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Bigger Isn't Always Better When It Comes to Outside Counsel

By Ruth E. Piller, Litigation News Associate Editor

Corporate legal clients once again seem to be developing an affinity for small law firms— notwithstanding the merger mania of recent years and the perception that large corporations want only to hire megafirms. With increasing frequency, the chief legal officers of leading corporations are now retaining small law firms and even solo practitioners.

"I do believe that we are seeing an increase in inside counsel using smaller, boutique firms," says Horace W. Jordan Jr., Lake Forest, IL, cochair of the Section of Litigation's Corporate Counsel Committee. Jordan, who is general counsel for an equipment leasing company, believes that two dynamics are responsible for this change: "the billable hour and a feeling that the smaller firm might have more flexibility in both arranging billings and understanding the client and its business."

Walter D. James III, Grapevine, TX, a member of the Section's Criminal Litigation and Environmental Litigation Committees, practiced at large Texas firms until 2004, when he became a solo practitioner. James represents several Fortune 500 companies on environmental matters and says his clients like the fact that he does not mark up litigation costs such as copying and long distance calls, as some big firms do. In addition, he says, his clients know they can be big fish in a small pond when he represents them, unlike experiences they have sometimes had at larger firms.

"Generally speaking, what they like is the accessibility and accountability that come with working with a smaller outfit," says Stephen J. Curley, Stamford, CT, cochair of the Section's Solo and Small Firm Committee. "It's not lost on clients that in certain years they could be 10 to 20 percent of a firm's revenues and that they will get immediate attention and white-glove service when it comes to working with a solo. On the other hand, their problems can be just as big, and those figures can be 1 or 2 percent of a much bigger firm's revenue."

Like James, Curley left a large firm to form his own office. He says that he and other solo and small firm practitioners have benefited from the increased use of technology. For example, many benefits that were traditionally available only at the larger firms "can be replicated through an artful use of technology in the hands of a competent solo. You don't need the 100,000-volume law library that the big firms heavily invested in years ago. You don't need the trappings of a class office space in a landmark building like people used to insist on years ago." Also, with the availability of remote access, he says, clients have realized there is no need to pay for the overhead of a big firm.

That's not to say that corporate clients have forgone the big firms completely. "We use the large firms for big-ticket matters still because we have a relationship with them," Jordan says. "But the bulk of my work I have limited to firms, whether big or small, that really know me and care about me. That sounds silly, perhaps, but it is absolutely essential."

Curley says big firms have in part become the victims of their own success. When the big firms command hourly rates approaching \$1,000 for their most-senior attorneys, he says, it becomes difficult for the client to call the senior partner from that office. When Curley left big-firm practice in 2002, he cut his rates literally in half, he says. Likewise, James says his rates, when compared to those of his colleagues at the big firms, are much lower. "For someone with my experience, it is just a bargain rate."

ABA member James G. Potter, San Francisco, senior vice president and general counsel of Del Monte Foods Co., says that his company's philosophy is to match the legal resource to the project. "That is from a host of perspectives including cost and quality, and what that has resulted in is that we use far more medium and small firms than we do large firms," he says. Del Monte tends to use large firms, for example, in areas that require very specialized expertise, such as in mergers and acquisitions or intellectual property litigation. He adds, however: "It is virtually impossible for a larger firm to cost efficiently handle a litigation matter where the cost at issue is less than \$1 million." Small firms are "extremely cost effective on the smaller matters."

Although it is one thing to understand why corporate clients want to use smaller outside counsel, it is another to attract those clients. James says that one way small firms and solos can solicit clients is by building on existing relationships with friends and acquaintances. One of James's biggest clients was once his opposing counsel in Superfund cases. Afterward, when the lawyers went in-house with an energy company, he maintained their friendship; now he now represents their company on the largest Superfund site in Texas. "It's not always about getting the file that day," he says.

Curley credits the ABA with helping to make his solo practice attractive to corporate clients; he calculates that 25 to 30 percent of his revenues each year are the direct result of referrals from ABA contacts. "The contacts that I've developed and the networking opportunities I've gotten because of the exposure I've received to other attorneys, both litigators and nonlitigators, have really given me the comfort to move out on my own," he says.

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