

The Legal Services Agreement

Background

Since the early 1970s and usually as a plaintiff, companies that I chaired were involved in considerable litigation and in many unpleasant experiences with their own lawyers.

Finally, in early 1991, I wrote an agreement for those companies and the lawyers they hired. The essence of the agreement was to set out in lay terms and common sense, how we expected to be treated by our own lawyers.

Later that year, the national magazine *The American Lawyer* came across a copy of the agreement, and finding it unusual, and useful, published it in their December 1991 issue.

Over the years, CEOs, general counsels and lawyers have asked to use all or parts of the agreement. I have told them to use what they like. ... Steven C. Markoff, September 2019

The Agreement Preamble

The attorney-client relationship is sadly misunderstood by many on both sides of the table.

Our Company has no in-house lawyers, and I am not a lawyer.

However, drawing on our substantial experience in hiring outside attorneys and law firms for litigation and other legal services, this agreement tried to cover our most troubling past encounters with attorneys, and attempted to clarify the more important areas of our relationships with the attorneys we hire.

Our internal process in implementing this agreement works like this: We will contact a lawyer or law firm that seems to have a specialty or competence we need. We interview the or their attorneys, and if they seem good, we agree to hire them.

They then often send us their engagement letter, usually a five to 10-page document, explaining all their rights in relation to how they're going to get paid, but saying little or nothing about their responsibilities for the job they're contracting to do.

We normally sign their engagement letter unchanged and return it to them with a copy of our agreement, asking that they fill it out, sign it, and return it, or call and discuss any part of our agreement they are uncomfortable with.

This has been some of our recent history in this process:

- The managing partners of three law firms signed our agreement unchanged.

- One major Los Angeles firm couldn't bring itself to sign our agreement, but a partner sent back a one-page letter saying they understood it, agreed with it, and would try hard to follow it.
- The managing partners of a New York plaintiffs firm decided it didn't want to represent our affiliate. They were particularly upset with paragraph 10: "We will both pay for our own mistake." The senior partner told me, in a fit of anger, that the agreement was "a contract of slavery."

A look at our company's agreement may give the legal profession another prospective on the attorney-client chasm.

The Agreement

LEGAL SERVICES/ ENGAGEMENT AGREEMENT*

(dated _____, for reference purposes only)

between

("____," "We," "Us")

&

**(Name of Lawyer/Law Firm)
("You," "Your")**

Dear _____:

This letter sets out the relationship we, as a "hands-on" client, want with you, the lawyer in charge of our account with your firm.

As a fiduciary to our firm, you will put our interests above your own. We believe common sense and/or a business perspective can be at least as important as a legal one and that we, the client, should always be in a position to understand, control, and minimize our legal expenses.

We want our issues/cases handled with a laser, not a shotgun, and are not normally interested in "papering" adversaries to death.

We see legal work as finding answers through the smart and efficient combination of knowledge and wisdom, while we view litigation as the solution of a disagreement by an unbiased third party (the court) which we, as business people, have worked hard but unsuccessfully to solve.

TABLE OF CONTENTS

- | | | | |
|-----|--|-----|--|
| 1. | Do Work For Us As You Would Have It Done For You | 13. | 48-Hour Written Updates |
| 2. | Personal/Close Supervision of Our Account | 14. | Transcripts of Hearings |
| 3. | We Want Your Best Help | 15. | Constantly Review The Most Efficient Path |
| 4. | Single Team Please | 16. | Continually Manage Our Budgets |
| 5. | Make Sure You Understand What We Want And Why At The Beginning Of All Work | 17. | Anticipate Events/Costs |
| 6. | Clear Authorization Prior to Dealing on Our Behalf | 18. | We Will Both Pay For Our Own Mistakes And Will Discuss Them Openly With Each Other |
| 7. | "Draft" Documents | 19. | Dealing With Potential/Perceived/Actual Problems |
| 8. | Strategy/Discussion Prior to All Hearings | 20. | Your Fees/Charges/Bills |
| 9. | Probability of Win/Loss | 21. | This Agreement Supersedes All Prior Ones |
| 10. | Legal Filings/Deadlines | 22. | Waiver of Any Term(s) Is Not Precedent |
| 11. | Research/Information Gathering | | |
| 12. | Executive Summary | | |

The following sets out our agreement in the absence of specific written agreement(s) to the contrary.

1. DO WORK FOR US AS YOU WOULD HAVE IT DONE FOR YOU

You will do no work for our account that you would not want us to do for you if we were your lawyers, unless you clear all such work with us.

All your charges should be for honest, necessary, and professional work. (For example, if you, spend, say, three hours changing the word "stock" to the word "shares" in an agreement for us, unless the work was necessary or agreed to, we wouldn't pay for that time.)

