



## 306 Roundtable: Effectively Managing Employment Litigation

**Anne E. Celentino**  
*Senior Attorney*  
Cubic Corporation

**Richard D. Gorelick**  
*Vice President & General Counsel*  
Integra LifeSciences Corporation

## Faculty Biographies

### Anne E. Celentino

Anne E. Celentino is senior counsel with Cubic Corporation where she represents the company and its subsidiaries in all legal matters relating to labor and employment law. Ms. Celentino advises management and human resources on employment issues including discrimination, harassment, privacy, electronic communications, affirmative action, compensation, employee relations, and terminations, as well as wage and hour, immigration, and employee benefits laws. She is responsible for conducting investigations and for developing employment-related policies as well as compliance and training programs in employment matters. Ms. Celentino also handles union negotiations and arbitrations on behalf of Cubic, agency charges of discrimination, and manages all employment-related litigation.

Ms. Celentino previously specialized in labor and employment litigation at Sheppard, Mullin, Richter & Hampton before joining Cubic. She also worked in legal research positions at the U.S. Senate and the United States Supreme Court while in Washington, DC.

She is a frequent speaker to industry and human resources groups on employment law topics and is the immediate past president of the ACCA's San Diego Chapter.

Ms. Celentino received her JD from Georgetown University.

### Richard D. Gorelick

Richard D. Gorelick is vice president and general counsel of Integra LifeSciences Holdings Corporation based in Plainsboro, NJ. Integra is a diversified medical technology company that is a leader in the neurosurgical device market and a leader in the development and manufacture of a broad range of products based upon proprietary technology for the regeneration of tissue in vivo.

Previously, Mr. Gorelick was associate general counsel of Aventis Behring LLC, a global leader in biologics (plasma proteins), where his practice focused on technology licensing, strategic alliances, acquisitions, and managing commercial litigation.

Prior to going in-house, Mr. Gorelick was an associate in the Business and Finance Section of Morgan, Lewis & Bockius LLP, resident in Philadelphia, where he concentrated his practice, among other things, on transactions, corporate reorganizations and creditors' rights (primarily representing creditors), and secured transactions (representing both borrowers and lenders).

Mr. Gorelick is a graduate of Princeton University and Boalt Hall School of Law, University of California at Berkeley.

## ARBITRATION AGREEMENT

1. \_\_\_\_\_ ("Employee") and \_\_\_\_\_ ("the Company") recognize that differences may arise between them during or following Employee's employment with the Company. The parties understand and agree that by entering into this Arbitration Agreement ("Agreement"), they both anticipate gaining the benefits of a speedy, impartial dispute-resolution procedure. Employee understands that any reference in this Agreement to the "Company" will also be a reference to its parent company, if any, and all subsidiary and affiliated entities, all benefit plans, the benefit plans' sponsors, fiduciaries, administrators, affiliates, and all successors and assigns of any of them.

2. The Company and Employee mutually consent to the resolution by final and binding arbitration of all claims or controversies ("claims") arising out of Employee's recruitment, employment or termination of employment, that the Company may have against Employee or that Employee may have against the Company and/or against its officers, directors, employees or agents. Final and binding arbitration shall provide the sole and exclusive remedy and forum for all such claims. The claims covered by this Agreement include, but are not limited to, claims for wages or other compensation due; claims for breach of any contract or covenant (express or implied); tort claims; claims for wrongful termination; claims for discrimination (including, but not limited to, race, gender, religion, national origin, sexual orientation, age, marital status, medical condition or disability) or harassment; claims for benefits (except where an employee benefit or pension plan specifies that its claims procedure shall culminate in a dispute resolution procedure different from this one), and claims for violation of any federal, state, local or other governmental law, statute, regulation, or ordinance, except claims excluded below in paragraph 4.

**3. The Company and Employee agree to give up their respective constitutional rights to have the above-mentioned claims decided in a court of law before a jury, and instead are accepting the use of final and binding arbitration.**

4. This Agreement does not cover claims Employee may have for workers' compensation or unemployment compensation benefits or disputes covered by a collective bargaining agreement. Also not covered are claims for injunctive and/or other equitable relief for unfair labor practices, such as picketing or strikes, or unfair competition and/or the use and/or unauthorized disclosure of trade secrets, proprietary and/or confidential information, as to which the parties may seek and obtain relief from a court of competent jurisdiction.

