

THE MEDIATOR'S ROLE IN THE FAMILY BUSINESS

A. Michelle Jernigan and Richard B. Lord

Introduction

Once the primary building block of American capitalist society, family businesses continue to play a vital role in the American economy. Family businesses make up approximately 35 percent of Fortune 500 companies. Defined broadly, they account for 50 percent of the United States Gross Domestic Product and generate 60 percent of the nation's employment.¹ Yet, only 30 percent of family businesses survive from the first to the second generation, only 12 percent continue to the third, and only 3 percent to the fourth generation.² Some of this attrition may be due to market forces or waning family interest. Some attrition, however, is due to challenges that families fail to overcome - obstacles that might have been mastered with proper communication and planning. In addition to the multitude of issues faced by businesses generally, family businesses face special challenges. These include, but are not limited to: wealth succession and preservation, estate taxes, governance, family conflicts, and the transference of values from one generation to the next. Each of these can pose challenges to the preservation of the family's wealth, continuity and longevity of the business, and family stability. If there is a combination of these challenges, business and family stress is further magnified, and the potential for family and business conflict is increased dramatically.

For purposes of this article, a family business is considered to be any business in which a single family owns or controls the business. The metaphor "Family Business Bottleneck"

¹ Family Firm Institute

² Family Firm Institute

(referred to hereafter as “Bottleneck”³) is used by these authors to describe the impasse that occurs when family and/or business conflicts prevent the family and/or business from making decisions or achieving desired goals. The consequences of an unresolved Bottleneck in the family business range from poor motivation and lack of productivity and inefficiency, on the lower end of the damage scale, to divisiveness and implosion on the higher end of the damage scale. The authors advocate two processes to cure and prevent Bottlenecks. These are Family Mediation and Family Meetings. The authors also advocate the creation of a structure referred to as the Family Council. The Council provides leadership for the business and establishes a framework for Family Meetings.

What Causes a Bottleneck in the Family Business?

To answer this question requires a bifurcated approach. What is the cause of conflict and what aspects of the family business make it uniquely susceptible to conflict? In an organizational context, conflict is defined as “an expression of dissatisfaction or disagreement with an interaction, process, product or service.”⁴ Stated another way, “conflict occurs when the ideas, interests or behavior of two or more individuals or groups clash.”⁵ It may be caused by skill deficits, lack of information or differing opinions on how information should be collected or assessed, conflicting interests or values, psychopathologies, differing personality styles, scarce resources, organizational deficiencies, unequal power or authority, selfishness, or evil intent.⁶

