed a product for a specific industry. He held the patent. During the partnership that followed, he developed a new product rendering his old product obsolete. When the partnership dissolved, he had to share the patent with his partner who knew nothing about the product, but did help market the product.

Sadly, he could have modified the product on his own, and he would be sharing nothing. The marketing of the product rendered little profit during the partnership. The majority of the income came when a larger company acquired the product. The better solution would have been to delineate the expectations and rights regarding future intellectual property prior to forming the partner-

ship. Unfortunately, the partnership was formed based on the original product with no vision of a better mousetrap.

Research. Do your due diligence. Just as a major company performs its due diligence before acquiring another large company, you should do the same on your potential partner. Take the time to find out whether your partner has delivered on promises and whether he is truly respected by current clients. Do not be afraid to ask for referrals. See if you can gather any financial information regarding his or her existing company. By doing all of this, you will avoid unpleasant surprises when it is too late to escape.

Dating. Consider the possibility of dating before you get married. Find a short-term project to work on together to determine your effectiveness as partners. Nothing is a better test of how well you can get along and produce results than actually doing it.

MAKE IT LEGAL

You cannot expect the friendship to outlast the breakup of the partnership. Hope for the best, but prepare for the worst. Here are some important considerations before deciding to partner—or at least before walking into your lawyer's office.

- What are the duties and obligations of each partner?
- What are the ownership percentages? (Sure, 50/50 sounds good, but then, either party can make decisions and bind the company without consent.)
- Can you define each partner's equity investment in the following?
  - Cash
  - Labor
  - Intellect and invention
  - Rainmaking and personal relationships



- How much time will each partner contribute?
- How will you measure all of the above?
- Do you have decision-making and conflict-resolution processes?
- How will past, present and future intellectual property rights be handled?
- Do you have a clearly defined exit strategy?

You must also decide what business structure you and your partner desire. This is best accomplished with the assistance of a lawyer and an accountant. Almost all new small businesses with more than one member choose to be organized as general partnerships, limited liability companies (LLC) or subchapter S corporations. These three are generally the easiest to navigate for small businesses. Each has advantages and disadvantages with respect to structure, taxes and formation costs.

FINAL THOUGHTS FROM A LAWYER

Once you have addressed and resolved all of your concerns, put everything in writing. Both parties should sign a formal partnership agreement.

During the early stages of a company's formation, affording a lawyer can be difficult. But sadly, if things go wrong, it could cost much more for a lawyer to clean up the mess. You owe it to yourself to ensure your partnership foundation is solid.

Recently, I dealt with a client corporation looking at possible criminal charges. The company was formed using online forms and filing instructions. Unfortunately, they did not finalize documents such as the LLC's operating agreement or the correct corporate filings. Therefore, the individuals were at serious risk.

I don't see this happening in the speaking business, but in this litigious society in which we live, I must encourage everyone to get your business started on the right foot. That means getting started on the right foot personally, professionally and legally.

Build a strong foundation that allows your partnership to soar and your ideas to take flight.



Joe Curcillo is a speaker, entertainer, lawyer and communications expert. As an adjunct professor at Widener University School of Law, Curcillo developed a hands-on course, based on the use of storytelling as a persuasive weapon. He has been a professional entertainer helping corporations and associations improve their communication techniques since 1979. Learn more at www.TheMindShark.com.