2. PERSONAL/CLOSE SUPERVISION OF OUR ACCOUNT

We want you to personally handle, closely supervise, and be responsible for our account, including personally signing all correspondence and all legal filings and personally making any court appearances on our behalf.

Anything to the contrary should be cleared with us in advance.

3. WE WANT YOUR BEST HELP

Use your senior, smartest, and most experienced (heavyweight) lawyers on our issues. (We have found from experience that the "heavyweights" have given us the best value for our legal dollar.) Although their billing rates are of course substantially higher than that for less experienced partners/associates, we have found they tend to work smarter/more efficiently as they usually know what needs to be done and, importantly, what doesn't need to be done.

If you assign an associate to our case, clear it with us -- and use the same one throughout the case as we will not pay for the "learning curve" for any new associates to be brought up to speed on the case -- unless we specifically agree to the change/addition of associates.

4. SINGLE TEAM PLEASE

Although we believe people in your firm may/should "brainstorm" our issues to help us chart the best/most efficient course on our legal work (when you brainstorm, for example, with three other attorneys, we will pay for all four of you), we normally want only one attorney at a time working on any issue. We only want to be charged for one attorney at a hearing or meeting. (In the event you believe it smart for us to have more than one and be charged for more, please discuss and clear that with us each time in advance.)

5. MAKE SURE YOU UNDERSTAND WHAT WE WANT AND WHY AT THE BEGINNING OF ALL WORK

Before you begin work on any issues for us, make sure:

- A. You and we understand the objective and potential value of each piece of work to minimize miscommunication and to keep us from authorizing work you don't think we need, understand, and/or have not thought through completely.

- B. We give you specific authorization and a specific budget if the expense of any work will be in excess of one partner hour.

6. CLEAR AUTHORIZATION PRIOR TO DEALING ON OUR BEHALF

We request that you do not "deal away" any of our rights, enter into any negotiations, or give any extensions to the other side without our specific prior approval. (For example, don't give the other side any "additional time" to prepare their side without our prior agreement.)

7. "DRAFT" DOCUMENTS

Normally, we like to work with/respond to your "drafted but unsigned" papers/documents as we are more interested in the content/ideas/creativity than beauty/finality during discussions.

In many cases, we will request a copy of the relevant law, underlined and sent to us so we can read it, be better informed, and thereby give you better input.

8. STRATEGY/DISCUSSION PRIOR TO ALL HEARINGS

Please send us a "strategy memo" to be received by us at least five business days before all relevant hearings, setting forth the upcoming issues, our side, our opponents' side, our strategy options and what you think our strategy should be, what our probabilities of winning/losing will be, and whatever else you think is important.

9. PROBABILITY OF WIN/LOSS

We will from time to time ask for your estimates and percentages of how we're going to do/might do in an action/issue. We expect only your good faith estimates.

10. LEGAL FILINGS/DEADLINES

Please send us copies of all legal letters/filings (to the courts, government agencies, opposing counsel, etc.) at least five business days prior to their being filed so we have time to review/question/correct/ make suggestions or bless. When there are special circumstances -- as when a court orders a hearing with less than five days' notice -- notify us promptly.

11. RESEARCH/INFORMATION GATHERING

Historically, we have received the most value from well-aimed research and from creative ideas from smart/knowledgeable people with wisdom.

We want to do as much administrative evidence/paper-gathering/number-crunching work as is smart to do in house and try to only hire you/your people's services for their legal knowledge, expertise, and most importantly, wisdom, not their administrative capabilities. (Our in-house administration time costs us around \$25 to \$30 per hour, whereas your firm may charge us substantially more for essentially the same work.)

We have found we can do -- administratively, at least -- what most paralegals do. As paralegals are often charged to us from \$50 on up, we want to do what administrative work we can in-house to save money.

When you do research for us, please see that it is specifically agreed to in advance, is budgeted, is precisely directed, and is carefully and constantly controlled. (You probably wouldn't like taking your car in for a \$300 set of tires and getting it back with a bill for \$2,750 with a note saying, "I thought I would put in a new engine while we were at it.")

12. EXECUTIVE SUMMARY

We will probably request from time to time a simple, in-English, executive summary on cases/issues, covering everything you would want to know if an attorney was handling the case for you -- including, but not limited to, things such as: exactly what the issues are, where we are, where we are going, what our options are and your recommendations, what we can expect as far as anticipated responses from the other side, and estimated costs through conclusion (in hours/fees and costs).

13. 48-HOUR WRITTEN UPDATES

Send us a fax "one-page" summary within 48 hours of gaining or losing anything from negotiations and/or in court.

14. TRANSCRIPTS OF HEARINGS

We would like unexpedited transcripts of all major hearings your firm attends on our behalf unless you think it's not smart and you so clear it with us.

15. CONSTANTLY REVIEW THE MOST EFFICIENT PATH

Whenever you find a smarter/cheaper way to proceed, even if you are within budget and/or have approval to proceed, please stop your work (assuming there is no emergency) and promptly discuss your thoughts with us.

