



15 Steps to effectively manage litigation as a corporate lawyer

Scot Patrick O'Brien (center), managing partner of Akerman's Washington, D.C., office, with corporate partners Austin Ownbey and Karyn Koiffman.
Jati Lindsay Photography

By Scot Patrick O'Brien

Managing litigation continues to be a growing concern for many businesses due to the increasing number of cases and expense of litigation. In 2023 the federal district courts alone docketed 339,731 civil cases, an increase of 24 percent from the prior year, according to the U.S. Supreme Court's 2023 Year-End Report on the Federal Judiciary. While the numbers went down in 2024, more than 290,000 civil cases were brought before federal district courts.

Litigation costs are rising in part due to the continuing large number of cases, but more importantly due to larger settlement amounts and higher legal fees, *The Wall Street Journal* reported in 2024.

Often it is corporate lawyers who have the primary legal relationship with a company. As trusted advisors, these lawyers are sometimes asked to bring in their firm's litigators and help manage a litigation matter for the company. In-house corporate lawyers can also be tasked with managing litigation and the outside litigation counsel.

Over the last five years at Akerman LLP, I managed 16 litigation matters for several long-standing clients as a corporate and lead relationship lawyer. The litigation matters included commercial disputes between contracting parties, fraud claims based on labeling and internet sales, and alleged deceptive business practice claims — some brought by assistant U.S. attorneys and various state attorneys general.

Drawing from my experience managing those recent legal proceedings, I developed 15 practical steps that every corporate lawyer can use to manage litigation more effectively.



1. ASSEMBLE A TEAM OF LITIGATORS WITH RELEVANT EXPERIENCE.

Build a client team of the best litigators with experience in the legal subject matter and industry of the dispute. Familiarity and experience with the court, judges, and opposing counsel are all considerations for choosing the right team. Include lawyers at all appropriate cost levels to ensure efficiencies for the benefit of the client.

2. MATCH THE LEAD LITIGATOR WITH THE CLIENT AND HOLD A KICKOFF CALL.

Ensure that the personality of the lead litigator from your outside litigation team matches the traits the in-house lead attorney seeks for the case. Hold an organizational kickoff call to introduce the client and lay out their priorities to all the members of the outside litigation team.

3. ENSURE THE CLIENT AND LITIGATION TEAM UNDERSTAND THE ROLE OF THE CORPORATE RELATIONSHIP LAWYER.

After the kickoff call, the corporate relationship lawyer should resist the urge to punt all responsibility for the litigation matter over to the outside litigation team. There is a place for a corporate lawyer to help manage the litigation matter and provide support and guidance to those attorneys actively litigating the case.

The corporate relationship lawyer can assign staff, educate the litigation team on the client and its priorities, facilitate communication with the client, and, depending on their experience, provide general case strategy input to the team and client. It is important to build the corporate lawyer's time into the litigation budget (see next step), both to ensure no overlapping of responsibilities and to communicate the corporate lawyer's anticipated level of involvement with the client. Over the course of a litigation matter, one would expect the corporate lawyer's time to be nominal in comparison to the rest of the litigation team.

4. PREPARE A BUDGET; UPDATE THE BUDGET (AND UPDATE AGAIN).

At the start of the matter, the litigation team, with the corporate relationship lawyer's involvement, should create a litigation budget. Client involvement, input, and acceptance of the budget are critical. Budgets are necessary for clients to obtain internal authorization and for setting the expectations of the various client stakeholders.

The budget must be realistic and conservative. It must be based on stated assumptions (number of claims, counterclaims, months, etc.) and include a range of costs depending on various assumed facts and approaches. But litigation budgets, by their very nature, are inaccurate due to their factual assumptions, which are sure to change. It is up to the outside litigation counsel to continually look ahead and provide the client with budget updates if material changes to costs/fees are anticipated. Letting a client know after the fact that the outside litigation counsel vastly exceeded the budget will not make your client look good and will cause friction.

To avoid common missteps in litigation budgets, account for the following:

- **The wide berth that most courts give to discovery.** Clients frequently ask, "Why is this request relevant?" Courts, on the other hand, ask, "Could this line of discovery lead to relevant information?" And, for most cases, a court would allow discovery.
- **The need to object to discovery.** Include the costs of challenging the scope and breadth of discovery, or particular points of discovery about which a client is particularly sensitive.
- **Third-party costs.** Add in the costs of experts, e-discovery, or third-party discovery.
- **Alternative dispute resolution (ADR).** ADR — mediation, for example — is often court-mandated.

5. LAY OUT THE CASE ROAD MAP.

At the beginning of the engagement, the outside litigation counsel, in consultation with the client, needs to lay out a legal road map for the case. This must include not only the technical legal procedures and filings, but also the strategy for achieving the desired results in the case. Include various strategies but avoid predictions.

6. DON'T JUST TEND TO THE CASE; LEAD IT.

Clients expect their outside litigation counsel to take a consistent and active role in pushing the case forward in accordance with the agreed-upon strategies. Vigorous and effective advocacy is the goal. Lawyers have many active cases, but merely moving the ball along by just making the procedural filings (or even the appearance of just doing so) is not sufficient. Cases, like deals, evolve, and so must case strategies. Sophisticated clients expect their outside litigation counsel to be on top of the case and to proactively provide creative approaches (including changes in strategy) to achieve the clients' desired result.

