

ACQUISITIONS OF ACCOUNTING FIRMS

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State Bar of Texas
12TH ANNUAL
CHOICE & ACQUISITION OF ENTITIES IN TEXAS
COURSE
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San Antonio

CHAPTER 7

**EDWARD M. POLANSKY CPA/PFS, EXECUTIVE PARTNER
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EXPERIENCE

2013-Present Weaver LLP

Retired Partner, June, 2013
Of Counsel, San Antonio Office

2009-2013 Weaver LLP

Executive Partner, San Antonio Office
Member Executive Committee 2009-2010

1998-2008 Polansky McNutt Perry & Company, P.C.

Managing Principal
Shareholder

1990-1997 Botello McNutt & Polansky, LLP

Managing Partner, 1996-1997
Director of Operations, 1990 - 1996

1968-1990 Ernst & Young (Formerly Arthur Young)

Director of Entrepreneurial Services Department
Southwest Region Thrift Tax Coordinator
Director of Tax Department
Partner, 1980
Office Professional Staff Recruiting Coordinator
Member of Audit, Tax and Entrepreneurial Services Departments

Experience includes extensive tax counseling and participation on a wide variety of accounting and audit clients, including various taxable entities such as corporations, partnerships, individuals, trusts and estates, and non-profit entities; and dealing with federal, state, and international tax authorities and regulations. Practice involves virtually all aspects of individual financial planning. Primary focus is on counseling closely-held businesses, their owners and related parties.

EDUCATION AND AWARDS

B.B.A., Accounting, 1968 University of Texas at Austin

Certified Public Accountant, 1970

University Honorary Fraternity memberships in:

Beta Alpha Psi (accounting)

Beta Gamma Sigma (business)

Phi Kappa Phi (general)

University of Texas Arthur Anderson Accounting Scholarship, 1967

Del Mar College Outstanding Business Student Award, 1966

PROFESSIONAL AND CIVIC AFFILIATIONS

American Institute of CPAs

Member of Responsibilities in Tax Practice Committee, 1996-99

Member of AICPA Council, 1992-1995, 2004-2007

Texas Society of CPAs

Distinguished Public Service Award, 2012-13

Outstanding Committee Chair Award, 2010-11

Chairman Federal Tax Policy Committee 2009-2011

Named Honorary Fellow 2007-2008

Chairman Awards Committee 2006-2007

Chairman Nominations Committee 2005-2006

Chairman of Executive Board, 2004-2005

Chairman-Elect and Member of Executive Board, 2003-2004

Special Recognition Award to Society, 2001-2002

Vice President and Member of Executive Committee, 1989-1990

Member of Executive Committee, 1993-1994

Permanent Member of Board of Directors

Membership Services Council Chairman, 1990-1992, 1997-1999

Chairman Strategic Planning Committee 2000-2003

Co-Chairman TSCPA Vision Team 1999

Vice Chairman Communications Council, 1994-1996

Chairman CPA Tax Institute Conference

Named Outstanding Council Chairman, 1990-1991

Past Editor/Author of Practice Management Column of Today's CPA Magazine

San Antonio Chapter of the Texas Society of CPAs

Outstanding Chapter President by TSCPA 1988-89

Former member of Board of Directors

Meritorious Service to Profession Award, 1994

President's Award, 1987

Texas State Board of Public Accounting

Member Continuing Professional Education Committee
Member Licensing Committee
Former Member Behavior Enforcement Committee

San Antonio Estate Planners Council
President, 1987-1988
Former member of Board of Governors
Active current member

Alamo Public Telecommunications Council (KLRN)
Chairman of Board 2012-2014
Member of Board and Executive Committee,
Previous Chairman Finance Committee

San Antonio Area Foundation
Chairman, 1996
Vice Chairman, 1994-1995
Former Member of Board of Trustees

The University of Texas Health Science Center School of Nursing
Former Member of Nursing Advisory Council

Randolph-Brooks Federal Credit Union
Governance Committee Chair
Current Board Member, 2000-Present
Advisory Board Member, 1998-1999

PUBLICATIONS

Featured in July 2004 Magazine CPA Wealth Provider (Supplement to Accounting Today, Accounting Technology, and Practical Accountant) with Broker/Dealers"

Author of Feature Article in February 2003 Today's CPA (Published by the Texas Society of CPAs) Magazine "Financial Planning and the CPA"

Past Editor/Author of Practice Management Column of Today's CPA Magazine (Published by the Texas Society of CPAs)

Author of Children's book "Oscar the Osprey: The Bird Who was Afraid of Heights"

