



# **Pierce Transit Outside Counsel Guidelines**

**Effective January 1, 2016**

Office of the General Counsel  
Pierce Transit  
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These guidelines (hereafter “Outside Counsel Guidelines”) serve to guide the relationship between Pierce Transit (“Pierce Transit”) with outside counsel and to outline the Agency’s expectations of outside counsel. These guidelines take effect on January 1, 2016 for all pending and future legal matters.

Law firms representing Pierce Transit must acknowledge receipt of these Guidelines before performing services and submitting invoices, and unless modifications are agreed upon by outside counsel and the Pierce Transit Office of General Counsel, outside counsel will be expected to follow these Outside Counsel Guidelines.

## **I. General Provisions**

Pierce Transit’s goal in retaining outside counsel is to obtain the highest quality legal services, efficiently and ethically rendered at a reasonable cost. The following general provisions are intended to help Pierce Transit, in coordination with outside counsel, achieve that goal.

Communication: For each matter, Pierce Transit’s General Counsel or other designated representative will be responsible for ensuring that appropriate Pierce Transit personnel are informed about and make the necessary substantive decisions about the matter and that outside counsel is kept appropriately informed both about Pierce Transit’s objectives in the matter and about pertinent business issues and developments.

Unless advised otherwise, all communications should be directed to General Counsel who should be consulted before any direct communication with Pierce Transit employees, representatives or trustees. Unless authorized, copies of documents should be sent only to the responsible inside counsel.

Collaboration and Deadlines: Inside counsel must be provided sufficient time to review drafts of all significant documents, including contracts, substantive pleadings, briefs, correspondence, and any other documents that will be provided to third parties on Pierce Transit’s behalf. “Sufficient time” is usually at least three business days prior to any applicable deadline. The responsible inside counsel may choose to prepare drafts of pleadings or other papers and documents.

Conflicts of Interest: Outside counsel must conduct thorough checks for conflicts. Conflicts must be identified and resolved prior to representation. Outside counsel should conduct periodic checks for conflicts and promptly notify inside counsel should any arise.

Confidentiality: Pierce Transit expects outside counsel to exercise the utmost diligence in protecting attorney-client privilege and attorney work product.

Files and Records and Work Product: All files and records maintained by outside counsel in connection with any Pierce Transit matter belong to Pierce Transit and upon request from inside counsel, shall promptly be transferred to Pierce Transit or elsewhere as directed.

## **II. Outside Counsel Engagement**

### **A. Retention Decisions**

Pierce Transit’s Chief Executive Officer or General Counsel are responsible for the selection and supervision of outside counsel. Other than as set forth below, outside counsel may not accept an engagement on Pierce Transit matters directly from other Pierce Transit personnel other than Pierce Transit’s Chief Executive Officer or General Counsel.

B. Engagement Letter

Every engagement (or series of engagements) of outside counsel in which the fees for the entire matter are likely to exceed \$5,000 should be memorialized by a letter setting forth the terms and conditions of the engagement. The letter should be signed by both inside counsel and lead outside counsel and should indicate outside counsel's familiarity with and agreement to adhere to this Outside Counsel Guidelines, subject to any modifications agreed upon with inside counsel. Pierce Transit retains the right to not pay bills submitted by outside counsel who have not signed such an engagement letter. An example of the Agency's engagement letter is attached as Appendix A.

C. New Matters

When a new matter is assigned, outside counsel must create a new file and bill that new matter separately. For instance, if counsel typically provides generalized business counsel for Pierce Transit and is then asked to assist with a specific project, outside counsel should open a new matter for that project and separately bill for the project.

D. Retaining Local Counsel, Consultants, and Expert Witnesses

Outside counsel are not authorized to retain any local counsel, consultant, expert, or vendor without the advance approval of the Pierce Transit inside counsel.

E. Alternative Fee Arrangements

Pierce Transit encourages outside counsel to propose, in appropriate cases, alternatives to conventional hourly-rate fee arrangements, including fixed or flat fees.

