Negotiating Outside Counsel Guidelines

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Introduction to Outside Counsel Guidelines (OCGs)

Definition of OCGs

Guidelines v. Rules

Impact on law firms and legal departments

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Develop, Monitor, and Iterate

Living document

Revisit regularly with the client

Incorporate into law firm engagement letters

- This means to maintain OCGs independent of engagement letters, but incorporate by reference

Compliance Enforcement

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Common Elements in OCGs



- Billing rates and discounts; prohibited expenses reimbursements; billable hours per day; research parameters; fee earners participation; training
- Staffing requirements and restrictions; resourcing; diversity; administrative support services
- Formats and forms; budgets; communications
- Client identification; Compliance and reporting obligations; conflicts of interest
- Confidentiality and data security

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How are OCGs Enforced?



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Invoice Review

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Why Negotiate OCGs?

Avoid	Avoid unfair or overly restrictive terms
Ensure	Ensure profitability and efficiency
Maintain	Maintain strong client relationships

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Key Negotiation Strategies

Understand	Identify	Leverage	Build
Understand the client's priorities	Identify dealbreakers vs. flexible terms	Leverage industry benchmarks	Build a case with data and precedents

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Common Challenges and How to Overcome Them

- Strict billing guidelines (e.g., no first-year associates, rate caps)
- Unreasonable invoice rejection clauses
- Overly broad indemnification clauses
- Unrealistic deadlines and reporting requirements
- All affiliate provisions
- Conflict provisions
- Data and security; technology demands
- Artificial intelligence provisions
- Applicability to terms to legal services vs. standard subcontractor terms
- Other terms and conditions that are abnormal

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Best Practices for Negotiation Success

Communicate	Offer	Document	Review and update
• Communicate early and clearly	• Offer alternative solutions	• Document changes and approvals	• Regularly review and update agreements

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Example OCGs (Brightflag Article)



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Final Takeaways



OCGS ARE CRITICAL BUT NEGOTIABLE



BALANCING COMPLIANCE WITH FIRM SUSTAINABILITY



BUILDING TRUST AND COLLABORATION WITH CLIENTS

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