CARLTON FIELDS

Clients and Lawyers Have Choices

August 10, 2018

The pecking order among law firms is changing. Discerning clients and lawyers are moving to law firms and legal markets that provide the best client service, results, and professional experience today, over firms best known for these qualities 15 or 20 years ago. They report that they are glad they did.

What the Data Show

As part of its aptly named "GC Thought Leaders Experiment," AdvanceLaw, a consultancy of lawyers, economists, and legal consultants, undertook to work with general counsel from major companies "to track what's working and what's not in outside counsel relationships." David Ruiz, *AdvanceLaw Joins About 30 GCs to Measure Law Firm Relationships*, Corporate Counsel (July 11, 2017). AdvanceLaw recently published its findings, "[b]ased on in-house evaluations of over 1,400 legal matters." Firoz Dattu and Aaron Kotok, *Largest, Most Pedigreed Firms Underperform on Service Quality Compared to Other Firms*, The American Lawyer (June 12, 2018). This report documents that "the largest most established law firms lag the rest of the Am Law 200 in delivering high quality client service." id.

More specifically, AdvanceLaw found that "the Am Law 21-200 is outpacing the Am Law 20 (the largest 20 firms by revenue) on several key service metrics, including responsiveness, efficiency, quality of work, and solutions focus." id. Likewise, when AdvanceLaw looked "at firms with high revenue per lawyer (an even better indicator of firm prestige and ability to charge premium rates) [it saw] a similar storyline." id. The most prestigious firms got lower ratings on "creativity, strategic thinking, and a 'yes, and here's how' (rather than 'no') mindset." id.

The authors did not find these results surprising. As they pointed out, the higher priced, more pedigreed firms often use "teams of associates" to support their business models. As "bigger teams liaise with the client, the lead partner may not learn quite as much about the business or matter." id.

It's hard for clients to "receive top partner attention" in the most prestigious firms," and it is "less likely clients will have a top partner actively working on (vs. overseeing) their matters." id.

More fundamentally, this study pointed out that:

> the legal market has an information problem: we don't know which firms are performing better, so we are forced to default to brand (and high cost) as proxies for quality. But that is changing . . . . Clients, in essence, are finding out that the blue chip firms of the past are not necessarily the blue chip firms of the present (and future). Likewise, the 'insurance' rationale for choosing certain firms for high-stakes work based on historical reputation should dissipate over time (but won't disappear). id.

When AdvanceLaw shared its findings with 50 GCs, many noted these findings "would impact their firm selection decisions." id. The authors explained "that many GCs have wanted to migrate more high-stakes work to promising but less branded firms for quite some time, but were understandably risk-averse." But these findings "should be a game-changer in the market for legal services." id.

The general counsel of DXC Technology, Bill Deckelman, had exactly this anticipated response. He said that for his first 15 years out of 20 as a GC, he "subscribed to the conventional wisdom that the most esteemed, branded firms were the place to go for top service—to receive . . . 'white-glove treatment.'" Bill Deckelman, *Why This GC of a $25B Company Has Migrated Work Away From the Largest, Most Elite Firms*, The American Lawyer (June 19, 2018). But over the last five years, he started migrating work to other firms, "in part because [he] was witnessing more service missteps than before." id. He said, at the "high prices we were paying, this felt inexcusable." DXC Technology was, after all, a $25 billion global company with more than its fair share of legal work. He concluded that the top partners at the most prestigious firms were

> . . .stretched thin, and can't be as attentive to our work as they used to be. This is the case because many of these firms achieved high partner profitability through increased staffing leverage. We're essentially paying for more junior lawyers, and when we get senior partners on the phone, they're often a step removed from the facts. id.

Deckelman observed that the documented poorer "responsiveness, solutions focus, quality of work, efficiency, expertise, and the like, as compared to other firms in the Am Law 200 (most of which charge a lot less)" may also be a function of reduced client leverage: "if a law firm is bringing in $3 billion a year they can afford to risk losing a client." id. "Overall," Deckelman concluded, "the firms at the top are running a different kind of firm than in the past, and it's led to real pain for clients." id.

He said he doesn't blame these firms:

> [T]hey "are simply maximizing profits. The root of the problem is that we clients go to the well with certain firms because we're making buying decision based on the firm's reputation for service quality 15 or 20 years ago; and we're willing to tolerate inefficiency or occasional service lapses. id.

Over the past five years, Deckelman started "retaining more firms outside the Am Law 20 and Magic Circle for high-stakes legal work." id. "I'm getting better service quality than I expected," he noted, adding, "[t]he results so far have been great. These new firms have been impressing us on quality, expertise, efficiency, and all the things we're measuring, on major work." id. He is getting "more senior partner attention" and "they're affordable." id. Importantly, Deckelman observed that "a lot of top legal talent has migrated across firms over the years." id.

