

Is Bigger Better?

Head count is one way for a firm to distinguish itself in a client's mind. But it's not the only way.

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1. We are a 450-lawyer super-regional firm that has been pursuing a national practice for the past five years. We have offices on both coasts, but are principally located in our region. Until recently, we saw our competition as firms ranging from our size up to 700 or 800 lawyers. Over the past two years, the market seems to have transformed, and some of our former competitors are now 1,000 to 1,500 lawyers. How big and where will we have to be to be among the survivors five years from now?

This is a tough question that many firms are confronting. At least you're in good company. Let's tackle size first and look at this through the client's eyes. Clients want to work with "successful" law firms. Clients find comfort in choosing a successful firm because it provides insulation from making a bad choice. In my experience, clients measure success in at least three ways: how big a firm is, how much money a firm's partners make and the lawyers who are attracted to the firm. In the minds of thinking law firms, size in and of itself means little. It certainly is not an indicia of the quality of work a firm produces, its service culture, the type of work it does (high end versus commodity) or the quality of its clients or lawyers. Indeed, for some time many managing partners have scoffed at the notion of being big for the sake of being big. Nonetheless, I believe clients link size with success, perhaps because in the legal profession, size translates into market share, and business people link market share with success.

Over the last couple of years, many firms (not infrequently at the behest of consultants) have focused on building net operating income by increasing their size based on their belief that they will need a significant largess to build the infrastructure and mount the marketing and advertising campaigns necessary to compete with the billion dollar behemoths emerging among the Am Law 100 and Global 50. The math is not complicated: for instance, 1% of gross revenues on advertising for a firm with \$225 million in gross revenues is \$2.25 million; for a billion dollar firm, it is \$10 million. Those are two very different advertising campaigns for firms competing for the same work from the same clients.

Still, the top tier of the profession, comprised of firms that command the best work from the best clients, is dominated by firms under 600 lawyers. Eight of the ten most profitable firms among the Am Law 100 are under 600 lawyers; nine of the firms with the highest revenue per lawyer are less than 600 lawyers. Only a couple of these firms are among the top ten grossing firms, a list dominated by 1,000 lawyer plus behemoths. The immense profitability of the “smaller” firms communicates their success to clients and refutes the notion that size is necessary to survive and prosper. Although the “top ten” Am Law rankings I’ve cited are dominated by New York firms, this pecking order is repeated in other cities around the country.

The moral of this story is that size may be one survival strategy—clients do equate it with success and they often express a need for breadth and depth. There will undoubtedly be a class of large middle market firms that survive and prosper. But, it is not the only road to survival: being among the elite, most profitable firms who get the very best work from the very best clients is another strategy, and size will be less relevant in this class of competitors.

The behemoths will need geographic breadth and depth; they will have to have offices in a limited number of key markets. A lot of the firms competing in this market are probably going to have to shed some of their “regional” offices, opened when they were pursuing a regional, as opposed to a national strategy. Otherwise, these offices will become, if they are not already, management distractions and resource drains as the firms stretch their resources to achieve national and international reach. There will be less money to spend and fewer management resources, like marketing and technology staff and dollars, to spend on small markets.

The most profitable firms won’t need to hang a shingle in every market; they will draw work because they will be perceived by clients as dominating the very rich niche of doing the best work for the best clients. And, they will cherry pick the best lawyers in their markets, sending messages to those markets about how successful they are. A handful of firms are emerging as apparently being able to enjoy both great size and the best work and best clients. Those will likely be the most acquisitive of the best lawyers and will emerge as the dominant global players.

How big will these firms be? If a recent informal poll of about a quarter of the Am Law 20 is any indication, expect to see these firms stretching to 2,000 in the next two or three years and on up to and over 5,000 over the next five to eight years.

2. We are a longstanding intellectual property boutique with over half of our revenue coming from patent prosecution work. Intellectual property practices have taken center stage as one of the most profitable practices of the new decade. Firms like ours have been targeted for cherry picking and acquisition by firms seeking to cash in on IP work. These firms are interested in our litigation practices, but not our prosecutors. What does the future hold for our patent prosecutors?

The widely held belief among patent prosecutors and many firm managers that patent prosecution work is a worthwhile loss leader for obtaining big ticket IP litigation has created homes for many prosecutors in big, successful firms seeking to build IP practices. The best performing firms, though, are steering clear of low margin prosecution work; I believe the rest of the market will soon follow suit. The historic success of the IP boutiques in mixing prosecution and big ticket litigation practices was rooted in the reality that the company's chief patent counsel was the client's decision maker for both kinds of work. The chief patent counsel is no longer the buyer for this big ticket work. The value and importance of intellectual property as a corporate asset has increased dramatically; consequently the buying decision for significant disputes in which intellectual property is involved has shifted to the chief litigation counsel or the general counsel. No longer is the relationship with the chief patent counsel the key relationship to have for a firm to get big ticket IP litigation; that relationship must now exist with the general counsel. Thus, big complex litigation practices who have these relationships are taking a bigger and bigger bite of the big IP cases, which is slowly but surely repudiating the loss leader strategy.

Where will all the prosecutors go? We are likely to see emerge some mega prosecution firms and a host of boutiques that will be quite different from the current roster of top IP boutiques that do both litigation and prosecution work. These firms will be highly leveraged with non-lawyers and won't have the conflict of interest dilemmas that the current boutiques have, because they won't be handling litigation. They will likely deliver services on a flat fee model and derive their profitability from their leverage and the efficiencies they are able to create in prosecuting patents.

They will maintain their relationships with the in-house patent lawyers, engineers and other technical players. Witness what has happened in the immigration law practice arena as an example of what is to come for patent prosecution work. Only a handful of big firms have immigration practices, and many of the most significant immigration practices around the country were founded by lawyers who spun themselves out of big firms.

3. Historically, we have not had any established criteria for selecting our practice group leaders. Our success at practice group management has been a mixed bag. What criteria have successful firms who are successful at practice group management used for selecting their practice group leaders?

Let's get our definitions squared away first. When I use the word practice group in this answer, I'm referring to groups of lawyers organized around a substantive specialty of the law, like a corporate finance or securities litigation practice group that might reside within a department in a firm, which in the case of these two practice groups might be the business and litigation departments, for example.

Many firms have not completely matched the skill set required to successfully run a practice group with their criteria for selecting practice group leaders. Often they seem to be prevented from doing so by precedent or

because they suffer from a lack of qualified candidates. Too often, though, it is because they haven't sorted out what their expectations are for practice group leaders—they don't have a clear understanding of the role and responsibilities of their practice group leaders and thus can't match candidates to the job.

As more and more firms are holding their practice group leaders accountable for the success of their practice groups they are recognizing a core set of skills needed to lead and manage a practice group. First, the leader must have a clear vision of where they want to take the group. This vision must be rooted firmly in a deep understanding of the group's target market, whether that is a specific industry (like health care, for instance) or group of buyer's who need the group's specialty (like trademark licensing, for example). Practice group leaders must also have a broad understanding of the firm's practices and client base, and strong relationships with other firm leaders, to identify and execute on cross selling opportunities. Management skills, including most importantly financial acumen, planning skills and the ability to lead and delegate are the final ingredients.

It used to be that a big book of business or seniority in the firm served as surrogates for these skill sets. Successful firms have learned over the last several years that although a big book and seniority often command respect, they don't always translate into leadership and management skills.