

MEMORIAL SLOAN KETTERING CANCER CENTER GUIDELINES FOR OUTSIDE COUNSEL

Overview

Memorial Sloan Kettering Cancer Center (MSK) is a not-for-profit hospital and research institution known throughout the world as the leading and oldest health care facility dedicated exclusively to the treatment and cure of cancer.

MSK desires to promote a working relationship with outside counsel based upon trust, collaboration and mutual respect. MSK's in-house attorneys and outside counsel will work together to: 1) provide high-quality legal services; 2) use resources efficiently and responsibly to create maximum value; and 3) achieve cost-effective case and matter management. These guidelines are applicable to all MSK matters absent express agreement or instruction from MSK to the contrary, and MSK reserves the right to periodically update and circulate revised guidelines. Each firm should provide a copy of these guidelines to all attorneys, legal assistants and invoicing staff assigned to an MSK matter before work begins. MSK requires outside counsel to devote the time and skill level appropriate to the tasks at hand and to be accountable for cost-effective management of the matters entrusted to them. MSK requires that all fees, costs and disbursements be reasonable. Finally, MSK requires that outside counsel comply with the rules of professional conduct and with the highest ethical standards.

These guidelines are effective for all legal services rendered on or after January 1, 2017.

Engagement

MSK engages outside counsel only through the Office of General Counsel (OGC); no other office or individual within MSK is authorized to retain counsel or authorize work performed by outside counsel. If approved by OGC, specific engagements may be directed by MSK employees outside of OGC.

Prior to beginning any significant work, outside counsel must come to an agreement with the responsible MSK attorney on the scope of the engagement and the compensation arrangement. This agreement should be in writing, usually in the form of an engagement letter.

If outside counsel is contacted by the press about any MSK engagement, he/she should consult the responsible MSK attorney who will advise outside counsel on how to direct such inquiries.

Budgets

Given our nonprofit structure and the challenging nature of the healthcare reimbursement environment, it is essential for MSK to be able to reliably predict the costs of legal services. MSK expects outside counsel to make every effort to provide optimal legal services in the most cost-effective manner possible.

For any matter for which the expenses are anticipated to total or exceed \$25,000, the responsible MSK attorneys and outside counsel should agree on a budget for the engagement. For some matters, the MSK attorney may require a work plan from outside counsel. Both the budget and the work plan should be based on agreed-upon assumptions about the nature and proper handling of the matter and must reflect realistic projections of fees and expenses for all reasonably anticipated tasks. The MSK attorney and the responsible attorney from the outside firm should conduct a periodic review of progress on the matter in relation to the budget.

Absent a material change in the scope of the engagement, for which counsel must provide MSK advance notice, actual fees for all tasks related to the engagement should not exceed the projected budget. Outside counsel is responsible for requesting a revision to a projected budget before fees are incurred in excess of the budget.

Conflicts of Interest

Legal and Business Conflicts

Although MSK retains individual attorneys within a firm, it considers the activities of all firm members in determining whether an unacceptable conflict of interest exists. With regard to any proposed representation, MSK requires outside counsel to disclose prior to the beginning of the engagement the nature, extent and current status of all representations by any member of the firm of any party adverse to MSK or one of its affiliated entities, including the firm's representations involving issues unrelated to the proposed engagement. Once MSK retains an attorney, no member of the firm may represent the party in a matter adverse to MSK or one of its affiliated entities during the engagement unless a waiver of the conflict is granted. If the firm becomes aware of a conflict or a potential conflict subsequent to the engagement, the responsible MSK attorney must be informed immediately to seek resolution of the matter. Outside counsel are also expected to disclose business conflicts with MSK or its affiliates that do not rise to the level of a legal conflict when the outside counsel may reasonably expect that the business conflict would be material to MSK's decision to retain counsel.

Waivers

Requests for waiver of potential or actual conflicts of interest will be considered on a case-by-case basis. MSK will not provide blanket or prospective waivers. Waiver requests should be directed to the MSK attorney responsible for the matter on which the waiver is sought. Any waiver granted by MSK will be conditioned on counsel's other client providing a written agreement that it will not object to counsel's continued ability to represent MSK on existing and future matters.

Staffing

Because MSK expects that the attorneys retained will provide legal services in the most efficient manner possible, work should be assigned to those firm attorneys with the lowest billing rate who are appropriate for the assignment. MSK may request information concerning the professional experience and background of each attorney and any other timekeepers who will be working on a matter.

