



What In-House Attorneys Wish Outside Counsel Knew About Legal Fees

By Katherine A. Compton

The current economic climate raises the stakes for everyone. More than ever before, in-house counsel are expected to bring value, minimize spending, and be accountable to upper management. For outside counsel, especially those who may be working with in-house counsel for the first time, learning the dos and don'ts of billing in-house clients can be daunting. Rejected invoices and drastically reduced payments can leave even seasoned private practice attorneys scratching their heads.

Here is some advice on billing from in-house attorneys, including what makes them smile and what makes them cringe when it comes to legal fees.

No surprises, please

Imagine that you have just enjoyed dinner at your favorite restaurant. You are satisfied with the meal and the service was exceptional. When you get the bill, you are shocked to find that you have been charged double the menu price. There are also extra fees, such as a surcharge for busboy services. You think, "Since when do they charge for the busboy? Why didn't anyone mention it before I placed my order?"

In a similar vein, in-house attorneys need outside counsel to accurately project fees and expenditures. While some areas of law are more difficult to predict than others, much of the work is proactive and can therefore be tied to hourly activity.

Outside counsel must efficiently manage expectations and risks associated with a matter. If an analysis of the case indicates a drawn-out legal battle or if a motion for summary judgment is determined to be in order, the outside counsel should advise the client and discuss necessary budgeting.

Act like you're the one writing the checks

In-house attorneys want outside counsel to think of a client's money as if it were the outside counsel's own. Are 25 depositions needed or would 10 depositions be sufficient? Are expedited delivery charges a matter of necessity or convenience?

Many in-house attorneys will never take a first-class flight or travel to meetings by limousine — at least not on the company's dime. They expect their outside counsel to also skip the luxury accommodations.

Every case needs a price tag

Every case deserves an appropriate amount of attention, no matter the amount in dispute or expected attorneys' fees. With that comes a need to communicate the real cost — price tag — of a matter to the client. In-house attorneys do not want to

spend \$100,000 on a case that has a maximum exposure of \$75,000 unless there is some other business concern at stake. If the corporate client presents a strong case but collection of a judgment is unlikely, make sure that the client fully appreciates the financial implications.

In-house attorneys want to know how outside attorneys can save them money. Proposing an early resolution that will cut down on fees does not make an attorney appear weak or indicate that he or she lacks trial confidence. In-house counsel appreciate when outside attorneys find solutions that save money and reduce exposure.

Special consideration is needed if a client is not an attorney, or if the client has an in-house attorney who is unfamiliar with the relevant area of law. The attorney may have to explain to a non-litigation savvy client that a temporary restraining order can rack up fees much quicker than simply filing suit. Similarly, patent cases are expensive in that there are essentially two trials (including a Markman hearing, which is an important pre-trial evidentiary hearing where the judge determines the meaning of the crucial words in the patent that is in dispute).

Don't assume that the client understands the financial ramifications of a request. This is true even if an attorney has worked with this client on similar matters in the past. Prevent sticker shock by stating a "price tag" at the start of the case and communicating any foreseeable hikes with the client.

Consider the big picture to avoid big bills

In-house attorneys need outside counsel to take a big picture view of the case to determine the best approach. Financially speaking, this means no aimless billing without concern for the final resolution of a matter. Begin with the client's end game in mind. It might be helpful to revisit the reasons that in-house counsel hire outside counsel in the first place.

In-house counsel repeatedly say that they hire the lawyer not the law firm and that the main criteria they use to hire a lawyer is expertise in a particular area of the law. If the matter is “bet the farm” or highly complex, in-house attorneys want someone with expertise and a reputation for being the best in the region or the country. In-house attorneys also depend on outside counsel for their knowledge of the court system, judges, and political climate.

Follow client billing policies

If it seems like in-house attorneys are becoming more stringent about their billing policies, that hunch is true. One in-house counsel put it this way, “Do you know how much you hate billing? I hate dealing with bills just as much.” Not adhering to the client’s billing policies costs everyone time and hassle.

Outside attorneys should ask the client for billing policies and procedures at the start of the case. An attorney should reconcile any areas that conflict with his or her firm’s billing policy and make sure the engagement letter reflects the agreement. For instance, many clients will not pay for legal research services.

An outside attorney should ensure that the entire team is aware of the client’s billing policy. This includes attorneys, paralegals, legal assistants, the law firm’s accounting department, and in some cases, outside vendors. If a law firm’s billing methods do not track with a client’s exact billing software requirements, the firm may find that particular time entries will not be paid. In some instances, in-house clients will reject an invoice.

Many in-house attorneys appreciate monthly status reports that compare budgeted fees to actual fees incurred. At the very least, in-house clients should be informed when a change in the case is likely to affect the budget.

Think outside the box

Think of an in-house legal department as a profit center. Doing so will make an in-house client look like a hero. For example, in litigation, if an attorney can include claims for breach of contract, a declaratory judgment, or a Texas Theft Liability Act violation, the prevailing party is entitled to attorneys’ fees.

If an attorney knows an in-house client’s business and industry, that attorney may be able to identify potential lawsuits in which the client could possibly win large damages. An attorney may learn that a client’s former employees have gone to a competitor, taking the client’s trade secrets with them. In talking to the client, the attorney learns that the former employees are under non-compete agreements. Suggesting that the client bring a lawsuit seeking money damages from the competitor and departing employees, where appropriate, can bring revenues in the form of money damages to the client.

In continuing to think outside the box on a client’s finances, consider creative ways to bill. If a pattern in the type of work from the client emerges, suggest an alternative fee arrangement. A flat fee on regular, predictable work can make in-house counsel look good for helping to manage legal fees. Additionally,

providing discounts up front with incentives for outside counsel who resolve the issue early can create a winning situation for in-house counsel and outside counsel.

Consider inexpensive and no cost ways to make the client’s life easier. If addressing a complicated issue, send talking points that boil down the issue and make it easier for the client to address with upper management. When submitting discovery requests, mark the questions that the in-house counsel truly needs to focus on. This way clients don’t waste time responding to requests that are going to be objected to anyway.

Emailing case documents to clients is a great area to add value without ratcheting up cost. Several in-house attorneys expressed frustration at receiving emails from outside counsel in which they are simply forwarded a document. In the body of the email, an attorney should include highlights of that document and the benefit of his or her interpretation of the document.

At the end of the day, in-house attorneys want outside counsel to make them look good for hiring them. Meet their expectations with up-front communication. Apply big picture thinking to avoid aimless billing and approach client billing as if you were the one writing the checks. Today’s in-house attorneys don’t just hire law firms, they hire lawyers — and that means you.

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A Short List of Don’ts

Each in-house attorney — all attorneys for that matter — has his or her likes and dislikes. Here are some key “don’ts” that outside counsel should keep in mind:

- Don’t increase the rates on a matter in the middle of the case.
- Don’t send an invoice without reviewing for edits, adjustments, and promised discounts.
- Don’t charge for luxury accommodations (e.g., first-class flights).
- Don’t bill more than 10 hours in one day unless necessary.
- Don’t send a bill that exceeds the budget without calling to discuss first.
- Don’t bill for multiple attorneys attending a deposition or internal meeting unless such a practice is agreed upon in advance.
- Don’t bill for conflict searches and attorney time resolving billing issues.
- Don’t bill for learning the basic law in an area.
- Don’t bill for time getting an attorney up to speed due to a staff change.
- Don’t retain contract personnel without prior approval.
- Don’t bill for time creating a new document when a form document is appropriate.
- Don’t incur unnecessary expedited charges (e.g., express courier, overnight transcription).