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### Should Small Firms Get on Board With Outsourcing?

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Small Firm Business  
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Some attorneys swear by it: offshoring legal work to India. But is this growing practice just a passing fancy, or is it an effective way for law firms to take a step towards gaining a competitive advantage?

For Ted Sabety the answer is pretty clear. "Law firms need to get on the [outsourcing] train," he says, or they'll get left in the dust. He feels that the ability of firms to pass along savings from the reduced costs for more junior-level legal work is an important competitive advantage. And who knows if another business trend will come along to provide firms with a similar cost saving opportunity for their clients?

The principal of an eponymous three-attorney technology and electronic-media law firm in New York City, Sabety outsources some of his firm's first-year associate research tasks to lawyers in Hyderabad, India. His is a business model that's about striking a balance. He and his colleagues provide the services that attract the clients -- performing analysis, constructing arguments, handling negotiations, etc. At the same time, junior-level legal work is sent overseas to English-speaking, common-law trained lawyers.

"If I hired someone full-time to do the work here, it would require substantial pay, overhead and training," he says. What's more, Sabety says that he gets a quality of work that's equal to that of junior associates here in the United States, yet at a bargain price. Even accounting for the time required to double-check the final work product of the Indian lawyers, he says the savings are significant. Witness that a competitive Indian attorney makes about \$12,000 a year according to Puneet Mohey, founder of Lexadigm Solutions, a legal outsourcer based in Grandville, Mich. That's far less than the \$65,000 average of U.S. first-year associates in small firms.

Sabety is not a lone trailblazer. In 2004, an estimated 12,000 legal jobs were sent offshore according to research by the U.S. Bureau of Labor Statistics and technology consultant Forrester Research based in Cambridge, Mass. The same research predicts that number will rise to 79,000 by 2015. Most of these jobs are expected to be legal research and document production and preparation.

Aside from the quality and low cost, attorneys tout the advantages that the time difference provides. For example, time in Bangalore is 10 1/2 hours ahead of Eastern Standard Time, making nearly 24-hour client service available. So an attorney can send out an assignment at the end of the day and possibly have the finished project in the morning.

But the practice of offshoring legal work is in its infancy, and small firm practitioners need to address some issues: What additional safeguards must be in place to ensure quality and confidentiality? What might the legal and ethical pitfalls be?

#### QUALITY CONTROL

Ask the outsourcing companies and the lawyers who use them about how they can ensure the quality of the work done in India, and there is a hint of offense taken. The barriers aren't as high as one might think: The Indian legal system is grounded in the traditions of British common law; Indian legal education is conducted solely in English; and Indian legal opinions are written in English. Nevertheless, the legal and language kinship between India and the U.S. is not the end of the inquiry. Here are some additional quality control measures:

**Look for ties to the U.S.** Make sure any outsourcer that you are considering has a physical presence in the U.S., thereby giving you recourse in U.S. courts should something go wrong.

**Be sure there's a thorough vetting of employees.** Outsourcers should be screening their employees thoroughly, whether they're to undertake legal or more clerical work. For example, in 2000 when Abday "Rocky" Dhir, founder and president of Dallas-based Atlas Legal Research, went to India to hire employees, he began by knocking on deans' doors at India's top law schools -- including the National Law School of India University and Bangalore University Law College -- to rustle up the candidates and screen them himself.

Similarly, in the spring of 2005 when Royal Oak, Mich.-based Contract Counsel decided to expand abroad, president David Galbenski spent months recruiting and investigating more than 100 Indian- and Sri Lankan-based legal outsourcers before selecting the final handful he would deal with.

The process Contract Counsel used was rather formal. It hired Minneapolis-based Renodis, a global outsourcing consultant with offices in Chennai and Mumbai, India. Renodis managed Contract Counsel's request for information (RFI), the initial phase of which involved sending outsourcers a questionnaire. Contract Counsel then selected outsourcers for an initial 30-minute teleconference. The final phase consisted of on-site visits and interviews with the executives and attorneys working for the outsourcing companies.

**Require a high level of training and education.** Make sure that Indian staffers have a legal education and/or work experience -- whether in the U.S. or in India. Also inquire about what training the outsourcers give their Indian-educated workers to familiarize them with U.S. law. New York City-based offshorer Quislex, for instance, gives its Indian employees two weeks of initial training on the basics of American law, ethics, drafting, dialect and writing. After that, training sessions are weekly.

