

THE LEGAL OUTSOURCING HANDBOOK



 **LEGALEASE**
SOLUTIONS LLC

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1 LEGAL PROCESS OUTSOURCING OVERVIEW

Business Process Outsourcing services have been available in the corporate world for years. Many specific business functions (like payroll, benefits administration, accounting, and data processing) have become so routinely outsourced that they are commonplace. Legal process outsourcing, however, is a relatively recent development. Like any other business process outsourcing, LPO (legal process outsourcing) is a tool of efficiency. When work can be accomplished effectively at a lower cost, it behooves management, regardless of the sector, to evaluate the opportunity.



In terms of the legal profession, outsourcing is simply an extension of a dynamic that already exists in every legal office: Aligning the requirements of the work with the experience and talent level of the person undertaking the work.

First-year associates are not asked to fill the shoes of a litigator with a career's worth of experience and, similarly, it is inefficient to commit a senior partner to paw through hundreds of boxes of files during litigation support.

The goal of every mid to large sized firm or general counsel's office is to push work down the organizational pyramid to the most cost-efficient level for which the work can be accomplished successfully, and outsourcing is a natural component of that model.

2 SUCCESSFUL LEGAL OUTSOURCING

What Legal Work Can Be Outsourced?

The scope of work that lawyers perform varies greatly – from contracts, negotiations, or court cases that require a very specific knowledge base, to more general and/or repetitive tasks.

It's this second group – the more general or repetitive legal processes – that are prime candidates for outsourcing.



Some of the services that LegalEase Solutions specializes in are:

Legal Research and Writing

- Pleadings
- Briefs (trial and appellate)
- Drafting of Memoranda
- Multi-State Surveys (research on laws of multiple jurisdictions)

Litigation Support

- Deposition Summaries
- Medical Summaries
- Legal Indexing (e.g. indexing mortgages, financial transactions, etc.)

Contract and Document Drafting and Review

- Contract Management
- Contract Review -- redlining against standards
- Due Diligence Work (MA transactions, etc.)
- Reviewing Transactional Documents
- Review Litigation Documents
- Privilege Review

Who Completes The Outsourced Legal Work?

LPO's can be structured in a number of ways. LegalEase Solutions uses a combination of onshore attorneys (a legal staff based in the United States) and offshore attorneys (a legal staff based in India).

The onshore staff manages and oversees every project, while the offshore staff performs the bulk of the work. The offshore legal staff is made up of highly educated attorneys in India who have all undergone LegalEase's proprietary training program.

Why Outsource Legal Work?

The primary motivation for attorneys to outsource their work is significant cost savings. In the United States, an entry level associate attorney's hourly rate can be anywhere from \$100 to \$250 per hour.

On the other hand, a highly qualified attorney in India can cost as little as \$30 per hour.

3 WHAT NOT TO OUTSOURCE

Since law offices are already aligning work to the most cost efficient layer of the pyramid, outsourcing provides a compelling logical extension to accomplish appropriate work at a fraction of the current costs. But the operative phrase here is "appropriate work", because one element of a successful outsourcing initiative is knowing what not to outsource.



Since appropriate tasks for legal outsourcing are typically less complex and more redundant, it follows that work that is less appropriate to outsource would be:

- **Complex, uniquely fact-driven cases.**

Work that has a very high level of complexity & case-specific data are not an efficient use of outsourcing. Since each case practically becomes its own field of study, the amount of time required to bring outside attorneys up to speed would require a greater amount of time than would be supported by the reduction in costs.

- **Fact-driven one-off cases.**

A fact-driven case by itself does not preclude outsourcing. The determining factor is whether there is long-term efficiency to be gained. Fairly complex, fact-driven subject matter can be reasonably outsourced if the case is ongoing or recurring, but is probably not advisable for a one-off case. The question to be answered is whether the duration of the proceeding supports the initial investment in time.

- **Complex work without U.S. supervision.**

The ABA's formal ethics opinion 08-451 (*Lawyer's Obligations When Outsourcing Legal and Nonlegal Support Services*) emphasized a lawyer's obligation to properly supervise lawyers and nonlawyers under rules 5.1 and 5.3. Outsourcing efficiencies are undermined without proper supervision, which is why an LPO provider with an onshore presence/ personnel is advisable when outsourcing more complex work.

- **Subject matter counsel is unfamiliar with.**

Counsel limits their ability to provide proper supervision when, due to lack of familiarity with the area of law, they are unable to judge the quality or accuracy of the work.