5. The arbitration procedure specified in this Agreement shall be applicable only to judicially cognizable claims, and not to any claim that in the absence of this Agreement would not be judicially cognizable. The Parties agree that the arbitration shall be conducted in accordance with the Arbitration Procedures which are attached and incorporated herein by reference. The Arbitration Procedures will also be maintained in the Human Resources Department and are available to all employees. This Arbitration Agreement shall survive the termination of Employee's employment. It can only be revoked or modified by a writing signed by both parties which specifically states an intent to revoke or modify this Agreement.

6. This is the complete agreement of the parties on the subject of arbitration of claims or disputes, except for any alternative dispute resolution procedure in connection with any

employee benefit or pension plan. This Agreement supersedes any prior or contemporaneous oral or written understanding on the subject. No party is relying on any representations, oral or written, on the subject of the effect, enforceability or meaning of this Agreement, except as specifically set forth in this Agreement.

7. If any provision of this Agreement is adjudged to be void or otherwise unenforceable, in whole or in part, such adjudication shall not affect the validity of the remainder of the Agreement. The promises by the Company and by Employee to arbitrate differences, rather than litigate them before courts or other bodies, provide adequate consideration for each other.

8. This Agreement is not, and shall not be construed to, create a contract of employment, express or implied, nor does this Agreement in any way alter the "at-will" status of Employee's employment. Both parties understand that the Company and the Employee can terminate their employment relationship at any time, with or without cause, with or without notice.

**9. Employee verifies that he/she has carefully read this Agreement and that, by signing below, attests that he/she understands and is knowingly and voluntarily agreeing to its terms. All understandings and agreements between the Company and Employee relating to the subjects covered in this Agreement are contained herein and Employee has not relied on any promises or representations by the Company (or any other person or entity) other than those contained in this Agreement.**

**10. Employee further acknowledges that he/she has been given the opportunity to discuss this Agreement with his/her own legal counsel and has availed himself/herself to that opportunity to the extent Employee wishes to do so.**

\_\_\_\_\_  
Signature of Authorized Company Representative

\_\_\_\_\_  
Signature of Employee

\_\_\_\_\_  
Title of Representative

\_\_\_\_\_  
Print Name of Employee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## **ARBITRATION PROCEDURES**

### General

The Company and Employee agree that the following Arbitration Procedures shall apply to the final and binding arbitration of all claims or controversies ("claims") arising out of Employee's employment (or its termination) that the Company may have against Employee or that Employee may have against the Company or against its officers, directors, employees or agents.

### **No Jury Trial**

**The Company and Employee agree to give up their respective constitutional rights to have the above-mentioned claims decided in a court of law before a jury, and instead are accepting the use of final and binding arbitration.**

### Required Notice of All Claims

Written notice to the Company, or its officers, directors, employees or agents shall be to the Director of Human Resources at Cubic Corporation at 9333 Balboa Avenue, San Diego, California 92123. Employee will be given written notice at the last address recorded in Employee's personnel file.

The written notice shall identify and describe the nature of all claims asserted and the facts upon which such claims are based. The notice shall be sent to the other party by personal delivery or certified or registered mail, return receipt requested, postage prepaid. Notice shall be deemed received four days after deposit in a United States postal box.

### Representation

Each party may be represented by an attorney or other representative selected by the party.

### Statute of Limitations

The statute(s) of limitations applicable to either parties' claim shall apply, just as if the claim were brought in a court of law.

### Discovery

Each party shall have the right to take the depositions of two individuals and any expert witness(s) designated by another party. Each party also shall have the right to serve one request for production of documents and one set of interrogatories on the other party. The

interrogatories will be limited to 30, including subparts. The subpoena right specified below shall be applicable to discovery pursuant to this paragraph. Additional discovery may be had only where the Arbitrator selected pursuant to this Agreement so orders, upon a showing of substantial need.

#### Designation of Witnesses/Exhibits

At least 30 days before the arbitration, the parties must exchange lists of witnesses, including any experts, and copies of all exhibits intended to be used at the arbitration, except demonstrative or impeachment exhibits. Demonstrative exhibits will be exchanged three business days before the arbitration.

#### Subpoenas

Each party shall have the right to subpoena witnesses and documents for the arbitration.

#### The Arbitration

The Company and Employee agree that, except as provided in this Agreement, any arbitration shall be before a neutral and impartial arbitrator. The arbitration shall take place in or near the city in which Employee is or was last employed by the Company, unless the location is outside the continental United States, in which case the arbitration shall take place in the City in which the "home" employing organization is located.

