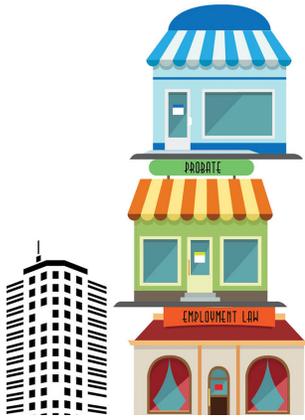


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TOP BOUTIQUES IN CALIFORNIA 2022

THINKING ABOUT STARTING A BUSINESS LITIGATION BOUTIQUE? HERE ARE SOME THOUGHTS...

BY GREGORY DOLL

Eighteen years ago, I co-founded a boutique business litigation firm. The most significant challenge facing us then was the same challenge that faces us today: defining our role in the legal world, finding the proverbial “sweet spot” in a highly competitive legal landscape. Put another way, where does our boutique business litigation firm fit into the picture vis-à-vis large firms and solo practitioners? Who are our potential clients? What type of cases can we handle?

In 2004, when we started our firm, the model that existed for business litigators seemed well established: the largest firms represented the largest companies, solo practitioners represented individuals and small companies and boutiques focused on everything in between – that is, small to mid-sized businesses, entertainment companies, real estate developers and other wealthy individuals. We occasionally would get a call from a large law firm to handle a case for one of its clients on a fee-sensitive matter or handle the joint defense of a former officer or employee of such a client in a multi-defendant case, but for the most part the lines were clearly drawn: big

firms handled big business, smaller firms handled smaller business, and there wasn't much overlap between the two.

The model changed a few years later, however, which I ascribe to two factors: (1) the 2008 recession, which created an environment, albeit temporary, where almost every case became fee-sensitive; and (2) the fact that when the recession finally ended, the boutique lawyers who had been hired by large corporations during the recession now had become trusted advisers to the in-house lawyers who had hired them. That is, in-house lawyers opted not to suddenly jettison the lower-priced legal teams they had assembled during the recession just because times were good again. The boutique firms now had a seat at the table and would continue handling cases for large corporations in the future.

The big firms surely must have been sweating this development, right?

Not even close.

The big firms are doing great. In fact, better than ever. There is more big-ticket litigation than ever before.



These cases are being handled by the most talented big-firm partners in the country with their elite associate teams, and they do phenomenal work. We've all seen press coverage of class-action lawsuits alleging billions in potential damages, antitrust actions threatening to upend corporate business models, environmental catastrophes, etc. When one of these cases gets filed, I don't wait for my phone to ring. But the last decade has seen a shift in the legal landscape in at least one major respect: big firms and boutiques now co-exist on the radar screens of in-house counsel for large corporations in a way that didn't exist when I started my firm. Both models – big firm and boutique – are valued, indeed thriving, in today's legal environment.

So what are the keys to success for a boutique business litigation firm in 2022? I would suggest three:

One, you need lawyers who can deliver the same type of written work product clients are accustomed to receiving from the big firms. Litigation generally boils down to a series of motions that are won or lost, and cases that get adjudicated or settled based on the effect of these motions. For business litigation boutiques, this means hiring lawyers who spent time as associates at big firms, or if not, clerked for judges, or if neither of those, then at least received training from other small-firm lawyers committed to producing top-notch written work product.

Two, you need to price your labor at hourly rates or alternative fee arrangements that make your firm financially attractive for cases that fall beneath a certain liability exposure

threshold for in-house lawyers. This exposure threshold will be subjectively determined by in-house counsel at different companies, but as a general rule, again subject to exceptions, this means cases that don't get listed as material risks in SEC filings. The good news for boutique lawyers, however, is that there are plenty of these types of cases, "materiality" is usually a very big number, and the exposure threshold for which you'll be considered for cases increases over time based on the results you achieve, sometimes crossing well over the line of materiality.

Three, you need to deliver top-notch client service and litigation results. This probably goes without saying, but without this third key, there is no path to success.

Here's the best part of starting a boutique business litigation firm: you'll still be handling cases for small to mid-sized businesses, entertainment companies, real estate developers, and other wealthy individuals, but now you also might be representing some of the largest corporations in the world. Your client base may become the broadest of all lawyers. Which, of course, leads to a good problem when you start your boutique with the right combination of talent, rates, and results: your phone should be ringing. And if you decide to start a business litigation boutique in 2022: congrats, you picked the best time I've seen in the last two decades to do it.

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