MSK ultimately decides how a particular matter should be handled. Outside counsel must obtain MSK's prior approval before undertaking substantial legal research projects, drafting significant documents or engaging in motion practice. All research memoranda, substantive documents and other work product generated in the course of a representation is MSK's property and upon request shall be supplied promptly to MSK, preferably in electronic format.

Because MSK pays for an attorney's time spent researching a matter, MSK will not pay for computer research charges. Outside counsel should not bill MSK for drafting documents or conducting research previously generated for MSK or other clients.

Billing

MSK expects outside counsel to bill monthly, within 30 days of the close of the month, and to provide timely, informative billing summaries (based on the type of billing arrangement negotiated) that will expedite the review process. MSK will not accept invoices for matters closed 60 days past the final disposition date or for matters with time entries more than 90 days old. Expert invoicing should be submitted no later than 45 days after the expert activity has occurred.

MSK requires the submission of invoices via its electronic supplier portal. Unless MSK grants a waiver, payment will only be made on invoices received through this authorized method. MSK requires 45-60 days for processing payments from the invoice date; outside counsel should bear this time frame in mind and provide MSK with adequate notice when requesting payment before the close of their firm's fiscal year.

Every matter should be billed on a separate invoice, and reflect all services provided during the month. Each invoice should specify the following:

- MSK contact who commissioned the legal work;
- Title of commissioned work;
- Name of the person[s] who performed professional services;

- Discrete tasks billed separately in 0.1 hour increments, with the corresponding time spent;
- Task descriptions detailed enough that a person unfamiliar with the matter can understand the task performed and ascertain the benefit from such service;
- Separate itemization of disbursements;
- Hourly rate for each attorney/legal assistant; and
- Total fees and expenses due.

Outside counsel should take reasonable steps to minimize the costs and disbursements charged to MSK. All permitted costs and disbursements, including but not limited to filing fees, witness and service fees and court reporting services, should be billed at actual cost without markup. Photocopying will be reimbursed at a rate not to exceed \$.05 per page for black and white copies or \$.10 per color page. Email should be used whenever possible and every reasonable effort should be made to avoid unnecessary use of express mail and delivery services, except when necessary for document filing or execution, or if requested by MSK.

Outside counsel and expert witnesses should also adhere to the following, which reflects MSK's Policy on Travel Reimbursement for Consultants:

- Commercial air fare: coach/tourist class for domestic and international travel and wherever practicable advance ticketing to minimize fares;
- Car rental: Should be from a car rental company that offers MSK special reduced rates.
- Lodging: Actual cost of reasonably priced accommodation. The use of hotels which provide MSK special reduced rates is encouraged.
- No professional fees may be charged for travel time, unless counsel is working on MSK matters during that time (with an exception for local travel, *e.g.*, to make a court appearance or attend a meeting).
- Receipts are required for commercial travel, car rental, parking, and lodging. Where attorneys visit more than one client on the same trip, the expenses incurred should be apportioned in relation to time spent with each client.

MSK will not reimburse outside counsel for overhead expenses, including the following:

- Office rent/utilities;
- Conference room charges;
- Equipment rental and office supplies;
- Computer software;
- Telephone charges, both local and long distance;
- Fax charges;
- Word processing;
- Clerical tasks and overtime;
- Meals and transportation home;

- Library staff and materials;
- Books, periodicals or other publications;
- Professional association and other membership fees;
- Routine postage;
- Storage charges/fees;
- Filing and file maintenance;
- IT charges (database administration, CD duplication, vendor assistance);
- Computerized tools and resources (Westlaw, LexisNexis, legal online docket services, eFiling services, subscription services); or
- The services of file clerks, data entry clerks, photocopy operators, secretaries, administrative assistants, word processors, docket clerks, computer personnel, computer support personnel, systems engineers, project coordinators, data analysts, programmers, database analysts, litigation support and similar staff.

Alternative Fee Arrangements

MSK desires where possible to avoid hourly billing charges and establish alternative billing arrangements based on agreed-upon assumptions about the nature and proper handling of the matter. We are interested in exploring with outside counsel mutually beneficial compensation arrangements, including blended rates, flat or capped fees or contingency fees. While such arrangements will be subject to modification in the event a particular matter takes an unanticipated direction, we generally expect outside counsel to abide by the fee arrangement and budget negotiated at the outset of the engagement.