Except as otherwise provided in this procedure or by mutual agreement of the Parties, any arbitration shall be administered: (1) in accordance with the then-current Employment Dispute Resolution Rules of the American Arbitration Association ("AAA") before an arbitrator who is licensed to practice law in the state in which the arbitration is convened; or (2) if locally available, a judicial arbitration and mediation service, in accordance with that bodies' procedures then in effect. The Party who did not initiate the claim can designate between AAA or a judicial arbitration and mediation service (the "Tribunal"). The parties will cooperate with each other to hold and schedule the arbitration in a manner to minimize the disruption and expense to the Parties.

Should a conflict occur between the Tribunal's rules or procedures and the Arbitration Agreement and/or Arbitration Procedures, the Arbitration Agreement and Arbitration Procedures shall take precedence.

The Arbitrator shall be selected as follows: if the Parties cannot agree on an arbitrator, the Tribunal shall then provide the names of 9 available arbitrators experienced in employment law matters. Each party may strike all names on the list it deems unacceptable. If only one common name remains on the lists of all Parties, that individual shall be designated as the Arbitrator. If more than one common name remains on the lists of all Parties, the Parties shall strike the names

alternately until only one remains. The Party who did not initiate the claim shall strike first. If no common name remains on the lists of all Parties, the Tribunal shall furnish an additional list or lists until an Arbitrator is selected.

The Arbitrator shall consider Company policy and procedure. The Arbitrator shall apply the substantive law (and the law of remedies, if applicable) of the state in which the claim arose, or federal law, or both, as applicable to the claim(s) asserted. The remedies available in the arbitration shall be identical to those allowed at law. The Federal Rules of Evidence shall apply.

The Arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this Agreement, including but not limited to any claim that all or any part of this Agreement is void or voidable.

The Arbitrator shall have jurisdiction to hear and rule on pre-hearing disputes and is authorized to hold pre-hearing conferences by telephone or in person as the Arbitrator deems necessary. The Arbitrator shall have the authority to entertain a motion to dismiss and/or a motion for summary judgment by any party and shall apply the standards governing such motions under the Federal Rules of Civil Procedure. Either party may file a pre-hearing brief.

Either party may arrange for a court reporter to provide a stenographic record of proceedings. The hearing, in so far as practical, shall be held on consecutive days so that it may be concluded as expeditiously as possible. Either party, upon request at the close of hearing, shall be given leave to file a post-hearing brief. The time for filing such a brief shall be set by the Arbitrator.

Either party may bring an action in any court of competent jurisdiction to compel arbitration under this Agreement and to enforce an arbitration award. Except as otherwise provided in this Agreement, both the Company and Employee agree that neither of the parties shall initiate or prosecute any lawsuit or administrative action (other than an administrative charge of discrimination) in any way related to any claim covered by this Agreement.

The Arbitrator shall render a written decision promptly, within 30 days of the last brief, if possible. The written decision shall contain the essential findings and conclusions on which the arbitration award is based. The decision shall only be subject to limited judicial review.

#### Arbitration Costs and Attorneys' Fees

The Employee will not be required to pay for costs associated with the arbitration that differ from costs the Employee would have paid should he/she have brought the claim in court, such as the arbitrator's fee. Each party shall pay for its own attorneys' fees, if any. However, if any party prevails on a claim which affords the prevailing party attorneys' fees, the Arbitrator may award reasonable attorneys' fees to the prevailing party, consistent with applicable law.

## Effectively Managing Employment Litigation-A Checklist

American Corporate Counsel Association Annual Meeting  
October 21, 2002

Anne Celentino, Senior Attorney, Cubic Corporation

### *I. Pre-Litigation Management and Avoidance*

- a. Maintain regular contact with the company's management and operating personnel, particularly the sales/marketing, contracts/purchasing and human resources departments
- b. Draft and negotiate contracts that avoid/minimize disputes and reduce exposure-add arbitration provisions
- c. Develop written electronic communications guidelines and train on these concepts
- d. Develop a corporate crisis management plan and manage crises to avoid litigation
- e. Implement an ADR policy (see attached arbitration agreement and procedures)
- d. Schedule regular in-house training on employment law issues and preventative law concepts-combine lecture, video, quiz and role playing formats
- e. Handle internal complaints and agency claims (EEOC, OSHA, etc.) in-house
- f. Ensure prompt and effective resolution of employee complaints in-house
- g. Consider training on investigation techniques and procedures for legal and human resources staff
- h. Consider Employment Practices Liability Insurance
- i. Remind separating employees of their obligations regarding confidential and proprietary information

