

How to Prepare a Litigation Plan and Budget

Adopting and implementing some tools and techniques routinely applied in the management of significant projects, such as building construction and product development, will improve your control of the substantive presentation of your company's position as well as the costs of doing so. Consequently, your role as in-house counsel will be further strengthened.

Advantages to improved planning and budgeting

Applying those tools and techniques will enable you to:

- **Monitor** more closely the resources deployed on your company's behalf;
- **Control** more effectively the costs associated with those resources;
- **Adapt** to unforeseen developments within the disputatious relationship and the litigation or, though external to that dispute or the specific matter, affecting either;
- **Report** to corporate management with greater confidence the status of and prospects for the company's efforts;
- **Establish** with greater assurance any necessary litigation reserves or other corporate benchmarks relating to the matter; and
- **Anticipate** positive or negative impacts of the dispute and its resolution of the company's business operations.

Techniques to manage litigation

With a view to realizing the benefits noted above, apply the following techniques within the context of your company's efforts to manage disputes and litigation:

- Establish the client's goal(s) in the dispute concisely and assure that all members of the team (in-house and outside) understand, support and share the goal(s)
- Develop a step-by-step plan by which you expect to achieve the company's goal(s)

- Determine what resources, both technical (*e.g.*, hardware and software requirements) and otherwise (*e.g.*, in-house and outside legal expertise), you will need to deploy to achieve the goal(s) and in what amounts and sequence
- Articulate clearly the assumptions on which the plan is based
- Circulate and gain consensus on the litigation plan so developed
- Prepare a budget for the matter that reflects the litigation plan and takes into account the assumptions and limitations of that plan
- Establish communications channels and steps that will ensure timely receipt of and action on any information that suggests the need to update the plan and budget or to adapt the plan to unexpected events or hurdles to achievement of the company's goals
- Create mechanisms for accountability for following plan and budget
- Consistently follow a process for the development and application of a plan and budget for each dispute or case

Create a litigation plan

A litigation plan requires the following steps:

- Set the goals for the matter with specificity (*i.e.*, do not state “win” without some elaboration as to what would constitute a “win” from the company's perspective)
- Determine steps necessary to achieve the stated goal(s)
- Articulate clearly the assumptions on which the plan is based (for example, to the extent that a resolution will require a court to apply a decision from another jurisdiction, make clear the likelihood of the court doing so)
- Consider and elucidate possible alternative strategies if the assumptions are not realized; think through “what if” scenarios
- Make certain that each step in the plan furthers the central theme for the case
- Determine what capabilities and areas of expertise will be necessary to follow those steps to successful completion

- Plot the sequence in which those capabilities and areas of expertise will be needed
- Include an expected timeline for the various efforts and identify the causality links between the various steps (*i.e.*, which ones are necessary predicates for others?)
- Determine the most appropriate sources of each of the capabilities and areas of expertise identified (*i.e.*, in-house personnel, law firm partner, temporary-staffing agency)
- Set approximate cost factors for the various elements of the plan

Correlate plan with budget

Make sure that the budget relates to the litigation plan:

- The budget should capture the significant cost elements of the plan
- Identify those parts of the budget that are (more) within your control and which are subject to others' control and identify those others (to illustrate, the discovery that you expect to need from the other party(ies) – “offensive” discovery – can be treated differently (from a budgetary perspective) than “defensive” discovery, such as defending the deposition of your company's president)
- Estimate any significant expenses for elements of the plan
- Organize the budget in the same way that the litigation plan is laid out, such as chronologically (likely) with some alternative approaches budgeted if likely
- Itemize the costs of in-house resources identified in the plan
- The budget should detail elements of each cost factor identified in the plan

Task-based budgeting and billing issues

- Task-based budgeting enables better coherence between a litigation plan and budget, since the plan typically flows in a task-oriented fashion

- Use of task-based billing codes enables ready comparison of expended-to-budgeted items
- Many if not all matter-management and e-billing systems allow for task-based budgeting and automatic incorporation of each task-based invoice's data into expended categories
- The Uniform Task-Based Management System codes have been incorporated by many vendors of matter-management and e-billing systems into their products
- Task-based billing does not, by itself, enable alternative fee arrangements, though its use will allow law departments and law firms to accumulate the data necessary to reach meaningful judgments regarding possible alternative fee arrangements by virtue of the greater understanding they can thereby gain of the types and amounts of effort required for various types of matters
- Task-based billing enables the law department to evaluate types and amounts of effort required by various tasks and different cases, for comparison and analysis

[See a sample **Litigation Budget form** [here](#)]

Metrics and reporting issues

- Metrics are valuable to track progress within a matter as well as overall management of multiple matters
- Metrics also constitute a significant part of the reporting by a law department to corporate executives
- Identify the specific data that must be collected to support each element of reporting required of the law department by corporate management
- Determine when the specific data are available and the party best positioned to collect each type
- Create a mechanism for the most efficient and direct capture of each type of data needed by the law department for internal (*i.e.*, managing the work for its own information) or external (*i.e.*, for reporting to others) uses
- Assure that reports to the law department by outside counsel contain the data needed by the law department for its reports to management

- Avoid duplicative collection of data
- Align the reporting by law firms to the law department with the reporting required of the law department so as to simplify as much as possible the data entry and to minimize the data-conversion tasks and potential for error

Case-specific and portfolio-wide issues

- Each matter deserves handling specific to its contours
- Multiple matters require a broader vision as well to address broader impacts
- Commonalities among matters may require particular approaches, such as centralized handling of discovery, research, etc.
- Reporting by the law department should be both matter-specific and portfolio-wide (for example, while case-specific reserves may be necessary for litigation and other disputes, enterprise-wide reserves will appear in the financial statements with itemization for only more-significant matters)