

PRACTICE NOTE ON HOW TO REDUCE LEGAL FEES

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Issue

Legal fees continue to go up. Companies want good legal service, but at a fair price. One way to reduce overall legal costs, as well as to provide better internal control, is to employ lawyers in-house to handle routine matters: No one knows the legal risks related to the business and how to manage them better than in-house counsel; and no one is better placed to implement preventive law programs to prevent them. But even companies with in-house legal departments rely on outside counsel – and incur outside legal fees – to provide specialist advice and assistance, and to represent the group in countries without an in-house legal presence.

Strategy

The in-house counsel or manager of the client company should control the cost of legal services by instructing outside counsel with the required expertise and by clearly defining the work expected. When the work can be clearly delineated, the client should ask outside counsel for an estimate of their fees to do the work and hold them to an agreed budget.

As a general rule, the highest legal fees are for high value-added and sometimes even business critical services related to acquisitions and litigation. Additional guidelines should be followed in those cases.

Guidelines on How to Instruct Outside Counsel

- Choose outside counsel with the experience to handle the specific task at hand (see Practice Note on Appointment of Outside Counsel).
- Enter into a written engagement letter with new outside counsel, which should include the following:
 - Background information on the client company
 - What the client does
 - Its legal structure
 - Who its competitors are (for client conflict purposes)
 - Contact information of the primary contact at the client
 - Legal entity to invoice
 - Expected staffing by law firm
 - One partner in charge of project
 - Use minimum number of lawyers

- No change of lawyers without the client’s prior consent
- Keep it simple
 - No research, memoranda of law without the client’s prior authorization
- Billing
 - Monthly
 - Provide details of services rendered
 - Provide number of hours worked by each lawyer
- No increase in legal fees without client’s prior consent
- When instructing outside counsel with respect to a specific task
 - Give clear, written instructions
 - Ask for a fee estimate before giving the assignment, and authorize fees up to agreed limit only without the client’s prior consent
- Where possible, it is better for an in-house lawyer to instruct outside counsel than for a non-lawyer to do so since another lawyer is better able to frame the question and evaluate the service rendered.
- Continuously evaluate outside counsel’s performance and provide feedback; if there is a problem with service or invoices, raise it immediately.
- Even if there is no work pending, keep in touch with outside counsel. For example, once a year the client company should meet with its key outside counsel to review the past year’s work and prepare for the next year; and it should at least send a copy of its annual report to its other regular outside counsel.

Acquisitions

- Appoint outside counsel familiar with the client’s industry and its legal risks.
- Work with the same outside counsel wherever possible to get the benefit of past experience and familiarity with the group and its best practices.
- Develop model due diligence checklist and acquisition agreement adapted to the acquirer’s business for use by both inside and outside counsel.
 - Improves quality control since ensures consistency in contracts
 - Reduces legal fees
 - Update model contract to reflect lessons learned from each acquisition
- Conduct an effective due diligence investigation targeting operational risks.
- Make sure that risks identified in the due diligence investigation are addressed in the acquisition agreement.

Litigation

- Perform early case assessment to identify claims or litigation that should be settled and not tried.
- Mediate disputes before commencing litigation and incurring discovery costs.
- Consider including mandatory mediation clauses in contracts with clients and suppliers; consider inclusion in employment contracts and in employee handbook.
- If mediation doesn’t work, consider arbitration.
- Ask outside counsel to prepare quarterly reports updating status of litigation with cost/benefit analysis of continuing lawsuit versus settling.
- Track number of disputes/litigation, how long it takes to reach resolution.
- Implement a Record Retention Policy to ensure that records are kept for period required by law and can be produced in discovery.

- When implementing the Record Retention Policy, start with the departments with highest litigation/discovery risk (e.g., Finance, Human Resources, Legal).
- Consider licensing searchable e-mail archiving software (e.g., EMC Email Xtender) designed to enable compliance with e-discovery.
- Put in place preventive law programs to avoid/minimize litigation. For example, hold regular workshops on workplace employment issues for HR professionals.

Legal Fees Report

To enable the group to evaluate its outside legal costs, the legal department should keep a record of all legal fees by firm and by type of work.

Conclusion

The objective should be for outside counsel to partner with in-house lawyers to manage the client company's legal risks on an effective and cost efficient basis. Outside counsel who demonstrate their commitment to achieving this objective – for example, by working proactively to resolve disputes as soon as possible without going to the considerable expense of discovery – will be rewarded by receiving repeat business. Those who churn cases won't.

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