### *II. Selecting Outside Counsel*

- a. Common ways to locate outside counsel: company-approved outside counsel list, referral from outside counsel, referral from other in-house counsel, ACCA member to member service, directories, etc.
- b. Some criteria for selecting outside counsel: past relationship, firm reputation, reputation of individual lawyers, rates, alternative fees, demonstrated cost consciousness, firm expertise in specific area, attorney expertise in specific area, firm's use of technology, size of firm, creativity of legal team, firm's geographic locations, low turn over of attorneys and staff



c. Conflicts checks: past representation of adverse party, positions taken in prior cases that may conflict with current matter, current representation of business competitors, only what is required by local ethics rules

d. Consider formal RFP's if large business transactions, commodity type (routine) legal matters (such as collections work), or large litigation matters

e. Consider alternative fee arrangement options at the outset- hours times rates, fixed fees, fee cap, discounted/blended rates, success fees or bonuses, contingency fees depending on result, value billing, retainer arrangement for certain work in a certain period

f. Alternative fee arrangements tend to make the most sense if high potential of liability, high potential of recovery, large business transactions, smaller matters (litigation or business transactions), routine/repetitive matters

g. Develop and use engagement guidelines/retainer agreements with outside counsel (see attached example).

- conflicts check
- scope of firm's responsibility
- fee arrangement
- dispute resolution clauses
- preparation of early case assessment (risks and potential resolution strategies), budget forecast and litigation plan
- periodic written matter updates
- end of matter assessment
- adherence to diversity/pro bono and/or technology requirements
- billing format/details
- no change of rates without approval
- no change of assigned attorneys without approval
- pre-approve research
- restrictions on press releases and public statements
- confidentiality
- client ownership of work product
- required use of specific vendors (e.g., court reporters)
- travel expense rules
- limits on internal charging (copies, faxes, phone, online research, secretary, clerk time, other expenses)
- allocating work between inside and outside lawyers
- file retention
- termination
- sign and return

h. Prepare an early case assessment

- i. Develop a budget
- j. Common reasons for terminating law firm relationships: lack of responsiveness, poor work quality, poor results, attorney changed firms, provided inaccurate information, delayed or missed deadline, non-practical advice, too high fees/costs, billing issues, personality issues, conflicts-ethics, conflicts-business

### *III. Effective Partnering with Outside Counsel during the Litigation Process*

- a. Develop the litigation plan
- b. Utilize strategic planning-create reasonable expectations, do risk and cost/benefit analysis, develop alternative litigation approaches
- c. Carefully consider case staffing- effective use of outside and inside counsel, consultants, and corporate employees
- d. Control nature and frequency of communications between in-house and outside counsel
- e. Acquire in-house technology that helps manage legal work with outside counsel: e-mail, case management software, document management software, videoconferencing, in-house software to analyze legal billings, etc.
- f. Other methods used to control outside counsel legal spending: in-house fee/bill manager, third party bill auditor, internal reports/databases, discounted/alternative fees, billing guidelines/spending rules, evaluations of outside counsel
- g. Consider mock trials prior to trial

*Overall, keys to controlling costs: articulating ground rules at the outset of the matter, establishing a budget and a strategy for the case, setting out billing guidelines, establishing effective staffing policies and ensuring efficient and sensible allocation of work between inside and outside counsel, use of alternative fee arrangements, early case assessment, technology, effective communication with outside counsel*

- h. Consider a convergence strategy (reducing number of outside firms with which you work on a regular basis) Why? Less time required to manage outside counsel, outside counsel generally more aware of business needs, more preventative law by outside counsel, more sharing of work product among partner firms, better legal advice/work product, lower fees, more common to have alternative billing arrangements
- i. Consider dedicated in-house services for litigation support-responding to document discovery requests and interrogatories, preparing corporate staff for depositions, legal research, due diligence requests and document review
- j. Look for insurance policies that give the company control over the selection of outside counsel