Daniel D. Tostrud

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Dan Tostrud is a member in the law firm of Cobb Martinez Woodward PLLC in Dallas, Texas. For over 23 years, Dan has devoted the vast majority of his law practice to representing lawyers, accountants, and other professionals on malpractice claims, administrative proceedings, and fee disputes. Dan has obtained summary judgment or dismissal on the merits for his lawyer and accountant clients on more than 55 occasions, and has successfully tried more than a dozen professional liability cases to verdict. Dan frequently speaks both locally and nationally before lawyers and accountants on risk management, conflicts and other ethical issues, and strategy in defending malpractice claims. Dan was chosen by D Magazine for inclusion in its list of Best Lawyers in Dallas for 2012, 2013, and 2014. Dan has been named a Texas Super Lawyer by Texas Monthly every year since 2004, and maintains an AV Preeminent peer review rating with Martindale-Hubbell. Dan received his law degree from Baylor University in 1989.

Bar Admissions

Texas, 1989

U.S. District Court Northern District of Texas

U.S. District Court Southern District of Texas

U.S. District Court Eastern District of Texas

U.S. District Court Western District of Texas

U.S. Court of Appeals 5th Circuit

Education

J.D., Baylor University School of Law, Waco, Texas, 1989

B.B.A., University of Mary Hardin-Baylor (*Cum Laude*), 1986

Professional Recognition

Best Lawyers in Dallas, 2012-2014 – D Magazine

“Texas Super Lawyer” – Texas Monthly and Law & Politics Magazine, 2004-2014

Rated AV by Martindale-Hubbell

Highest ranking graduate from University of Mary Hardin-Baylor, 1986

Recipient of the Insurance Law Award, 1989

Outstanding Alumnus Award from University of Mary Hardin-Baylor, 1998

Professional Associations and Memberships

State Bar of Texas, Litigation Section, Member

Dallas Bar Association, Tort and Insurance Practices Section and Business Litigation Section, Member

Seminars/Publications

September 5, 2013	Lawyers Risk Management Seminar in Dallas, Texas (Co-Presenter) "The Adaptable Lawyer: Staying Practical in Today's Complex Legal Environment"
June 24, 2013	Webinar to IP Lawyers (Co-Presenter) "Managing IP Malpractice Risk by Effectively Managing Your IP Practice"
October 11, 2012	Accountants and Lawyers Defense Network in Chicago, Illinois (Presenter) "Defending Conflict of Interest Allegations in Accounting Malpractice Cases"
September 6, 2012	ABA Fall 2012 National Legal Malpractice Conference in Chicago, Illinois (Panel Member) "Managing Risk in High Exposure, Low Liability Cases"
September 2012	Co-Author, "The Flip Side of Collectibility: Putting Legal Malpractice Plaintiffs to the Test for Proof of Payability"
August 3, 2012	AICPA Professional Liability Insurance Program in Amarillo, Texas (Co-Presenter) "Accountant Liability: No Good Deed Goes Unpunished"
May 23, 2012	Webinar to IP Lawyers (Co-Presenter) "The Adaptable Intellectual Property Lawyer: Staying Practical in Today's Complex Legal Environment"
December 16, 2011	Webinar to IP Lawyers (Co-Presenter) "Avoiding IP Malpractice: How to Avoid Bad Practices While Protecting Great Ideas"
December 5, 2011	Webinar to IP Lawyers (Co-Presenter) "Avoiding IP Malpractice: How to Avoid Bad Practices While Protecting Great Ideas"
September 13, 2011	Lawyers Risk Management Seminar in Dallas, Texas (Co-Presenter) "Building a Solid Foundation: Managing Law Practice Risk"
August 15, 2011	AICPA Professional Liability Insurance Program in Shreveport, Louisiana (Presenter) "Accountant Liability: No Good Deed Goes Unpunished"
September 8, 2010	Dallas Association of Young Lawyers CLE in Dallas, Texas (Panel Member) "Ethical Issues in the Tripartite Relationship"
July 2010	Webinar to AICPA Forensic and Valuation Services Section (Co-Presenter) "Business Valuations: How to Manage Your Malpractice Risk"
January 28, 2010 Member)	ACI's Second National Forum on LPL/Legal Malpractice Issues in New York City (Panel Member) "Law Firm Risk Management in the New Economy: Minimizing Exposure to Liability and the Lessons Learned from the Economic Downturn"
October 15, 2009	Accountants and Lawyers Defense Network Conference in Chicago (Co-Presenter) "Effects of the Down Economy on Legal Malpractice Claims"