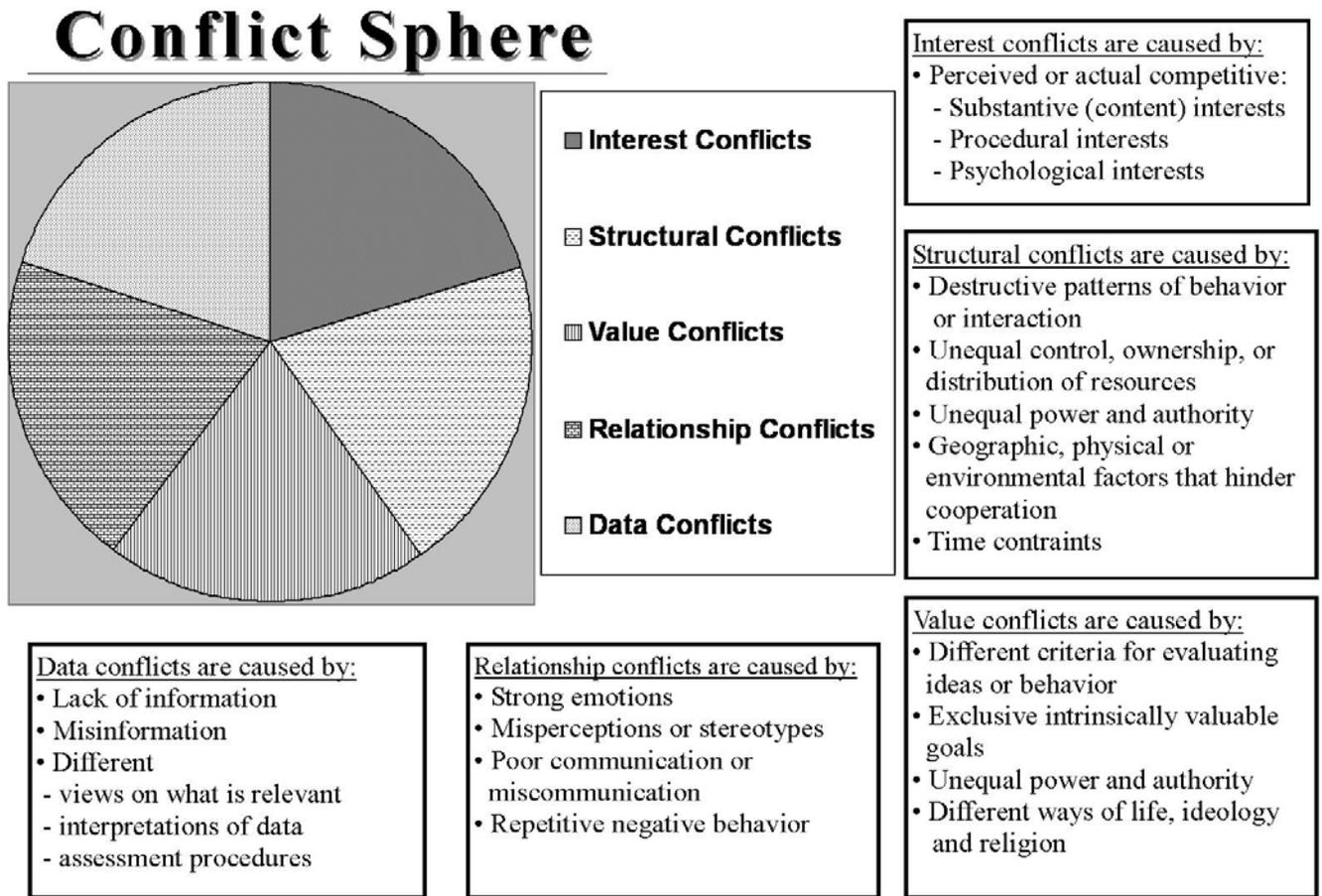
³ Use of this word is credited to mediator and managing partner, John J. Upchurch, Upchurch Watson White & Max (June 2007).

⁴ CATHY A. CONSTANTINO & CHRISTINA SICKLES MERCHANT, DESIGNING CONFLICT MANAGEMENT SYSTEMS (1996) at 4.

⁵ KARL A. SLAIKEU & RALPH H. HASSON, CONTROLLING THE COSTS OF CONFLICT (1998) at 6.

⁶ CHRISTOPHER W. MOORE, THE MEDIATION PROCESS (1986) at 101. CONTROLLING THE COSTS OF CONFLICT at 7-8.

The illustration below is an excerpt from a diagram created by mediator, Christopher Moore. It categorizes conflict into five basic causes, with each category containing a number of specific sub-causes. Moore refers to his diagram as a “sphere of conflict.”

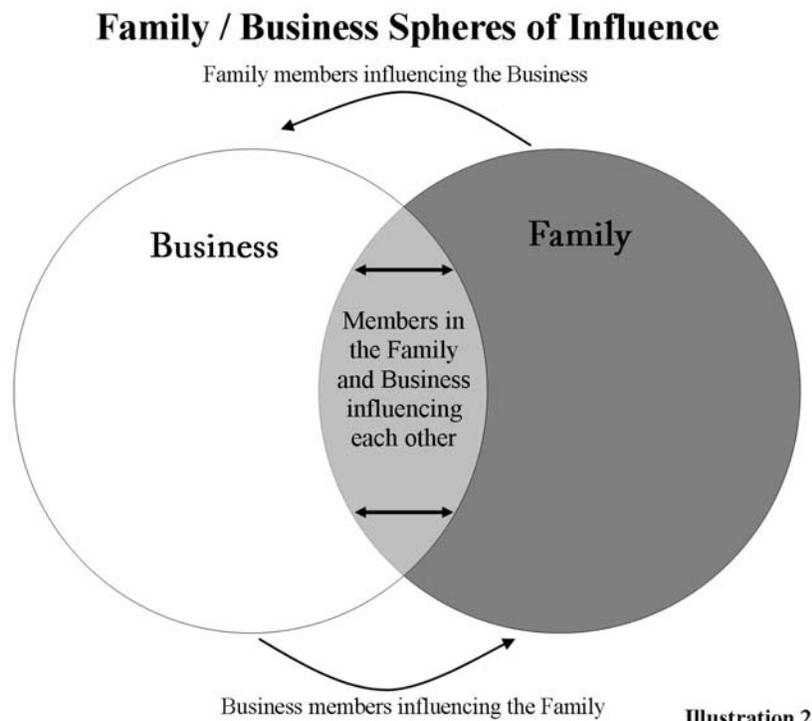


* MOORE, CHRISTOPHER W. THE MEDIATION PROCESS. (2d ed. 1986) at 27.