16. CONTINUALLY MANAGE OUR BUDGETS

When working on a budgeted issue/project for us, if it appears the expenses may exceed the budget (but before exceeded), stop the work and call us so we can both re-assess the project and its direction, cost, and usefulness.

17. ANTICIPATE EVENTS/COSTS

- A. As our attorney, we expect you to anticipate and communicate things to us in a timely manner (we don't like to give or get surprises) that may affect us/our case.

- B. You will let us know in writing within five days whenever you estimate, verbally or in writing, for any reason (including for your internal projections), your firm's "fee/income potential" of any case/issue you are handling for us.

18. WE WILL BOTH PAY FOR OUR OWN MISTAKES AND WILL DISCUSS THEM OPENLY WITH EACH OTHER

If you make a mistake or something that arguably could be considered a mistake, you will promptly bring it to our attention and discuss it with us openly and not try or allow your firm to hide or cover it up.

You won't charge us for your mistakes, and we won't penalize you for ours. For example, we'll pay for work even if we ask you to do substantial work for us that turns out to be of no value to us; conversely, if your firm does work for us that wasn't budgeted/approved, wasn't properly done, and/or needs to be redone/corrected, you won't charge us for your mistakes.

19. DEALING WITH POTENTIAL / PERCEIVED / ACTUAL PROBLEMS

- A. If problems arise between us regarding billing, representation, and/or other issues, we and you pledge to discuss same in an open and constructive way, particularly because you have a fiduciary obligation to us even in these discussions. You will not bill us nor will we pay for any of your time spent in such discussions.

- B. Should we wish, for whatever reason, to discontinue your services, or should you for any reason wish to disengage (assuming you can legally do so), you will give us all our files, which will include, but not be limited to, copies of everything regarding our cases -- in writing, notes, and

everything stored electronically, including your internal memoranda and notes, even if things in our files may seem to you at the time to show work your firm did or contained things that could arguably show or put you in a bad light -- and provide full cooperation to the new attorney/law firm engaged.

- C. In the event there is litigation between the parties to enforce this agreement, the loser in such litigation will pay the attorney fees and court costs of the winner.

20. YOUR FEES / CHARGES / BILLS

- A. You will send us the following information so we can better understand your billing:

1. What your minimum billing rate and the billing rates of your associates/partners?
2. What is your minimum billing increment and how does it work?

(How will you bill us if we call you, for example, five times in one day and each call is five minutes; if we call you five minutes one day and five minutes the following day?)

3. Will you charge us for the following; and if so, how much?
 - a. Photocopying?
 - b. Word Processing?
4. Do you add a profit to the actual costs of the computerized research (on our behalf) you do for us or bill us at your true costs? If you add a profit, how much profit do you add?
5. If you charge us more than your actual costs for the following, please tell us.

- a. FAXing.
- b. Messengers.
- c. Air freight (and the like).
- d. Telephone.
- e. Other.

- B. Secretarial time/overtime. We will generally not pay for such overtime unless the secretary worked on our matter(s) for the entire day and was requested to work overtime for us (and not because of your lack of planning or inefficiency).
- C. We will pay pro rata (not double billing). If you bill us for a court appearance and/or a plane trip when others are also billed for the same time/expense, you will only bill us for our pro rata share of such expense.
- D. All you billing statements (inclusive of all charges, including costs) should be "task" based, and:
 - 1. Made out to the exact company name you are doing the work for;
 - 2. In the form of Exhibit "A," on pages 10 and 11, setting out at least:
 - a. The biller's name(s) and title(s), hourly rate, and hours billed per issue/line item, monthly;

- b. The calendar month the bill covers;
 - c. By issue/line item;
 - d. Broken out as much as you think we want/need to understand the billing;
- 3. Received by us no later than the 15th day of the month for all prior month's work/costs (so we know the costs for our monthly financials and so we can quickly respond on issues/costs in question);
 - 4. Reviewed and initialed by you personally, confirming that "you have carefully reviewed the bill and believe we have received fair value for every dollar billed, and that each bill fully conforms to this agreement."
- E. We will not pay for any time discussing/understanding your billing or representation issues or problems.

21. THIS AGREEMENT SUPERSEDES ALL PRIOR ONES

The provisions of this agreement supersede any previous conflicting, earlier agreements.

We are happy to work with you discussing these and any other issues at any time toward nurturing a mutually comfortable and beneficial relationship.

22. WAIVER OF ANY TERM(S) IS NOT PRECEDENT

We may, on occasion, miss, or waive certain terms of this agreement to expedite matters, or for other reasons, including oversight. Any such waiver is a single, specific event and shall not alter the future nor the terms of this agreement.

Agreed To By:

Authorized Signature

Date