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## These tips may help in drafting a workable litigation plan

Most of my clients now request a litigation budget or plan at the commencement of litigation. After 18 years of practice, I know the challenges of preparing such a plan. However, a well-drafted and thoughtful plan can help to reduce fees and costs in litigation and solidify relations between outside counsel and the client.

The act of drafting a workable plan requires a client to communicate its budgetary limits to outside counsel, while outside counsel must communicate to the client the potential uncertainties and outcomes of the lawsuit.

The specific information that a client will request may vary, but each plan must incorporate the client's goals and allow for open dialogue throughout the life of the case.

Here are some tips that can help to make litigation plans work better for both outside counsel and the client.

### Identify the client's goals.

Goals may vary greatly by the type of client and case; whether or not the client is a plaintiff or a defendant; whether there are other parties to the case; and a client's tolerance for litigation. To identify goals for litigation, it is important to present to the client the possible "worst" and "best" legal outcomes for the case. Outside counsel must ascertain whether settlement is an option and, if so, for what price and that price must be compared with the cost of possible legal outcomes. In almost every case, it makes sense

to determine at the outset of litigation whether or not settlement is even possible.

Before I even file an answer or an appearance on behalf of my client, I usually reach out to opposing counsel to have a frank discussion regarding settlement. At a minimum, this discussion is "free discovery" and allows me to better understand the goals the other side may have during the life of the case.

### Identify the cost drivers in the case.

Outside counsel must communicate to the client the potential costs and uncertainties in the case. It should be ascertained whether the case will involve extensive discovery, including electronic discovery and the number and identity of potential witnesses and volume of relevant documents should be considered.

This information may require outside counsel to interview the major players and/or to review key documents before litigation even begins. This knowledge is essential to enable outside counsel to tailor the plan to the specific case and facts involved. Outside counsel also should inform the client of the elements of each claim in the litigation, so that the client can better understand the case and what documents or testimony may be needed or requested.

Information on the particular judge and the opposing counsel's litigation style can also shed light on potential costs. You can find this information online, by searching the judge's decisions in similar cases or by asking other attorneys at your firm or company.



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### Identify the likely tasks and the costs of completing those tasks.

Outside counsel should inform the client of the specific tasks that will need to be completed to defend or prosecute the case. The Uniform Task-Based Management System codes, used by many clients today, can assist with this analysis.

The timing and cost of the tasks may be uncertain based on the judge and on the tactics used by

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opposing counsel. For example, a case that is assigned to a judge who happens to permit what is perceived as over-broad discovery may result in increased and unforeseen expenses. I try to incorporate different scenarios with each possible task as much as possible.

### Identify how and when the plan will be updated.

Once outside counsel sends the plan to the client, make sure the client is fully informed of the ramifications and understands the potential costs and uncertainties, including any additional tasks that might need to be performed if there are unexpected outcomes in any court ruling.

Outside counsel and the client also should agree on how and when the plan will be updated. The client should communicate to outside counsel any changes in goals in the litigation. Outside counsel should immediately inform the client of any court rulings or important case developments.

There also should be agreement in the method of selection and budgeting for any outside vendors, including the use of expert witnesses and the payment of any fees.

Litigation plans are an important and effective means of facilitating open communication and a good working relationship between outside counsel and clients.

Through this communication, clients can better ensure that their goals are met in litigation and outside counsel can strengthen the client relationships that are essential to their business.