Illustration 1

Utilizing Moore’s model there would be separate spheres of conflict for the business and the family. The next illustration depicts these two spheres and the area of overlap. The overlap represents those who are family and business members who exert influence over both spheres.

The left sphere represents the influence the business exerts on the family and the right sphere represents the influence the family exerts on the business.



It is the integration of the family and the business, with all their inherent conflicts, that makes the family business particularly vulnerable to conflict. Furthermore, the consequences are twofold and can be extremely devastating. In the business context, unmanaged or unresolved conflict can create havoc in the work environment, waste resources and prevent the realization of goals. In the family context, unmanaged or unresolved conflict can cause strife, tension, and competition for power -- leading ultimately to fractured relationships, resentment and distrust. Simply stated, a healthy family business is dependent upon, and interdependent with, a healthy family.

Issues for resolution may include conflicts which confront the family, the business or both: “Are certain family dynamics interfering with the healthy functioning of the business? Is compensation fair? What about family and business governance? Do certain family/business

members have conflicts at home or in the workplace that hamper productivity? How should poor business performance by family members be handled? Should non-family and family business members be treated equally? How will death or divorce impact the family and the business? How should a patriarch or matriarch deal with sibling rivalry and competition within the family business? These are just a few of the conflicts that could arise in the family business context.

The Cure for Bottlenecks – Family Business Mediation

Parties generally have three types of responses to conflict: Escape responses, attack responses and conciliation responses. Escape responses include denying the existence of the conflict, avoiding the conflict, and fleeing from the conflict. Attack responses include power plays such as legal positioning, instituting litigation, physical or verbal threats or intimidation, and violence. Conciliation responses include discussion, negotiation and mediation.⁷ Escape responses are insufficient because they do not address the conflict and its underlying causes. Attack responses are inappropriate because they cause too much irreparable damage to the family and the business. Generally speaking, the conciliation response is the best approach to resolving conflicts within the family business.

Of the conciliation responses, discussion and negotiation are self explanatory, although there are differing styles of negotiation. Some are collaborative (problem-solving) and some are competitive (positional). Life experience, education and personality will dictate the style of negotiation one may choose to utilize. Mediation is a conciliatory process that often yields win-win results while enhancing communication and preserving relationships. When discussions break-down and negotiations fail, mediation can be the cure for the Bottleneck.

⁷ KEN SANDE, *THE PEACEMAKER, A BIBLICAL GUIDE TO RESOLVING PERSONAL CONFLICT* (2d ed. 1997) at 20-21.

While statutes, case law, or procedural rules throughout the country may define mediation differently, it is generally thought of in the family business context as a confidential process whereby a trained professional neutral helps promote healthy family communications and negotiations for the purpose of resolving conflict. In this same context, the mediator is a neutral, impartial facilitator who: 1) develops procedures for problem solving, communication and solution implementation, 2) serves as a translator of family and business members' communications, promoting empathy and understanding 3) educates family and business members on how to negotiate and communicate more effectively, 4) serves as a reality-tester, exploring the validity of members' views and positions, 5) assists the members in reconciling differing interests, diminishing hostility and establishing trust, and 6) assists the members in drafting action plans for solution implementation.

Mediators have professional expertise in conflict management and resolution and are knowledgeable of the devastating emotional, financial and business costs of unresolved conflict. Most professional mediators are governed by a code of ethics that requires them to: 1) serve as neutral and impartial facilitators, 2) promote self-determination through recognition and empowerment, and 3) maintain the confidentiality of all communications.⁸

Selecting the Mediator

Once family business members or their advisors discover there is a Bottleneck which they have not been able to resolve through discussion and negotiation, a mediator can be introduced to the family business. Family business members should select a professional

⁸ MODEL STANDARDS OF CONFLICT FOR MEDIATORS, AMERICAN ARBITRATION ASSOCIATION (Sept. 2005), AMERICAN BAR ASSOCIATION (Aug. 2005), ASSOCIATION FOR CONFLICT RESOLUTION (Aug. 2005).

mediator who has received some licensure or certification⁹ as a mediator. The mediator should be trustworthy, a person of integrity, to whom confidences may be safely revealed. The mediator should be a person who is a “good fit” with the family and the business, one whose personality and style works well with the members involved.