### **III. Staffing**

At the outset of the engagement, inside counsel and lead outside counsel will together designate a specific lawyer within the law firm who will be chiefly accountable for the conduct of the engagement. That lawyer should be personally and directly involved in the representation and is responsible for assuring that Pierce Transit's objectives are met with respect to the engagement. The lead inside counsel must approve all members of the team handling the matter, as well as any subsequent changes to the team. Once the team is established, Pierce Transit expects continuity of staffing for the duration of the engagement, absent extraordinary circumstances.

Pierce Transit strongly encourages lean staffing on its matters. Matters should be staffed with the number and level of personnel that are appropriate in order to render quality service in a cost-effective manner. Pierce Transit prefers that its legal matters be staffed with lawyers who have developed knowledge of Pierce Transit and have appropriate subject matter expertise. Pierce Transit will not agree to the assignment of first-year associates to work on Pierce Transit matters unless special permission is obtained.

Pierce Transit expects outside counsel to use paralegals instead of lawyers whenever possible and appropriate. In general, associates should not be used for services performable by paralegal or junior legal assistants; nor should paralegal or billable legal assistants be assigned tasks performable by secretaries, clerks and messengers (*e.g.*, photocopying, filing, delivering materials, scheduling meetings, etc.).

Pierce Transit expects that outside counsel remain mindful of the fact that Pierce Transit is a public agency funded by taxpayer dollars and as such, outside counsel shall exercise good judgment with regard to the amount of time billed to Pierce Transit matters by each timekeeper and any related expenses. Pierce Transit will only pay for reasonable internal conferencing. Before staffing an activity such as a mediation, conference, deposition, appearance or trial with more than one timekeeper, approval for a greater staffing level must be obtained. In general, Pierce Transit will not approve or pay for the attendance of more than one lawyer at any one such activity.

#### **IV. Fees, Disbursements, Budgets and Billing**

##### **A. Fees**

###### *1. Billing Rates*

In matters that are to be billed based on the law firm's hourly rates, outside counsel shall, upon engagement of the firm, provide inside counsel with a schedule showing the billing rate for each timekeeper assigned to the engagement. Once agreed upon at the commencement of a matter, the scheduled billing rates shall remain in effect for the duration of the engagement. An exception to this requirement will be made only if the inside counsel approves in writing a proposed rate change sixty (60) days in advance. In no event shall billing rates be increased more than once in any twelve month period.

###### *2. Charges for Services*

Unless an alternative fee structure has been agreed upon, bills should reflect actual time reasonably expended. The number of hours for which Pierce Transit is billed should be the subject of "billing judgment" exercised by the lead outside counsel, so that the fees charged reflect only the time appropriately and productively devoted to the matter. As guidance, Pierce Transit will not pay for:

- Client development activities
- Conflict review
- Preparing or reviewing invoices or responding to billing inquiries
- Calendar or schedule maintenance
- Basic research on topics considered to be within the firm's scope of expertise
- Summer associate time
- Secretarial or clerical work (defined as: maintenance of internal databases, bates stamping, filing, preparing bills, indexing pleadings, opening and closing files, scheduling meetings or making travel arrangements, participating in review or "feedback" sessions, and billing audits)
- Filing
- "Learning time" or "ramp-up time" required by the substitution of attorneys or paralegals working on the engagement
- "Learning time" to educate any staff on standard procedural matters or basic substantive law
- Duplicative document review

Absent advance permission, Pierce Transit will not pay for:

- Attendance by more than one attorney at external meetings, depositions, or hearings.
- Legal research projects that exceed 3 hours.

Where two or more timekeepers consult to obtain specific advice or counsel or substantive or procedural aspects of the case that result in a more effective defense, said reasonable and necessary conference time will be reimbursed provided that sufficient detail of the subject of the communications is set forth to demonstrate its relevance and value.

Unless otherwise directed, the time for each activity should be separately stated.

#### B. Disbursements

Pierce Transit will reimburse outside counsel for actually incurred out-of-pocket expenses with no mark-up, provided those expenses are itemized and reasonable. Invoices should be described in sufficient detail so that there is no question of the nature of the expense involved or the reason for it. Payments to court reporters, expert witnesses, outside contractors and others must identify the recipient by name.

