

Midsize firms luring 'Big Law' clients

By Pat Murphy

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More and more, midsize and boutique firms are finding themselves to be the better option for corporate clients that increasingly are questioning the value of paying big-firm rates for the handling of run-of-the-mill legal matters.

That conclusion is borne out in a recent study by the business consulting firm CEB, Inc. Released in November, the "CEB 2016 State of the Legal Function Survey" found that, from 2014 to 2016, there's been an 8 percent jump in the portion of outside counsel budgets allocated to midsize firms. In 2014, corporate legal departments used 32 percent of their outside counsel budgets on midsize firms. That number reached 40 percent last year.

Providence attorney Michael F. Sweeney has witnessed that trend materialize since 1996 when he co-founded Duffy & Sweeney, an 18-attorney business law and litigation firm.

"More and more you don't need the label of a large firm," Sweeney says. "It's who has the best reputation and expertise."

To Sweeney, the trend is the product of corporate clients simply recognizing the value of talented attorneys at smaller firms being able to deliver high-quality work at lower rates.

"As you see more and more talented people at the smaller firms, you're going to see a lot more business headed that way," he predicts.

Francis A. Connor III, co-managing partner at the 30-attorney litigation firm Barton Gilman in Providence and Boston, agrees that corporate clients are seeing midsize firms as a viable alternative because of their lower rates. However, he likewise sees a greater appreciation of the quality of work performed at midsize firms.

"Clients are not going to hire a lawyer for less money if they're sacrificing the subject-matter expertise they need," Connor says. "More information and transparency has allowed more clients to become very sophisticated consumers of legal services."



Controlling costs

Paul L. Feldman is the managing shareholder at Davis, Malm & D'Agostine, a 36-attorney general practice firm in Boston.

"Market forces in the last several years have driven companies to start diversifying their use of outside counsel," he says.

According to Feldman, the 2008 recession forced companies to reexamine how they managed their legal services.

"Once they realized there were some alternatives, that became part of their norm of how they operated their legal departments," he says.

Jaclyn L. Kugell, managing partner of Morgan, Brown & Joy, a 32-attorney employment and labor boutique in Boston, says larger firms are being squeezed on the one hand by the pressure exerted by corporate legal departments focused on tightening their belts in the wake of the recession. On the other hand, there are internal pressures to maximize revenues to pay for high overhead and the demands of partners to maintain the income levels to which they are accustomed.

Jeannette Riendeau, director of marketing and business development at 25-lawyer Bernkopf Goodman in Boston, says she expects Fortune 100 companies to continue to stick with the big law firms.

However, she also expects to see more opportunities to pick off big-firm clients in the future because corporate decision-makers



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have become savvy about the cost of legal services.

"They can look at a bill and see when they're getting billed by an associate at a \$600-an-hour rate at a large firm," Riendeau says. "The thought process is, 'I am paying to train an associate how to do their job.' There's resentment that's starting to come from that."

Kugell says midsize firms are well-situated to meet a corporate client's needs in terms of handling the "everyday business-of-law" type cases in a cost-effective manner. And while she accepts the fact that corporate America typically will turn to the big law firms in "bet-the-farm" cases, Kugell thinks corporate clients like the fact that her firm is open to alternative fee arrangements.

Of Morgan Brown's top 10 clients in terms of billing last year, half had alternative fee arrangements, Kugell reports.

"That makes the cost of doing business attractive for both them and us," she says.

Kugell adds that smaller firms naturally have more flexibility when it comes to trying something like flexible billing.

"Size has everything to do with being more nimble," she says. "If you're smaller, you have the ability to navigate these issues more easily."

But Connor doubts whether big firms are or will be as inflexible on fees as some suggest.

"I don't have any reason to think that the big firms aren't equally willing to consider those kinds of arrangements," he says. "They're feeling competitive and are probably willing to do that."

Several of Boston's largest firms contacted for this story, including Foley Hoag, Goodwin, Ropes & Gray and WilmerHale, either declined to comment or did not respond to a request for comment.