This professional should be highly regarded by her peers and should have a wealth of experience in mediation, as well as conflict resolution process design. A family business mediator must be able to direct the process, without controlling the content or dictating the outcome of the conflict. Most importantly, the mediator must establish rapport and trust with the members, so as to uncover their true interests and harmonize them -- with their mutual gain as the goal.

Initiating the Mediation

Any family business member may initiate the process of engaging the mediator and beginning the mediation. It may be preferable that a family member of significant stature within the family business engage the mediator and introduce the concept of the mediation to other family business members. The mediator should play a role in deciding when and where the mediation takes place, who should participate, what items appear on the agenda and the need for any sub-processes within the mediation. It is critical for all family and business members to recognize that while the mediator may have been contacted by the patriarch or the matriarch, that individual is not the mediator’s client. The mediator may be compensated by the business, but the mediator’s client is actually all members participating in the mediation. The mediator’s ethical duties and responsibilities extend to all mediation participants. Typically, the mediator will have a written engagement letter which will be executed by all the members for the purpose

⁹ Michelle Robinson, *Mediator Certification: Realizing Its Potentials And Coping With Its Limitations*, 1 AMERICAN JOURNAL OF MEDIATION 51 (2007).

of setting forth the mediator's fees and schedule of compensation, establishing ground rules for the mediation, invoking the confidentiality of the process and confirming the members' understanding of the role of the mediator and the process.

At the beginning of the mediation, the mediator will introduce herself and provide information concerning her educational background, areas of expertise, level of experience and a brief description of how the contact was initiated. The importance of this "introduction" by the mediator may be greater in the family business mediation context than in other types of mediations. This is due to the complexity of the interrelationships of the participants. The mediator will also make any disclosures that may be relevant to the members' perception of her neutrality, as well as any clear or potential conflicts of interest. Following, there will be a brief discussion of the process and its confidential nature, the procedures to be utilized and any specific ethical codes that govern the mediation. Members will be encouraged to ask questions about the mediator, the process of mediation, and her role in the process. It is critical for the mediator to explain that she is a neutral facilitator and has been engaged for the purpose of helping the members sift through the Bottleneck, rather than adjudicate the issues that resulted in the Bottleneck. The goal is a mutually acceptable resolution, not a reluctantly accepted ultimatum.

The Mediation Process

The mediator usually begins the process by reviewing the background of the conflict. This may be accomplished through pre-mediation conference interviews. How did it arise? Are there varying accounts of what happened? Who was involved? This is essentially the "who, what, when, where, and how" of the mediation process.¹⁰ At this stage it will be critical for the

¹⁰ MOORE, *supra*.

mediator to inquire if all interested members are present. Most certainly, all involved decision-makers should be present, as well as all stakeholders who (although they may not have knowledge concerning the presenting issues) may have an interest in the outcome of any resolution. In the family business context, the mediator must be sensitive to soliciting feedback in an open or joint-session attended by all participants. This is one of the advantages of pre-mediation conferences or interviews. These initial interviews also assist the mediator in planning for, and designing, a successful process.

The mediator may question members about the conflict while all members are gathered together. The mediator may then speak to some or all of the members privately to gain insight into the issues from their individual perspectives, as well as to determine individual members' underlying issues and interests. The information gained by the mediator in the private sessions with various members is only to be disclosed to other members if that disclosure is requested by the member revealing the information. Otherwise, all the communications made to the mediator by individual members are confidential, and are not to be shared with any other members in the mediation. This should be clearly stated by the mediator prior to meeting privately with any member.

