

Saint Louis University School of Law
Scholarship Commons

All Faculty Scholarship

7-2014

Collaboration in the Nonprofit Sector

Dana M. Malkus

Follow this and additional works at: <https://scholarship.law.slu.edu/faculty>



Part of the [Legal Profession Commons](#), and the [Nonprofit Organizations Law Commons](#)



SAINT LOUIS UNIVERSITY SCHOOL OF LAW
Legal Studies Research Paper Series

No. 2014-24

Collaboration in the Nonprofit Sector

Dana M. Malkus
Saint Louis University - School of Law

*ABA Business Law Section Community Economic
Development Committee Newsletter (July 2014)*

Collaboration in the Nonprofit Sector

By Dana M. Malkus

A practitioner who has had even casual contact with the nonprofit sector has undoubtedly noticed that both internal and external forces exert pressure on nonprofits to collaborate and to accomplish more with fewer resources. There are, of course, many factors driving this pressure, including the economic downturn, funder preferences, government policy changes, and the reality that many nonprofits focus on complicated issues that often require a multi-faceted approach.

In my work with the St. Louis nonprofit community, I see nonprofits grappling with this reality in a variety of ways. As practitioners, we can provide real value to our nonprofit clients by helping them identify, evaluate, and appropriately document collaborative arrangements.

Collaboration: What, Why, and Why Not¹

Simply put, collaboration refers to two or more organizations coming together to accomplish a specific goal. It is helpful to think of collaboration as a spectrum: Collaborations range from informal arrangements (e.g., a committee, a task force, a joint initiative, information sharing, joint purchasing arrangements, co-locating arrangements, or program coordination) to more formal arrangements (e.g., the creation of a new entity).

Common reasons for collaborations include

- greater access to certain funding or grant streams;
- access to the expertise of the collaborating organization;
- an ability to increase the human resources that can be devoted to an event or cause;
- access to an established infrastructure or positive reputation; and
- an ability to accomplish more than the organization would otherwise be able to accomplish.

Collaborations tend to work best among participating organizations that understand and trust each other and that have closely aligned missions, goals, and core values.

While there may be benefits to collaborating, it is essential to recognize that collaboration is rarely cost-free. For example, logistical and relational issues in the collaboration can eat up significant time and other resources (including money and reputation). Or, the potential collaborative partner may be one who does not “play well” with others, frustrating the effort at every major step along the way. Additionally, the collaborating organization may turn out to have less expertise or fewer resources than originally perceived. Moreover, if the potential benefit of the collaboration is unclear—or if the collaboration is simply an end in itself (and not a means to an end)—these downsides are likely to be magnified.

Collaboration: Two Examples

Examining example collaborative relationships can help both practitioners and their clients think more strategically about collaboration and envision creative responses to community needs. The following two examples are intended to illustrate some ways in which small nonprofit organizations can use collaboration as a tool to positively impact disadvantaged communities.²

Example 1: Neighborhood X

In St. Louis, a nonprofit called the Community Builders Network of Metro St. Louis (CBN)³ is engaged in a variety of activities, including attempts to facilitate collaborative relationships among community development nonprofits. CBN recognizes that logistical, relational, and resource barriers can sometimes be insurmountable for a small nonprofit, even if the nonprofit does have a desire to collaborate with others. CBN also recognizes that successful collaborations require that the participants know and understand one another so that there is some basis upon which to build trusting and productive relationships.

Among other activities, CBN provides logistical support for potential collaborations. Such support includes arranging and facilitating meetings, generating problem-solving options when a collaborative group gets “stuck,” and compiling and distributing meeting minutes. CBN also makes mini-grants available to help collaborative groups pay for professional assistance (e.g., technical support, funding identification support) related to the group’s common goals.

