

1 *Representing the FDIC*

1.1

Scope of the Deskbook

The Deskbook describes the policies and procedures that must be followed by Outside Counsel beginning with the execution of a Legal Services Agreement (“LSA”) (*refer to [Chapter 3](#)*), continuing through retention and concluding with post-representation responsibilities.

1.2

Identifying the FDIC as a Client

You may list the FDIC as a client in published materials as long as you adhere to the following restrictions.

You may not represent that you have been "approved" as Outside Counsel for the FDIC. As Outside Counsel, you are required to comply with all applicable ethics rules regarding advertising, including those restrictions pertaining to claims of "expert" status, expertise, or specialization. Similarly, you may not quote FDIC materials or staff comments as to performance evaluations, if any.

1.3

Statutory Compliance

The Legal Division requires all Outside Counsel to be familiar and comply with all applicable statutes and orders, as well as regulations, policies, procedures and directives promulgated pursuant thereto. *Refer to [Appendix B](#) for a representative list of applicable federal laws and regulations.*

1.4

Equal Employment Opportunity and Diversity

The FDIC has a strong commitment to equal opportunity under the law. The Legal Division actively seeks to engage firms owned by minorities or women. Similarly, the FDIC supports all efforts on the part of Outside Counsel to employ individuals with disabilities and Vietnam era veterans.

"Minority-owned firms" are those that are at least 51% owned and controlled (through day-to-day management) by one or more persons who are members of one or more of the following groups:

- Asian American;
- Black American;
- Hispanic American; or
- Native American Indian.

"Women-owned firms" are those that are at least 51% owned and controlled (through day-to-day management) by non-minority women. Firms claiming minority- or women-owned status must certify their status as such to the FDIC, and the FDIC may require additional information to verify the status.

The Legal Division also seeks to engage minority- and women-owned firms to provide legal services in association with other firms ("co-counsel" arrangements). Additionally, we encourage firms that are not minority- or women-owned firms to assign work on FDIC matters to minority and women attorneys within their firms. The Legal Division requires information on such assignments to be maintained and reported to the FDIC with your monthly billings. *Refer to [Chapter 7](#) and [Appendix L](#).*

The Legal Division works to ensure the inclusion of minorities and women to the maximum extent possible. *See 12 C.F.R. Part 361 at [Appendix G \(2\)](#).* The FDIC provides assistance to minority- and women-owned firms and minority and women attorneys within other firms with the application process, waiver of conflicts or other matters relating to the retention of outside counsel. If you are interested in such assistance, contact the Outside Counsel Liaison at (800) 846-1901.

1.5

Ethical Considerations

The FDIC expects you to maintain the highest ethical standards and to comply with all applicable laws, rules and regulations governing ethical conduct. In particular, you should be cognizant of the following:

- To avoid any appearance problem, neither you nor any person associated with your firm shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of monetary value to any employee of the FDIC which is not in conformity with 5 C.F.R. § 2635, Subpart B, of the Standards of Ethical Conduct for Employees of the Executive Branch. While private firms may host social or holiday functions for business associates and others with whom they do business, there are limitations on attendance at these events by FDIC employees. With few exceptions, FDIC employees may not solicit or accept gifts from anyone who does, or seeks to do, business with the FDIC.
- Your firm may hire former FDIC employees, but as former employees they are subject to the government-wide post-employment statute, 18 U.S.C. § 207, which affects what they can do for your firm. Generally, however, former FDIC employees may work on matters that they worked on personally or which were under their supervision while at the FDIC.
- If an FDIC employee was involved in negotiating your firm's current LSA, that individual upon joining your firm may not, during the duration of the LSA, renegotiate the rate schedule, request changes in service providers or be involved in any matter pertaining to questions of the competence of the services provided by your firm under the LSA.

For more information, contact the Ethics Section of the FDIC Office of the Executive Secretary in Washington, D.C. at (202) 898-7287.

1.6 File Retention

All information maintained in the legal matter files, whether supplied by the FDIC or third parties or created by you, including attorney work product, is the property of the FDIC.

Under no circumstances may you withhold files for any reason including a dispute over payment.

Upon completion or termination of the matter, you are responsible for the preservation of the files until the FDIC authorizes the files' destruction or the FDIC orders their transfer to the FDIC or another organization. *Refer to [Chapter 8](#) and [Chapter 9](#).*

NOTE: There are separate records retention requirements for underlying support documentation related to your FDIC invoices. *Refer to [Section 1.7](#) below and [Chapter 7, Section 7.11](#).*

1.7 Audit Rights

Outside Counsel must permit the FDIC, the FDIC Office of Inspector General and the General Accounting Office, or their representatives, to conduct audits or reviews of your FDIC billings, including previously paid invoices. All paid invoices are subject to audit regardless of disallowances taken during the fee bill review and approval process.

For purposes of subsequent audits, Outside Counsel must retain copies of all invoice packages and original underlying support documentation, including time sheets and time and expense adjustment records, for at least three years after final payment under the legal referral.

The recordkeeping requirements for electronic billing (timekeeping) systems are discussed in [Appendix P](#). The FDIC reserves the right to obtain additional information upon review of any itemized fee bill or support documentation.

1.8**Fees and Expenses**

The Legal Division expects to receive legal representation at fees and/or hourly rates that reflect substantial discounts from your usual fees and/or hourly rates. The Legal Division will consider flat rate and other innovative rate proposals.