While the mediator is acquiring information regarding the conflict and the apparent and underlying issues, the mediator is also constructing a diagnostic framework for analyzing the issues and designing a process for resolving them.¹¹ The mediator is a process expert, not a content expert. Various trusted family business professional advisors may play a key role in assisting in the resolution of content issues. The family businesses' Professional Advisory Team ("PAT") – lawyers, accountants, financial planners, business and management consultants, even

¹¹ Brian Mandell, Harvard Program on Negotiation, *Teaching Negotiation in the Organization: Negotiating Better Outcomes* (2002).

family therapists, may provide welcome assistance in the resolution of some issues. The mediator is not retained to provide advice on questions of law, accountancy, finance, business management, or family dynamics and interpersonal issues. Rather, the mediator is the director or conductor; the one who guides the communications, negotiations, and mediation process in such a way that is most likely to produce a resolution of the issues. Unlike others in the PAT, the mediator has no one client, but rather owes a duty: to maintain the confidences of all members: to promote all members' opportunities for recognition, empowerment and self-determination: and to ensure fairness in the process.

Once the mediator has a clear understanding of the presenting issues and the underlying issues, negotiation will begin, assuming the participants are prepared to do so. Most mediators have been trained to negotiate in accordance with the principles set forth by Roger Fisher and William Ury in their National Bestseller, "Getting to Yes".¹² In the family business context, we advocate a cooperative (collaborative) approach to negotiation. Some of the characteristics which make this style of negotiation readily identifiable are: 1) Bargaining over interests and not positions;¹³ 2) People being separated from the problem; 3) Options being

¹² ROGER FISHER & WILLIAM URY, GETTING TO YES, NEGOTIATING AGREEMENT WITHOUT GIVING IN (2d ed. 1991). This book is based on the work of the Harvard Negotiation Project.

¹³ The simplest example of the difference between positions and interests lies in the following illustration:

A mother with two daughters has one orange. Both daughters assert a claim to the one orange. Each daughter's demand for the orange represents her "position." If both children continue to demand that the orange be given to them, the mother is most likely going to a) cut the orange in half and give one-half to each daughter, or b) give the orange to the one daughter with a promise that any orange obtained in the future will go to the other daughter. Either solution will be unsatisfactory to one or both of the children. On the other hand, if the mother makes the inquiry of each daughter about why she wants the orange, she will gain insight into their interests in acquiring the orange. In this example the mother makes the inquiry and finds that one daughter wants the juice of the orange for drinking and the other daughter wants the rind of the orange for baking.

invented for mutual gain; and 4) Parties to the negotiation using objective criteria for evaluating options. Under this style of negotiation, parties are encouraged to examine their BATNA, or “Best Alternative to a Negotiated Agreement”.¹⁴

In order for parties to make educated, reasoned decisions regarding their options, they need to fully explore all the options available for resolution, as well as the consequences of not reaching an agreement. In the family business the consequences of not reaching an agreement could be diminished productivity, losing an employee, family divisiveness, financial loss, lost business opportunities, forced sale of the business or portions of it, and ultimately business failure. Mediation may last a few hours, or it may require a number of days. The process may be one event, or it may be ongoing over weeks or months. Members may need to gather additional information, or seek the advice of the professional advisory team before substantive decision-making may occur.

Since mediators have no one client, their focus is on generating multiple options. Their goals are to help find a resolution that best meets the needs of all members involved and to create “joint value”¹⁵ or “mutual gains”. If the members reach an agreement on the issues, then the mediator will assist them in reducing it to writing and will make recommendations that the agreement be reviewed by appropriate members of the PAT before it is signed. If the members do not reach an agreement on the issues, they are free to proceed with other avenues of conflict resolution, including adjudicatory processes, such as arbitration and litigation. Thus, the mediation simply presents an opportunity for the members to fully understand one another, to

Hence, negotiating the positions results in a win-lose outcome, whereas negotiating the interests yields a win-win outcome.

¹⁴ ROGER FISHER, *supra*.

¹⁵ LAWRENCE E. SUSSKIND & PATRICK FIELD, *DEALING WITH AN ANGRY PUBLIC: A MUTUAL GAINS APPROACH TO RESOLVING DISPUTES* (1996).

explore their interests, to evaluate objectively their options, and to examine the consequences of reaching an agreement versus the consequences of not reaching an agreement. Mediation presents a “nothing ventured, nothing gained” scenario, which is most certainly a worthwhile exercise when compared to the extrinsic and intrinsic costs of the escape or attack approaches to conflict.