**Ask for references.** Speak with clients who will discuss their experiences and ask around to see what else you might learn.

**Confirm that there's adequate supervision.** Before any work comes back, it should be checked by at least one U.S.-trained attorney. For example, at Lexadigm Solutions, Mohey -- a 2003 graduate of the University of Minnesota Law School -- supervises the work of his Guragon, India-based employees or hands the task to his partner, Zachary Bossenbroek, a 2002 graduate of Wayne State University Law School.

Also make sure there are several layers of supervision. There's no magic number; just get comfortable with the depth of the process. Take Atlas Legal Research, which uses five tiers, starting with an associate in India who completes the assignment. From there the work is checked by Sanjay Bhatia, the company's head of operations in India; then by a U.S.-based and trained attorney; followed by a U.S. paralegal; and finally by Dhir himself, a 1999 University of Michigan Law School graduate.

Document production checks should be reviewed by a statistical sampling. Because document productions can approach thousands of pages, reviews are done by statistical sampling where usually 60 percent to 75 percent of the pages are checked at least twice. This is the system that Quislex uses.

**Closely review the work.** Though there may be several layers of supervision, it's still imperative to meticulously double-check the work. For example, IP attorney Sabety maintains close interaction with the Indian researchers working on his projects. He says that he reviews the databases used, asks for the exact queries and reads and assesses every case cited -- managing the researchers just as he would any first-year associate.

## PROFESSIONAL RESPONSIBILITY

It's routine for non-lawyers to play supporting roles in the practice of law. But it's a safe bet that attorneys practicing in India are not licensed here. So it's important to be mindful of not inadvertently abetting the unauthorized practice of law. Unfortunately, the line demarcating unauthorized practice varies widely. "It's more like a blurry smudge than a line," says Mary Daly, legal ethics expert and dean of St. John's University School of Law in New York.

Ten or 15 years ago when domestic companies started popping up to provide contract attorneys, legal academics and state bar officials screamed that the service was per se unethical. But all the shouting fell by the wayside when no one made an issue of the practice. Daly thinks there's a good chance that offshoring legal work will also fade as an issue of contention.

She believes the pivotal question is whether anyone is being hurt by the practice.

"There's no such thing as a national association of [law firm] associates to file a complaint," she says. "I don't think the state bar disciplinary committees are going to want to be involved in the issue because they have limited resources."

So what kind of tasks can you outsource and what kind should you keep in-house? The answer ultimately depends on the complexity of the work and the extent of supervision.

Most lawyers who outsource, and the vendors who offer the services, discourage outsourcing activities that involve legal analysis, ultimate judgments, and negotiations or intense client interaction -- services that would probably qualify as the practice of law in any state.

For example, Lexidigm's Mohey describes the parameters within which Lexadigm will operate. He says that it wouldn't be appropriate to have a foreign attorney draft a contract from scratch; but it would be appropriate if terms have been established and the Indian attorney drew up an initial draft that would then be thoroughly massaged, edited and reworked by the U.S. attorney.

Mohey also considers it safe to have his staff write objective memos of law, assessments of the strength and weaknesses of fact and persuasive memos that can be turned into a brief.

Going one step further, Atlas's Dhir insists that legal research and writing, no matter how complex -- an entire federal appellate brief, for instance -- can be outsourced. Dhir says that what keeps it from being an unauthorized practice is the extent of supervision. "Summer associates draft these kinds of briefs all the time," says Dhir. Another area that's commonly outsourced is litigation support tasks, such as document reviews and indexing. Here you'd be getting an educated attorney to do tasks usually performed by paralegals or junior attorneys but for far less than it would cost in the United States.

## **APPROPRIATE PROJECTS**

What work can be performed offshore also depends on your comfort level with its complexity and laws governing compliance in the subject area. For example, Ian Kelley of the four-attorney real estate and securities firm Lee & Kelley in New York City, uses Quislex to perform basic legal research on compliance with SEC rules and state laws relating to hedge funds.

Work for some of Quislex's other clients includes drawing up commercial lease summaries. Its staff in Hyderabad also drafts certain securities transaction documents, such as debenture purchase agreements and merger agreements. The law firms supply standardized documents and the agreed-upon terms.

Two areas in which experts say attorneys looking to offshore legal work should tread carefully are patents and immigration law. Patent research is actually a popular area to outsource, but liability for mistakes can be very high and the U.S. regulates what kind of technology information can be shipped abroad.