7. COMMUNICATE REGULARLY AND IN WRITING.

Misunderstandings arise when clients have not heard from their outside litigation counsel on a consistent basis. The corporate relationship lawyer and the outside litigation counsel need to communicate regularly with each other and with the client regarding case status and any developments. Weekly update calls can be extremely helpful. Clients also should communicate their deadlines and expectations (and outside litigation counsel should solicit this information from the client).

Case trackers are helpful, too. Akerman uses a case-tracking interface to provide real-time updates to clients, see what tasks have occurred and what still needs to happen, and view expected completion dates.

8. CONTROL THIRD-PARTY COSTS.

E-discovery, copying, storing, investigations, experts, and other third-party costs need to be managed by the outside litigation counsel even if the client is ultimately paying the bill and even if these costs are not part of the outside litigation counsel's budget — especially if the client is not familiar with this part of litigation. Often, the outside litigation counsel will have to request and review third-party invoices.

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9. THE CLIENT IS ALWAYS RIGHT (BUT NOT ALWAYS).

The client wants the case to be managed in a certain way and has preferences on strategy, positions, and arguments. These all must be accounted for. However, the outside litigation counsel cannot be afraid to provide their professional opinion on matters, even if the client disagrees with it. This is the value-add that clients need, and it gives the client all the information necessary to make the decisions that are in the client's best interests. (Side note: As the corporate relationship partner, always have your outside litigation team's back. While you want to have the client speak plainly to you about the outside litigation team's performance, you cannot openly lose confidence in your team in front of the client. If the client has complained to you, provide the team with the client's feedback and make personnel changes if needed.)

10. LISTEN TO YOUR CLIENT (AND GET YOUR CLIENT TO LISTEN TO YOU).

Sometimes the client or outside litigation counsel communicates more than just the words that are spoken or written. The outside litigation counsel needs to be perceptive to what the client is actually trying to convey. Conversely, the outside litigation counsel should ensure that they are communicating important information to the client, even if the client disagrees with the information or opinion or does not want to hear opposing opinions or bad news (including the news that mistakes were made).

11. LISTEN TO YOUR CLIENT (AGAIN).

This is worth mentioning twice. For example, if your client has been setting up regular video conference calls and asks the outside litigation team to do so, do not set up a regular (nonvideo) call! If the client asks to review a filing a week before it is filed, do not provide the draft three days before the filing deadline. It is best practice to accomplish the simple client demands well because the team may not be able to perfectly comply with more difficult requests.

12. IT IS THE CLIENT EXPERIENCE AS MUCH AS THE CASE RESULT.

This is the most crucial point. Throughout the course of the engagement, if the outside litigation counsel does not listen to their clients; does not provide the necessary and vigorous case leadership, communication, and deliverables; is not responsive; and does not understand what is important to the client, the outside litigation counsel likely will not provide the client with the positive, professional experience they are anticipating. Even if the outside litigation counsel provides stellar legal results, if the client's impression of the day-to-day workings of the case were subpar, the legal result of the case will be overshadowed by the client's poor experience with outside counsel.

13. MANAGE THE CLIENT'S EXPECTATIONS.

When the budget and strategy are being developed at the start of the case, the corporate relationship lawyer and the lead outside litigation counsel must be forthright with their client on a realistic outcome of the litigation. This is not a function of preparing the client for the worst pos-

sible scenario, but instead a mutual understanding as to the various possible results.


Throughout the litigation, the outside litigation counsel should regularly assess the status of the case in comparison to the client's expectations. They should pick the appropriate times to reassess the case with the client to ensure the client is comfortable with where the case is headed from a timing, cost, and risk-exposure perspective. There is no quicker way to lose a client than to not appreciate when the client's expectation deviates from how the outside litigation counsel is managing the case or how the case is actually proceeding. To the extent the client's expectations are inconsistent with the mutually agreed-upon strategy or anticipated results, a candid discussion with the client is due.

14. ENSURE INVOICES ARE REVIEWED, DELIVERED, AND PAID TIMELY.

The corporate relationship lawyer and the outside litigation team must review the invoices from the perspective of the client. Are descriptions clear, is the time charged fair and not redundant, and are the individual time entries and final fee amount reflective of the value provided? The

corporate relationship lawyer must send out invoices timely and in accordance with the client's procedures and, once delivered, ensure the client is promptly reviewing and paying the invoices.

15. KNOW WHO YOUR CLIENT IS AND MAKE THEM LOOK GOOD.

An outside litigation counsel who is engaged by in-house counsel should recognize that their first client is the in-house counsel, and the in-house counsel's client is the business unit or executive they are responsible for within the company. If the outside litigation counsel makes their in-house counsel (or, if none, then the business unit or executive) look good by providing consistent, forward-leaning, and legally sound advice and service, then there is a good chance to develop a long-term, mutually beneficial relationship between the outside counsel and the client. 

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