



The Legal Outsource (LPO) Quandary

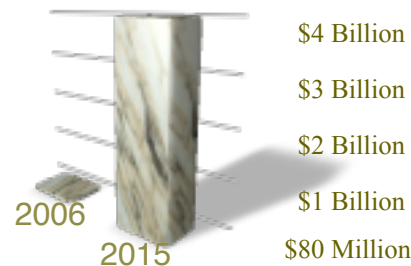
- I. What is legal outsourcing? (sometimes called Legal Process Outsourcing or LPO)
- II. Why should your company consider legal outsourcing?
- III. How will legal outsourcing benefit your company?
- IV. Does the Code of Professional Responsibility permit outsourcing by a U.S law firm or company?
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- VI. If your company outsources some of its legal work offshore, can your outside U.S. counsel charge a reasonable supervision fee?
- VII. What is Legal Outsource Advisors, LLC and how can we help your company understand and consider its legal outsourcing options?
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I. What is Legal Outsourcing?

Outsourcing involves distributing work traditionally handled within a company or law firm to an outside contractor for performance.¹ While outsourcing of legal work within the U.S. has been practiced by companies and law firms for longer than a century, the recent trend in legal outsourcing comprehends sending work historically performed by law firms in the U.S. to other countries such as India.

To some, the term *outsourcing* conjures images of concern or fear. In reality, outsourcing in a legal sense amounts to nothing more than delegation of carefully selected tasks and assignments to qualified professional members of the law firm's staff or team for completion. "Outsourcing" of legal work by senior partners to junior associates down the hall, temporary attorneys, "of counsel," or even summer law clerks (students), is a practice as old as the legal profession itself.

Twenty-first century outsourcing, increasingly demanded by clients for cost savings, involves delegation, under supervision, of certain task-oriented "chore" work to lawyers across the globe. Forrester Research has forecast that the offshore market for legal services, at \$80 million annually as of the



end of 2006, will amount to \$4 billion annually by 2015. Offshore legal outsourcing reflects a fundamental change in the legal profession and the delivery of service to clients of law firms. While the legal profession historically has been slow to embrace new ideas, change often envelopes the profession. Earlier generations of lawyers resisted the typewriter and later the dictating machine in favor of shorthand, the computer in favor of the typewriter, TV and print legal advertising in favor of the country club. Resisting change does not fend it off. Rather, those who understand and manage the inevitability of changing trends impacting the legal profession are better able to maintain a competitive edge, increase efficiency and maximize profits.

II. Why should your company consider legal outsourcing?

Why should your company consider outsourcing *some* legal work? Won't we lose control? What about our outside U.S. legal counsel? How will our U.S. lawyers react? Can we outsource some work directly?

These are some of the questions raised by companies considering outsourcing. Even though some U.S. law firms are resisting outsourcing, there are compelling reasons for clients of those firms with substantial legal expense to consider outsourcing as an adjunctive, efficient and economical means of obtaining legal services.

The foremost reason to consider outsourcing a portion of the legal work of your company is because it makes sense economically. A lawyer works for his clients. Clients do not work for their lawyers. According to Bloomberg.com, "clients are pushing firms like Jones Day and Kirkland and Ellis to send basic legal tasks to India".² Unlike law firms which have been prompted by clients to outsource, Haynes and Boone, a well-known Texas law firm, chose proactively to proceed with legal outsourcing in order to better serve its clients.³

Secondly, legal outsourcing, properly implemented and administered, will significantly increase the amount of legal work which can be effectively handled by salaried in house counsel. With "chore" legal services performed offshore, in house counsel are released to engage in legal services not amenable to outsourcing, such as planning, court attendance, strategic guidance and personal engagements.