#### *IV. Criteria for Assessing Outside Counsel*

- a. Communications: verbal and written communications are clear, concise and understandable
- b. Expertise/Judgment: provides requisite legal competence, makes sound and logical judgments
- c. Risk Appraisal: provides practical assessments on the legal risks for various alternatives
- d. Predictive Accuracy: realistically predicts matter costs and outcomes
- e. Problem Solving/Innovation: offers creative and imaginative ways to solve problems
- f. Business Knowledge: good understanding of your business and objectives
- g. Proactive: provides constructive advice on effective ways to prevent, avoid or minimize future problems
- h. Accuracy: services/products are generally error free
- i. Cost Conscious: demonstrates cost consciousness in the planning and development of legal services
- j. Listening Skills: listens constructively to client concerns or suggestions
- k. Teamwork: works with legal department to understand needs and achieve common goals
- l. Working relationship: easy to work with
- m. Demeanor: demonstrates professional, courteous, respectful, and helpful attitude in dealing with clients and third parties
- n. Responsiveness/timeliness: readily accessible to staff when needed; phone calls and e-mails are promptly returned

May 13, 2002

Outside Counsel  
Law Firm  
Nashville, Tennessee 37219

Re: Retention Agreement

Dear Outside Counsel:

Cubic Corporation (ACubic@) and its subsidiaries hereby agree to retain the services of ("The Firm") for the following specific matter and on the terms stated herein. The scope of this Retention Agreement shall be limited to legal matters referred to The Firm by Cubic from time to time ("Matter").

Cubic reserves the right to terminate this agreement for The Firm's services at any time and for any or no reason. No other terms or conditions on the retention of The Firm shall be binding on Cubic.

By this letter, Cubic is retaining only The Firm. The Liaison Attorney and The Firm shall agree to specific staffing for this matter. The General Counsel and/or the Liaison Attorney shall have the right to request and direct any change in The Firm personnel assignments on this Matter. Cubic will not compensate any additions to, changes or substitutions in personnel without the prior express written authorization from the General Counsel and/or the Liaison Attorney.

The Firm agrees that Cubic retains its services as an independent contractor and not as an employee of Cubic. Cubic is neither responsible for The Firm's actions outside the specific scope of retention, nor required to provide The Firm with any benefits associated with employment. The Firm may not contract for or in the name of Cubic, nor bind Cubic to any matter or thing (other than routine or required filings) without the prior permission of the General Counsel or the Liaison Attorney.

The Firm represents that it has completed all necessary conflict checks that would prevent it from fully and zealously pursuing the Matter. Should The Firm become aware of a conflict or potential conflict of interest during its representation of Cubic or any of its related companies, including Cubic, Cubic Transportation Systems, Inc., or any others, it will promptly notify the General Counsel and the Liaison Attorney in writing of any such conflicts of interest or other ethical issues. In addition, The Firm will notify Cubic in all situations where there is any reason to believe a potential new client is a Cubic competitor. (Lists of Cubic subsidiaries and are attached hereto as Exhibits A and B, respectively). Cubic's General Counsel reserves the right to decide whether an actual or potential conflict exists. If, in his opinion, an actual or potential conflict does exist, The Firm agrees that it shall not undertake representation of a conflicting client until the situation has been resolved to the satisfaction of Cubic's General Counsel, or if he states in writing that it may proceed notwithstanding.

The Firm represents that it has in place independent insurance for legal malpractice and general liability. Such insurance shall remain in place for the duration of this representation. The Firm assumes sole liability for any failure on its part to acquire proper insurance coverage. The Firm agrees to provide a copy of the coverage upon request.

Cubic's General Counsel has full authority for the management of the legal affairs of Cubic and all its subsidiaries. The Liaison Attorney will be your primary point of contact for the handling of this Matter. Cubic's General Counsel, through the assigned Liaison Attorney, will be the sole

authority for directing the legal services you will provide. Subsidiaries, divisions and departments of Cubic, or any individual working therefor, are not authorized to engage your services for any matter. All communication with Cubic Corporation or any of its employees, officers or directors should be solely via the Liaison Attorney, unless specifically authorized otherwise by the Liaison Attorney.

The Firm agrees to communicate regularly and promptly with the General Counsel and the Liaison Attorney and keep them fully informed of all developments in the Matter. Such communications may be either written or oral, depending on the direction of the Liaison Attorney, or as dictated by the expedient nature of any matter. The Firm must promptly provide Cubic's Liaison Attorney with a copy, in its original form, of every internal research memorandum, pleading, motion or discovery request generated or received in this Matter pertaining to Cubic.

