

Value Practice:

Secondments, Meaningful Budgets & Fixed Fee Arrangements for Special Projects- Value Practices at Johnson Matthey Inc.

***Robert Talley
Interviewed while President-Corporate, General Counsel & Secretary for Johnson Matthey Inc.***

Background

Johnson Matthey Inc.'s law department has five lawyers (including the General Counsel) plus four paralegals, and is successfully implementing a number of value practices in connection with structuring and implementing relationships with outside counsel. In late 2009, the General Counsel conducted a benchmarking and metrics analysis of the internal / external spend balance. As a result, he shares that he anticipates increasing in-house staffing in 2010.

This ACC Value Practice piece highlights some of the law department's practices relating to value-based staffing, strategic planning and setting meaningful budgets and alternative fee structures.

Value-based Staffing Practice: Secondments

The law department uses secondments as a way to efficiently meet staffing and resource needs. In specific, arrangements ranging from one week to several months have been successfully implemented. Lawyers being 'seconded' to the law department 'sit' on site with the in-house legal team during the secondment arrangement.

Key aspects include:

- ***Right person-*** having the right person and level of talent is key since a motivating factor for this type of arrangement is the need to efficiently meet a driving resource need- individual is selected by the law department;
- ***One-week to several months-*** range of time periods for arrangements that have been implemented; from twice per week to weekly;
- ***Located on site with in-house legal team-***seconded staff 'sit' on site with the in-house legal team and interface directly with the business management;
- ***Per diem/flat fee-*** value-based fee structures include flat fee per diem or weekly; this approach helps provide a measure of certainty on cost.

Benefits & Challenges

What are the benefits of secondment staffing arrangements? The General Counsel notes the following:

- ***Continuity with the firm providing the 'seconded' professional-*** enhances firm's relationship with and understanding of the client's business since the embedded lawyer learns the company being "in the skin" of in-house

- **Business people are part of the process** - there is a natural reluctance to deal with “outsiders” and this can be overcome by introducing the seconded lawyers as part of the team, albeit temporarily
- **Seconded lawyer has enhanced understanding of the client’s business**- sitting ‘on-site’ enables the outside lawyer to develop knowledge of and familiarity with the business - especially important in an organization with highly diverse product areas - and enables in-house lawyers to develop enhanced working relationships with seconded lawyer(s)
- **Flexible staffing** -gives the ability to cover short term “stretch” periods effectively
- **Results include**- enhanced process efficiencies and substantive contributions since the seconded lawyer may have varied experiences that could contribute to overall department efficiencies and value contribution

What are the challenges that must be addressed? Up front time to explain assignments and effectively oversee seconded individuals. The learning curve must be expected and managed. Also, the General Counsel notes to be sure to educate the seconded lawyer quickly on the unique cultural aspects of the company so he or she can avoid committing an organizational *faux pas*.

Plan and Set Meaningful Budgets

Another practice that adds value to the overall client service relationship is planning matters and setting meaningful budgets up front. The General Counsel shares that there are few, if any, matters worked on by outside counsel that aren’t capable of up front cost estimates, even if potential variables need to be factored into the analysis.

- **Up front:** plan and discuss budgets up front so that budgets can be meaningful and strategic discussions can occur without distractions that can arise while ‘fighting the battle;’ the law department requires budgets (or ranges) up front for all major matters;
- **Make it meaningful:** the budget needs to be based on experience and data and not inflated for unlikely contingencies;
- **Discuss staffing:** discuss who and how many outside lawyers/service providers will be assigned to the matter;
- **Be visible- GC’s role:** outside counsel legal fees for more significant matters are ‘charged’ directly to the business clients; however, for this law department, the General Counsel plays a key role in budget reviews and discussions to help shape early focus and strategy;
- **Periodic reviews:** have periodic sessions to ‘step back’ and review the case and perform a strategic assessment to confirm case strategy and budgets continue to make sense.

Alternative Fee Arrangement- Fixed Fee Per Diem for Due Diligence Support

The General Counsel notes that factors such as established relationships with firms, regularity of work and size of the matter can help make discussions regarding alternative fee arrangements easier. In addition, matters such as immigration or patent filings – which may be considered more repetitive or typical – may be more amenable to flat fee structures.

In specific, the General Counsel describes experience implementing per diem fixed fee arrangements for outside legal services assisting with due diligence on acquisitions.

Key factors for shaping due diligence alternative fee arrangements include:

- **Identify individuals with experience:** helps both the law department and law firm with predictability of service and structuring per diem fees- individuals should be efficient in reviewing documents;
- **Establish staffing levels and time frame:** define up front how many legal service providers will work on the matter and for how long- set a date for deliverables;
- **Set a per diem or weekly fee:** based on a discussion of the scope of work, staffing levels and time, set the fee for providing these services, including what the typical daily hours will be (10 hours per day was the standard used);
- **Scope the services:** to help ensure the law department receives the 'right level of service provider' and the desired results, identify up front: what outside counsel will do, the level of detail and issues to search for, special considerations on relevance, focus and outcome and the expected work product to be delivered;
- **Key benefits of this type of arrangement:** greater budget certainty and service level, scope and deliverables/results can be tied to the economics of the transaction.

Contact Information

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