

Effective Budgeting: Managing Expectations and Aligning Case Strategy, Objectives and Financial Constraints

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Look around other areas of your company, and you will find different approaches to budgeting – most of which are accurate and flexible enough to respond to changing circumstances. Budgeting for sales, production and other initiatives involve known quantities and variables with historical precedent: Accuracy has improved over time based on overall market or industry trends, evaluation of historical results and well-developed budget management workflows.

Quite the opposite is true when it comes to legal matters. A great deal of inherent volatility exists, based on the actions taken by a few individuals (your team, the judge and the opposition), as compared with countless market participants determining the price of a product or raw material. Just as the objective of manufacturing budgeting is to estimate the timing, level and cost of production in response to market conditions, effective legal budgeting presents the challenge of aligning case strategy and objectives and with financial constraints. Your team can achieve this by focusing on certain critical success factors: Employ the right level of budgeting; identify measurable and manageable cost drivers; and ensure that effective and efficient workflows for creating and monitoring budgets exist.

Selecting the Budget Level

One constraint on selecting the budget level may be your system's capability for tracking actual costs. Consider the value of budgeting at a level for which actual data will have to be summarized, grouped or otherwise manipulated for meaningful comparisons. Incorporate this into any decision regarding the following three budgeting options.

A summary budget involves estimating lump sum costs on a monthly basis. While it is easy to implement and monitor, there is scant information that one can observe from outcomes: Why were we over or under budget? How can we apply this performance to future cases? Summary budgets have their limits, as they afford no way of monitoring spend and linking it to case results, and they are rarely accurate, given matter intricacies.

On the other end of the spectrum is the detail level, where one estimates rates, hours and costs for every task, activity and expense. This level provides the most granular view into the relationship among drivers and spend. Remember, however, that the more detailed the budget, the more effort must go into managing and monitoring it. A detailed budget that cannot be changed quickly in response to the judge's schedule or shifting strategies and tactics is of little use. This can quickly become a staff exercise that consumes resources that otherwise could be dedicated to favorable matter resolution.

The third option for budgeting is the hybrid level. As with the detail method, the hybrid approach links case strategy and financial constraints by integrating the judge's schedule and the opposing counsel's perceived strategy with rates, hours and expenses. However, active budget management is applied to only the 20% - 30% of areas that comprise the majority of spend. For example, it is no secret that discovery activities typically dominate complex case costs. Combine this with other high-spend areas based on experience with similar cases (e.g. pretrial pleadings and motions), and you have likely

identified about 70% - 80% of anticipated spend. These are the areas where you would actively and manage detail-level budgeting. Other relatively routine tasks and activities should be budgeted at the same level, but passively monitored unless circumstances dictate otherwise.

Identifying Cost Drivers

Having selected an appropriate budget level, our attention turns to identifying the correct cost drivers. One might conclude that rates, hours and expenses should demand the focus. These items are not drivers, but rather cost components of matter spend: Although they can be measured, they cannot be effectively managed in and of themselves. Accurate budgets instead focus on what *drives* each of them. Consider rates: Even if you know which partners, associates, legal assistants and other timekeepers will be working on the matter, do you have clearly outlined roles and responsibilities for each that will help determine overall labor mix? Should only partners or associates attend hearings, or should combination of both attend? What actions taken by the judge or opposing counsel would change this mix? Apply the same approach to hours: How many witnesses will each side depose, and what is the average deposition duration? If the judge extends discovery, will the timing and number of depositions change? What might cause more time to be spent on certain elements of the case? With respect to expenses, consider the venue/ jurisdiction and the number of trips taken for hearings, meetings and other events. Estimate other significant items like document production and hard drive cloning in the same manner.

Establishing Workflow and Defining Business Rules

The famous 19th century German military strategist, Field Marshall Helmuth von Moltke wrote, “No battle plan survives contact with the enemy”, and case management plans are no different. Strategies and tactics can change with a moment’s notice, at which point the initial budget is instantly outdated. Revisiting the budget may seem like turning a battleship with a canoe paddle, even if you are budgeting at the hybrid level (the “80-20” rule) discussed earlier. This is where a clearly defined and transparent budget management process can save valuable time and resources in response to ever-changing matter developments. While a full discussion on workflow is beyond the scope of this article, consider the following when evaluating your ability to adjust the budget in a timely manner:

- *Involve the right people.* Involve not just the partner-in-charge and internal staff responsible for implementing changes, but also your CFO or comparable financial liaison, in order to foster communication and improve expectation management.
- *Agree on triggers.* What justifies a budget change? Are there certain events or conditions that warrant a budget recast (e.g. a strategy shift from discovery to claim construction) vs. relatively minor adjustments (the judge moving a hearing back one month)? Get everyone’s agreement on the nature, timing and extent of such triggers so that you can apply the appropriate resources in a timely manner.
- *Define roles and responsibilities.* Identify who is responsible for making budget changes in response to your discussions with outside counsel, who reviews them and who communicates those changes to all stakeholders. Equally important, clearly define the timing of each of these tasks. It does no good if the budget changes without timely communication.
- *Establish clear lines of communication.* The majority of your discussions with outside counsel will appropriately focus on case subject matter. However, establish a standing meeting or conference with outside counsel to discuss case progress relative to financial constraints. It is also a good

idea to issue a standard, summarized budget vs. actual report to all stakeholders in order to consistently communicate and manage expectations.

- *Consider your system capability.* Evaluate the ease with which information on actual spend for a similar matter can be extracted from your accounting or cost management system. As stated earlier, it is important to determine whether your systems for processing invoices and tracking actual spend will permit an apples-to-apples comparison to budget. If your budgeting level is too summarized or detailed relative to your system's capability for tracking actual spend, more time will be required to reorganize data for accurate and meaningful analysis.

Upfront planning on these workflow elements will help ensure timely responses to changing circumstances.

While you control only one-third of the litigation process – the judge controls the timing and the opposition controls the intensity – you can successfully establish and manage accurate budgets and forecasts by considering the budget level, cost drivers and workflows. Doing so will help your team manage expectations and align case strategy, objectives and financial constraints.

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