Preventing the Bottleneck - The Family Meeting

The focus of this article, thus far, has been on resolving conflict through mediation. In the field of conflict resolution, as in the healthcare profession, there is also treatment and prevention. Mediation may be used in treating existing conflict, but the Bottleneck can be prevented with the family meeting.¹⁶ Human experience tells us that when circumstances, whether physical, psychological or spiritual, are left unattended, they tend to decay, fragment, become dull and may even disappear. The Second Law of Thermodynamics characterizes this as the increase of entropy or the dispersal of energy over time where nothing constrains it. In the family business context, the mechanism for constraining the dispersal of energy is the family meeting. The family meeting is an ancient concept that is more relevant today than ever before. The family meeting is of immense value to the family business as a venue for education, planning, decision-making, and communication.

Why Have a Family Meeting?

The Family Meeting is a recurring or single forum to promote productive communication among interested family members. It can involve the most interested stakeholders and decision makers or it can expand to include all family members interested in working for the business or

¹⁶ *Should We have a Family Meeting?*, 1 THE CALIBRE PAPERS, Spring 2007.

benefiting passively from the performance of the business and wealth of the family. The Family Meeting can also, when appropriate, involve non-family members.

Family meetings, when conducted properly, enhance communication, encourage transparency, and promote understanding and trust within the family and the business. Family meetings provide a structure within which productive discussions and deliberations may take place. Through regular family meetings, a family can develop a sense of mission, vision and purpose. Priorities can be established and family values can be articulated and transferred. Family meetings are an excellent forum for establishing governance and cultivating family leadership, which translates into stronger relationships and a stronger family and business as generations come and go. Family meetings also preserve and perpetuate a healthy family legacy.¹⁷

At the core of family meetings are interpersonal dynamics that influence communication, decision-making and acceptance of decisions. Successful business families have learned the value of the family meeting to maintain family connectedness, to gain understanding of personality differences and perspectives, to address presenting and underlying issues, and to head off damaging conflict. The primary goal of the family meeting is to provide an informal forum for communication among family members.

We all recognize that communication is the key to the effective functioning of an organization. Knowing the importance of communication and actually communicating are two different things, with the latter being more difficult and elusive. In business, without effective communication, resources are wasted, goals go unrealized, and failure can result. In a family, the fabric of relationships can fracture and disappointment and resentment can flourish, with

¹⁷ Id. at 2.

wounds lasting a lifetime. In a family business the value of effective and productive communications cannot be overstated.

Family businesses are dynamic and the nexus between family and business is quite complex. Family values, business values, generational perceptions and expectations, succession, and pragmatic business management, wealth, tax, and estate planning issues can all be addressed through the family meeting. Most families agree it is better to make decisions for themselves and to resolve issues in the privacy of a meeting room rather than in a public courtroom. “It is not an exaggeration to say that every family that succeeds over multiple generations makes some use of family meetings”.¹⁸ On a personal level, Family Meetings move families from “Family Discord to Family Connectedness.”¹⁹

When Should a Family Meeting be Held?

Exercise works best when done periodically; the same can be said for family meetings. Regular family meetings are excellent ways to enhance collaborative relationships and provide team-building opportunities. They can also be ways to regularly mark accomplishments and recognize new family business members. The benefits of regular meetings include periodic connectedness and communication, opportunities to share information and values, family and business development, identification of family and business goals, assessing progress towards those goals, gaining understanding of member’s value differences, early problem solving and management of family and business transitions. Regular family meetings may be held on an annual basis, semi-annual basis, or quarterly. These meetings may be informal, or more structured.

¹⁸ *Should We have a Family Meeting?*, at 2.

¹⁹ Wayne Gill, mediator, Upchurch Watson White & Max (Oct. 2007).

Regardless of whether the purpose is to connect with family members, or address important business and wealth management issues, there should be an agenda, with an appropriate allocation of time to address all topics. It is crucial that meetings be scheduled with plenty of time and some variation in topics so that members can maintain an appropriate level of interest. Members of the different generations will have varying needs regarding times for breaks and relaxation, the ability to stay focused and on-target, and time to digest information and make decisions. Most family meetings take longer than members may anticipate due to the time required for members to process business issues in the family context.

Family Meetings may also be called on an impromptu basis to address specific issues. Family meetings are crucial at times of difficult transitions and family stress, such as the death of a key leader, the sale of the business, management changes and transition of the business from one generation to the next. These are times when the family and the business are extremely vulnerable and need to ban together for support, communication and constructive decision-making. Successful family meetings at these critical junctures can make the difference between thriving and not surviving.

What are the Topics to be Addressed at Family Meetings?