It is a condition of The Firm's retention that it consult with and receive approval from the General Counsel prior to identification of Cubic as its client in any promotional matters, including seminars, publications, meetings, press conferences, and speeches. The Firm will not make any statements to the media pertaining to the represented matter without prior consent of the General Counsel. Any inquiries by the media concerning the represented matter should be directed to General Counsel or his designee.

The Firm agrees and understands that Cubic Corporation holds the right to all work products and attorney-client privileges that it or The Firm may raise, and agrees not to take any action or fail to take any action which would defeat either such privilege. When applicable, The Firm must obtain a waiver of any privilege in writing from the General Counsel.

The Firm agrees that Cubic's General Counsel and Liaison Attorney must preapprove the strategy and budget for the Matter for which you are retained. Additionally, no material changes may be made to the strategy or budget without approval of the General Counsel and the Liaison Attorney. Further, The Firm must consult with and obtain the consent of the Liaison Attorney regarding any deadline extensions.

The Firm and Cubic must establish a negotiated fee structure or arrangement for this Matter in writing, prior to the rendering of any services. The fee arrangement must be set out in writing and made a part of this Retention Agreement. Any hourly billing rate must be inclusive of all normal and usual overhead, G&A and internal charges associated with The Firm. The Firm agrees that all hourly billing rates and internal cost rates for this Matter will not be raised during the pendency of this effort. However, this shall not prevent The Firm from proposing changes to such rates should circumstances reasonably indicate a revision is necessary. The General Counsel will review such requests.

Cubic will neither pay for nor reimburse any extraordinary costs or expenses or any costs which are a normal part of The Firm's overhead without the prior written authorization of the Liaison Attorney. For example, Cubic will not pay for retainers, secretarial or staff overtime, or "overtime meals" (unless such overtime was requested or caused by Cubic's request or was required for the Matter), unreasonable in-house copying charges, conference room fees, time spent by associates for training or learning, intra-office conferences or meetings (unless such conference is the most efficient way to communicate a matter, or took place at the request or direction of Cubic), basic legal research (e.g., research that is fundamental and normally unchangeable - court rules, standard for summary judgment, etc.), time spent reviewing billing, word processing charges, local transportation unless directly related and required by the Matter. Cubic requests that any significant legal research projects be preapproved by the Liaison Attorney. In addition, Cubic expects that The Firm will utilize, and Cubic will not pay for, legal research already conducted by The Firm on an

identical or similar issue. Cubic will pay for supplementation and update of such prior legal research. Unless specifically requested, Cubic will not pay for attorneys to summarize depositions or perform any other paralegal or clerical type work. Absent prior approval, only one attorney should be present at meetings or proceedings. Cubic will not pay for use of experts or consultants without prior written approval from the Liaison Attorney.

To the fullest and most reasonable extent possible, outside counsel shall utilize the services of Cubic support staff, law clerks, summer associates, and paralegals for research, discovery responses and other tasks. This Matter will be coordinated and directed by the Liaison Attorney.

Cubic will pay or reimburse actual, normal and reasonable costs and expenses (without any "markup" by The Firm) only if authorized in advance by the Liaison Attorney. Unless otherwise agreed upon in advance, Cubic will recognize only the following charges as billable to Cubic:

1. Attorney's fees at the hourly rate as established upon retention or other compensation arrangement if not on an hourly basis;
2. Commercial duplication costs;
3. Long distance telephone charges incurred in the course of work for Cubic, provided that The Firm diligently uses Cubic's toll-free number when phoning Cubic in San Diego (800/854-2876);
4. Telex/telefax charges;
5. Computerized legal research costs;
6. Mailing costs;
7. Messenger services;
8. Filing Fees
9. Service of process fees/costs
10. Reasonable travel expenses for travel as required by Cubic. Cubic will reimburse charges for air travel at coach rate only. If the attorney actually performs work on the Matter while traveling, Cubic will reimburse the actual hourly rate. However, if the attorney is only traveling but doing no work, the attorney will only be reimbursed at one-half the normal hourly rate. If work is performed for another client while in transit, no amount shall be billed to Cubic.