Pierce Transit expects outside counsel to use its best efforts to minimize reimbursable out-of-pocket costs both by avoiding unnecessary expenditures and by selecting competitively-priced vendors and service providers.

Pierce Transit expects outside counsel to avoid unnecessary travel through such alternatives as teleconferencing. Travel and business expenses will be paid in accord with the Pierce Transit Travel and Business Expense Policy, which will be provided. If outside counsel is traveling on business for more than one client, Pierce Transit expects counsel to apportion the expenses appropriately. Pierce Transit will only pay for 1/2 of timekeepers' rate for time spent traveling unless outside counsel works on Pierce Transit business while traveling, in which case, outside counsel may charge their full rate.

When outside attorneys or staff members are working at their normal office locations, Pierce Transit will not pay for meals or other incidental expenses.

Transmission of information and documentation by electronic means has made routine copying, faxing and delivery of hard copy documents less critical and, in many cases, unnecessary. Consistent with security concerns, Pierce Transit expects outside counsel to maximize the use of technology to minimize photocopying, facsimile, and messenger expense. Photocopies will be reimbursed at actual cost incurred by the firm, and in no event at more than \$.10 per image.

#### C. Budgeting

In engagements where professional fees are expected to exceed \$25,000, outside counsel shall prepare a budget and shall render its bills in a form corresponding to that budget. A sample budget is attached as Appendix B hereto. This budget shall be prepared within 30 days of assignment to outside counsel.

Prior to incurring unbudgeted fees for a particular task, outside counsel must obtain the advance approval of inside counsel. In the absence of prior approval by inside counsel, Pierce Transit will not pay bills for legal fees and expenses for a particular task that exceed the budget approved for that task. Budgets shall be reviewed quarterly, and a review of the budget should be included in quarterly reporting on the matter.

#### **D. Invoices**

Unless inside counsel approves different arrangements, bills should be rendered monthly, within 30 days after the end of the month in which the services were rendered and should include only fees for services performed in the immediately preceding month. Pierce Transit reserves the right to request copies of the firm's billing records and supporting documentation with respect to Pierce Transit charges and to conduct audits of the bills. Pierce Transit expects the lead outside counsel to review all invoices.

Each matter should be invoiced separately, and each invoice must contain the following information:

- Total hours worked by each timekeeper;
- Itemized expenses and disbursements;
- Total fees and disbursements for the billing period;
- Total fees and disbursements billed and paid to date from the inception of the matter.

#### **V. Reporting**

Outside counsel should submit regular written reports with respect to the status of all matters handled on behalf of Pierce Transit. The first report should be made no more than 30 days after outside counsel begins work on the matter, and subsequent updates should be made no less frequently than quarterly. Updates should also include a budget review.

For litigation cases in which Pierce Transit is a defendant, the initial report should include a discussion of the factual bases for, and the strengths and weaknesses of, the allegations against Pierce Transit and the defenses available to Pierce Transit, as well as a preliminary strategy for the defense of the matter and a preliminary evaluation of the potential exposure faced by Pierce Transit. Outside counsel should also discuss the desirability, likelihood, and potential range of settlement.

#### **VI. Insurance Coverage**

When a matter is covered by one of Pierce Transit's insurance policies, or the Washington State Transit Insurance Pool (WSTIP), outside counsel will be considered to be "assigned counsel" for purposes of this paragraph, and may be bound by the reporting and other requirements of that third party. At no time may assigned counsel take a position on or give advice on insurance coverage to any party. Assigned counsel must remember to adhere to its duties of loyalty to Pierce Transit as the client.

## **VII. Media or Public Comment**

In the absence of specific authorization, Pierce Transit does not authorize outside counsel to offer media or other public comment on Pierce Transit or matters being handled for Pierce Transit or respond to requests for comment. Any inquiries or proposed public comment about Pierce Transit or an Pierce Transit matter must be referred to inside counsel or to Pierce Transit's Public Relations Officer.