'Price point' issue

As managing partner at Todd & Weld, a 40-attorney litigation firm in Boston, Christopher Weld Jr. sees big firms having a particular problem serving large corporate clients on the litigation front.

According to Weld, using a big law firm may be justifiable in a case in which the future of the company is at stake or in a high-stakes class action.

"There's still a perception that it is worth paying the fees and everything else to the big firms in those large cases," Weld says.

But big firms are having trouble handling the "mid-level" cases in a cost-effective manner, opening the door to more litigation work for firms like his, Weld says, calling it a "price point" issue.

"If you have a \$1.5 million to \$2 million piece of litigation, you're going to pay a big firm over a million bucks to do that, which is kind of hard to justify," he says.

Weld certainly agrees that lower fee schedules give midsize firms a distinct advantage when it comes to recruiting cost-conscious clients. But he sees overstaffing as an even more fundamental problem for big firms in controlling costs.

"We tend to be a lot less top-down than the big firms," he says. "At a big firm you'll get a senior partner, a junior partner, a senior level-associate, a junior-level associate and a paralegal assigned to a case. So a two-hour meeting is a \$5,000 or \$10,000 affair."



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Sweeney says the fact that partners with experience are more likely to be actively involved in a case helps make midsize firms more attractive to general counsel and their companies.

"The rates are usually 30 to 50 percent less, and you have access to someone who actually has 30 years of experience, not a glorified third- or fourth-year associate who charges as much as someone like me," he says.

According to Sweeney, technology has been another major factor in leveling the playing field, with the laptop giving every attorney access to legal information and research materials that big firms once used to house in law libraries that occupied entire floors.

"Technology has helped us compete with the large firms," Sweeney says. "Everything is available on the internet. It changed the game."

Sweeney, who heads Duffy & Sweeney's mergers and acquisitions practice, points out that technology has in more subtle ways benefited smaller firms that don't have the advantage of large travel budgets or offices spread across the country.

"A lot of closings don't take place in person anymore," he notes. "You used to fly to a place and have a physical closing in a room. I haven't had a physical closing on a large M&A deal in years."

Talent drain?

In the competition for corporate clients, smaller firms are benefitting from talented attorneys at big firms looking for greener pastures.

Feldman says Davis Malm recently made three lateral hires from larger firms, and in each case the old firm's high rate structure had become problematic for the attorney in retaining his or her clients.

"In all three cases, when we talked about our rate structure, that was one of

the things [the new hires] found attractive," Feldman says. "They were having trouble maintaining their client base because they were getting squeezed from ever-increasing rates. They even felt it impaired their ability to grow their practice."

Sweeney says Duffy & Sweeney has snapped up big-firm lawyers because of their expertise, not because they come with a book of business.

"We hire lawyers who are talented and don't see a future in a big firm," he says. "They see the demographics of the firm with a lot of older partners who are going to be there."

Peter C. Lando knows first-hand why talented big-firm attorneys may want to migrate to smaller firms. Lando himself is a former big-firm lawyer who in 2003 joined with other big-firm lawyers to found Lando & Anastasi, a 27-attorney intellectual property boutique in Cambridge.

"We were lawyers who came together from larger firms recognizing this was going to happen," he says. "Rates can only go so high, so the demand for that type of practice can only go on for so long."

Lando says his firm has seen steady growth over the years, successfully competing for clients who ordinarily would have gone to big firms. He attributes part of that success to the fact that his firm's average billing rates are 25 percent lower than the typical Boston market rates.

"We're looking to add eight practitioners this year because our work is growing," Lando says. "The type of work we do is work that large firms would love to have."

Weld envisions some large firms eventually coming to the realization that their infrastructure is too big to handle a client's small- to mid-level cases in a cost-effective manner. When that happens, he says, look to see more partnering arrangements in which attorneys at large firms hand off work to trusted attorneys at smaller firms.

"When they look in the mirror and conclude they don't want to handle those cases, the question becomes, 'Where can I put the case so I don't have a risk that the person is going to steal my client?'" **RILW**