

Value Practice:

Office Depot, Inc.: Value-Based Fee and Staffing Practices for Real Estate, IP, Litigation & Beyond

Steve Calkins

Interviewed while Vice President and Deputy General Counsel

Background

During the last five years, the Office Depot law department has implemented a range of initiatives specifically designed to focus on value. These practices include staffing and value-based fee arrangements for the real estate portfolio, value-based fee arrangements for the law department's patent and trademark work, contingency fee plaintiff cases, and fixed and flat fees for bankruptcy and immigration work.

Focusing on the real estate staffing and practice initiatives in specific, the law department estimates that its value practices resulted in about a 65% cost-savings (or a few million dollars over time). Notably, the company's business executives specifically acknowledged the law department's achievements and focus on value during the company's global business forum, a meeting for the top 500 corporate executives.

Following is a summary of these practices, including insights into how to successfully implement value-based fee arrangements.

REAL ESTATE PORTFOLIO PRACTICES: STAFFING APPROACH & VALUE-BASED FEE STRUCTURES

Prior to implementing the current value-based approach, the company's legal support for real estate was handled by a large internal department of real estate lawyers that reported into the retail business function (rather than the law department) plus outside counsel. Work performed by the internal real estate lawyers is described as including both legal work and 'quasi-legal' business work.

About five years ago, the company's Vice President and Deputy General Counsel implemented a number of practices to help focus on value and save costs:

- ***Consolidated in-house team; reporting lines to legal function-*** the company consolidated the in-house legal team supporting real estate and changed reporting lines from the retail function to the Vice President and Deputy General Counsel within the law department
- ***Reduced number of outside firms from over 15 to 2-*** the law department used an RFP and implemented a selection process that, as a starting point, required firms responding to the RFP to agree to implement value-based fee arrangements; signed a Statement of Work with each firm and review it annually
- ***Fixed fees for legal services:*** the new arrangements are on a fixed fee basis, including; fixed fee for new leases on a per project basis and fixed fee for subleases; the law department specifies who, within the firm, will work on company matters; although the firm may choose to keep time and produce shadow bills for its own purposes, the law department does not ask to see them

- **One-off transactions: RFP and selection-** for one-off transactions (e.g., property sale and leaseback), the law department reaches out to 3 or 4 firms to invite them to submit a proposal on how work for that transaction would be handled and fee structure; from those invited firms, the law department selects a service provider
- **Seconded lawyers-** in 2009, to help handle a rise in workload, the law department seconded 4 lawyers (2 from one firm, 1 from another and 1 independent) for a cost equivalent to 50% off of their hourly rates; the initial arrangement was for a period of 3 to 6 months; the law department made offers to join the in-house legal team to 3 of the seconded lawyers, further reducing the costs related to these lawyers.

PATENT AND TRADEMARK IP WORK: COMBINATION OF SCHEDULE OF FLAT FEES PLUS DISCOUNTED RATES

The law department is also implementing value-based fee practices in connection with its patent and trademark portfolio (for work excluding IP litigation). More specifically:

- **Preferred Provider Relationships:** using an [RFP process](#), the law department selected preferred provider firms to provide legal services on trademark-related issues (i.e., trademark prosecution, trademark oppositions, global trademark portfolio management, and trademark licensing), and a variety of other intellectual property-related issues (i.e., domain name disputes, UDRP, copyright issues, etc.).
- **Flat fee schedule for certain types of matters:** the law department has a 'menu' of matters with various flat fees assigned to each type of matter
- **Discounted hourly rates for counseling work or matters not included on the schedule:** although value-based fee structures are encouraged and preferred, the law department has also negotiated discounted hourly rates for general counseling or matters not on the schedule

LITIGATION- EMPLOYMENT, CLASS ACTION AND PLAINTIFF SUITS

For litigation matters, the law department uses a spectrum of approaches.

- **Single plaintiff employment litigation-** using an [RFP](#), the law department selected two firms, geographically based, to handle this work; fee structure is discounted hourly rates with 'do-not-exceed' caps through summary judgment plus another 'do-not-exceed' cap if the matter goes to trial; the in-house legal team decides whether to settle or proceed to trial. Work handled under this arrangement includes:
 1. Federal and State employment discrimination, harassment and retaliation claims;
 2. Federal and State whistleblower claims;
 3. State law tort claims such as assault, battery, defamation, and negligent hiring, retention and supervision;
 4. Non-compete and other breach of contract claims;
 5. Class action wage and hour/meal and rest break claims;
 6. FMLA, ERISA and other benefits-related claims.

- **Major class action-** if the law department receives a major class action, process would include sending the complaint to 3 or 4 firms and asking them to provide a case strategy and budget; resulting arrangements generally include a blended hourly rate fee structure
- **Company as plaintiff-** fee structure is pure contingency fee calculated as a blended hourly rate (70% off the standard hourly fee) with a 20% results payment at the end; results are tiered based on the amount of recovery

BANKRUPTCY AND IMMIGRATION WORK: FIXED AND FLAT FEE STRUCTURES

For bankruptcy work/preference lawsuits, the law department pays a fixed fee each month for the firm to handle whatever comes in. How did they set the value of the fees? Using historical data from the law department and from the firms that had an existing service relationship for this type of work for the company.

Immigration work is handled on a flat fee basis.

KEYS TO SUCCESS

Among the keys to success described by the Vice President and Deputy General Counsel are:

- **Work with firms you know and trust**
- **Work with firms that are willing to be flexible and work with you to try new ways of doing things**
- **Be flexible-** not every arrangement works for every situation
- **Be creative**
- **Tolerate some risk-** fixed and flat fee arrangements, if measured against the standard hourly rate, may mean that both sides need to tolerate some risk; the upside: efficiency and good outcomes can be rewarded

Contact Information

Steve Calkins (steve.calkins@officedepot.com)