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FEATURE: FLYING SOLO: THE SMALL LAW FIRM AND STRATEGIC ALLIANCES

by Robert S. Bennett

Robert S. Bennett is the senior litigation partner at Bennett, Camp, Krenek & Hilder, L.L.P., a small plaintiffs firm that handles complex civil and criminal matters involving personal injury, toxic tort, employment discrimination, antitrust, and federal investigations.

My legal career began 21 years ago with a very large law firm -- the United States Department of Justice. Since then, I have been a solo practitioner, with the last ten years as founding partner of a law firm with 20 litigation and corporate attorneys. Recently, my firm dissolved and I formed a new partnership with three litigation attorneys to concentrate on plaintiffs' contingency work in toxic tort and personal injury, employment discrimination, consumer law, antitrust and complex white collar criminal defense matters. In my experience, the small law firm provides unique and rewarding challenges in the practice of law.

Other attorneys share my view. Recently I attended the swearing-in of Civil District Judge Tad Halbach. In his remarks to the audience, Judge Halbach talked about the four years he spent as a solo practitioner before his nomination to the bench. He described those four years as the greatest and most fun experience of his life. This description parallels John O'Quinn's career. One afternoon after John and I successfully completed a joint project, he expressed his satisfaction, as a member of a small firm, in seeing through a project from inception to resolution. John also noted that under his present (and much larger) arrangement, he can concentrate solely on trial matters and leave the discovery and motion hearings to other attorneys in his firm.

My experience in mass tort matters and complex antitrust cases over the past several years has inevitably led to strategic alliances with other solo practitioners and small law firms which transcend the standard "referring attorney," "local attorney," or "joint venture" arrangements. These strategic alliances were formed to share costs, skills, knowledge, and information.

The development of new technology allows law firms to instantaneously share information and data through special telephonic links, an impossibility just a few years ago. Attorneys and staff from different firms can work together concurrently rather than sequentially. The use of computer networks allows this sharing and brings increased power and ability and greater flexibility to the litigation process. The end result is better service to our clients.

One of the real advantages to strategic alliances is the perspective and experience each firm brings to a project. The exceptional skills and resources of each firm are employed to advantage for the duration of the project. There are, of course, certain risks when a project is divided among firms. For example, one firm's attorney may prepare the jury charge, leaving out key language. If uncorrected, the consequences could be disastrous

to the entire project. Losing control of part of a case may be anathema to some trial attorneys. It certainly suggests the need to build trust among those involved in strategic alliances.

I recommend the following guidelines to solo practitioners and small firms interested in forming strategic alliances.

1. Choose Well.

You will be working with firms or individuals for an extended period of time. Their values and work approach will affect the end result. It is not as important to have someone "in command" as it is to have an understanding of the separate areas of strength each individual or small firm brings to the strategic alliance. Decisions by consensus offer the best outcome.

2. The Golden Rule.

Every strategic alliance should offer a win/win opportunity for the practitioners involved. The interest of the client must be paramount and each participant must be part of the ultimate outcome.

3. Responsibilities Defined and Assigned.

There should be a ready answer to why a strategic alliance is best for the client and best for the firms involved. Each participant must know what skills, resources or knowledge he or she is expected to bring to the endeavor and what his or her specific role in the activity will be.

4. Building a Communication Network.

Computer networks and links must be used to communicate with current and potential strategic alliance members. The constant exchange of information will ensure success.

As lead trial counsel for my old law firm, I obtained a significantly favorable verdict for my clients against Honda Motor Company, ending Honda's 34 victory streak in similar cases. Winning the Honda case has brought a certain amount of notoriety, resulting in nationwide contacts and strategic alliance opportunities with attorneys and individuals with complex product liability cases costing over a million dollars in time and expenses. Very few firms can handle this type of litigation alone, emphasizing the need for strategic alliances.

After the Honda victory, my trial team moved on to other litigation projects such as cases of exposure to formaldehyde emissions from wood products used in the manufacture of mobile homes. Our firm formed a strategic alliance with the well-known technology-oriented litigation firm, Fleming, Hovenkamp & Grayson, P.C., to pursue these personal injury/product liability cases on a nationwide basis, utilizing their client base of thousands of mobile home owners throughout the country.

We cemented our strategic alliance through strategy sessions with our respective staff members as well as attorneys from the states of Illinois and Florida. At these sessions, the steps to litigation and resolution of formaldehyde exposure cases were discussed in detail, with all team members contributing creative ideas and solutions to this mass litigation project. Key staff members came to know one another and to rely on each other's skill. At these strategy sessions we outlined and formulated the project's assignments, and established my firm's harmonious and compatible working relationship with the Fleming firm. Joint staff meetings are periodically held for special assignments such as the custom design of a database tailored to meet the needs of these personal injury/product liability cases. Computer links were established between the two firms using a product called First Class which accommodates Macintoshes(R), PC's running Microsoft(R) Windows, and other computer systems. The custom-designed database we share is FoxPro.

My staff members continue to exchange knowledge and information with the Fleming firm as the project progresses. Our firms are sometimes in contact on a daily or weekly basis to organize and conduct various assignments. Currently, the Fleming team is conducting ambient air testing and inspections of the mobile homes, while the Bennett team is responsible for filing petitions, requesting and responding to discovery, taking depositions, appearing at hearings and pretrial conferences, and preparing for trial. Each firm's responsibilities are uniquely suited to the skills and preferences of its attorneys and staff.

In the area of white collar criminal defense, the adversary is often the U.S. government, armed with its vast resources in which to investigate and prosecute. Larger federal cases may involve task forces comprised of several investigative agencies. These investigative resources support the prosecution in preparing for, and at trial. The solo criminal practitioner or small law firm may be at a disadvantage to combat these powerful government resources. However, parity can be achieved by forming alliances outside the office to create an ad-hoc defense team.

One of the attorneys at our firm focuses her practice on employment law. As we are currently involved in two class actions based on employment discrimination, strategic alliances are vital in this area of our practice as well. One of the class actions already certified involves nearly 3,000 class members and approximately 15 other attorneys who have coordinated efforts and clients. Mass litigation, even paper-intensive employment litigation, presents no obstacle to the small firm utilizing strategic alliances.

One tool we use to forge alliances in the area of employment law is an extensive client interview questionnaire developed in our firm. The questionnaire, in bound booklet form, is made available to other firms and solo practitioners to facilitate evaluations of potential clients and to educate the lawyer or nonlawyer unfamiliar with the nuances of federal and state employment laws. The questionnaire is also a valuable "alert" system for attorneys faced with potential employment class actions without the resources to prosecute such cases themselves. A firm or solo practitioner may have developed strong relationships with several potential class members or mass litigation plaintiffs but lacks the expertise in employment law to bring the case to a successful conclusion. An alliance with a firm that practices employment law affords clients the best possible representation: the trustful relationship with the firm they are familiar with, and the experience and knowledge of a litigation firm.

Today's technology plays a major role in a small firm's ability to gain strategic advantages in mass litigation and large case matters. By investing in the latest computer equipment, fax machines, software, and CD-ROM technology, we have equipped our firm with the tools necessary to research and access information databases and other resources in a matter of minutes with tremendous savings to our clients. The ability to access and share databases and information with other attorneys and firms through strategic alliances keeps us a step ahead of the competition in effectively handling large litigation matters.

Strategic alliances with other firms have allowed me to take on and expand projects normally beyond the resources of a small firm. More importantly, my partners and I, along with our staff, enjoy the freedom to do what we do the best.