

TOP 10 WAYS TO MANAGE OUTSIDE COUNSEL

The successful management of the relationship with outside counsel often involves a delicate balance between cooperation and oversight. External law firms generally offer special expertise, an independent perspective, and sheer numbers to address challenging problems. In-house counsel contributes to team coordination, experience, and a thorough understanding of the needs of the corporate client. How can in-house counsel ensure that they are effectively managing outside counsel? The following 10 recommendations are a good start.

1. CREATE CLEAR OUTSIDE COUNSEL GUIDELINES – AND FOLLOW THEM

Legal departments must not only create clear guidelines for their firms, but also must consistently enforce them. The best practice is for external law firms to confirm agreement to the guidelines in writing, with any additional terms in a mutually agreed addendum (no side agreements). A good legal department management system can help streamline the monitoring of compliance with agreed guidelines (no. 10 below).

2. WHEN ASSIGNING NEW WORK, CONSIDER ALTERNATIVE FIRMS AND STOP GIVING WORK TO UNDER-PERFORMERS

Legal departments often send work to the same large law firms. However, considering smaller law firms and firms outside of the largest cities, and soliciting bids for large projects is key when it comes to assigning new work. Under-performing firms who do not take corrective action could be removed from consideration for new work. The legal department should regularly evaluate the work performed by outside counsel (generally at the conclusion of projects) to identify opportunities for improvement.

3. REQUIRE EXPERIENCED STAFFING OF LEGAL PROJECTS AND PRE-APPROVAL OF ANY CHANGES

In-house counsel can work with external law firms to create appropriate legal teams for major projects, including confirmation that experience levels match the work. We suggest that in-house counsel remain vigilant to ensure that a project team is not changed without approval. There are innumerable instances where clients hire a major firm because of perceived expertise, only to find dozens of trainees—or even temporary lawyers—on the bill doing the actual work.

In-house counsel should carefully monitor bills to look for additions to legal teams that could create inefficiencies and greater costs. Left to their own devices, firms could assign a plethora of such timekeepers to your matters, some experienced and some not, all billing part-time to this and other matters, which increases the number of people who have to be educated on the matter and kept up to speed.

4. CONFIRM THAT HOURLY RATES AND EXPENSES ARE (AND REMAIN) REASONABLE

In-house counsel should confirm discounts with colleagues and other sources. In addition, pre-approval should be required for any changes to negotiated rates. Finally, large law firm expenses should be supported by receipts and reviewed for both reasonableness and to eliminate inappropriate overhead charges (e.g. word processing, administrative expense).

5. PUT PROJECT PLANS IN PLACE AND REGULARLY MONITOR PROGRESS

In addition to agreeing on a project team, a plan can be put in place to manage projects, including tactics for reaching potential early resolution points. The plan milestones should then be monitored (as bills are reviewed and with periodic status updates) to determine whether the firm is sticking to the plan, or whether the plan needs to be adjusted.

6. REQUIRE DETAILED LEGAL BILLS THAT SPECIFICALLY DESCRIBE THE SERVICES PERFORMED

By requiring more detailed bills, such as electronic bills, in-house counsel can gain insight into what outside counsel are actually doing, not just what they claim they are doing. Vague descriptions and “block billing” can hide duplication of effort, inefficiency, and time erroneously billed to the wrong project. The legal department can also maintain a record of challenged entries and amounts written off to ensure that law firms follow through on billing revisions.

7. OBTAIN PROJECT BUDGETS AND TRACK BILLS AGAINST THEM

While the legal department may have clear guidelines requiring budgets, very few are obtained in practice. Therefore, a budget should be agreed upon, and bills not paid until it is in place. In order to facilitate the tracking of spending against the budget, budgets should be broken down by phase, major activity, or time period. Then, as bills are received, they can be compared with corresponding budget categories to quickly identify projects that may be getting off track.

8. OBTAIN ELECTRONIC COPIES OF DOCUMENTS TO RE-USE WORK PRODUCT

The legal department can obtain electronic copies of all important records not only so that in-house counsel may monitor and review legal work, but to serve as backup in the event firms lose materials (fire, flood, firm breakups, etc.), firms are terminated, work product is recycled to avoid duplication of effort, or the client wishes to conduct fee or performance reviews. By maintaining such information in a shared electronic repository, the legal department also avoids having to pay multiple times to obtain the same information.

9. WHEN PROJECTS ARE COMPLETED, TRACK RESULTS ACHIEVED AND LESSONS LEARNED

In order to compare law firm performance, results must be tracked. Such results could include duration of the project, total fees and expenses, results achieved (payments/recoveries), and the predictive accuracy of outside counsel. In addition, lessons learned can be captured and shared with appropriate business clients to reduce future legal exposure and spending.

10. PUT IN PLACE A LEGAL DEPARTMENT MANAGEMENT SYSTEM THAT IS EASY FOR BOTH IN-HOUSE COUNSEL AND EXTERNAL LAW FIRMS TO USE

Matter management and e-billing systems can efficiently accomplish many of the goals described above: alerting bill reviewers of staffing or hourly rate changes, flagging violations of expense guidelines, automatically comparing spending with budgets, enforcing requirements of regular status updates, capturing results and lessons learned, and evaluating outside counsel. However, many systems are ineffective because they are too difficult to use on a regular basis.

CONCLUSION

The ten practical suggestions discussed above can help legal departments to gain a better understanding of the fees they pay and the components of those fees so that they can choose wisely and negotiate the best fee arrangements and pricing.

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