The first litmus test when evaluating Legal Process Outsourcing is efficiency. Complex, one-time, nonrecurring subject matter is less likely to lend itself to efficient outsourcing.

4 AVOIDING CONFLICT OF INTEREST

Legal Process Outsourcing companies supplement both in-house and firm-based attorneys by performing a variety of legal services – including legal research and writing, deposition summaries, contract and document drafting and reviewing, pre-litigation support, drafting of memorandum, preparation of trial & appellate-level pleadings & briefs, and discovery and patent services.



The nation's largest Bar Association, the American Bar Association, as well as Bar committees in New York City, Los Angeles County, and San Diego County have all ruled that *“lawyers may contract with foreign lawyers not admitted to practice in any jurisdiction in the United States... to perform legal work for U.S. clients.”*¹

As increasing numbers of in-house counsel and firm-based attorneys evaluate the significant cost savings offered by LPOs, they must also factor into consideration an LPO's commitment to thoroughly upholding the ethical obligations lawyers implicitly owe their clients. Because, while utilizing an LPO may result in efficiencies and significant cost savings, those benefits are meaningless if the outsourcing results in an ethical breach such as conflicts of interest.

Conflicts of Interest

A conflict of interest can generally be defined as a situation where a person in a position of trust (such as a lawyer) has actual or potential competing interests (professional or personal) that make it difficult for that person to fulfill his/her duties to a client in an impartial manner.

¹ Steven J. Mintz, *Ethics Opinions Allow Foreign Legal Outsourcing*, ABA Litig. News Online, July 2007, at: http://www.abanet.org/litigation/litigationnews/2007/july/0707_article_outsourcing.html

In the legal profession, a law firm is prohibited, by the duty of loyalty owed to a client, from representing any other party with interests that are adverse to those of any current client. The most common example of this is the fact that the same law firm will not represent opposing parties in a case. The actual or even potential existence of a conflict of interest can create an appearance of impropriety, undermining the client's confidence in the firm.

Conflict Checking

In terms of legal process outsourcing, the New York City Bar's statement opined that *"[a]s a threshold matter, the outsourcing...lawyer should ask the intermediary, which employs or engages an overseas non-lawyer, about its conflict checking procedures and about how it tracks work performed for other clients."*²

When evaluating the value of an intermediary LPO, one of the primary concerns expressed by in-house and firm-based counsel alike is the avoidance of conflicts of interest. Attorneys know that conflict checking can be substantial even within a single firm, so there is legitimate cause for consideration when contemplating employing an LPO that could potentially be providing similar services to a number of firms.

This is why it is imperative for an LPO – as both a duty of loyalty and as a professional tenant – to design and implement comprehensive conflict checking systems.

²NYCBA, Formal Op. 2006-3

Internal Protocol

Before an LPO even enters into conversations with counsel, the LPO should have an initial foundation in place to ensure ethical conduct. This starts with education and training in conflict avoidance for each employee, onshore and offshore.

Training should include an employee handbook with written protocol emphasizing the ethical requirements for conflict avoidance. And while a thorough overview is the first part of the internal foundation, it is of little value without a proactive policy for conflict disclosure.

The protocol for disclosure should cast a wide net, requiring disclosure on any actual or possible conflict of interest from any employee assigned to a project. This disclosure requirement should include the existence of any actual or potential conflicting interest, whether personal or professional. Any such disclosure must be made at the beginning of the project or as soon as the actual or potential conflict is recognized.

Information Collection

“A legal outsourcing company should have a conflicts checking procedure in place that... includes avoidance of a concurrent conflict of interest with a client already engaged, and avoidance of a significant risk that the representation of one client may be materially limited by responsibilities to another client.”³

Once the value of distributing work to an LPO as been established, it is vital for both the LPO and the client's counsel to ensure sufficient communication to allow for viable conflict checking. To achieve this level of communication, it is helpful to have a tool in place at the outset to gather high level information and keywords (ranging from the clients' business names and principal names, to client subsidiary or parent companies, to business sectors, to the nature of the legal proceeding).

³American Bar Association Model Rule of Professional Conduct 1.7.

A detailed Work Product Request Form can collect these high level keywords and allow for more thorough conflict checking. Of course, non-disclosure agreements should be in place with every employee of an LPO to allow the client's counsel to comfortably provide enough searchable data to avoid conflicts.

Electronic Referencing

“A law firm shall keep records of prior engagements... and shall have a policy implementing a system by which proposed engagements are checked against current and previous engagements...”⁴

Data from the Work Product Request Forms should then be used to populate and maintain a searchable database with keywords and summaries of each client and case.

