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LITIGATION



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Budgeting for Litigation: Obtaining Efficiencies and Meeting Client Goals

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“We must consult our means rather than our wishes,” George Washington prudently observed. Although he was addressing wartime budgeting, his words resonate with today’s corporate clients who are pressing their inside and outside litigation counsel to rein in litigation costs. Since 2009 clients have increasingly sought to reduce litigation costs by asking outside law firms to cut their rates. But cutting rates alone is not a sustainable strategy to achieve long-term savings when managing complex or recurring business disputes. That’s why some forward-thinking clients are requiring more from outside law firms to control costs and deliver more value.

So what can outside lawyers do to control costs and deliver more value to clients? There are many tools in the toolbox, including legal project management (LPM), process improvement, alternative fee arrangements/value billing and flexible staffing models. Thompson Hine embraces all of these in its approach to innovative service delivery. LPM tools and methodologies drive greater predictability and client communication, ultimately maximizing value to clients. Streamlined and standardized processes yield more efficiency and additional cost savings. Value pricing arrangements, as an alternative to the traditional billable hour, can meet a client’s need to cap risk or achieve predictability. And flexible staffing models allow the

law firm to use the right lawyer at the right price for each task in the litigation, thereby containing costs without sacrificing quality.

Consider one other useful but underutilized tool for delivering more value: a customized litigation budget. Of all the crucial documents a trial lawyer will create during the life of a complex dispute – such as a well-drafted complaint, a comprehensive motion for summary judgment or flawless jury instructions – a sound litigation budget is arguably one of the most important. Outside counsel should view preparing a litigation budget not as a burden, but as an opportunity – an opportunity to collaborate with the client, to demonstrate a willingness to share risk, to minimize surprises and to maximize the chances bills will be paid without issue or delay. Moreover, a sound legal budget enhances communication and transparency regarding the ongoing progress of the matter, a goal shared by the client and the trial lawyer.

Litigation Budgeting: Thompson Hine's Standardized Approach

The challenge for a law firm is to build a culture that *embraces* budgeting as an opportunity, despite the uncertainties of litigation. At Thompson Hine, we have rallied around four key principles:

1. Standardize and simplify the budgeting process.
2. Give trial lawyers the right technology.
3. Take advantage of prior efforts and prior results.
4. Demonstrate commitment inside and outside the firm.

Using these principles, we have designed our own proprietary budgeting software that is available on every trial lawyer's computer. With this software, the trial lawyer can readily create a customized budget with sufficient detail to enable the client to make informed choices about scope, staffing and resources.

Our proprietary budgeting program is the product of collaboration among trial lawyers, IT specialists and our Director of Legal Project Management. Its user-friendly interface includes a series of prompts, drop-down menus and suggested possibilities drawn from the collective experience of our entire litigation group. Similar to a tax preparation program, the budgeting software asks questions and prompts the attorney to consider various aspects of the litigation planning process. It allows the lawyer to adjust standard budget elements for maximum customization of the budget, while still drawing on the collective wisdom of the firm's past engagements. And it automatically performs all calculations, eliminating the potential for errors due to incorrect (or deleted!) spreadsheet formulas or manual miscalculations.

At its heart, the budgeting software prompts the lawyer to plan the anticipated work on the matter by reference to the standard ABA litigation task codes plus a proprietary set of firm-developed sub-task codes. Using high/low ranges to bracket the expected spend for each timekeeper and task, the program accounts for some of the uncertainty inherent in budgeting long-term future events. The software also accounts for the element of time: The lawyer estimates the start and end date of each task (or phase), giving the client a good picture of the expected timing of its legal expenditures in future periods.

Tracking Performance

After one creates a litigation budget, the job is only half complete. An important element of LPM is regular periodic reporting of *actual* billings versus *budgeted* billings throughout the life of the matter. Thompson Hine has invested in Budget Manager, a comprehensive software package that tracks budget-to-actual data. Whether the client requests it or not, our timekeepers code time entries for all matters; these codes correspond to the budgeted task codes, enabling Budget Manager to track budget-to-actual data in real time. We then can create reports that contain detailed budget-versus-actual statistics by timekeeper, phase and task, and share them with the client. If the unexpected happens, we are in a position to promptly advise our client and discuss options.

Takeaways

In light of escalating litigation costs and organizations' shrinking budgets for legal services, corporate clients are challenging their law firms to offer new and innovative ways to achieve their goals more economically. As part of a comprehensive, disciplined approach to managing legal projects, trial lawyers and their clients should embrace litigation budgeting as a positive, concrete way to help control costs, improve efficiency and provide the transparency and accountability clients need to better manage their resources and expectations, ultimately increasing the value clients receive for their legal spend.