



COLLABORATIVE RELATIONSHIPS

Presented by:

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The word Collaboration does not have any specific legal meaning. In other words, it doesn't define a specific legal relationship. With that said, it can take many configurations, the basis of which is the understanding and agreement of the parties to such relationship.

As we all know collaborative relationships have become very much a part of the way we work in today's world with other professionals. Some of these take on a continuity as a result of an ongoing relationship that has been built up over years through many common assignments/clients; and some are less frequent, occurring once or only a few times spread out over many years. As I have described these arrangements, they all have one thing in common—they are product of an informal understanding (i.e. no binding legal promises are made) about the role each of you will play in the context of the assignment/client, there is generally no sharing of fees, cooperation is based upon the individual's willingness to play nice, and fit within the team and each member works on the goal defined by him or her with the client. Whether that goal fits within the common goal established by the other collaborators of the group will depend on the goodwill of each collaborator in working with the other members of the collaborative group. If it's successful, the team or members will elect to do it again in another assignment, or in deed may be willing to recommend members of the team for another assignment that he/she is involved with.

As most of you already know, you can enter into a formal legally binding collaborative arrangement. The basis for this is contract law, and can take many different forms.

For example, it could be forming a separate entity through which each collaborator participates as in the following example:

“For example, X LLC and YCorp form C,LLC, “Management Consultants”, and agree to solicit work and enter into engagements with third parties under this umbrella organization with its own rules of governance, and organizational structure (i.e. charter, bylaws, operating agreement and ancillary documents such as buy-sell agreements, compensation agreements, bonus plans, etc.). X LLC and Y Corp are the members of C, LLC” and accordingly will decide who and how it will be managed.

Joint Ventures can be formed for a specific purpose, specific client, for a defined industry or practice area and is intended to be the basis through which collaborators engage third party clients in this specific field, etc. In many of these instances, the participants will retain the right

to provide their particular professional service in other fields or to other clients outside of the Joint Venture. This should be addressed in the governing agreements between the participants. Also note that a joint venture entity or agreement can have a limited life. For example, formed for one project for a specific client and purpose with a limited life the duration of which is for only as long as that project requires.

OR: it could be each entity formally agrees, in writing, to participate in its own identity but under the terms and conditions of its entity structure. This writing is a contract and it will govern the terms and conditions of the parties' participation in managing third parties' work, sharing profits and losses, etc.

Liability among and between the participants/collaborators:

(I should also mention that this legally binding arrangement doesn't necessarily have to be in writing to be legally binding. However there are obvious issues when it isn't in writing (problems of proof as to what the arrangement was or should have been, etc.) and legal considerations (statute of fraud, which requires certain arrangements to be in writing), although this is too broad to cover in this presentation.)

For Example: X LLC and Y Corp enter into a written agreement to jointly provide services as outside consultants to third parties d/b/a "Management Consultants"; no formal entity is formed, and the agreement governs all aspects of the arrangement among the collaborators.

In each case, the rights, obligations, liability and remedies that flow from one of the participants to the others stem from these arrangements, and should be addressed in the governing documents or agreements. These issues, to name a few, are ownership of customers, confidentiality of information, use of proprietary information or trade secrets, rights to name, telephone numbers, leases, and other entity owned property upon dissolution, withdrawal rights of a party, buyout of an entity's interest in the joint venture, right of contribution and indemnification.

Liability to Third Parties: This is governed or determined by the agreement between the Third Party and the Joint Venture Entity or the informal association with its participants and third party.

Example: Joint Venture Entity enters into a formal written agreement with third party. The terms and conditions of that agreement determine the rights, obligations, liability of one to the other. If the entity breaches the agreement, the third party sues the entity. Any rights of the members to that entity flowing to and from them are governed by the terms of that entity's governing documents. Another way to say it, is that the entity's liability to a third person doesn't determine the rights that one member may have against another member for causing that breach. (It's no answer to a breach by the entity to a third person, that one of the members to the entity didn't cause that breach).

Another Example: D/B/A enters into an agreement with third party.

The same analysis as above applies to the liability of the association to the third party, excepting only when the third party is informed that each underlying participant isn't formally being engaged as a collaborative association with an identity separate and apart from its individual participants. However, as a practical matter, associations of this sort are formed to give the appearance of an organization, and it's this appearance that is the basis for holding each individual responsible for the actions of the other participants. So in most instances of this kind, the third party will sue each individual collaborator d/b/a as the association. The question of the liability as between the participants arising out of the third party's suit will be determined by their agreement, and its provisions/understanding. If it's in written form, it will be easier to figure out and prove; if not, it becomes a question of fact (possibly law) and proof.

Examples of Formal collaborations:

Ideasicle-Expert Agreement and Client Agreement

LABS and CCS

Two Agreements purporting to create collaboration: the first was done by two businessmen who owned their respective businesses and decided to collaborate. Years later, one of them has passed away, the other one is elderly and inactive, each business is now run by a 2nd generation (i.e. daughter and son, respectively), and there is litigation over the intended nature of the relationship created. Also, they are an example of an association that used a name symbolic of them as a group of affiliated companies.

Second set of agreements is a start up business in a novel field of business, the first agreement of which is between the entity through which the business is conducted with the client and the independent collaborators and the second agreement is between the client and the entity. Explain the business: Ideation; two sides to the relationship, as with most businesses that use independent contractors and sell to other businesses.

Point to be made: That if it is worth creating a formal relationship in writing, then it is worth doing it properly so that the agreement leaves as little to doubt or interpretation as possible. In second set of agreements, you have two sides of the transaction that must be coordinated, so each agreement has to address certain issues in a symmetrical way. Creation of Ideas, ownership of those ideas and sale of the ownership rights in those ideas.

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