

Cost-Crunching Counsel: Nine Keys to Controlling Costs and Improving Legal Services for Your Business

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Attorneys are all about money, right? We're the ones who cue our families for photographs with, "Everybody smile and say, 'Fees!'" Go ahead. Insert your own joke here. We can take it. But despite the jokes and our reputation, most of us are businessmen, too. We understand the need to control costs. We don't like wasting anyone's time, either. We're just like you. We thrive on referrals and return business. If we gouge clients, a lot of people hear about it. So I'm here, as an attorney, to tell you how to keep your legal costs under control. I've enjoyed twenty years in my career with firms ranging in size from more than 500 lawyers to firms with less than five attorneys. It's this simple: When companies follow these nine keys for hiring and using legal counsel, they crunch their legal costs—and actually increase the quality of their legal representation. Key #1: Get the right lawyer for the job. Get the lawyer whose practice focuses on the narrow area of law in which you need assistance. (This almost always means you need more than one law firm doing your legal work, by the way.) <I>Choosing the right lawyer can save you big money in the long run.</I> The focus of my practice is international dispute resolution. Many times, the best way to collect a debt owed by a foreign company (particularly if that company is based in an emerging market country) is to seize an asset of that company in a foreign country. Suing these companies in the United States is very expensive. Many countries do not fully recognize U.S. judgments. You sue here and take the judgment there, only to learn you essentially need to sue again and win in your debtor company's home country. Seizing your debtor's valuable asset in a neutral third country can oftentimes be the best solution. The problem is that many, if not most, of the contracts my clients or their attorneys ask me to collect on outside of the United States weren't written with that in mind. Why not? <I>Because they weren't written by an international lawyer.</I> In these cases, I'm only brought in as the specialist to do damage control long after the agreement is executed. Many of these contracts state very explicitly that the client's home city is the only jurisdiction in which any lawsuit might be brought. So what happens? Such a provision can preclude action in some foreign countries and make seizure in all of them more problematic. I had a recent case where I am certain we could have collected a million dollars for the client in an overseas jurisdiction had there not been a provision requiring litigation in an East Coast state. My East Coast client may have saved a few hundred dollars by having his regular lawyer draft the contract, but in the end, it may have cost them a million dollars. <I>Choosing the specialist usually saves money in the short term as well.</I> My next door neighbor asked me to be her lawyer in purchasing a house from her parents. (A reminder: I do international dispute resolution.) I made clear I had absolutely no real estate background and that this transfer would be far more complicated than she probably realized. My neighbor needed an attorney with experience in these deals. I knew such a deal should be structured to legally minimize various taxes and I told her that if she used someone without experience in this specific area—like me—she increased the likelihood of missing out on some tax benefit. Still, the clincher was when I told her that it would take someone like me around 30 hours to do such a project, while someone who was familiar with the legal territory would probably get it done in half the time. I recommended a top-flight real estate lawyer with a tax background and told my neighbor she should expect legal fees of at least \$3,500. She mentioned that the lawyer I'd recommended had completed the job, tax benefits intact, for much less. I was shocked by the low fees and called the real estate lawyer for an explanation (I actually thought he had cut my neighbor a break as a favor to me). The lawyer told me it had taken him only three hours for the job because he does about twenty of these transactions a year. That means there is no need for him to research the tax laws each time so what would take me 30 hours takes him three. This illustrates an old adage about the best way to find the best lawyer for your particular matter: solicit suggestions from your regular lawyer, or a friend who is an attorney. However, you need to ask for more than, for example, someone who has ever done a trademark registration. In that case, you'll probably be passed off to another lawyer in his firm that has handled a few trademarks rather than getting the name of a well-respected trademark lawyer outside the firm. Using the in-firm corporate generalist for your trademark work will prove mighty expensive if that generalist misses something in the registration. Key #2: Stay in constant communication with your lawyer. It may seem completely counter-intuitive that constantly communicating with your lawyer will save you money, but it almost surely will. In reality, staying in good communication with your lawyer is the rough equivalent of regularly changing the oil in your car. It costs money each time, but a blown engine or (in the case of legal services) a big lawsuit is going to cost you a lot more in the long run than a few oil changes or phone calls along the way. This brings me right to the next key: Key #3: Know your goals and tell your lawyer [WHAT THEY