

# Hiring a Law Firm: Does Size Really Matter?

From the Experts

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The commercial environment that followed the 2008-2009 financial crisis has, among other things, served to heighten the sensitivities that many businesses historically have had toward legal fees. It seems as if the current lament of every business owner is that new business is much harder to come by today compared to the environment preceding the crisis. Revenue streams are constantly being challenged by competitors; no relationship can be taken for granted. Given this atmosphere, it should come as no surprise that clients have shown an increasing commitment to their own bottom lines and, as part of that commitment, a determination to better manage their legal budgets.

As general counsel and other in-house attorneys increasingly receive directives from their CEOs, CFOs and boards of directors to better control their operating expenses, they are becoming more open to considering alternative ways of efficiently engaging outside legal services.

One way that GCs are being more proactive in managing efficiencies is by being more open to hiring law firms other than the largest and best-recognized ones. The other classic consideration that many in-house attorneys are pondering is whether an alternative billing arrangement might be better suited to a specific matter rather than the traditional billable-time model used by most law firms for the better part of the past century.

How many lawyers does it take for a firm to be able to provide a client top-shelf legal advice? That question, as silly as it may seem today, has been answered frequently by many businesses in the United States as follows: the larger, the better! Although many European, Latin American and Asian businesses, as well as middle-market and smaller U.S. businesses, have tended to prefer smaller firms at which they can easily and regularly access one or more senior advisors, the typical large-cap U.S. business has traditionally been attracted to the large, multinational law firm with multiple offices, practice areas and, of course, many, many attorneys.

That thinking is now being challenged, as all businesses look to engage quality practitioners while simultaneously managing their legal expenses.

The large “one-stop shop” not only provides clients and prospective clients with numerous practice skill-sets under one roof, and offices in markets far and near, it also has often provided in-house attorneys with “CYA” insurance coverage. Stated another way, engaging a very large, very well-known law firm may or may not be the right choice for the matter at hand but, invariably, if something were to go wrong and fingers were going to be pointed, it was usually assumed that the choice of a large law firm would insulate

the decision-maker from any culpability, as he or she went with the known commodity.

As many attorneys have now come to appreciate, going with the largest or best-known law firm does not guarantee that the client will get great counsel or that the lawyer staffed to the matter will be accomplished. Because it is now more regularly appreciated that the legal advice you receive is only as good as the individual lawyer providing it, clients are discovering that they can find "best in class" attorneys at firms of all sizes. If a leading lawyer can be engaged at a law firm that charges that lawyer out at rates that are more attractive than a larger provider, all the better!

Although the largest law firms continue to have much to offer, clients have become sensitized to the fact that it all comes at a cost. Billing rates at the largest firms with a national footprint have kept pace with their increasing costs as they have grown in size and geographic scope. Partners at such law firms are often billing their time out at anywhere from \$800 per hour to well north of \$1,000. Compare that to partner rates at many middle-market, full-service law firms, which are often in a range from the mid-\$400s to the mid-\$600s.

Furthermore, most large law firms employ a 3:1 associate-to-partner staffing ratio, as compared to middle-market shops that more often are flat in terms of staffing leverage, usually employing one associate per partner. So, as a client of a large law firm, you are often interacting with a younger practitioner with less experience, who is billing at a rate that often exceeds the rate at which a more experienced partner or senior practitioner at a middle-market firm would likely be charging. More senior-level advice at more attractive fee levels: compelling.

With the billing rates of many middle-market law firms at a 30 percent to 35 percent discount from the corresponding rates at larger shops, and further efficiencies coming from working with more experienced practitioners, the resulting legal fee is often significantly less at the middle-market firm. This math has caused many middle-market and large-cap businesses alike to reconsider the question of how large their law firm needs to be.

In our own middle-market oriented practice at Morrison Cohen, clients range from individual entrepreneurs and startups to the major bulge-bracket investment firms and commercial banks. Our private equity practice—which includes such private equity sponsors as AEA Investors, Atlantic Street Capital, CITIC Capital (China-based), Great Point Partners, Littlejohn & Co. and North Castle Partners—has witnessed many such clients moving all or part of their businesses from large law firms to our middle-market practice for these very reasons.

Middle-market sponsors are focused on engaging lawyers who can deliver first-rate counsel, but can do so on a fee basis more appropriate to their middle-market investment funds. Of equal importance, even where a buyout shop continues to use a large law firm on its initial investment, once it acquires the operating business in question, it often chooses to direct that portfolio company our way in order to take advantage of more attractive billing rates, and because the portfolio company will be assured of working directly with practitioners who have the experience to provide the senior-level advice the portfolio company requires.

Alternative billing arrangements are yet another way that sophisticated clients are looking to better manage their costs. The more nimble the law firm, the lower its overhead and the more likely that it may be amenable to alternative billing arrangements, including accepting an assignment on a contingency-fee basis, a fixed-fee basis, a hybrid basis (which involves a discount on the traditional billing rates, but also an "upside" or "success" fee that would exceed in the aggregate what a straight-time arrangement would cost), or other billing arrangements and structures. The key is understanding the circumstances under which each fee model can work for you or against you, and discussing these issues with a law firm that is

confident in its own business model and therefore able to think outside the box.

There is no doubt that clients are under greater pressure today to protect and grow their bottom lines; the business environment is tough for everyone. Given the environment, businesses are both more focused on keeping their legal fees in check and more open-minded as to how that can be most effectively accomplished. The search for quality lawyering does not start and stop with the largest and most recognizable law firms anymore. There is a growing willingness to look to both middle-market, full-service law firms that are modeled to provide more senior-level practitioners at more rational billing rates, and smaller boutiques that offer more focused practice areas.

Law firms, for their part, have to be similarly focused on competing for every piece of appropriate business, and in doing so need to be mindful of how they can bring their overhead down and provide their services most efficiently—whether by lowering rates, staffing a matter with more experienced practitioners, considering alternative billing arrangements or otherwise. Clients and prospective clients are increasingly expecting them to do just that.

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