As an alternative to custom databases, many time and billing software programs contain a conflict of interest functionality. When evaluating a time and billing software program, an LPO should thoroughly QA the conflict checking functionality.

SUMMARY

Legal Process Outsourcing companies are doubly indebted – to the client and to the client's counsel – to uphold ethical standards. Conflict checking should be thoroughly pursued by employing internal 1 measures (training, written protocols, and non-disclosure agreements), detailed work process request forms to capture searchable data, and effective electronic referencing via project databases or time/billing software programs.

⁴DR 5 – 105(E), New York Lawyers Code of Ethical Responsibility

5 PROTECTING CLIENT CONFIDENTIALITY AND DATA SECURITY

Counsels' decision to entrust aspects of their work to an LPO entails a layer of consideration beyond just the matter of cost. In addition to the significant financial savings (and the high quality of work that is requisite), there is the less quantifiable, yet equally necessary, requirement for an LPO to ensure adherence to counsels' ethical obligations, like confidentiality.



When firm-based or in-house counsel partner with an LPO, they are outsourcing more than just legal functions; they are outsourcing trust. Counsels' reputations are built on both performance and ethical stringency, and working with an LPO represents counsels' inherent conveyance of those ethical responsibilities. It is essential that an LPO be prepared to embrace that responsibility.

An LPO's commitment to upholding confidentiality should encompass both Personnel Protocol and Security Infrastructure.

Personnel Protocol

“A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services...that might reasonably be performed in conjunction with and in substance are related to the provision of legal services.”⁵

Maintaining confidentiality on the LPO side of the equation starts with training and education. Internal written protocols and thorough training -- at both the outset of employment as well as periodic refreshers -- are fundamental. Admission to the Bar in most jurisdictions is contingent on passing the Multistate Professional Responsibility Examination, so it reasons to follow that offshore attorneys should be proficient in the same model rules.

⁵ABA Model Rules for Professional Conduct 5.7

Along with training and education, an LPO should exercise diligence by instituting internal constraints in the form of Confidentiality and Non-Disclosure Agreements with all employees. These agreements should be used in conjunction with thorough background checks, as well.

An additional mechanism that can be employed is an individual confidentiality agreement between the LPO and counsel. The ABA strongly advises these agreements, and the Association of the Bar of the City of New York (Ethics Opinion 2006-3) recommends “*contractual provisions addressing confidentiality and remedies in the event of breach, and periodic reminders regarding confidentiality.*”

Another consideration for an LPO, albeit a less tangible one, is cultivating a corporate culture that puts a premium on low attrition. While this is less quantifiably tenable or enforceable, a stable work force can mitigate confidentiality risks by minimizing the number of former employees in circulation.

Data Security

Along with Personnel Protocols, protecting client confidentiality is a direct function of Data Security Infrastructure. The first component of Data Security lies in the systems implemented in the actual physical location where any work is being done.

Physical security considerations should include:

- Employee security swipe cards that log every entry and exit
- Badge identification with photo IDs for all employees
- An escort program for visitors
- Fulltime security personnel
- The prohibition of cell phones and cameras in any area where client work is processed
- A secondary, offsite location where digital audit trail records are stored

Data Security includes all systems and networks for data access, collection, and storage. Data Security considerations should include:

- United States based servers for the storage of all data
- Network monitoring and tracking capable of producing audit trail records of all files accessed on the server and logs of all incoming and outgoing mail from the servers
- A secure internet network incorporating Proxy/Firewall NAT and Port filtering
- External internet access restricted to certain sites/ computers within office locations

- Restricted computer functionality for individual computers with limited user rights and disabled media drives & USB/printer ports
- Secure individual computers with PC firewall & antivirus protection
- A paperless office. No paper or writing instruments except as necessary for the project and only those provided by the LPO
- If not a paperless office, paper should be shredded and writing instruments collected at the end of each work session

SUMMARY

Inherent in both firm-based and in-house attorneys' decisions to outsource legal work is a conveyance of trust to the LPO. The support an LPO provides to counsel entails more than just the work. Unlike other business outsourcing functions, mistakes in the form of breaches of confidentiality are not easily rectifiable. It is vital for an LPO to proactively acknowledge counsels' ethical obligations and institute comprehensive systems to protect client confidentiality.

