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The budgeting piece of the business of law

BY [SILVIA COULTER \(/AUTHOR/SILVIA-COULTER\)](#)
SEPTEMBER 1, 2015

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When it comes to setting budgets for legal projects, there are still many firms providing excuses for why they cannot put together a solid budget. Some firms have worked diligently on building the necessary resources to help partners and clients become more effective at creating predictable budgets. Scrutiny of legal departments has increased. With demands for lower costs and more predictable legal fees coming from the board level, many clients no longer want to hear excuses; they want to partner with outside counsel to provide predictability, solutions and metrics.



Lynne Miller, senior counsel, brand protection and brand legal-NA at The Procter & Gamble Company, provides input from the client/buyer side. "Budgets are fluid and need to be revisited regularly. We have to establish a line of communication. Communication, revisiting and revising are the key considerations in the current economic environment," she says.

Maureen Beacom Gorman, a partner at the Chicago IP firm Marshall Gerstein Borun says, "Oftentimes outside counsel will quote their outside counsel fees but not all of the costs that go into the litigation." She cites as an example: "External costs can be as much as the fees so it is critical to bring costs up in the beginning and add anticipated costs into the budget."

Clients will regularly advise outside counsel to be aware of and budget for all the contingencies they can think of. Many clients are asking for a budget that is not adjustable under any circumstances. While this seems like hardball, the brass ring is often a big chunk of the client's work including "bet-the-company" litigation or large transactions if outside counsel are willing to take on more routine cases for fixed amounts.

For negotiating fees and preparing budgets, it is critical to have some metrics in place. This responsibility falls on the shoulders of both inside and outside counsel. The more information collected, the better the predictability.

Gorman says, "The considerations outside counsel need to keep in mind for inside counsel are all the contingencies you can think of. ... Oftentimes quotes for litigation don't include quotes for settlement negotiations occurring alongside litigation activity," she says. "So quoting for

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contingencies — like settlement negotiations — is helpful to the businesses for anticipating unforeseen litigation costs and costs for the communication component is key to adjusting for those things inside counsel's litigation processes. WIPLevent Network (/wiplnet)

"A caveat to contingency planning — it's just the nature of lawyers — it can paralyze because no one feels like every contingency has been anticipated," offers Miller. "That's when budgeting issues arise. ... While it's good to think about contingencies; it's important for outside counsel and the in-house counsel establish a budget for the anticipated work. ... they will likely have to revise the case budget in the future. ... And when it comes to settlement negotiations, even if we are telling you now that we are not going to settle, we'd like to see what those costs considered."

These musings about budgeting for a case are the first step in the budgeting process is creating an annual legal budget. More and more counsel are being asked to craft an entire year's budget for their companies. The challenge is the unpredictability, of course. But, given that there may always be an unforeseen circumstance, it's wise to build that into the budget as well. We asked our inside and outside counsel for this month's column to give us their thoughts about the annual budgets.

Budgeting for outside legal spend is based on historical actual spending and current matters. This is the case at P&G as well. Miller says, "I consider previous case spend and review various data points in terms of the expected work and expenses to budget for a current case. ... The nature of litigation makes case budgeting very difficult. ... Most clients will agree that when they create litigation budgets, they are doing so with certain caveats."

While this may be the case for some companies, other firms have reported that they are being asked to provide a budget that is not negotiable. Clearly, within the construct of that budget there are definitions about what is included and what is not. When it comes to a specific case, once a budget has been set, there is often no going back for more. How mainstream is this becoming? It's not yet clear, but we anticipate this is becoming far more commonplace.

Gorman adds her outside counsel perspective, "We've had both experiences: if you have a rational explanation (for missing budget) there is often a fundamental trust between in house counsel and what we do that allow for adjustments. ... It must be explainable by in house counsel to their peers and upper management." She reflects that her firm has experienced the "no changes" budget as well. "The flip side is yes, there have been times where clients have said this is an absolute," she says. "Then there is an expectation that the firm will eat fees that exceed the fixed budget. ... It's understanding the pressures on the situation both internally and externally and what's going on that is causing budget mishaps."

"In my area at P&G, the amount of fee arrangements has increased substantially over the past five years and we continue to look at those," adds Miller. "Fee arrangements provide more business certainty for our business clients. ... We use a variety of arrangements including fixed fee, has yielded more certainty. ... It's clear what the work is and how much it will cost."

Whether it's a matter, a case, an entire year of legal work, regular communication between inside and outside counsel are now one of the most important aspects of relationship management. Conducting budget reviews on a regular basis (at least quarterly) makes good sense for managing important relationships and the expectations that come along with those relationships.

Silvia Coulter

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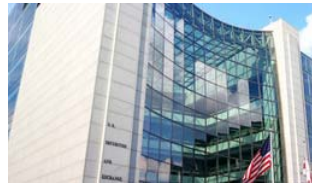
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