For alternative billing arrangements, we will establish the terms of the billing at the inception of the matter and define those terms in the engagement letter. Invoices submitted for such arrangements should:

- Include the amount remaining to be paid under the fee agreement (if a flat or capped fee arrangement);
- Include a report of the number of hours worked and customary billing rate for each attorney working on the assignment, consistent with the guidelines above (even for flat fees or other alternative fee arrangements);
- Identify any deviation from the agreed-upon billing amount; and
- Clearly distinguish fixed fee work from fee for service work, to the extent both fixed fee work and fee for service work are included in the same invoice.

Rates and Rate Increases

MSK expects to be billed at highly competitive rates no higher than those charged to comparable firm clients for similar volumes of work. In addition, MSK requires outside counsel to discount these standard rates by 10%, such discount to be applied to each monthly invoice, for all legal services rendered. All requests for rate increases must be submitted in writing to MSK and an MSK attorney must approve the increases prior to outside counsel billing the higher rates. For partners, senior counsel and counsel not on partnership track, annual rate increases should be limited to 3%. Rates for associates and counsel on partnership track may be increased in excess of 3% to reflect additional years of experience (but such rate increases should be reasonable and such rates should not be higher than the lowest partner rate). These requirements may be waived, in whole or in part or for specific matters, if in the judgment of MSK a firm's rates are already competitive or below market for the particular expertise requested.

Business Conduct

It is MSK policy and the responsibility of its employees to conduct business affairs with the highest standards of integrity and business ethics. If outside counsel has any concerns about the propriety of MSK's conduct or business practices, they should report these concerns either to the MSK Compliance Department at 646-227-2622 or via our Hotline at 844-MSKLine . Outside counsel should abide by MSK's Policy for Interaction with Industry in all dealings with MSK and its employees, available at: www.mskcc.org/interactionwithindustry. MSK will also require outside counsel to execute a Business Associate Agreement for any engagements that involve the use of patient data or other Protected Health Information.

Performance Reviews/Diversity

MSK will conduct periodic reviews of outside counsel, which will include candid discussions on staffing, quality of services, efficiency in completing matters and disposing of cases, cost effectiveness and areas in need of improvement. These reviews also will include an open and candid assessment of whether the firm is receiving necessary information and adequate communication from MSK. We expect to have a formal annual review, but also believe this should be a continuous feedback loop in which outside counsel and MSK freely express areas of concern and develop opportunities to increase cost efficiency and effectiveness on an ongoing basis.

The annual review also will focus on outside counsel's record on diversity. MSK is committed to providing equal opportunity, in accordance with all applicable federal, state and local civil rights laws, to all of its employees and applicants for employment, and expects its vendors and contractors to adhere to the same standards. In this regard, MSK encourages the firms it retains

to hire and promote attorneys from diverse backgrounds and to assign them to significant projects, including MSK work, as appropriate and commensurate with their experience.

APPENDIX I

Guidelines for Patent Matters

As a general matter, outside patent counsel's primary responsibility is to ensure that MSK does not lose rights in any MSK inventions in its care. In the absence of instructions from an MSK attorney or Licensing Manager, despite counsel's best efforts to obtain such instructions, counsel is authorized and expected to take appropriate actions or pay appropriate fees necessary to preserve these rights.

Our business is licensing technology, not just acquisition of patents. We are interested in obtaining broad, licensable proprietary rights at a reasonable cost. Our inventions are generally early stage and require much development before they become commercially viable; therefore, our patenting expenses are MSK's "at risk" expenditures and we appreciate outside counsel's help in controlling them.

Correspondence

The Office of Technology Development (OTD) shall be the address of record for patent documents (*e.g.*, Power of Attorney, assignments, PCT and foreign patent applications):

Memorial Sloan Kettering Cancer Center
Office of Technology Development
1275 York Ave.
New York, NY 10065

All correspondence should be by e-mail only and all office actions and documents requiring signature(s) should be sent directly to the appropriate signatories. Assignment and inventor declaration forms should be sent directly to the inventors, with electronic copies to OTD at otd@mskcc.org. Outside counsel should not use assignment forms that require notarization.

All patent-related correspondence should be copied to the appropriate Licensing Manager and otd@mskcc.org. The email subject line should include the MSK docket number, patent serial number, and type of attachment (office action, application, etc.).

Example: SK2014-023-01 Notice of Recordation - File Copy

In the event that the serial number has not been assigned, the attorney reference number can be substituted. The attachment should have an identifying filename, such as:

SK2014-023-01_Declaration.pdf

The inventors of MSK technologies should be copied on all incoming and outgoing patent mail. In the case of office actions and references, please communicate directly with the inventors unless otherwise stipulated, copying at all times otd@mskcc.org and the Licensing Manager. Outside counsel engaged to prepare and/or file an application should provide the Licensing

Manager and inventor(s) ample time to review and comment on the applications prior to the proposed filing date.