ARE]. This is an "ouch" item. Remember the old Rolling Stones song "You Can't Always Get What You Want"? With your counsel, "You Won't Ever Get What You Want" if you don't know what you want to achieve through legal representation. It's your lawyer's job to explain various possible outcomes of a case or transaction, but it's your job to know what your goals are. You are always going to know your business better than your lawyer. Many years ago, a client came to me about six months into some highly contentious litigation with his business partner. The client had already spent around \$50,000 on this case he had brought, but he had a vague sense of uneasiness about it. His regular corporate counsel had referred him to me for a second opinion regarding the litigation. I met with the client for a few hours and learned that he wanted me to make sure his lawyers were handling the case properly. During this conversation, the client must have told me at least ten times that he never wanted to do business with his partner again. I told him I would review the entire case file and get back to him in a few days. When we met again a few days later, I told him that his lawyers had been doing a fine job. Again, he kept mentioning how he never wanted to do business with his partner again. I then asked him whether he realized that no matter what happened in his lawsuit against his business partner, they would still be partners at the end. Here's the "ouch": it turns out the client had thought that victory in his lawsuit would remove his partner from the partnership. The client had fifty grand into this process, and that goal of dissolving the partnership just wasn't going to happen. I then spoke with litigation counsel who confirmed the lawsuit could never achieve that objective. The lawsuit

was just to seek compensation from the partner for business he had allegedly diverted to another of his companies that should have gone to the partnership. We met a few times with his partner (who actually wanted out of the partnership). Within a few weeks, we achieved a settlement that removed the partner from my client's business—and ended the litigation that should never have been started in the first place. Key #4: Avoid Litigation. Being sued or finding yourself in a position where you have no real choice but to sue should almost always be avoided. This is easier said than done, but by living up to your agreements (and getting them in writing), spending a little up-front in legal fees and consulting with lawyers, you can go far in avoiding most lawsuits. However, litigation is often necessary and should even sometimes be employed to further broad strategic business objectives. Nonetheless, once litigation has begun it is time consuming, difficult to control, and very expensive. Regular communications with your lawyer will better enable her to head off problems before litigation becomes the only solution. It will also enable her to better position you to prevail in any such litigation, if it cannot be avoided. I have found that the clients who are best at communicating with me have gone through litigation and truly understand the need to avoid it. Concentrate your efforts close to home. While great time and effort are spent on protecting against injury lawsuits (hot coffee and the like), that risk for most businesses is relatively small and, more importantly, can be insured against. For most businesses, employee and contract issues present a greater danger of getting out of hand. Ironically, these are precisely the issues that are easy to avoid up-front with proactive employment policies and clear written contracts. Key #5: Use a law firm that appropriately outsources. The big firms are usually set up in such a way that the profits of the partners come from the work of their associates. These associates are often recent law graduates who are likely to be far less efficient than a more senior lawyer. Put simply, 20 hours at \$200 will cost you more than 10 hours at \$300. Associate time is often a lousy value. Law firms love having their associates doing legal research. The associate conducts highly profitable legal research and the law firm avoids having an inexperienced lawyer making strategic decisions. In the meantime you are paying to help train that associate. In seven years or so, he'll be ready to become a partner and use a new associate to do the same thing to some other client. How can you avoid putting too much of your legal budget into associates? On each matter ask your lawyer whether it would be possible for her to subcontract out some of the research work by using a part-time contract lawyer or even an overseas research service. In Seattle there are many lawyers who, for whatever reason, do not wish to work full time and so contract out their legal research services for anywhere from \$30 to \$70. Though your law firm will justifiably mark up these charges to cover their normal overhead, you still should expect substantial savings. There is even the possibility of using overseas lawyers to assist in initial research of some matters. With competent lawyers in India charging as little as \$7 an hour for computerized legal research, there is no reason not to give them the first crack at research that your lawyer will have plenty of time to review and supplement. The outsourcing used by your law firm should not be confined just to lawyers, either: Good Japanese translators are in great demand in this country and so they are quite expensive. For years we have been successfully e-mailing Japanese documents to excellent translators in Russia who charge 1/5 as much. We realize