The goals for any family meeting should be clear, and should be tailored to the needs of the family at the time of the meeting. From creating a mission statement to developing a strategic plan, or reviewing changes in the family business's investment environment, the family meeting is a valuable tool. Succession planning, estate planning, wealth creation and management strategies, market changes and other issues important to family business are typical topics of the family meeting, along with updates and revisions as to the family's values, mission,

priorities and goals. These meetings can help hone and shape values, promote a sense of heritage and ensure a long lasting legacy.

Many other issues may be addressed at the family meeting. Which family members should occupy what roles in the company? Should the family bring in a professional management structure, or continue to manage the company itself? Who will succeed the current generation? How does the current generation transfer its values to the successor generation? What is the proper way to train and educate the new generation? Does the current generation want the successor generation to be involved in the business? Would the family's goals of wealth creation and preservation be better served by a sale of the company and purchase of another, or some other investment? Is the applicable estate plan consistent with the benefactor's and beneficiaries' wishes and expectations? Is there a need to address estate and income tax goals? Should there be a restructuring of the business to simplify it or enhance asset protection? Are cash flow, capital preservation and liquidity realities in line with the family's expectations? Who should be retained or hired as trustees or other trusted advisors? Are the family's philanthropic efforts consistent with its values and are they being optimally implemented?

Who Should Attend the Family Meeting?

If a regular family meeting is being held, then all family members above the age of eighteen should be invited to participate. If a special family meeting has been called, then the meeting invitees should consist of those with knowledge of, and an interest in, that purpose for which the meeting is held. If the goal is to address specific conflicts that have arisen between family and business members, the family meeting will most likely consist of only those involved in the specific conflict, as well as those with decision-making authority or influence relative to the issues in conflict.

The PAT is a meaningful and integral resource in any family meeting where the topics of interest are impacted by law, regulations, the financial markets, family business environment, taxes or investment performance. The PAT can be an invaluable resource in the process of family meeting preparation by gathering data and summarizing it. Members of the PAT can make presentations about available alternative courses of action, provide recommendations, prepare plans for the implementation of an adopted plan of action, and monitor performance of that plan.

What is a Family Meeting Facilitator and Why Retain One?

A Family Meeting Facilitator (FMF) is a professional who is retained by the family to conduct the family meeting. Even though one of the family members could facilitate the family meeting, it is often wise to retain a professional who is actually a “process expert” for such a task. As with other important processes, proper design and implementation of the process is needed for it to be successful.

The authors believe that mediators are well suited for the role of FMF by any family wishing to create or improve an existing family meeting framework. As FMFs, mediators are uniquely positioned through training, experience and professional practice to serve as neutrals. They are by training focused on issue identification, problem solving, and practical resolution. The mediator as FMF works with the family and the PAT’s from other disciplines to discover impediments to productive communications and to design a process that meets the particular needs of that family and the issues to be addressed. The FMF meets with family members and the Family Council²⁰ to establish an agenda for the family meeting. The FMF can help coordinate scheduling of the family meeting and assist in site selection as well. Most

²⁰ This concept is discussed more fully in the next section of the text.

importantly, FMFs can identify impediments to productive dialog and decision-making, and they can successfully manage the complex discussions that will occur before, during and after the family meeting. Mediator FMF's are goal driven and result oriented, but are uniquely gifted to manage the "soft issues".²¹

What is the Family Council?

The family meeting is a process. The family council is a governing or advisory structure, akin to an executive or steering committee, or a board of directors.²² At the core of the family meeting and the family business is the family council. It is distinguished from a corporate board of directors in that the corporate board does not occupy a position between the family and the business. The family council should be comprised of the most influential and representative cross section of family members. It may also include spouses of blood relatives, or other non-relatives, but voting rights may or may not be extended to all council members. The circle should be drawn rather tightly so that the resulting council will be strong and influential, yet open to dialogue and discussion.

²¹ Soft issues have been referred to as "Kleenex box issues" or "touchy feelie issues". These are the relationship issues as distinguished from the hard issues, which are the more practical quantifiable issues of business operations. EDWIN A. HOOVER & COLETTE LOMBARD HOOVER, GETTING ALONG IN THE FAMILY BUSINESS: THE RELATIONSHIP INTELLIGENCE HANDBOOK (1999) at 12.

²² Many business consultants use the term Family Council and Family Meeting interchangeably. After considerable thought these authors have made the decision to distinguish these concepts from one another.

