

MERGING LAW FIRMS – FORMATION CONSIDERATIONS

- ❖ EFFECTIVE DATE OF THE NEW MERGER
- ❖ CORPORATE FILING STATUS
 - CORPORATION (E.G. SUB S, C)
 - GENERAL PARTNERSHIP
 - LIMITED PARTNERSHIP
 - LIMITED LIABILITY PARTNERSHIP (LLP)
 - LIMITED LIABILITY LIMITED PARTNERSHIP (LLLP)
 - LIMITED LIABILITY COMPANY (LLC)
- ❖ PARTNERSHIP/OPERATING AGREEMENT
- ❖ SOURCE OF FUNDS TO FUND THE NEW ENTITY, OR NEW PARTNER CAPITAL CONTRIBUTION?
- ❖ FEIN (FEDERAL), STATE, AND LOCAL ACCOUNT NUMBER(S)
 - WILL THE NEW ENTITY GET NEW ACCOUNTS?
 - CREATE NEW ONLINE ACCOUNTS FOR PAYROLL TAX PAYMENTS
 - WILL ONE FIRM'S ACCOUNTS SURVIVE?
 - IF SO, THEN THE OTHER FIRM'S ACCOUNTS SHOULD BE CLOSED AFTER THE FINAL TAX RETURNS ARE PREPARED
- ❖ SELECTING A CPA TO CONSULT ON TAX AND FINANCIAL IMPLICATIONS OF MERGER
- ❖ SAME FISCAL YEARS FOR TAX REPORTING? IF NOT, HOW DOES THAT AFFECT THE MERGER EFFECTIVE DATE, TAX RETURNS, ETC.?

MERGING LAW FIRMS – COMPENSATION CONSIDERATIONS

- ❖ PARTNER/OWNER COMPENSATION
 - WHAT IS THE EXISTING TYPE OF COMPENSATION FOR EACH FIRM (E.G. SALARY, DRAWS, COMBINATION, ETC.)
 - HOW WILL THAT CHANGE GOING FORWARD?
 - HOW WILL YOU ADDRESS THE COMPENSATION DISPARITY PRE-MERGER AND THEN GOING INTO THE NEW FIRM?

- ARE THE ADJUSTMENTS EQUITABLE BASED ON THE AMOUNT OF WORK AND NEW RESPONSIBILITIES?

➤ BONUSES

- DID BOTH FIRMS GIVE BONUSES?
- WILL THERE BE BONUSES GOING FORWARD? IF SO, BASED UPON WHAT CRITERIA?
- Performance tied to billable hours, collections, etc.?
- Consideration given for marketing activities, mentoring, community involvement?

❖ ASSOCIATE AND STAFF COMPENSATION

- WHAT IS THE EXISTING TYPE OF COMPENSATION (E.G. SALARY, COMMISSION, BLENDED)?
- HOW WILL THAT CHANGE GOING FORWARD?
- HOW WILL THE DISPARITY PRE-MERGER AND GOING INTO THE NEW MERGE BE ADDRESSED?
 - ARE THE ADJUSTMENTS EQUITABLE FOR THE WORK PERFORMED AND NEW RESPONSIBILITIES?
- WILL THERE BE BONUSES? IF SO, BASED UPON WHAT CRITERIA?
 - CONSIDERATION GIVEN FOR MARKETING ACTIVITIES, COMMUNITY INVOLVEMENT?

❖ EMPLOYER/EMPLOYEE BENEFITS PLANS – DOES EACH FIRM USE THEM? HOW WILL THEY BE MERGED?

- SIMPLE IRA, 401(K), PROFIT SHARING, SEP, QNEC
- INSURANCE - HEALTH, LIFE, DISABILITY INSURANCE, DENTAL, VISION
- HSA, FSA ACCOUNTS
- PTO AND SICK POLICIES

MERGING LAW FIRMS – ACCOUNTING AND BILLING CONSIDERATIONS (TBA)

❖ TBA SOFTWARE

- WHAT PRODUCT IS BEING USED BY EACH FIRM?
- WILL ONE PRODUCT SURVIVE AND BECOME THE MERGED FIRM'S SOFTWARE?
 - IF SO, WHAT DATA CAN BE EXPORTED OUT OF THE PRODUCT NOT BEING USED?
 - CAN THAT INFORMATION BE IMPORTED/MERGED INTO THE SURVIVING PRODUCT OR WILL THE INFORMATION BE ENTERED MANUALLY? IF MANUAL, WHO WILL ENTER THE DATA?
- WILL YOU RESEARCH NEW SOFTWARE PRODUCTS TO USE GOING FORWARD?
 - SCHEDULE DEMOS WITH SUFFICIENT TIME TO REVIEW OPTIONS AND PLAN THE IMPLEMENTATION
 - REVIEW DATA THAT EXISTS IN EXISTING PRODUCTS TO CONSIDER WHAT COULD/SHOULD BE MIGRATED TO THE NEW PRODUCT