Once issued, outside counsel should send an electronic copy of the patent and should not order hard copies from the Patent Office, but unless otherwise stipulated, should send the blue-ribbon original patent. At no time should outside counsel send a Chapter II demand notification for PCT. MSK will not pay for routine correspondence or status inquiries to the Patent Office and does not need to receive Routine Reissue Reminders or Office Action Summaries.

Estimates and Budget

A proposed estimate of fees and other patent expenses must be submitted to the Licensing Manager before commencing with patent preparation. This estimate should include a dollar amount, time frame, the non-clerical personnel expected to work on the matter, and an outline of patenting strategy. If the estimate changes after reviewing the disclosure, discussing the invention with the inventor(s), or reviewing the prior art, please notify otd@mskcc.org and the Licensing Manager. Consistent with the general guidelines above, counsel is expected to stay within estimated expenses and to inform OTD promptly if these estimates change. Reported estimates should reflect the “best possible budget” for the work.

As with other outside counsel, MSK encourages patent counsel to submit proposals for flat fees and other alternative fee arrangements.

Outside counsel should spend a maximum of four hours to prepare and respond to an office action; additional time must be approved in advance by the Licensing Manager.

No work on MSK inventions, whether patent-related or not, can be authorized without explicit approval by a Licensing Manager or OTD attorney. Each inventor must be queried regarding her/his contribution to the invention at the appropriate time to determine proper inventorship.

Billing

There should be separate invoices for each Licensing Manager, who should receive one invoice per month with all matter numbers listed and expenses sorted by matter number. Invoices must include the MSK reference number (i.e., MSK Docket xxx- xxx), with one docket billing per invoice.

If a licensee is directly responsible for all patent expenses pursuant to a separate agreement, outside counsel must inform MSK within 90 days of the licensee’s delinquency on payment. Otherwise, MSK will not be responsible for those expenses.

MSK’s patent policy provides that inventions conceived or reduced to practice in the course of employment responsibilities at MSK, or with use of MSK resources, must be assigned to MSK. If an MSK employee requests a filing that is not assigned to MSK, outside counsel should advise the employee to contact OTD directly for clarification of title, in order to avoid any conflict of interest.

Government Sponsorship

Most MSK inventions are government-sponsored and require acknowledgment of same. All patent applications for government-funded inventions must contain the following language:

“This invention was made with Government support under contract ##### awarded by (agency name). The Government has certain rights in this invention.”

Mistakes or changes in the sponsorship of the patent application can result in a substantial administrative impact and must be promptly brought to OTD’s attention. Incorrect language should be corrected at no charge to MSK.

Dual Representation

Should an MSK licensee wish to hire outside counsel for its own patent prosecution or IP strategy advice, in the absence of an express waiver from MSK, outside counsel should decline the representation or end the engagement with MSK.

APPENDIX II

Guidelines for Healthcare Professional Liability/Professional Disciplinary Matters

MSK values prompt identification of meritorious claims to facilitate efficient and effective disposition, and requests a realistic claim assessment for review by MSK's Claims Committee that includes: an apportionment of liability between MSK insureds and any co-defendant(s); settlement value; sustainable verdict value; and likelihood of success if the case is tried.

If MSK extends settlement authority, outside counsel should pursue settlement negotiations expeditiously. Please request settlement authority on a timely basis and not on the "eve of trial" or the day before a settlement conference. All monetary demands should be immediately communicated to the MSK attorney along with advice if the insureds' exposure might exceed the MSK primary policy limits. From time to time outside counsel may be requested to provide information to MSK excess insurance carriers; the MSK attorney and legal assistant should be copied on all such correspondence.

Meritless claims will be vigorously defended, with the goal of completing discovery as swiftly as possible to avoid unnecessary fees. Outside counsel should then contact MSK's insureds, in writing and by phone, no later than one week of case assignment.

Reporting

As described below, outside counsel should submit reports to the responsible MSK attorney and legal assistant in the course of the engagement. All reports should be sent electronically and, where indicated, use the forms described below. MSK will provide these forms to counsel.