The Firm should submit billing statements on a monthly basis. Billing statements must contain sufficient detail to identify the work performed and time spent per item for each day worked. At a minimum, the billing statement must contain all of the following information:

1. The Matter being billed;
2. The name and telephone number of the supervising Attorney;
3. A daily description of the work performed by each timekeeper. The listing shall contain at least the following:

- a) The name and hourly billing rate of each time keeper;
  - b) The time spent on each task;
  - c) A description of each task;
  - d) A total of the time spent that day for each timekeeper.
4. An itemized description of all costs and expenses for the billing period accompanied by a copy of any invoices for all extraordinary outside services or services over One Hundred Dollars (\$100.00). The Firm must provide detailed records to justify all fees and expenses if Cubic so requests. The Firm agrees that Cubic shall have the right to audit The Firm's billing records and Matter files to ensure compliance with this Agreement, to review the accuracy and reasonableness of time spent on each task, or to provide audit information to any US Government agency. Cubic agrees not to unreasonably invoke this right.

Cubic will not pay late charges or interest unless there is a specific separate written agreement to that effect.

Please refer any questions you may have regarding the terms of your retention to Kenneth A. Kopf, General Counsel, Cubic Corporation, 9333 Balboa Avenue, San Diego, California 92123. If this letter and the guidelines contained within accurately reflect our mutual understanding, please sign the letter and return it to us at your earliest convenience.

The undersigned represents that he/she has the authority to sign for and bind The Firm.

Cubic Corporation's Legal Department thanks you in advance for your services and diligent adherence to Cubic's general retention policies. Cubic has retained The Firm's services because of its expertise and abilities, and we look forward to a productive and successful relationship.

Very truly yours,

Anne E. Celentino  
Senior Attorney

\_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

## Can't We All Just Get Along? 21<sup>st</sup> Century Approaches to the In-House/Outside Counsel Relationship

Anne Celentino, Senior Attorney, Cubic Corporation

Every so often, the legal press creates a wave of anxiety through the in-house legal community by featuring a corporation that has decided to reduce or eliminate its in-house legal department. By efficiently and cost-effectively managing legal risk, the in-house practitioner can create an environment that eventually prompts an evaluation of in-house legal services, ultimately making in-house counsel victims of their own success.

Twenty years ago, companies began bringing more legal work in-house. The belief was that experienced in-house attorneys could facilitate litigation prevention, manage legal risk more effectively, comply with government regulations and provide more responsive and practical business advice, all at a substantial cost-savings.

As a result, more and more in-house counsel, many from law firms, took control of the corporation's legal matters. Law firm billings began being scrutinized with an unprecedented zeal. Billing wars amongst law firms, lengthy retention letters, rigid cost containment, law firm beauty contests, increased emphasis on methods of alternative dispute resolution, creative billing methods (such as task-based billing, blended rates and contingency fee arrangements) all heightened pressure on firms. These strategies also helped to achieve what in-house lawyers were hired to do—manage and reduce legal costs.

At the same time, in-house counsel began to see the benefit of effective partnering with outside counsel and they began forging alliances with specific law firms. This trend recognized the inherent value of selecting the right mix of legal support both inside and outside the company, with the ultimate goal being to provide efficient and cost-effective legal services to the entity.

With this myriad of dynamics, economics and business realities, the relationship between in-house and outside counsel is complex. However, there are many ways to establish and maintain effective partnering between in-house and outside counsel. And, as with many relationships, it helps to start out on the right foot.

### Establishing a Solid Partnership between In-House and Outside Counsel at the Outset

#### *Share Information about the Company*

The fastest way for outside counsel to gauge the legal needs of its corporate client is to learn as much as possible about the company at the front end of the relationship. Here are some questions to consider:



How long has the company been in business and what will the organization look like in five years? Do the plans involve new plants or offices in new locations? What is the profile of a typical customer? What has the financial climate been like for the company recently? What does the organization chart look like and who are the key executives? What is the overall leadership style and vision?

*Share Information about the Company's In-House Legal Department*

Outside counsel greatly increase the chances of a successful partnership with in-house counsel if they gain an in-depth knowledge of the company's existing legal department-the client within the client. These are some questions to ask:

How is the legal department organized? What does the legal department see outside counsel accomplishing for the organization? What kind of legal services is the company currently using and is that expected to change? What has been dissatisfactory about the level of legal services obtained from law firms in the past? How much detail does the legal department like to get from its outside lawyers? What criteria does the company use in selecting lawyers? How does budgeting for legal services compare to what is spent on other resources?

*Establish a Team Approach to Litigation*

In a litigation matter, creating a positive partnership means establishing a team approach in which there is a division of work between inside and outside counsel and pursuit of common goals. As a practical matter, it may sometimes be a challenge to align outside counsel's interests with the company's.