Secondary Markets Shine

By the same token, clients are finding that firms outside major cities may well outshine even the best firms in New York. As part of its GC Thought Leaders Experiment, AdvanceLaw compared the performance of firms across 40 major metropolitan areas (e.g., Denver, Phoenix, St. Louis, Minneapolis, Portland, Baltimore, Detroit, Cleveland, Tampa, Milwaukee, Charlotte, and Atlanta). The study found "no material difference in performance—but lawyers in the less-populated cities performed markedly better on cost and efficiency." Michael Williams and Aaron Kotok, *How Good Are Lawyers in Mid-Market Cities?* The American Lawyer (July 18, 2018). The authors observed,

> For all the talk about prestige locations and how mega cities attract all the best talent, there is no real performance difference. In fact, as the slight downward slope of the best-fit line shows, the largest cities . . . have marginally lower performance scores than other locations, though this is not statistically significant. id.

However, as noted, "the lawyers in the largest cities are more expensive," whether we look at partner rates or whether we examine "in-house counsel assessments of cost and efficiency." id. "Put simply," the authors concluded, "if clients gravitate to the very biggest of cities, they'll pay more; and, on average, they don't receive better service quality." id.

The authors suggested that "part of the reason that there isn't a quality improvement when turning to lawyers in the largest cities is that quality and depth of talent in other markets has been growing steadily over the years." id. Lawyers are "looking for a different quality of life or returning to their hometowns." id. So "in-house teams venturing outside mega (or money-center) city firms are receiving very strong legal service at substantially lower cost." id.

The GC of Molson Coors, Lee Reichert, bears witness to this conclusion. He recounts how recently, when, going into a significant arbitration, his company was "pitted against a fabled New York law firm—one of the five most highly regarded firms in the nation." Lee Reichert, *Why the GC of Molson Coors Is Moving Major Work From Prestigious New York Firms*, The American Lawyer (July 24, 2018). So he naturally "considered hiring an equally pedigreed firm in a money-center city to represent us." id. Instead, he selected lawyers from the Denver office of another firm. He said "our Denver counsel out-lawyered the blue-chip New York law firm's larger team, and we were very happy with the result." id. He acknowledged that he

> routinely retain[s] counsel in major financial or regulatory centers when there is a specific skill and experience only they can supply. [But] [i]ncreasingly . . .we find ourselves relying on lawyers and firms in other cities for the rest of our work. id.

Reichert explained that "there has been a major migration of talent from money-center cities—many great lawyers have moved to places like Denver." He pointed out that

> "[n]ot every elite lawyer wants to work in the kind of environment that yields $3 million in profits per partner, especially when the alternative for senior partners is often $1 million or more in several mid-to-large cities across the country. It's also a far easier decision than it would have been in 1980, or even 2000. Work is more mobile, technology has advanced, communication is fluid, and paper files no longer keep lawyers to a specific physical office. id.

Reichert said that clients are moving with these lawyers because the numbers generated by the money-city firms

> are mostly achieved with a steady stream of client matters placed into sizable staffing pyramids—lawyers you've never met billing hundreds of hours to a file. This staffing model is a major source of frustration among GCs with whom I speak, and is consistent with the Thought Leaders research showing that some of the largest and most-pedigreed firms fail to outperform the rest. id.

Shifting Career Choices

These findings are supported by other research that confirms that top lawyers, like clients, are increasingly selecting lesser known “mid-size” firms over better branded, larger alternatives. A study published by Law360, drawing on more than 1,350 survey responses, confirms that “when it comes to job satisfaction and overall well-being, lawyers at midsize firms come out ahead.” Natalie Rodriguez, *The Least Stressed Attorneys in a Stressed-Out Profession*, Law360 In-Depth, July 23, 2018. These lawyers are “consistently more satisfied than their counterparts at larger or smaller firms.” id. The study found that,

> [c]ompared with their peers, more respondents from midsize firms—defined here as firms with between 100 to 500 attorneys—say they feel they can accomplish all their tasks in a given day, and they’re least likely to work more than 60 hours a week or to have delayed a life event because of work. When asked whether they have a “good work-life balance, most say yes.

They have more direct contact with clients, fewer late nights or weekends in the office, and greater leeway to negotiate rates. Maybe most significantly, they enjoy “more opportunities to do important work early on.” id.

This can differ markedly from the professional experience at the largest firms, given that “[t]he sheer size and geographic dispersion of present-day large law firms makes it more difficult to create and sustain firm-wide cultural norms, such as collegiality, cooperation, and risk sharing, that may have moderated intrafirm competition” at an earlier time. Marc Galanter & William D. Henderson, *The Elastic Tournament: A Second Transformation of the Big Law Firm,* 60 Stan. L. Rev. 1867 (Apr. 2008).

Although lawyers in less profitable mid-size firms may earn less money, “[t]he way they look at it, the salary is just a single component of many that should be considered when you’re talking about your career.” Rodriguez, supra. Midsize firms also tend to run “leaner” than BigLaw peers, “which keeps many fiscally conservative attorneys feeling safer about the future.” id.

Conclusion

Clients and talented lawyers have choices. These studies suggest that thoughtful segments of both are exercising their prerogatives in ways that are changing the complexion of the legal marketplace today.

Authored By

Gary L. Sasso