CBN currently is working to facilitate relationships among three small nonprofits (Organizations A, B, and C) who work in a particular disadvantaged neighborhood in St. Louis city (Neighborhood X). Organization A primarily rehabilitates housing stock within Neighborhood X and maintains it as affordable rental housing. Organization B engages in a variety of community-based initiatives (in Neighborhood X and in other area neighborhoods) such as housing development, crime prevention, leadership training, citizen empowerment, and neighborhood organizing. Organization C seeks to advance the health, safety, vibrancy, and interconnectivity of the neighborhoods along a bicycle and walking path running through several St. Louis neighborhoods, including Neighborhood X.

Organizations A, B, and C have very small staffs and find it difficult to devote any time to thinking about or otherwise exploring potential collaborative opportunities. At the same time, the organizations’ missions have some degree of overlap, and they believe that they might share similar desires and goals for Neighborhood X. After some preliminary discussions facilitated by CBN, it is clear that all three organizations recognize Neighborhood X’s need for

- strategic commercial development and increased employment opportunities;
- increased and coordinated residential real estate development;
- greater attention to neighborhood clean-up and beautification projects; and
- more coordination among nonprofits serving Neighborhood X to take advantage of opportunities for coordinated programming.

Each organization recognizes that its limited resources do not allow it to respond to these needs on its own on the kind of scale needed to make a lasting impact in Neighborhood X. Organizations A, B, and C have decided that the next logical step is to explore whether there may be ways of working together to address these commonly shared concerns. With logistical support from CBN, these organizations are now meeting on a regular basis for just this purpose. The logistical support from CBN has been a crucial component of this potential collaboration.

The early stage planning meetings among Organizations A, B, and C might or might not lead to on-the-ground-collaboration. In these early stage meetings, Organizations A, B, and C have simply committed to exploring collaboration possibilities in a strategic and organized way to determine whether collaboration is feasible. Each organization intends to remain a separately incorporated entity under the control of its own board of directors. If the organizations determine that some

level of collaboration makes sense, they will memorialize their agreement in a memorandum of understanding to set out the roles and responsibilities of each organization.

This potential collaboration brings with it the possibility of Organizations A, B, and C making a much larger total community impact than what any of the organizations could accomplish on its own. In addition, the collaboration could give the organizations access to new funding streams. Importantly, this example illustrates that, while collaboration is not cost-free, collaboration can sometimes be less “costly” when some of the logistical and relational costs are borne by another person or entity (e.g., an organization such as CBN).

Example 2: Aging-in-Place

In St. Louis, a small nonprofit organization (Organization D) has a mission focused on helping St. Louis seniors who live in a certain area of the city (Area Y) connect with a variety of services to allow them to “age-in-place.” This kind of help benefits both the seniors themselves and the local community of which the seniors have been a part. Organization D continually looks for ways to increase its impact by collaborating with others. Area Y has a diverse population that includes seniors of all income levels and crosses traditional race and class geographic boundaries, all of which is important to Organization D’s mission.

Through a collaboration with a local hospital, another local nonprofit organization (Organization E) provides a service that aims to help seniors and their family caregivers find ways for seniors to remain safely in their homes.

After some initial discussions initiated by Organization D, it became clear to Organization D and Organization E that a collaboration would potentially benefit both organizations and Area Y. In addition to programmatic collaboration, Organization E has some excess office space in Area Y that it could make available to Organization D. The organizations are currently working on a memorandum of understanding to define their collaboration in writing, and they are exploring the possibility of a lease for the excess office space.

This collaboration allows Organization D to access Organization E’s established infrastructure, while also providing Organization E with access to Organization D’s expertise. Moreover, the collaboration allows both organizations to accomplish more together than either could accomplish alone.

Collaboration: A Lawyer’s Checklist

Most potential collaborative relationships (whether simple or complex) share common issues. The following checklist is intended to be a tool for practitioners to use when interviewing, counseling, and drafting for nonprofit clients considering collaborative arrangements. The checklist can be used to (1) organize the information-gathering process, and (2) bring issues to the surface that the client has not yet considered, but which should be considered before moving forward with the collaboration.

I created this checklist as a result of conversations with clients on the topic of collaboration and use it as a framework for helping clients decide whether to move forward with potential collaborative arrangements.