Because the pressures to maximize billable hours at law firms may be inconsistent with the goals of in-house counsel to deliver effective, efficient results for the company, companies often expect the individual attorney they retain to manage those pressures effectively and ultimately for the benefit of the corporation. Lawyers who do so get more work than lawyers who do not.

*Set Up Clear Lines of Authority*

It helps to initially establish one in-house attorney contact that will manage the matter for the company and be a key member of the litigation team. It is essential that both the in-house and outside counsel work closely at the outset to educate outside counsel about the company's business situation and any internal politics or pressures so that the matter can be handled in a matter that is consistent with the company's overall business goals.

*Discuss Staffing and Resources, Understand What the Game Plan Is and Develop Reasonable Expectations*

Developing a case plan, including staffing levels and projected costs, also greatly assists the partnering process between in-house and outside counsel. By initially defining the appropriate strategy and staffing level and identifying any potential variable costs that may be incurred, the in-house attorney and the company's management team have a clearer appreciation of the legal issues involved in the matter and what the firm's representation is anticipated to cost.

This important initial discussion establishes a natural forum to ensure that the matter will be managed efficiently, and with fewer surprises, by both in-house and outside counsel toward an effective result.

It is perhaps stating the obvious that firms should limit the number of attorneys and staff that work on the legal matter. Firms sometimes seek to assign a number of associates "part-time" to a matter, because of the perceived need to be able to respond at any given moment to demands from several different clients. It is preferable to in-house counsel if a partner handles the case directly, with the assistance of an associate. By limiting at the outset which attorneys will assist in the matter, the inevitable inefficiencies of too many attorneys working on the file can be avoided.

*Centralize Communication*

Communication should be centralized through in-house counsel. By doing so, both in-house and outside counsel gain the efficiencies of utilizing the in-house counsel's knowledge of the company and where documents and information can be obtained. Centralizing the communication process also helps meet the important client need of ensuring that members of management are briefed by in-house counsel on the matter's status and progress.

*Increase the Dialogue between In-House Counsel and Outside Counsel Professional Groups*

The relationship between in-house and outside counsel continues to evolve with time. One very positive trend is the increasing dialogue between professional groups of lawyers, such as the American Corporate Counsel Association ("ACCA") and the American Bar Association, on the topic of effective partnering.

The San Diego Chapter of ACCA has hosted continuing legal education programs on relationship management for corporate legal departments. These types of events provide forums for in-house and outside counsel to share information on what enhances, and what detracts from, an effective partnership. Additionally, corporate counsel institute programs hosted annually by law schools such as Georgetown and USC, as well as ACCA National, provided expanded opportunities for this type of dialogue and information exchange to take place.

### *Conclusion*

A partnership between in-house and outside counsel is a complex relationship that requires both parties to expend time and effort on mutual goals. Two hallmarks of an effective partnership are shared information and shared decision making. In-house counsel should be kept fully informed about the tactics and strategy that are being employed by outside counsel in any matter. They should also play an active role in shaping and making legal judgments and decisions concerning litigation and corporate transactions. Additionally, in-house counsel must keep outside counsel fully informed about the corporate goals that are being pursued.

Overall, in-house counsel are extremely familiar with the inner workings of their organizations. Therefore, they are in an excellent position to seek and obtain effective and cost-efficient outside legal services for their corporate clients. Indeed, the business settings in which corporate counsel operate *require* that in-house counsel become smarter and more demanding buyers of outside legal services.

By the same token, competition among law firms, particularly in San Diego, remains fierce and firms should be more motivated than ever to deliver legal services to corporations in a flexible framework that is best suited to the company's ever changing needs and business strategies. The central theme should therefore be the establishment of a mutually beneficial partnership with the ultimate goal of all parties being the delivery of effective and efficient legal services to the corporate client.

This article was published by the San Diego Daily Transcript in June of 2002 as part of its Law Week series.

Anne Celentino is a Senior Attorney with Cubic Corporation in San Diego, California where she represents the company and its divisions in all legal matters related to labor and employment law. She received her J.D. degree from Georgetown University in 1987 and was an associate at Sheppard, Mullin, Richter & Hampton before joining Cubic in 1991.

Ms. Celentino is the immediate past-president of the American Corporate Counsel Association's San Diego Chapter and is a frequent speaker to industry and human resources groups on employment law and litigation topics.