The Family Council

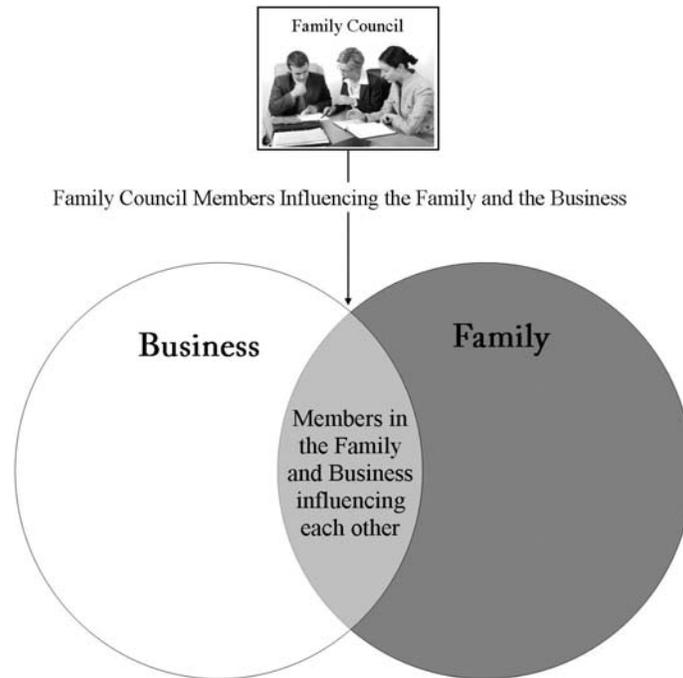


Illustration 3

The purpose of the family council is to provide leadership for the family and to serve as a powerful liaison between the family and the business. As the family grows, there is greater potential for divergent views. This is due to a loss of connectedness or identity with the family business, the influx of relatives by marriage, and changes in the business as a result of the introduction of non-relative employees and managers. Family meetings provide a forum for discussing and addressing the various issues that may arise. The family council serves as a guiding force in the family meetings by setting the agenda, providing education, establishing priorities and providing input to the FMF on family meeting rules. This insures that the family meetings are productive.

The family council represents the collective family voice for the family and the family business. This is the entity that sets the course for the family by establishing and transferring family values to the family and the business. The family council is, in essence, the policy-maker

for the family with regard to the soft issues, as well as the hard issues (such as succession, wealth management, estate and tax planning). The family council also serves to harmonize and reconcile the differing interests of the family members represented in the council. In this way the family can approach the family meeting with a sense of order and cohesiveness. Family councils may conduct research surveys of family members and non-family employees to stay informed and to solicit suggestions and opinions in a non-threatening manner. At least one family council has sought to encourage youth from the fourth and fifth generations to participate in the family business by holding a job fair.²³

It is important to recognize that the members of the family council may or may not be the governing members of the family business. Obviously in situations where the council members are identical in make-up to the governing members of the family business, the nexus between the family and the business is very strong. In circumstances where a number of the members of the family council are not the governing members of the family business, the family council plays a more advisory role as opposed to a governing role in the family business. Regardless of the composition of the family council, it is cloaked with a high level of influence, as it is representative of the family.

Conclusion

Family businesses control a tremendous amount of the world's wealth. Almost one-half of the wealthiest one percent of the United States population acquired their wealth through operation of their own companies, most of which are family-owned.²⁴ Other than wealth, one of

²³ The Family Council referred to in the text is called the Duda Family Council. Cynthia Barnett, *The Duda Way*, FLORIDA TREND, Sept. 2006, at 63.

²⁴ Gerald Le Van, *Healthy Wealth in Business Families*, 2004.

the most valuable assets of the family business is its “relational estate.”²⁵ This is a phrase used to describe the genes, the history, heritage and interpersonal relationships between the family members.²⁶ The preservation of the family business through generational lines is dependent upon the health of the relational estate.

Due to the large amount of wealth owned by these business families, preservation of the family business has a tremendous impact on our society and our economy. Family business mediation, family meetings and family councils play a vital role in sustaining the health of the relational estate and the businesses as families move one generation to the next. Given their professional background and expertise, mediators should be considered a vital part of the family business, not only as mediators, but as family meeting facilitators and process advisors to the family council.

²⁵ Gerald Le Van, *The Family Council for the Relational Estate*, 2004 at 1.

²⁶ *Id.*