

## The Virtual Firm: Teaming Up with a Peer

By: David S. Rintoul

Working on a project with another independent actuary? Congratulations. You may have just formed a general partnership.

Joining with a peer to do a project is a great way to handle a project that would otherwise be too big, or for which you do not have all the expertise required. It can also relieve some of the professional isolation a solo or small-firm consultant can feel. To make sure that you get what you expect out of the deal, you need to keep some legal issues in mind, though. Many issues are similar to those addressed in the articles that appeared in the prior two issues on client agreements and agreements with contractors who will work for you.<sup>1</sup> Like those agreements, you will need to address issues such as ownership of any intellectual property created for the project, and non-solicitation of clients and possibly a non-compete. Take a look at the prior articles for more background on these issues.

Some legal issues are unique when working on a project with a peer. You may see the relationship with your peer as a one time, non-exclusive project. Each of you remains free to seek other work without having to share any of the work or revenue from these other projects with the others. Your expectations may be wrong, though, if your peer or a court finds that you didn't just form a one-off deal, but instead have established a new business entity. This can happen as a result of the law of partnerships.

If two individuals join together to do business with someone else, the law generally considers the individuals to have formed a general partnership under common law. You don't have to file any form, make any elections, put initials after the name of the entity, or even have a name at all. A partnership can arise simply from the fact that two or more individuals and companies are working together. Whether a partnership is formed, the scope of its business, and how long it will last depend on the intent of the parties. If this intent is not in writing, however, one of the "partners" may claim a different understanding of what you all intended when you started working together, particularly if participation in a lucrative and prestigious contract is at stake.

The consequences of a court finding that you are operating as a partnership can be far-reaching. Partners in a partnership owe their fellow partners strict duties of loyalty. In a famous statement of the duties partners owe to each other, Justice Benjamin Cardozo stated:

Joint adventurers, like copartners, owe to one another, while the enterprise continues, the duty of the finest loyalty. Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. . . . Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior.

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<sup>1</sup> The articles are at <http://library.soa.org/library-pdf/SCF0410.pdf>, page 14, and <http://library.soa.org/library-pdf/SCF0406.pdf> page 9.

The words are grand, but the consequences of partnership status are concrete. If a partnership exists, you have a duty to give your partner a chance to participate in future business opportunities that are within the scope of the business of the partnership. If you don't have something in writing setting forth the scope of the joint business, you open yourself up to a claim from a former "partner" that he should have the chance to participate in the project, or that you breached your duty to him by not first offering the business opportunity to the "partnership."

Avoiding an unintentional partnership can be easy. A simple letter signed by each participant that each has the right to pursue other business during and after the specific joint project without first offering the project to any or all of the other participants can be enough. Once any part of a deal gets in writing, though, there is a tendency to put everything in writing. The more writing there is, the more important it is to have legal counsel involved to make sure that everyone's expectations are fulfilled.

Sharing business creates the web of reciprocal interests that is the foundation of successfully marketing a solo or small firm practice. We all know, however, that it was no fun when our mothers forced us to share Halloween candy with our baby brother. Being forced to share a big contract is no fun, either. If you make sure that everyone understands the scope of a project at the beginning, **you** can decide to spread the wealth, or just keep all the goodies for yourself.

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