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Feature Story

# Lawyers not always equipped to work with family-owned businesses

***By Thomas D. Davidow***

As a family business consultant, I have found lawyers to be some of the smartest professionals with whom I work. As a group, they are highly conceptual and intellectually curious about how to resolve the most complex of issues. They also care deeply about their clients.



Lawyers who work with family-owned businesses, however, are often pulled in some form into the family dynamics, an area that, despite their intelligence and analytical training, they are unequipped to navigate.

Lawyers are vulnerable to two types of errors. There are errors of omission, in which they ignore the impact of their actions on the family system, and there are errors of commission, in which they actively and consciously seek to bring about change in the family relationships.

For example, a very well-respected and competent attorney drew up the estate plan for a family I was working with in the Midwest. The family's stated goal was succession. Two children, both of whom were in the business, had an extreme case of sibling rivalry. One had posted a sign on his door that read: "Genius at work." The other had posted: "It does not take a (expletive) genius to run this business."

With the rest of the family supporting them, however, the siblings worked very hard to sort out their differences. Their relationship evolved from stressful co-existence to one of cooperation.

The attorney's estate plan was driven by tax issues, funded by life insurance, and left the underlying interest in the business to the surviving parent. The problem with the plan was that one of the parents had a great relationship with one of the sibling's spouses and a terrible relationship with the other sibling's spouse. Due to a long list of historical issues, that unfortunate dynamic was beyond repair.

As a result, once the estate plan was drawn up, the sibling whose spouse had a strained relationship with one of the parents feared two things: First, if that parent were the survivor and were to gain control of the enterprise, then that parent would favor the sibling with whose spouse the parent had a good relationship; and secondly, that the relationship between the two siblings would be disrupted.

I had been working with the family as their family business consultant for three years prior to the attorney being hired to do the estate plan. I knew absolutely, based on my training, my understanding of the family's dynamics and knowledge of family systems theory that the estate plan would fail.

The fear of being treated unfairly by the surviving parent would seep into the consciousness of the sibling whose spouse had a difficult relationship with one of the parents. That sibling knew that if that parent were to become the survivor, then that sibling's future in the business would be at risk.

Through discussions and letters to the attorney and to the parents, I explained in great detail why this plan would have negative consequences for the family's relationships and severe consequences for the management and operation of the business.

I went so far as to suggest alternate models that would still accomplish the goal of tax savings while protecting the two siblings' relationship. I even predicted that, as a consequence of the estate plan, one of the siblings would leave the business within 18 months.

My advice went unheeded. Unfortunately, I was correct. The business managed to survive; the family relationships did not.

Why didn't the attorney give any credibility to the information I had gathered about the family over a three-year period? He was an excellent tax lawyer who had had lots of success with many family business clients. It was counter-intuitive for him to move away from a plan that he believed in. Unfortunately, he did not have the knowledge or the training that would have helped him understand his plan's effect on the dynamics of the family.

In another instance, I worked with two siblings who suffered from a relationship that was too close. While one sibling took care of the other — and constantly complained about it — the second sibling griped about unfair or unequal treatment in the business at the hands of the first sibling.

Their issue was separation. Co-dependency was unhealthy for both of them. They needed to separate, but it was not possible for them to do so as long as they were in business together. Their underlying mutual resentment (a consequence of their co-dependent relationship) was going to bubble up as soon as meaningful discussions about separation started to occur.

We were concerned not only about the siblings, but also about the many people who worked in their business and who were dependent on the siblings and their relationship for their livelihood. The challenge for all the professionals who worked with them was to manage the damage to the business, the employees, the suppliers and their customers.

The "underdog" sibling chose a law firm that specialized in being the "protector of those who have been victimized." At one point, one of the "protector" lawyers was so rude, aggressive, insulting and obnoxious, that the "caretaker" sibling threw a briefcase at him.

Nevertheless, the lawyers for both sides continued their discussions and we eventually struck a deal. (The "caretaker" sibling, no longer in the room, was called and approved via telephone). After the attorney for the "underdog" put the finishing touches on the agreement, I got that sibling's permission to read the agreement before it went out. I was shocked to discover that the attorney had changed a critical part of the deal without permission from his client.

Why did he do that? Blinded by his empathy for his client, (a projection of his own personal history, which he shared with me), he lost his objectivity and, therefore, his ability to see what was in his client's best interest.

**Risky territory**

Attorneys who are effective have good "people skills." Their clients trust them and share personal information with them. Much of the information that is shared has little to do with the legal issues involved and a great deal to do with the emotional issues they are wrestling with.

This sharing of information can be very useful, since, in the family business context, the most effective solution for a family business client is directly correlated with the amount of information the attorney has about the family and the family's dynamics.

However, in the process of gathering this information, too many lawyers get overly involved in "diagnosing" family members without the proper training necessary to make such psychological assessments.

Also, attorneys may not be aware of how their own emotional history, stimulated by the family's dynamics, can influence their decisions and advice.

Furthermore, because lawyers do have a lot of knowledge and experience, because they have gained the trust of family members and because what they say sounds correct, family members who are unaware of attorneys' biases will believe them and follow their advice. As a result, attorneys can unwittingly solve business issues in a way that will have a negative impact on family dynamics and the business.

Maintaining the boundary between managing family problems and interpreting the facts can be extremely tricky. Attorneys have not been trained to understand that business solutions alone cannot resolve underlying family issues. Like grass though concrete, those issues will eventually re-appear.

In my family business practice, I am very careful not to "play lawyer," to defer instead to the expertise lawyers bring to tax and business issues. Lawyers should be careful as well not to overstep their professional boundaries, not because it brings them into competition with psychologists, but because, by ignoring or misunderstanding family dynamics, they can bring serious harm to their clients.

Attorneys who wish to become more skilled at navigating the risky territory inherent in family business issues may want to look into The International Association of Attorneys for Family Held Enterprises (www.afhe.com). AFHE holds educational conferences addressing the overlapping legal and psychological aspects of working with family-owned businesses.

Through an increased awareness of the many faceted aspects of family dynamics, attorneys can learn how to acknowledge such issues effectively without trying to manage them through their legal instruments.

Once attorneys for family businesses and family business consultants, trained in family dynamics, discover the intersection where both professions meet, they can then work cooperatively to best serve the interests of family business clients.

*Dr. Thomas D. Davidow has worked with family businesses since 1982. He specializes in guiding the family through the myriad of ownership and management issues that surface during the succession process. He can be contacted at tom@tdavidow.com.*

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