



## 810: Budgeting for the New Attorney Manager

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**Barbara Wagner**

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## Faculty Biographies

### Carolyn R. Adler

Carolyn R. Adler is vice president, intellectual property and legal affairs for Raven Biotechnologies, Inc. in South San Francisco, California. With a specialization in the strategic aspects of intellectual property law, her practice has covered the full range of corporate matters, such as licensing and corporate partnering transactions, research and development, manufacturing, clinical trials, product marketing activities, and advice regarding disclosure and compliance issues.

Prior to joining Raven, Ms. Adler worked at COR Therapeutics Inc., leading their intellectual property and general legal practice. Her last position at COR was vice president, intellectual property. Previous positions include being a patent attorney at Genentech, Inc., and several years as a consultant and in private law firm practice.

Ms. Adler holds a BA from Brown University and a JD from the SCALE Program at Southwestern University School of Law.

### Marc J. Lemberg

Marc J. Lemberg is managing corporate counsel for Avaya Inc., a global leader in internet protocol (IP) telephony systems and communications software applications and services. Mr. Lemberg's responsibilities include advising division, line of business, and sales leaders with respect to commercial, sales, and marketing operations. He manages an organization that includes lawyer and non-lawyer contracts management professionals in the U.S. and Canada.

Prior to his current role in the United States, Mr. Lemberg was corporate counsel for Avaya's Europe Middle East and Africa (EMEA) region in Brussels, Belgium. There, he provided legal support for all aspects of Avaya's EMEA businesses, encompassing sales in over 60 countries and direct operations in over 20 countries. Prior to joining Avaya, he was an in-house counsel with Lucent Technologies Inc. supporting the company's software and systems integration businesses. Mr. Lemberg began his legal career as an associate in the Philadelphia offices of Morgan, Lewis and Bockius LLP where his practice focused on mergers and acquisitions, securities, venture capital financing, and technology licensing matters.

Mr. Lemberg received an AB from Princeton University and a JD from New York University School of Law.

### Barbara Wagner

Barbara Wagner is associate general counsel and assistant secretary of Chiquita Brands International, Inc. in Cincinnati. Her responsibilities include corporate, securities and M&A, bank finance, Sarbanes-Oxley compliance, corporate governance, and corporate secretarial work for 200 subsidiaries worldwide. Among other management responsibilities, she prepares the annual law department budget.

Prior to joining Chiquita, Ms. Wagner worked at Frost & Jacobs (now Frost Brown Todd) in Cincinnati, and at Shearman & Sterling and Skadden, Arps, Slate, Meagher & Flom in New York City, where she was involved in a variety of corporate and securities matters.

She is an adjunct professor at the University of Cincinnati Law School, and involved in several activities for high school and college students interested in careers in law. She also recently completed a three-year term as a member of the board of governors of the association of Yale alumni and is director of the alumni schools committee of the Cincinnati Yale Club.

Ms. Wagner received her BA from Yale University, a MSBA from Boston University, and her JD from Columbia Law School.



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*The in-house bar association.™*



### **Agenda**

- Principles
- View From Above
- General Considerations
- Special Considerations
  - International Law Departments
  - Downsizing
  - IP-Intensive Practices

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## Principles -- Disclaimer

- Budgeting varies from company to company
  - Large / small
  - Public / private
  - Domestic / international
  - Non-profit / profit
  - Service / manufacturing
  - Industry-specific

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## Principles

- Budget process is imperfect, particularly for law department
- Informed guess (garbage in, garbage out)
- Separate budgets for inside and outside costs (may roll into one final budget number)

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## **View From Above – It's Not Your Process**

- **Budgeting Paradigm Is Inherited**
  - Identify and work with existing process
    - Practices
    - Forms and Formats
    - Level of Detail
    - Annotations / Backup

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## **After The Budget Leaves Your Hands...**

- **Learn the Process**
- **Consider the Audience**
  - Concerns
  - Bias

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## **View From Above -- Board & Management Perspective**

- Control and Predictability
- Enterprise-wide Context
- Scrutiny is Situational
  - Top line review
  - Dive into details

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## **View From Above -- Reliance On The Hands On The Reins**

- Philosophy of Budget Manager
  - Understands corporate priorities
  - Mindset / ability to control costs

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## View From Above -- Outside Legal Expenses

- “Soft Money”
  - Can offset or combine with other “soft money” areas
  - Parking place for contingency funds
- Always Inflated (unless potential D & O liability)
  - Billing rates
  - Apprenticeship practice

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## View From Above – Adding Value in the Process

- Finance
  - Predict accrual in other “soft” sectors (e.g., consultants, contractors)
  - Anticipate benchmark and milestone payments
  - Estimate royalties in / out
- Business Development
  - Describe costs by product / program
  - Inform about notice periods that impact strategic decisions or implementation

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## **In-house Budget**

- Costs generally fixed and predictable
  - Payroll (attorney and support staff)
  - Bonuses
  - Materials and supplies
  - Travel and entertainment
  - Employee development
  - Library publications, research, software
  - Overhead

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## **In-house Budget (continued)**

What overhead is allocated?