For example, Jonathan Osha of the Houston-based IP boutique Osha Liang warns that you could be exporting technology without a license. He recounts a time when a drafter he had hired to do drawings for some patent applications, subcontracted the work to an outfit in India. The technology in this case was not regulated, but it could have been.

Osha says, nonetheless, that offshoring patent work is very tempting because a draft patent application that would cost \$10,000 in the U.S. would cost only \$4,000 to \$5,000 in India.

Conversely, Sabety will not use an offshore outsourcer to work on patent applications under any circumstances -- particularly for smaller companies. The risk of error is not worth the savings. "If there's a limitation on the application that renders the patent worthless, then the client -- and thus the lawyer -- are really up the creek," he says. Possibly to the tune of tens of millions of dollars.

The problem with outsourcing immigration law work is that administrative rulings and advisories are issued frequently and are not usually included in online databases such as Lexis.

The concern is echoed by Angelo Paparelli, principal of Irvine, Calif.-based immigration law firm Paparelli & Partners, and a member of the SFB editorial advisory board. Paparelli is currently considering foregoing an outsourcer and hiring Indian attorneys directly to do research and writing. If he does hire Indian lawyers, he'll need to deal with a raft of Indian laws -- labor and tax, among others. But he considers this safer than trusting the supervision of outsourcers in this area of practice.

## **SECURITY AND CONFIDENTIALITY**

It's important to take additional safeguards to protect client confidences. One way, according to Sabety and Kelley, is to ensure that no confidential information is shared -- i.e., don't send documents or assignments abroad that contain facts or statements that could identify the client. For issues that require some kind of factual background, the attorney might add hypothetical situations that steer the researcher in the appropriate direction. Sabety does not send any information abroad that could reveal the identity of the client unless he has the client's express authority.

Of course such privacy isn't possible in document reviews or specific contracts. Whatever the case, you should take steps to ensure that the work is not disseminated by the researchers themselves, is not vulnerable to hackers or could be accessed by unauthorized parties. Most importantly make sure that the outsourcer commits to maintaining confidentiality in your service contract.

Some of the technology measures to make sure that your outsourcer is utilizing include: use of a virtual private network for connecting servers; firewalls and 128-bit encryption to keep out hackers; controlled access to data -- this can be done through password protection; and no local caching of data, which basically means that the lawyers abroad cannot store the material on their own hard drives.

## THE QUESTION OF ETHICS

The legal and ethical guidelines with respect to offshoring legal research haven't been clearly defined. According to ABA spokesperson Nancy Slonim, the ABA Standing Committee on Ethics and Professional Responsibility is currently studying such ethical issues.

Aside from the unauthorized practice of law and inadvertently divulging confidential information, ethical issues include waiving the attorney-client privilege and the obligation to disclose to the client that you're using foreign workers.

An attorney probably has an ethical obligation to disclose the use of foreign staff performing legal work, especially if a vendor is used as an intermediary between the firm and foreign workers, writes professional responsibility expert Mark Tuft in *Offshoring of Legal Services: An Ethical Perspective on Outsourcing Abroad*, a paper he presented to the ABA's Fall 2004 National Legal Malpractice Conference.

Tuft, an attorney with San Francisco's Cooper, White & Cooper, bases his opinion on two ABA proclamations: An attorney has a duty to keep a client informed of the progress of the case; and an ABA formal opinion obliging an attorney to report the use of temporary attorneys if the temp is not working under close supervision of the attorney at the attorney's firm, and if the client would reasonably want to know if temps are working on their matters.

Ultimately, outsourcing legal work to attorneys in India could help your firm cut expenses, or even help improve responsiveness to clients by relying upon the additional manpower abroad. But the decision should be approached with eyes wide open. It's not a decision that's purely about delegation. On the outsourcing train ride, you'll have to do some work -- it isn't about kicking back and enjoying the scenery.

## OFFSHORE PRICING

- [Contract Counsel](#) Specialty: Document reviews, contract compliance and drafting Pricing \$30 to \$90/hour (offshore only; not prices for domestic staff)
- [Lexadigm](#) Specialty: Legal research, patent projects Pricing: \$60 to \$80/hour (legal research), \$75-\$95 per hour (patent projects)
- [Quislex](#) Specialty: Legal research and writing, litigation support Pricing: \$20 to \$60/hour
- [Atlas Legal Research](#) Specialty: Legal research and drafting legal documents Pricing: \$60 to \$80/hour