❖ TRUST ACCOUNTING

- WILL YOU OPEN NEW ACCOUNTS FOR THE NEW ENTITY?
- IF AN EXISTING ACCOUNT WILL BE THE NEW ENTITY'S MAIN ACCOUNT, WILL YOU TRANSFER BALANCES FROM THE OTHER ACCOUNT OR KEEP THEM SEPARATE AND WIND DOWN THE OTHER ACCOUNT?
- ARE EXISTING ACCOUNTS FULLY RECONCILED AND OUTSTANDING ITEMS ADDRESSED?
- IF STALE DATED BALANCES OR UNCLAIMED FUNDS, IS THERE A PLAN TO CLOSE THE BALANCES AND REMIT THE FUNDS BASED UPON THE BAR ASSOCIATION'S UNCLAIMED FUNDS RULE?

❖ BILLING PROCEDURES

- WHAT REVISIONS ARE REQUIRED FOR THE RETAINER AGREEMENT?
- ARE THE BILLING PERIODS THE SAME OR DIFFERENT?
- HOW ARE THE FEE AGREEMENTS SIMILAR OR DIFFERENT? (E.G. HOURLY, FIXED, ETC.)
- HOW WILL ADVANCED COSTS BE ADDRESSED?
 - TRACKING BY EACH ATTORNEY?
 - CASH REQUIRED TO FUND ADVANCED COSTS?
- ARE NON-REFUNDABLE FEES DEPOSITED DIRECTLY INTO OPERATING OR TRUST?
- DID EITHER FIRM USE A RETAINER REPLENISHMENT/EVERGREEN RETAINER POLICY? SHOULD A POLICY BE IMPLEMENTED?

❖ REPORTING

- WHAT PRODUCTIVITY REPORTS ARE REVIEWED BY EACH FIRM?
 - ACCOUNTS RECEIVABLES
 - BILLINGS
 - COLLECTIONS
 - BILLABLE/NON-BILLABLE TIME
 - TIMEKEEPER BUDGETING
- WHAT FIRM FINANCIAL REPORTING IS REVIEWED BY EACH FIRM?
 - PROFIT AND LOSS STATEMENT
 - WHAT INCOME AND EXPENSE ITEMS ARE BEING TRACKED BY EACH FIRM?
 - WHAT GENERAL LEDGER ACCOUNTS WILL CHANGE OR GET ADDED?
 - IS EITHER FIRM MAINTAINING A BUDGET?

❖ CLIENT BALANCES

- WILL ACCOUNTS RECEIVABLE BALANCES GET TRANSFERRED TO THE NEW ENTITY OR WILL THEY BE PAID IN THE SEPARATE ENTITIES?
- WILL UNBILLED FEES AND COSTS GET MERGED INTO THE NEW FIRM OR BILLED OUT IN EACH FIRM SEPARATELY?

❖ FEDERAL AND STATE TAX RETURNS AND SUPPORTING DOCUMENTS

- ARE ALL RETURNS AND DOCUMENTATION ARCHIVED AND ACCESSIBLE POST-MERGER FOR ANY QUERIES?
 - FEDERAL TAX RETURNS
 - 941 (FED. W/H, FICA, MEDICARE)
 - STATE (SUTA) AND FEDERAL UNEMPLOYMENT (FUTA 940)
 - STATE INCOME TAX
 - LOCAL INCOME TAX

❖ BANK ACCOUNT INFORMATION

- NEW ACCOUNT FOR THE NEW ENTITY OR WILL EXISTING ACCOUNTS BE USED BUT WITH A NAME CHANGE?
- DOES EITHER ENTITY ACCEPT CREDIT CARDS?
 - IF SO, WILL YOU MERGE MERCHANT ACCOUNTS?

❖ INSURANCE POLICIES

- PROFESSIONAL LIABILITY (CONFIRM IF TAIL INSURANCE IS INCLUDED)
- PROPERTY (LIABILITY, WIND, FIRE, FLOOD, ETC.)
- AUTO
- KEY MAN
- BUSINESS INTERRUPTION
- LOSS OF VALUABLE DOCUMENTS
- WORKERS' COMPENSATION
- TAIL INSURANCE COVERAGE

❖ SCHEDULE OF ASSETS – WILL EACH FIRM'S EXISTING ASSETS BE OWNED BY THE NEW ENTITY?

- FURNITURE
- COMPUTERS AND EQUIPMENT
- BACKUP EQUIPMENT AND ACCESS
- AUTOMOBILES
- BUILDINGS
- SAFE OR LOCK BOX COMBINATION

❖ LINE OF CREDIT

- ARE THERE ANY CREDIT LINES? IF SO, WHAT STEPS NEED TO BE TAKEN TO KEEP THEM IN THE NEW ENTITY?
 - NEW FINANCIAL STATEMENTS?

- NEW PERSONAL GUARANTEES?