Client Counseling	
Need	<ul style="list-style-type: none"> • What is the unmet need this collaboration will address?
Mission Fit	<ul style="list-style-type: none"> • How does the collaboration fit into the client's strategic or business plan? • Is there a compatible corporate purpose? • Does this activity further the tax-exempt purpose of the client?
Benefits	<ul style="list-style-type: none"> • What does the client bring to the table? What does the potential collaborative organization bring? • What specific organizational and collective benefits will be gained from the collaboration?
Resources	<ul style="list-style-type: none"> • Can the client invest the up-front time and resources needed for the collaboration? • Will the collaboration have adequate resources (e.g., skilled leadership, funds, staff, materials, and time)?
Assessment of Potential Collaborative Organization	<ul style="list-style-type: none"> • Are there shared values and goals? • Is the potential collaborative organization reliable? • What is the potential collaborative organization's reputation? • Is the potential collaborative organization invested in the outcome and willing to sacrifice time and resources to achieve the joint goal?
Client Characteristics	<ul style="list-style-type: none"> • What is the client's bargaining strength? • What is the client's tolerance for risk?
Costs/Risks	<ul style="list-style-type: none"> • What are the monetary and non-monetary costs associated with this collaboration? • What kinds of things could go wrong? • What is this collaboration specifically not intended to do, guarantee, or create?
Written Agreement	
Purpose and Form	<ul style="list-style-type: none"> • What is the legal structure of the collaboration? • Will the collaborators remain as separate entities? Will there be a new entity created? • What is the purpose of the written agreement (e.g., reduce the possibility of misunderstanding, provide legal protections, allocate risk, create greater certainty, provide a mechanism for working together and settling disputes)? • What type of agreement will be used (e.g., informal letter agreement, memorandum of understanding, traditional contract)?
The Basics	<ul style="list-style-type: none"> • Who? What? Where? When? Why? How? • What are the collaboration start and end dates? • What are the specific responsibilities of each party? Are these sole responsibilities, or are they shared in some way? • Who pays what? • What procedure will the parties follow if conflicts arise? • Can one party bind the other?
Employment Law	<ul style="list-style-type: none"> • Are any employment law issues implicated in this arrangement?
Consents	<ul style="list-style-type: none"> • Are any third-party consents needed (e.g., lenders, landlords, government agencies, funding sources)?
Risk Management	<ul style="list-style-type: none"> • Is either party required to carry certain types of insurance? • Is either party providing an indemnity? • What other tools can be used to manage identified risks?

Dana M. Malkus is an assistant clinical professor at St. Louis University School of Law. Contact her at millerdl@slu.edu.

¹ The following resources provide more in-depth explanations of the information presented in this section and may be useful to both practitioners and their clients:

- Foundation Center's Nonprofit Collaboration Resources:
<http://foundationcenter.org/gainknowledge/collaboration/;jsessionid=KRV5FZ4ZYEVWZLAQBQ4CGXD5AAAACI2F>
- Managing Collaboration Risks:
https://www.niac.org/AMSCentral/ResourceDocuments.cfm?var_PageAction=View&var_ID=63
- Cautions:
http://www.ssireview.org/articles/entry/the_reality_underneath_the_buzz_of_partnerships/
- Frameworks:
<http://www.acf.hhs.gov/sites/default/files/ocs/partnerships.pdf>
- MOUs:
<http://www.nonprofitrisk.org/library/enews/2007/enews052307.htm>
- Collaborative Checklist of Questions to Consider:
<http://dongriesmannsnonprofitblog.blogspot.com/2009/05/nonprofit-collaborative-or-partnership.html>

² These examples are based on (1) work done by students (under my supervision) in the Community & Economic Development Clinic at Saint Louis University School of Law in St. Louis, Missouri; (2) personal knowledge gained as a result of being a board member of one of the nonprofits discussed in this section; and (3) an informational interview with Karl Gunther, Community Builders Network of Metro St. Louis (January 16, 2014).

³ See www.communitybuildersstl.org.

**This article was originally published in the
ABA Business Law Section Community Economic Development Committee
Newsletter (July 2014)**