III. How will outsourcing benefit your company?

If your company judiciously outsources some legal work offshore, its bottom line will significantly improve. Certain legal work is repetitive or “chore” type work. Such services can be reasonably acquired for significantly less than \$200 to \$600 (or more) per hour charged by major U.S. law firms. Because legal fees charged to clients for legal work performed in the U.S. are typically billed at several times the hourly billing rate for the same work outsourced to India, the cost savings can be dramatic.

The ABA Model Rules of Professional Conduct require that a lawyer not charge an “unreasonable fee” or a fee significantly higher than “the fee customarily charged in the locality for similar legal services”.⁴ Further, a lawyer has a duty to “*reasonably consult with the client about the means by which the client’s objectives are to be accomplished.*”⁵ With several major U.S. law firms actively engaged in outsourcing it would seem obvious that legal outsourcing is a reality being accepted by U.S. companies and their U.S. law firms alike.

IV. Does the Code of Professional Responsibility permit outsourcing by a U. S. law firm or company?

Outsourcing of legal services to foreign attorneys (i.e. non-lawyers) is ethically permissible, providing the lawyer:

- A. Preserves the client’s confidences and secrets
- B. Avoids conflicts of interest
- C. Appropriately supervises the non-lawyer, so as to avoid aiding the non-lawyer in the unauthorized practice of law and to ensure that the non-lawyer’s work contributes to the lawyer’s competent representation of the client
- D. Bills the client appropriately for outsourcing
- E. When necessary, obtains the client’s advance consent to outsourcing⁶

Either in house or outside U.S. counsel must assure that these key concerns are satisfied.

V. What about quality, confidentiality, training, and coordination in regard to outsourced legal work?

India constitutes the preferable destination for outsourcing legal work because the Indian legal system is similar to the legal system in the United States and Indian attorneys are trained in a similar manner to their U.S. counterparts. India, like the U.S., is a former British colony and has adopted the British common law system. Like America, the current legal system in India has evolved from the British legal system, often referring to the British law on issues on which the Indian law is silent. As in the U.S., lawyers in India undergo three to five years of post-secondary legal education focused on the Indian common law system. Classes in law school are taught in English. Indian lawyers speak and write in English. Moreover, India, like the United States, is a constitutional democracy with a similar political system. For these reasons, Indian attorneys are well equipped and competent to handle U.S. legal work.



It is noteworthy that a 10 to 13 hour time difference exists between India and the United States, a fortuitous differential which can be helpful in managing work flow. The time difference allows a requesting attorney to submit an urgent matter for production by attorneys in India overnight. Because attorneys in India are able to work on the matter during their normal day-time business hours, the requesting attorney will receive the finished work product on his or her desk the next morning. The requesting attorney can then revisit the work product at a convenient time during the U.S. work day and yet be able to request follow-up work, if necessary, over the following night. Therefore, using a combination of U.S. and Indian attorneys can ensure that pressing matters receive attention around the clock, adding to overall efficiency.

Preservation of client confidences and secrets is maintained in India through utilization of multiple systems including secure computer servers, human security, biometrics, physical limitation of access to data, prohibition of cell phones and recorders in the work area, passwords, background checks, and other safeguards.

Training and coordination is carefully undertaken, frequently involving the assignment of a particular group of Indian lawyers to a particular client or its U.S. law firm. If possible, these selected attorneys in India would work only for an individual client. In addition, they would be brought to the U.S. to meet and train with their U.S. counterparts.

VI. If your company outsources some of its legal work offshore, can your outside U.S. counsel charge a reasonable supervision fee?

A lawyer is prohibited from sharing legal fees with a non-lawyer.⁷ A lawyer shall not practice law in a jurisdiction in which the lawyer is not licensed to practice or assist another in engaging in the unauthorized practice of law.⁸ However, generally a lawyer may charge a client a fee for supervising outsourced legal work including attribution of a reasonable overhead expense and supervisory expense, providing the lawyer vouches for the outsourced work.