6 THE LEGAL OUTSOURCING MARKET

While the Legal Process Outsourcing sector is relatively young, it is growing quickly and projected development is dramatic – increasing from a market size of \$146 million in 2006, to \$640 million in 2009, to a conservatively estimated \$2 billion for the United States alone in 2013 (*according to American Lawyer Magazine, Dec. 2008*). Add to the equation U.K. lawyers, who have embraced legal outsourcing more quickly than their U.S. counterparts, and the market size is expected to increase another billion dollars in the next few years.



Legal Process Outsourcing is a business segment within the Knowledge Process Outsourcing (KPO) industry, and the primary market driver is cost control, with the labor arbitrage providing savings of nearly 80% over work done solely by United States attorneys. But other advantages include the efficiency of a 24-hour work force, as well as the quality assurance provided by United States based managing attorneys at the LPO.

In the first opinion issued by the ABA regarding legal outsourcing, the nation's largest bar association not only allows for legal outsourcing but commends the trend as a "salutary" one for a globalized economy (*ABA Opinion 08-451 pg. 2*).

The combination of savings and efficiency in a global marketplace has convinced companies across a range of business sectors to incorporate LPO into their overall legal strategies. These corporations include General Electric, Microsoft, Sony, Motorola, Sun Microsystems, Du Pont, Accenture, and many more.

The market for LPO is not, however, confined to multinational general counsel. Large law firms enjoy strategic cost containment by utilizing LPO as “virtual associates”, executing more redundant, “commoditized” work on an as-needed basis. Small and mid-sized law firms turn to LPO for scalable and timely support from either a dedicated fulltime attorney or on a project-based arrangement.

With the current global market size for all legal services at \$250 billion, there isn't an industry segment that can't benefit from strategic use of Legal Process Outsourcing.

CASE STUDY
PREPARING DEPOSITION SUMMARIES

Challenge: A large automotive company ('company') is made defendant in a class action. The class claims damages from the company for asbestos exposure while at work. Some of the class members are employees of the company, whereas others are not direct employees of the company. The company wants to avoid paying damages to those class members who were not its employees or who have made fraudulent claims against the company. As trial approaches, the legal department of the company along with retained counsel face the task of summarizing over 18,000 pages of deposition transcripts in a short time-frame. The company lacks the required resources to complete the task efficiently & cost effectively.

Solution: The company's legal department contacts LegalEase Solutions and details the case background and requirements. The company requests an in-depth summarization of the depositions. LegalEase Solutions takes over the work and gets it done:

- Understands the volume of work and the timeframe to complete
- Identifies the number of resources needed to timely complete the summarization task
- Prepares guidelines based on LegalEase Solution's internal best practices and the client's specific requirements
- Divides the depositions amongst the resources
- The resource personnel understand the client's requirements and produce a line-by-line thorough summarization
- Two resource personnel do a quality check before it is sent across to the U.S.
- A U.S. attorney does a second round of quality checking before sending the work to the client

Conclusion: LegalEase Solutions prepares a timely summary which meets the requirement and quality standards of the client.

Using LegalEase Solutions, the company reaps these benefits:

- Savings of over \$36,000 on this project
- Advantage of a double quality check (in the US and India)
- Freeing up of the legal department and retained counsel's time to focus on more pressing aspects of trial preparation

8 CASE STUDY PREPARATION OF MOTIONS

Challenge:

A large automotive company ('company') is made defendant in a class action. The class claims damages from the company for asbestos exposure while at work. Some of the class members are employees of the company, whereas others are not direct employees of the company. The company wants to avoid paying damages to those class members who were not its employees or who have made fraudulent claims against the company. The company gets sued in various state courts and needs a cost effective and efficient way to respond to these lawsuits, and when appropriate, seek summary dismissal of these lawsuits

The company's needs include:

- Reviewing the lawsuits filed in various state courts
- Preparing answers to lawsuits based on the company's standard legal and factual positions
- When appropriate, drafting Motions for Summary
- Judgment after reviewing discovery materials including deposition transcripts, interrogatories, and other relevant documents

Solution:

LegalEase Solutions assigns staff attorneys to the automotive client to read all incoming lawsuits, and prepare answers and Motions for Summary Judgment as appropriate. These pleadings are then reviewed by the company's outside counsel and ultimately filed by the relevant outside counsel.

Conclusion:

Using LegalEase Solutions, the law firm reaps these benefits:

- In 2008, LegalEase drafted over 150 Answers to Complaints; 10 Motions for Summary Judgment/Adjudication and 9 Deposition Summaries consisting of over 10,000 pages of deposition testimony
- Savings of over 50% on this project, when compared to the cost of doing this purely through outside counsel

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