substantial savings for our clients by having our Chinese documents translated in China, rather than here. We have used Korean engineers for initial engineering review on cases, saving at least 30%. We even encourage Vancouver or Toronto, Canada, arbitration provisions in our client's international contracts because Vancouver arbitrators, though quite competent, generally cost about half of those in the locales most commonly used for international arbitration (London, New York, and Stockholm). Key #6: Explore alternative fee arrangements. It almost always makes sense to at least discuss with your lawyer billing arrangements other than straight hourly fees. Perhaps you'll both benefit from a fixed fee arrangement. Here, you and your lawyer agree on a fixed fee that covers legal services. The real advantage in this arrangement, for both counsel and the client, is the ability to budget in advance and so limit billing "surprises" for both of you. Contingent fees are another alternative option. Simply stated, the law firm is paid contingent upon the results they achieve. Although you often hear "If we don't win, you don't pay" on TV commercials, the more common arrangement in business cases is to use contingent fees in combination with cost-reduced or limited-number hourly fees. There are also a number of hourly billing variations to consider. One common option is to negotiate a reduced hourly rate plus bonus. Here, an agreement can put your counsel at a reduced hourly rate plus bonuses to be paid for meeting or exceeding deadlines you agree upon. Key #7: Have your lawyer give you an estimate of the fees and costs. It's in your best interest to get an estimate of your legal fees. An estimate is just that: an estimate. Legal fees are often difficult to predict, particularly in litigation where the opposing party's tactics greatly influence what your lawyer is required to do. However, you still need an idea of the legal costs you're about to encounter. From my perspective as counsel, I have learned that it is always a good idea to give an estimate because sometimes clients truly have no idea exactly what is involved in handling a particular matter. Years ago, a client called me wanting to seize the assets of a Russian company that owed his company about \$350,000. Because this was the first time I had worked with the company, I wanted to impress the client and I told him that I would use my contacts throughout Asia to determine whether this company had any assets there that could be seized. I also told him I would be working with a Russian law firm to explore the likelihood of success if we needed to sue in Russia. When he agreed to that strategy, my firm did all of these things, incurring \$5,000 in fees and costs. About half of that went to lawyers/agents in Korea, China, Hong Kong, and Japan and to the lawyers in Russia who had written a very good four-page memorandum outlining what would likely happen if we were to sue in Russia. I reported back to the client within a week and gave him very clear directions on what we needed to do to recover the debt. I then sent out the bill for approximately \$5,000, believing we had done a great job very quickly and efficiently. I assumed the client was very happy with our work and would gladly pay the bill. (I can assure you that my clients for whom I regularly do this sort of work would not have batted an eye at the bill.) My assumption was wrong. The client called and said he had no idea that it would cost so much. This struck me as curious, since the client was a rather sophisticated business person whose company uses one of the big firms in town. Yet he told me that he thought that my search for assets, and my working with Russian lawyers, would basically consist of one afternoon's worth of phone calls. Because the miscommunication regarding fees was more my fault than his, I drastically cut the bill. But from then on I've tried to always give an estimate up front and then continue to update that estimate as the work progresses. Key #8: Don't focus too much on the attorneys' hourly rate. An in-house counsel for one of the largest corporations in America once told me that, no matter what the hourly fees were at the various firms used by her company, in the end, most of the firms tended to charge similar amounts. According to her, the firm

whose partner billed out at \$250 per hour simply billed more time than the firm whose partners billed out at \$350. At the \$350 per hour firm, more work would go to associates. So here's the principle behind the key: <l>Focus on lowering your total bill, not on the fees charged by individual lawyers.</l> Key #9: Don't forget about insurance. One of the best investments against monumental legal fees is <l>insurance.</l> Carry liability insurance and, if feasible, carry directors' and officers' liability insurance. Discuss your various insurance options with both your broker and your lawyer. Then, if you do get sued for any reason, have your lawyer check your policy to see if you have coverage. Too many times, companies have assumed their policy could never cover a particular matter when in fact it either might or it does. These nine keys combined can form a powerful strategy to significantly control your legal costs. You may never be able to smile with your lawyers when they say "Fees!" for the firm's holiday photo, but you'll know you're making the most of your legal budget. Dan Harris is an attorney with the international law firm of Harris & Moure, pllc., which focuses on assisting businesses in or involved with Asia, Eastern Europe, or North America. <http://www.harrismoure.com>