Addressing the billing of expenses and disbursement in the context of goods or services provided by *non-lawyers*, ABA Formal Op. 93-379 notes that “a lawyer may not charge a client more than (actual) disbursements for services provided by a third parties like court reporters, travel agents or expert witnesses, except to the extent that the lawyer incurs costs additional to the direct cost of the third-party services.” In its Formal Op. 00-420, the ABA extended the above-stated application to temporary lawyers as well.⁹ When billing a client for services of non-lawyers or contract lawyers as an expense, a lawyer shall not charge more than the lawyer’s actual disbursement for the services provided, plus any reasonable overhead cost related to managing the third-party (service provider) relationship.¹⁰ Significant authority exists permitting a law firm to asses a premium over a temporary lawyer’s services when such services are billed a part of the overall legal services, provided that the lawyer vouches for the work of the temporary attorney and the total charges are reasonable.¹¹

Your company may choose to outsource directly and/or in conjunction with your chosen and respected outside U.S. counsel.

VII. What is Legal Outsource Advisors, LLC and how can we help your company understand and consider its legal outsourcing options?



Legal Outsource Advisors, LLC represents only corporations, law firms, governmental law departments, and other U.S. entities desiring to explore legal outsourcing. Presently there are over 120 legal outsource providers offering outsourcing of legal work to India. Some are not well-established or funded. Most have expertise in completing particular legal assignments, but not all. Not being aligned or limited to any one provider, **Legal Outsource Advisors, LLC** will find the best legal outsource provider(s) to complete the assignments of your company.

Because of the rapid growth of the legal outsource industry, most of the legal process outsource providers have employed personnel with a business process outsource (BPO) background. Few have seasoned U.S. attorneys actively guiding the legal outsourcing (LPO) venture on behalf of U.S. law firms and entities. This omission frequently leads to a lack of understanding of the needs of and/or coordination with the outsourcing entity. The legal profession, while having attributes of business, is first and foremost a profession. Therefore, “standard” business outsourcing practices utilized for non-professional businesses do not uniformly apply to legal outsourcing.

Legal Outsource Advisors, LLC

Balancing the scales . . . across the globe



Martin L. Sandel, President and CEO of **Legal Outsource Advisors, LLC**, earned a reputation as a stellar trial lawyer in both plaintiffs' and defendants' cases over the last 30 years. As managing attorney of the prominent Ohio law firm of Bilfield and Sandel, Mr. Sandel tried and settled numerous high-profile and major damage cases.

Insurance companies have also sought Mr. Sandel's expertise, retaining him to dispose of their largest exposure claims. He has been recognized as a pioneer in the field of legal marketing, his law firm being one of the first nationwide (in the 1980's) to engage in mass marketing of legal services. He has been an invited lecturer at attorney and physician association meetings on the subject of medical professional liability.



Mr. Sandel and his wife, Karen, discovered India in the course of charitable work with their private charitable foundation, Last

Coconut Foundation. They have traveled extensively to India to help establish orphanages, day care centers and community colleges for the benefit of underprivileged rural children of India.



In addition to his extensive trial experience, Mr. Sandel brings the following skills and experience to your company's exploration of legal outsourcing:

- ❖ Well-developed litigation/management skills
- ❖ Ability/experience in delegation of responsibility to qualified team members with appropriate monitoring
- ❖ Superior negotiation skills developed over many years in law practice
- ❖ Extensive legal background in all phases of litigation--- beneficial in qualitative evaluation and training/liaison capacities
- ❖ Extensive exposure to and experience with the Indian culture and people



VIII. Services Provided to your company by Legal Outsource Advisors, LLC

If selected as its legal outsource advisor/consultant, **Legal Outsource Advisors, LLC** would provide the following services to your company:

- ❖ Determination of legal work of your company amenable to outsourcing (“chore” work vs. retained “core” work)
- ❖ Investigation and evaluation of the LPO service providers most capable of servicing your company’s particular offshore requirements with quality personnel (including trips to India, as required)
- ❖ Securing written proposals for your company’s work from qualified offshore providers
- ❖ Evaluation of provider proposals with regard to: (1) education/experience/skills of provider personnel, (2) provider references, (3) security/confidentiality controls, (4) plan for coordination and particular training of offshore personnel undertaking outsourced work of your company
- ❖ Negotiation of final contractual terms
- ❖ Implementation of legal outsourcing program
- ❖ Ongoing supervision of your company’s legal outsourcing program during the term of contract with the outsource provider (in conjunction with your company’s legal counsel)
- ❖ Obtaining feedback data for your company as to measurable quality and production performance of individual Indian attorneys assigned to your company

Resources

¹ Marcia L. Proctor, *Transactional Law: Considerations in Outsourcing Legal Work*, 84 Mich. B. J. 20 (Sept. 2005)

² See Bloomberg.com article by Cynthia Cotts and Liane Kufchock, “Jones, Day, Kirkland send work to India to cut costs.” Aug. 21, 2007

³ No reference herein to Jones Day, Haynes and Boone or Kirkland and Ellis should be construed as an endorsement, either expressed or implied, of Legal Outsource Advisors, LLC, SENDLAW.com, or The Legal Outsourcing.com by any of those respective law firms.

⁴ Mod. Rules of Prof. Cond. Rule 1.5

⁵ Mod. Rules of Prof. Cond. Rule 1.4

⁶ N.Y.C. Bar Assoc. Formal Op. 2006-03 (2006) (discussing outsourcing of legal support services overseas); San Diego County Bar Assoc. Op. 2007-1 (2007) (when outsourcing legal support services overseas, an attorney must have sufficient knowledge to supervise the outsourced work properly and must make sure the outsourcing does not compromise attorney’s other duties to the client); *see* LA County Bar Assoc. Op. 518 (2006) (stating that an attorney in a civil case may contract an out-of-state company to draft a brief provided that attorney is competent to review the work, remains responsible for the final work product of the out-of-state company, does not charge the client an extra unconscionable fee, maintains and preserves client’s confidences and secrets, and see to it that there are no conflict of interest between the client and the contracting entity); TN Eth. Op. 85-F-99, 1985 WL 285088, at *2(1985) (stating that “there is no impropriety in a law firm leasing non-lawyer staff personnel from a third party lessor/employer, provided the law firm exercises reasonable care to prevent the leased personnel from disclosing or using the confidences or secrets of a client.”); N. Y. State Op. 721 (199) (noting that a lawyer may use services of outside legal research firm staffed by non-lawyers).

⁷ Mod. Rules of Prof. Cond. Rule 5.4(a).

⁸ Mod. Rules of Prof. Cond. Rule 5.5.

⁹ ABA Formal Op. 00-420, at 3.

¹⁰N.Y.C. Bar Assoc. Op. 2006-3 (opining that lawyers can bill the client for the outsourced legal services provided the lawyer only charges for the direct cost of services and any reasonable overhead expense); LA County Bar Assoc. op. 518 (stating that a lawyer must accurately disclose the basis of any cost that is passed on to the client, including any mark-up); Calif. State Bar Assoc. Formal Op. 2004 2004-165 (stating that a lawyer should include the services of a non-lawyer as disbursement in a written fee agreement with a client).

¹¹ABA Formal Op. 00-420; ABA Formal Op. 88-356; Alaska Bar Assoc. Ethics op. 96-1; Calif. State Bar Assoc Formal op. 1994-138, at 4-5; Virginia legal Ethics Op. 1712 (1998); D.C. Bar Legal Ethics Comm Op. 284 (1998) (a lawyer may bill the client for the services of a temporary lawyer at any reasonable rate mutually agreed by the lawyer and client, provided any disbursements associated with hiring the temporary attorney are billed at cost or an agreed markup); Colorado Bar Assoc. Ethics op. 1712 (1998)

