

Cost Controls

How To Work with Outside Firms To Keep a Lid on Expenses

By Michael C. Ross

Reducing outside counsel expenses is a much-covered topic. In the challenging economic environment in which most companies are currently operating, the subject is getting increased attention. Although it is difficult to offer either a one-size fits all approach or a guaranteed array of silver bullets, following are some qualitative approaches that may be useful.

Perspective

Articles about control and reduction of outside counsel costs often address only law firm bills for services rendered and “other charges.” Outside legal costs also include results, at least to the extent that outside counsel affects results. Efforts to manage outside costs must take into account the relative values of wins, losses and settlements of disputes, the measurable quality of transaction negotiations and documentation and the quality of legal advice in other areas. In each case, the question is how well outside counsel served the client’s interests. The appropriate goal, of course, is the best results at the lowest cost. Goals and ranges of outcomes should be discussed in advance and after significant positive or negative developments so that both sides will have standards against which to measure outside counsel’s performance.

Relationship

The best odds for achieving significant, long-term cost-reduction are with outside lawyers who genuinely care about helping the client achieve that goal. Many outside lawyers pay lip service to cost-control but few devote sufficient effort to the cause over any long period.

Finding such sympathetic counsel will often require trial and error, patience and some good

luck. Working with a firm that promises cost-consciousness may be a reasonable start, but only the billing attorney and attorneys in charge of matters can deliver reductions in cost.

Firms control hourly rates, and there are limits to rate-based savings. At some level, firms cannot or will not perform for less. Testing the limits now may provide short-term savings, but those savings are unlikely to last through the next turnaround — when firms once again can command higher and higher rates. In addition, as rates are reduced, pressure may increase for attorneys to increase the number of hours they work on assignments. Clients also risk quality, service and results by trying to push rates too low. If the billing attorney ranks near the bottom of the firm in realized rates for a client, he or she will have difficulty marshalling high-quality talent to work for that client.

Identify outside attorneys who care about cost-reduction not by their promises but by their actions. They invest in understanding their clients’ business and offer training and educational programs at reduced or no cost. They willingly and carefully prepare thorough and understandable budgets and use them to manage matters. They promptly communicate about circumstances that require adjustments and suggest reasonable alternatives. Some offer draft bills for review before the final bill is sent. Attentive lawyers will scrub bills to eliminate erroneous entries for time and those ubiquitous “other charges.” They offer meaningful discounts for poor results, particularly if their firm’s performance may have contributed to those results.

Outside counsel will, naturally, be interested in rewards for helping clients reduce their costs. General counsel and other senior



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in-house attorneys should be willing to consider appropriate bonuses and commitments for future work but would be well-advised to reward recurring, long-term reductions rather than one-time savings unless they are extraordinary. By the same token, outside counsel should be accountable for cost overruns within their control. This give-and-take works only if there are reasonable expectations for a long-term relationship.

Communication

For outside counsel to deliver reduced costs, there must be frequent, candid communication about policy, strategy and tactics. Communications should be scheduled regularly during the course of the matter and promptly after material changes in circumstances occur. Matters should be debriefed, without charge, for “lessons learned” that could save future costs.

Topics should encompass the relevant menu of cost-savings measures. Staffing alternatives may include outsourcing, contract attorneys, paralegals and interns. Secondment of firm attorneys may be an option for some clients. Alternative billing arrangements may be explored, keeping in mind that such arrangements are likely to favor one side or the other, particularly in the short run. Technological opportunities with research, drafting and document management and retention may be available.

The dialogue should focus on the value provided by outside counsel. The conversations should be about the results and costs as they compare to comparable matters managed by the firm for the client and other clients, as well as matters managed by other firms.

Communications must, of course, be two-way. In-house lawyers should be receptive to outside counsel’s perspective, which is often based upon

a breadth and depth of experience gained from representing numerous clients over a long period of time. Willingness to experiment with creative and novel approaches may lead to cost-reductions that can be leveraged across other matters.

Work Inside?” in *Report to Legal Management*, July/August, 2008).

It is also hard to imagine a time when law firms and outside lawyers will be more receptive to helping their clients in this important endeavor. Many outside counsel will

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Competition

Having outside firms compete for legal work can motivate the firms to get serious about reducing costs. That said, competition for some types of legal matters performed for public companies, including corporate, securities and tax work, is generally not practical. There are, however, many areas in which there is plenty of comparable work that can be assigned to two or three firms. These include employment and other recurring litigation, leasing, licensing and contract work. Clients can learn from successful cost-reduction measures at one firm and suggest that similar measures be used at other firms.

It is difficult to find any other time besides the present when legal departments have been under as much pressure to reduce outside legal costs. According to a recent Altman Weil Survey, 75 percent of responding general counsel indicated that their departments are facing 2009 budget cuts, and more than 80 percent identified outside counsel costs as one of their greatest concerns. Amidst these concerns, one of the most likely ways for law departments to cut costs is by bringing more work in-house. (See my article “Time to Bring Legal

figure out that general counsel are bringing work in-house and that if outside firms do not get serious about cost reductions, there will simply be less work for them in the long term. Now is the time for in-house lawyers to devote more attention to creating or enhancing relationships with outside counsel that will deliver genuine cost control and reduction. ♦

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