- A. Attorney Report – Form A: to be submitted within 180 of assignment and updated one month after the Note of Issue is filed.
- B. Attorney Outline – Form B: to be submitted at the completion of discovery (or no later than one month after plaintiff has filed a Note of Issue). The MSK attorney will advise if a Form B is required for the Claims Committee meeting. The outline does not need to be updated absent a specific request from the MSK attorney.
- C. Reporting Throughout Discovery – Form C: to be provided every 90 days. Specific discovery requests should include pertinent information such as deadlines and/or copies of records to facilitate retrieval of requested information.
- D. Reporting 30 Days before Trial –Form D: to be submitted no later than 30 days before trial is scheduled to commence or for Claims Committee meetings.
- E. Claim File Documentation: the following items should be submitted upon receipt: 1) bills of particulars; 2) deposition mini-transcripts; 3) pertinent medical records; 4) memoranda of law and 5) summary judgment motions and non-boilerplate motions.

- F. Deposition Reports: to be submitted within 30 days of the deposition along with a copy of the mini-transcript. The report should highlight significant testimony related to the identified liability and damages issues. Full narrative reports will not be reimbursed.
- G. Medical Records: within 60 days of case assignment, a chronology of the pertinent medical records and a brief summary of pertinent medical facts that relate to the identified liability and damages issue(s) should be provided. Thereafter, counsel will provide an updated chronology upon receipt of additional pertinent medical records. Copies of pertinent medical records and specifically requested radiographic films should be forwarded upon receipt.
- H. Reporting During Trial: an MSK attorney or legal assistant will monitor the trial whenever possible. Otherwise, trial counsel should contact the MSK attorney managing the case daily to provide pertinent updates and current case evaluation.
- I. Calendar: outside counsel should provide a monthly calendar of all scheduled court conferences, meetings with insureds/witnesses, deposition preparatory sessions, depositions, motions, demands and trial dates to the MSK attorney.
- J. Discontinuance of Insured[s] – Form E: discontinuances of MSK insured[s] should be "with prejudice." Discontinuance of non-involved insureds should be sought as early in the case as is practicable.
- K. Potential Liens, Including Medicare Liens: notification of potential liens should be conveyed to the MSK attorney when identified. Lien status must be addressed prior to settlement. Any settlement papers including releases should protect MSK's interests vis à vis any liens, including Medicare liens.

Settlement conference dates and trial dates should be immediately communicated to the MSK attorney and legal assistant. Counsel should update MSK insureds on all pertinent case developments, including the bill of particulars, preliminary conference orders, scheduled deposition and trial dates and expert opinions. Unless otherwise agreed to, the MSK attorney and legal assistant should be copied on all correspondence to insureds or other non-party staff members.

Review and Approvals

Expert Witnesses: outside counsel should select and retain expert witnesses after consultation with the MSK attorney. Counsel should provide the MSK attorney with a copy of the proposed expert curriculum vitae and fee schedule for approval prior to retention. An expert opinion should be obtained before the insured's deposition. MSK must specifically approve rates above \$350/hour or a daily trial testimony rate above \$3,500.

Requests to engage in motion practice should include the rationale for the motion, the likelihood of success, and the proposed budget. Unless otherwise agreed to, drafts of all substantive

motions should be provided to the MSK attorney at least 10 business days prior to the filing date to allow the MSK team to review and provide input on the draft.

Independent medical examinations require an MSK attorney's prior approval.

MSK medical graphics should be used for all trial exhibits; the MSK attorney must approve any outside vendors retained to prepare such exhibits.

Settlement Documents

Because of recent changes implemented to the Foreign Account Tax Compliance Act (FATCA), MSK's captive insurers have advised that we must provide a W-9 form for both the attorneys involved and the claimants in order to process a settlement check request.

The settlement agreement and release must include a confidentiality provision unless otherwise agreed. Prior to concluding any settlement negotiations, outside counsel should review the terms and conditions of the settlement documents with the MSK attorney.

Outside counsel should provide a cover letter to the MSK attorney and legal assistant with the settlement agreement and release containing instructions on payee information for the settlement check. Payee information should appear on two lines on the settlement check and is limited to 40 characters on the first line and 30 characters on the second line, with the total lines not exceeding 70 characters including punctuation and spacing, but exclusive of street address, city and state.

Personal Counsel

MSK will immediately notify outside counsel if any insured retains personal counsel. Outside counsel is expected to cooperate fully and maintain an open line of communication with any insured's personal counsel, to notify MSK when it provides personal counsel with information and to copy the responsible MSK attorney on all written communications with the insured's counsel.