## **VIII. Federal Equal Employment Opportunity Law Compliance**

Pierce Transit expects outside counsel to comply with all applicable federal equal opportunity laws, orders and regulations, including without limitation, Executive Order 11246, the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1972, the Rehabilitation Act of 1973, the Vietnam Era Veterans Readjustment Assistance Act of 1974, the Americans With Disabilities Act of 1990, and the Civil Rights Act of 1991.

You may expect to receive requests from time to time for confirmation of compliance with the foregoing.

*SAMPLE OUTSIDE COUNSEL ENGAGEMENT LETTER*

Date

Lead Outside Counsel Name  
Law Firm Name  
Address

Re: [Matter

Name] Dear\_\_\_\_\_:

This letter will confirm that Pierce Transit has asked you to represent us in the above matter. In connection with your representation we have asked you to [describe scope of the engagement].

With this letter I am sending a copy of Pierce Transit’s Outside Counsel Guidelines. Except as set forth in this letter, or specifically agreed to by me, the Guidelines will govern your representation of Pierce Transit in this matter and all subsequent matters in which you are retained. We have agreed that you will be the lead outside counsel on this matter, will personally handle this matter, and will be responsible for ensuring adherence to the Guidelines. I serve as inside counsel on this matter. We believe that providing you with a clear statement of the principles which apply to your representation of Pierce Transit will assist us both in providing effective, high quality legal representation responsive to the needs of our client. I urge you to raise any questions you may have about the Outside Counsel Guidelines with me at the outset.

We have agreed that you will be compensated for your work on this matter [insert fee arrangement], and that you will submit your bills [monthly, quarterly, or at the completion of this matter]. [This matter is covered by a Pierce Transit insurance policy. You may work directly with the carrier or its representative, but shall continue to copy me with your reports and budget reviews. Because this is a covered matter, you shall look only to the insurance carrier or its representative for payment of fees and expenses.] We have further agreed that the attorneys and staff who will work on this matter are as follows, that their billing rates will not increase over the life of the engagement, and that no additional timekeepers will be added to this matter without my consent:

Name            Billing rate

Name            Billing rate



I look forward to working with you on this matter. Please confirm that you have received and agree to abide by the Guidelines by returning a signed copy of this letter to me at your earliest convenience.

Very truly yours,

[            ]

We have received Pierce Transit's Outside Counsel Guidelines and agree to be governed by that document's terms in our representation of Pierce Transit and its affiliates.

Law Firm Name

By: \_\_\_\_\_  
Lead Outside Counsel

**APPENDIX B**

**SAMPLE BUDGET**

**Budget**  
[Matter]  
Budget Through Trial

<b>Timekeepers</b>	<b>Roles</b>	<b>Hourly Rate</b>
	Partner	
	Associate	
	Paralegal	

**Assessment:**

<b>Task</b>	<b>Hours</b>	<b>Cost</b>
Fact Investigation / Development		
Analysis / Strategy		
Experts		
Document / File Management		
Settlement / Non-Binding ADR Potential mediation including drafting mediation brief and attending mediation.		
<b>Total Fees for Phase</b>		

**Pre-Trial Pleadings and Motions:**

<b>Task</b>	<b>Hours</b>	<b>Cost</b>
Pleadings Draft Answer and review. Analysis of pleadings of other parties		
Other Written Motions		
<b>Total Fees for Phase</b>		

**Discovery:**

<b>Task</b>	<b>Hours</b>	<b>Cost</b>
Written Discovery		
Document Production		
Depositions		
Expert Discovery – including depositions of expert witnesses		
<b>Total Fees for Phase</b>		

**Trial:**

<b>Task</b>	<b>Hours</b>	<b>Cost</b>
Fact Witnesses		
Expert Witnesses		
Written Motions and Submissions		
Other Trial Preparation and Support		
Trial and Hearing Attendance		
<b>Total Fees for Phase</b>		

**ESTIMATED TOTAL FEES AND COSTS THROUGH TRIAL:**

(Estimated Costs include \$\_\_\_\_\_ for deposition costs and \$\_\_\_\_\_ in expert costs)