You must include in your fees or hourly rates for legal services your costs of doing business, including all "overhead," general and administrative costs, fringe benefits, and profit. You may not submit and the FDIC will not pay invoices for such costs of doing business. "Markups" above any costs actually incurred by you for any supplies or services obtained by you for the Legal Division shall not be charged to the FDIC; any discounts you receive are expected to be passed on to the FDIC.

The FDIC will only pay reasonable costs for services rendered or supplies provided in the course of representation. The invoice process is discussed in [Chapter 7](#).

NOTE: The submission of erroneous bills or requests for reimbursement of inappropriate charges may result in sanctions. Under no circumstances may Outside Counsel attempt a set-off or recoupment, obtain a charging or retaining lien, or withhold files in the event of a dispute over payment for services rendered.

1.9**Malpractice Insurance**

You are required to maintain adequate malpractice insurance when representing the FDIC in all matters, with certain limited exceptions. Those exceptions include where you are retained solely to represent the FDIC on appeal or in connection with asset liquidation-related proceedings where the aggregate value (e.g., claim amount) of the asset(s) is less than \$250,000; or as the Legal Division may otherwise determine.

You must advise the Legal Division of the identity of your malpractice insurance carrier, the extent and duration of your coverage, and limitations on your coverage that may affect the FDIC. You must furnish a copy of the malpractice insurance

policy upon request by the Legal Division or the FDIC Office of Inspector General.

1.10 Contacts with the Media and the Public

Extra-judicial statements regarding FDIC matters are almost always inappropriate and often counterproductive. If media representatives contact you concerning cases that you are handling on behalf of the FDIC, you may confirm factual matters that are a matter of public record. Under no circumstances shall you comment to the media on other specifics of a case, such as potential appeals or settlements, or on more general matters involving the FDIC's policies and procedures or decision-making.

FDIC Office of Corporate Communications

All media inquiries concerning FDIC matters must be referred to the FDIC Office of Corporate Communications in Washington, D.C., at (202) 898-6993 for response. Additionally, you should promptly advise the FDIC Oversight Attorney of the inquiry and referral to the FDIC Office of Corporate Communications.

Speaking Engagements

If you address the public at seminars or other functions on topics pertaining to the FDIC or laws and regulations affecting the FDIC, you must disclose to the audience that you are making the presentation on your own behalf and not on behalf of the FDIC.

1.11 Role of FDIC Oversight Attorney

Attorneys in the Legal Division are responsible for managing all legal assignments and litigation, including matters referred to Outside Counsel. Outside Counsel must consult with the Oversight Attorney on all major strategic or tactical decisions associated with a matter.

On routine cases the Legal Division does not expect to be involved in every decision. **However, important decisions always should be raised with your Oversight Attorney in sufficient time to allow for meaningful review and consideration of the issues especially if a case involves policy issues or substantial sums.**

At the Beginning of the Legal Matter

It is important at the beginning of a legal matter to identify clearly the objectives to be achieved and possible alternative courses of action. As a general matter (depending in part on the scope of the assignment), the Oversight Attorney will:

- Define the goals and objectives to be achieved.
- Outline your role and expected duties.
- Discuss with you the scope of the required case plan and budget designed to achieve the FDIC's goals and objectives in a cost-effective manner. *Refer to [Chapter 6](#).*

During the Legal Matter

During the course of the legal matter, the Oversight Attorney will:

- Review your work and may participate in representation.
- Monitor progress against the case plan and budget.
- Review and obtain approval of any significant changes in the case plan or budget.
- Keep FDIC business personnel informed of developments.
- Coordinate contacts between Outside Counsel and FDIC business personnel, as discussed below.
- Evaluate your performance as Outside Counsel on an on-going basis. Among the items evaluated are the quality of the services provided, cost consciousness, responsiveness to Legal Division and business personnel, effective management of matters referred, and compliance with FDIC policies and procedures.

*Contacts with Other
FDIC Offices*

Generally all contact with non-legal FDIC personnel should be made through the Legal Division. This policy permits the most efficient utilization of resources and serves to avoid duplication of effort and to minimize costs. Therefore, you are expected to direct all communications to your Oversight Attorney, except in the following circumstances:

- When referring a media inquiry to the FDIC Office of Corporate Communications;
- When your Oversight Attorney indicates otherwise;
- When immediate action is required and neither your Oversight Attorney nor his/her supervisor can be reached;
- When responding to the FDIC's Office of Inspector General;
or
- When seeking limited factual information that can be obtained in a relatively brief amount of time (such as payoff figures for a loan or the address of a borrower).

Under special circumstances or in certain types of litigation, your Oversight Attorney may make arrangements for more extensive direct contact with FDIC business personnel. This might occur, for example, in a case involving an in-depth investigation of an institution's records.

Charges for time and expenses related to contacts other than those authorized may not be paid.

**1.12
Termination**

The Legal Division reserves the right to discontinue its relationship with you for any or no reason. Notification will be confirmed in writing. You will be contacted and provided instructions concerning disposition of files and other FDIC property. Your cooperation during transition is an ethical obligation and necessary for an orderly transfer of legal matters.

You must forward upon demand of the Legal Division all files and documents concerning the terminated legal matter(s) including all work product of your firm. It is important that you promptly forward files as instructed. Failure to do so may delay or prevent payment of your final invoice. Under no circumstances may you withhold files in the event of a dispute with the FDIC.

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[TOC](#) [INTRODUCTION](#) [CHAPTER 1](#) [2](#) [3](#) [4](#) [5](#) [6](#) [7](#) [8](#) [9](#) [APPENDICES](#)