October 30, 2008	ASWA/AWSCPA's Inspired Solutions in Dallas, Texas Conference (Presenter) "Professional Liability Primer for Accountants"
June 26, 2007	ACI's Regional and Mid-Size Law Firm Forum in Chicago (Panel Member) "Tackling the Unique Risk Management Issues of the Mid-Size Firm"
February 20, 2007	Dallas CPA Society Free CPA Conference in Dallas, Texas (Co-Presenter) "Liability Exposure for CPAs in Texas – What You Need to Know"
May 15, 2006	Risk Management Seminar for lawyers in Albuquerque, New Mexico (Co-Presenter) "Packing Your Parachute: Preparing for Law Practice Risk"
June 19, 2006	ACI's National Forum on LPL/Legal Malpractice in Miami (Panel Member) "Helping Insureds Prevent Conflicts of Interest that Lead to Malpractice Claims"
October 21, 2005	2005 Ethics CLE in Las Vegas (Presenter) "Navigating Dangerous Waters - Addressing and Dealing with Potential Conflicts of Interest"
May 14, 2004	Risk Management Seminar for lawyers in Dallas, Texas (Co-Presenter) "Packing Your Parachute: Preparing for Law Practice Risk"
Third Quarter 2005	Risk Management Memorandum Published by Several LPL Carriers over the following six years "Identifying and Addressing Potential Conflicts of Interest"
February 2004	Update on Disciplinary Rules and Grievance Procedures presented to law firm in Dallas, Texas (Presenter)
September 2003	Impact of Sarbanes-Oxley Act on Lawyers presented to LPL Claims Professionals in Dallas, Texas (Presenter)
July 2002	Practice Areas with the Largest Legal Malpractice Exposure presented to LPL Claims Professionals in Dallas, Texas (Presenter)
December 2001	Author, "Did They Make a Settlement Offer"
July 2001	Author, "The Importance of Carefully Drafted Engagement Letters"
December 2000	Author, "The Limitations of an "As Is" Clause in the Sale of Real Estate"

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I. Introduction

A. Ed Polansky's background and experience in accounting firm mergers and acquisitions

- Former Managing Shareholder of Polansky McNutt Perry & Co. (PMP)
- 22 years with Arthur Young (AY)/Ernst & Young (E&Y), Partner for over 9 years
- Started in Houston Audit Department, transferred to Tax Department, finished in Entrepreneurial Services Department
- Moved to San Antonio in 1979 to open office, during 1980s AY merged with a regional firm, local firm and finally with another Big 8 firm, all impacting the SA practice
- Left E&Y in 1990, to join a small CPA firm which led to establishing PMP after "divorcing" principal partner
- PMP became an "accidental firm", grew to 25 through internal growth, mergers and purchases and ended with the merger into Weaver 1/1/2009

B. What's happened in San Antonio since the merger?

- We are still merged, I'm now Of Counsel
- It is like having your first child, within 2 months it's like you have had a child all your life, i.e. mergers are like "cliff decisions" and things change immediately and permanently
- We joined Weaver and Tidwell, now we are part of Weaver
- Office has grown from around 24 to 60, top 6 firm in San Antonio market
- Some fallout of staff has occurred as a result, more expected
- Employees have transferred from other offices, a Partner, and managers have been hired from larger local firms
- A second and third merger occurred with small firms in SA area
- Financial services side has suffered due to emphasis on accounting firm development
- Conversions of software has been difficult and highlighted some growth problems
- The reasons we merged still apply, it has been a success but stressful

II. The Merger Process: Typical Steps

A. Decision to seek merger or acquisition candidate

1. Definitive decision as part of strategic planning or necessity
2. Serendipity – opportunity presents itself

Potential pitfalls

1. Key partners not being on board with process, fall out
2. “Cliff” decision involved, no going back
3. Failure to understand financial terms crucial

B. Various approaches to conducting search

1. Passive – word of mouth, referrals
2. Hire consultant to help devise and assist with search strategy
3. Mailing: firm or consultant can do
4. Advertise interest
5. Use professional networks, and contacts
6. Size of desired target is critical to search strategy

Potential pitfalls

1. Not being ready when opportunity comes
2. Future of firm may be at stake

C. Decide important characteristics of prospective candidate

1. Size (fees, number of people)
2. Age of partners (looking for a true merger or a retirement-minded owner group?)
3. Staff adequacy, competence
4. Location of office(s), lease issues
5. Billing rates
6. Profitability
7. Types of work they do and fit with your clients
8. Specifications and/or niches you are looking for
9. Work ethic, culture
10. Software systems capability

