

## Legal Services & Opinions

### Surveys

Many chapters find their members appreciate the detail of chapter surveys. The most popular chapter surveys include those featuring equipment, support staff benefits and compensation.

Before embarking on a survey, members are advised to study the [ALA Antitrust Guidelines](#). (This information will help you make sure that the survey questionnaire, manner of tabulation and reporting comply with the Association of Legal Administrators' (ALA) policy and that you are not placing the chapter in legal jeopardy.) **ALSO, SURVEY QUESTIONNAIRES SHOULD BE REVIEWED BY ALA PRIOR TO DISSEMINATION. PLEASE ALLOW TWO WEEKS (from date of receipt) FOR THE REVIEW PROCESS.** The basic concepts to keep in mind when conducting compensation surveys include:

There should be a legitimate rationale for collection and dissemination of the data including a rationale for the frequency of data collection, its detail and the format of dissemination.

#### **The data must be historical:**

The reported data should include only past data, preferably data which is at least three months old. The Association recommends against collection of billing rates.

#### **The raw data must be collected and tabulated by an independent third party:**

The data should be collected by an independent third party, such as an accounting firm, which will maintain the confidentiality of individual firms' data and periodically destroy the individual firm data.

#### **The results must be presented in a confidential manner:**

Data should be aggregated, averaged or distributed in composite form consistent with the purpose of the statistical program, but which conceals the identity of individual firms.

#### **Confidentiality agreements:**

All chapters should have an agreement with the consulting/accounting firm which addresses the following:

- All information should be maintained internally.
- Information should only be made available to those who need it while working on the project.
- All information on the data sheets is destroyed after it is collected and the survey is completed.
- There should be one independent source for collection of data that is destroyed upon completion of the survey.

#### **Participants:**

All law firms or law offices which could be construed to compete with each other should be able to participate by providing their economic data and obtaining the averaged results, compiled and presented so as not to permit identification of any individual participant's data. Participation in the program should be voluntary, and no auditing should occur. Non-members should be allowed to participate. Non-member participants could be charged a higher amount for participation, but the higher amount must be directly related to the costs of producing the economic survey.

#### **Non-participants:**

Parties that do not participate in the survey and who cannot be construed as competitors of the participants do not have to be provided the results of the survey. Limiting the results to the participants tends to encourage participation. Further, some participants do not wish to have the averaged data made available publicly. If the data is to be sold to non-participants, that intention should be made clear at the

time the survey questions are submitted to participants. If the sales are to be made, it is suggested that charges to members and non-members should not differ substantially. Since competing law offices and firms could have participated and received the data at the amount charged to participants, the costs to non-participants are not legally limited.

**Trade between or among chapters of completed information:**

If the information is available to participants only, the information cannot be traded. If the information is not limited to participants only, then the finished product is available for sale or trade to anyone. Individual participant data may not be sold or traded.

There should be a number of participants submitting data — preferably at least five (5) — in order to eliminate any reasonable possibility of identifying or estimating individual firm data. While members may discuss data collection and dissemination procedures, discussion of the actual data by Association members should be avoided. Also, the Association should not provide any analysis of the data, nor should it make any recommendations relevant to the subject matter of the data.

The data should be collected, put into composite form and disseminated only so often as is necessary to achieve the purpose of the program. The program should involve exchange of data at the lowest level of detail necessary to achieve the purpose of the program.

Business surveys and similar data prepared by governmental agencies may be reproduced and disseminated.

NOTE: It is recommended that chapters not conduct surveys regarding attorney compensation or billable hours. Also, the Instructions for Salary Survey must indicate a **past date** so that all participants understand that the information they supply will be for a 12-month period ending prior to the dissemination of the survey questionnaire. **THIS IS EXTREMELY IMPORTANT!**

**Sales Tax on Surveys:**

Are ALA chapters liable for sales tax when they sell surveys? There is no uniform answer since it depends upon the applicable laws of the state in which the chapter is located. However, as a general rule, the sale of surveys is taxable. The final determination on whether the sale of surveys is taxable needs to be made by competent local counsel familiar with the sales tax laws of your state.

**Equipment Surveys:**

Most chapters structure equipment surveys using the "directory" approach: a listing of the various makes/models followed by an indication of which firms utilize them. This is the safest way to structure equipment surveys because **there should be no attempt to rate or evaluate the equipment or vendors.** The directory structure allows chapter members to contact users of specific types or brands of equipment for additional information.