What overhead is unallocated?

Is the Law department budget allocated?

How and to what extent?

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## Break From The Routine

- Routine Run Rate is Preliminary
  - Historical actuals favored
- Where are the Non-routine Events?
  - Enterprise shifts planned
  - Special projects anticipated
  - Contingencies
  - Budget scenarios

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## Allocation of Total Internal Cost to Business Units – One Method

- Divide total internal costs by number of full time attorneys to get cost per attorney
- Allocate cost per attorney among chargeable business units and line items (based on attorney estimates, with manager review)
- Significant portion is held as corporate overhead (not charged to business units)

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## Outside Counsel Budget

- Estimation of outside counsel costs
  - Refer to current and prior years' expenditures
  - Focus on known or anticipated projects and needs
  - Prior years' budgeted amounts and actual costs
- Each attorney must describe specifics of any significant project
- In-house and outside counsel budget are not necessarily lockstep; some clients/line items may involve primarily in-house or outside counsel

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## Billing

- Direct billing
  - Administrative expense to implement
  - Disincentive for client to seek advice
- Shadow billing
  - Attorneys' weekly estimated % of time spent on different clients/line items
  - Rollup at end of quarter/year, used primarily to estimate (and defend) budget allocations for coming year

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## Special Considerations – International

- How are operations structured?
- What is the correct metric?
- Outside Counsel “Rules of Engagement”
- Ongoing Management

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## Special Considerations – International Operations

- How are operations structured?
  - Direct country operations
  - Regional operations
  - All from US (indirect)
  - Hybrid
  
- International expansion/contraction planned in the coming year?
  - Corporate governance – establishing/shuttering subsidiaries
  - Labor-law-related costs higher

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## Special Considerations – International Metrics

- What is the correct benchmark?
  - Lawyers per unit revenue or other?
  - Lawyers per geography?
  - Expanding/contracting versus mature businesses
  - Direct versus indirect channels
  
- Why are international regions more expensive?
  - Language
  - Culture
  - Legal systems
  - Qualification
  - Corporate governance of subsidiaries

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## Special Considerations – International Outside Counsel

- Outside counsel management
  - Who manages? Who pays?
  - Fixed fee retainers for predictable “day-to-day” expenses may be worth the premium at budget time
  
- Examples to consider (costs are higher):
  - Subsidiary corporate governance – filing annual financial statements, other regulatory matters
  - Employee hiring/firing/severance
  - Consumer markings and regulatory compliance
  - Contract translations/localizations
  - Don't forget the VAT
  
- Who bears currency risk – corporate hedging or your budget?

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## Special Considerations – International Vigilance

- Be vigilant
  - Review cost center reports monthly
  - Beware of dumping (when people can't figure out where to put the cost)
  - "It's a legal issue"
  - Adjust for FOREX effects to establish meaningful run rates
- Know your quarterly outlook
  - Be in front of extraordinary events
  - Try to quantify their impact on your run rates
- Know your run rates and trends by scope and geography
  - Appear on top of your business
  - Add value to analysis of local operations via trend analysis

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## Special Considerations -- Downsizing

- As the in-house lawyers decrease, the outside fees increase (business doesn't simplify as it shrinks)
- Lawyer headcount has gone down faster than support staff headcount (more delegation)
- If no new lawyers are hired – the remaining lawyers are increasingly senior  
Result: "per lawyer" cost of budget has gone up (but each lawyer spread more thinly)

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## Special Considerations -- Downsizing

- Significant costs for bankruptcy and post-bankruptcy (e.g., credit facility compliance)
- When in-house staffing very thin, one unexpected event requiring legal time can have large cost implications on other unrelated matters, due to need to outsource unexpectedly

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## Special Considerations -- Anticipating IP Expenses

- Strategic Alignment of Portfolio with Corporate Goals and Priorities
  - Involved decision-makers
  - Agreed limits (stop-loss)
  - Understand geometry of geography
  - Life cycle considerations
  - Periodic review

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## General Musings

- Being effective is more important than being right
- Being cost-effective is more important than being cheap
- Predictability is king
- Beware of the past – “Historical performance is no guarantee of future returns” . . . unless you under-ran last year’s budget