Potential pitfalls

1. Incompatible software, potential major conversion problems
2. Overlooking unfavorable utilization and realization rates
3. Assuming office lease issues can be easily worked out
4. Assimilation problems

D. Consider legal, tax and entity issues of contemplated Transaction

Potential pitfalls

1. Common problem is CPAs think they know everything they need to know
2. Without legal counsel, terms not adequately documented

E. Identify candidates and conduct discovery meeting with partners of prospective candidates

1. Managing Partners meet to screen each other
2. Hold an initial “get to know you” meeting with short list of candidates. During meetings, each firm
 - a. Describes itself: bio on partners, number of people, services, specialties, brief firm histories
 - b. Shares why they are interested in merging; what they want
 - c. Describes how they are managed
 - d. Explains what their timetable might be for proceeding

Potential pitfalls

1. Not looking for red flags
2. Not determining the real decision makers

F. Have each firm sign confidentiality and non-disclosure agreement

Potential pitfall– failure to implement this step could result in violations of standards and rules on state and federal levels

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- G. Exchange financial documents and production statistics, such as:
1. Client lists, overall revenue and expenses
 2. HR benefits and employee wages
 3. Per partner profit, compensation
 4. Billable hours, rates, etc.
 5. Revenue by service area

H. Partners for each firm meet each other to get acquainted and assess the potential for a culture and personality fit

Potential pitfall - failure to spend enough time to assess the culture and personality fit is one of biggest reasons for failed mergers

I. Negotiate terms of merger/acquisition

1. Major concerns of each firm, and critical and sensitive issues such as the name of the firm, how the firm will be managed, how partner compensation and retirement will be determined, etc.
2. Important, but less critical issues such as policies and procedures of combined firms, role of individual partners in new firm, and other partner agreement issues
3. Operational issues such as salaries of staff, benefits, office hours, etc.
4. Merger implementation issues such as moves, training in software, vendors, websites, etc.

J. Due diligence conducted by both sides, including work paper review, compatibility of work standards and financial statement formats

Potential pitfall - if different work standards and expectations, it could be disastrous, especially for audit work (Restatements, etc.); further, since most complaints against CPAs are tax related, close review of tax files are also crucial

K. Prepare term sheet and/or letter of intent these are the specific business terms that will then be given to the lawyers to draft a proper, legally binding, merger agreement

Potential pitfall – the principal negotiator of the merger (e.g., the Managing Partner) may not be around very long after the merger and the terms, if not clearly documented, could be open to interpretation by either firm

L. Lawyers prepare a formal merger agreement to be signed by both sides

Potential pitfall - not using lawyers at this stage (each side needs their own lawyer looking out for their own interest)

M. Establish plan to inform personnel and clients

- Internal announcements
- Personal notification to critical clients
- External announcements

Potential pitfalls

1. Not building consensus before announcement
2. Ignoring potential need for post-transition engagement letters
3. Loss of important clients
4. Loss of important personnel

N. Implement the merger

Potential pitfalls

1. Not making sure you have liability insurance in place to cover all gaps (possible need for tail coverage)
2. Failure to establish clear responsibilities can cause unsettled environment
3. Expect some level of fall out (clients, partners, and staff)...it will happen

III. Keys to successful merger

- A. Cultural and personality fit
 - best determined only after multiple meetings over many months
- B. Valid reasons for merger by both sides
- C. Sound firm management to ensure merger goals are met
- D. Ability to resolve sensitive issues such as partner compensation, partner retirement, name of firm, how the firm will be managed, etc.
- E. Agreement on the vision of the new firm
- F. Proforma income statement that represents what both firms expect to see
- G. Congruity of values (managed styles, team work v. solo efforts, delegation, low vs. high billing rates, degree of firm specialization, growth objectives, etc.)
- H. Due diligence: work papers, internal operations and merger economics

IV. Conclusion

Polansky Perspective

Mergers and Acquisitions of Accounting firms will continue unabated with the consolidation of the industry and the major partner succession problems of all sizes of firms...from the sole proprietorship to the several-thousand partner national firm. In my over 40 year history in public accounting, I personally have experienced at least 10 mergers or acquisitions in the firms that I was a part of. I see no reason for that situation to change.

Daniel Tostrud Perspective

To minimize the fall out and potential legal problems down the road, accounting firms need to carefully manage all aspects of potential mergers from the initial discussions to the implementation.

