

# Managing Your Legal Spend

By Christopher Seezen, Alicia Hunter, and Emily Rhode





When it comes to managing your organization's legal spend, it's important to set expectations with outside counsel clearly from the onset to avoid confusion and expensive surprises. Below are some ideas to help you get a better handle on your legal spend.

01

### **Idea One: *Timekeeper Authorizations***

Authorizing timekeepers builds accountability into your relationship with outside counsel.

HERE ARE THREE IMPORTANT CONSIDERATIONS:

#### **Is paying your timekeepers an hourly rate the best way to manage your legal spend?**

For some types of law, perhaps not. Many organizations have found success with flat fees and alternative fee arrangements for transactional and regulatory matters where the work being performed has little risk of unexpected outcomes or additional legal work. For adversarial litigation like auto liability or workers' compensation, the hourly statement of your defense counsel will give you a clear idea of progress made on your case and the type of work being completed. This can be invaluable in keeping you apprised of the ongoing activities of litigation.

#### **Are you hiring a lawyer or a law firm?**

If you have a small pool of matters there is no substitute for personally vetting your outside counsel and maintaining a long term relationship with them. With only a few lawyers to keep up with, rates should be set individually or by position. If your attorneys are responsive and get good results, you will want your matters to continue to be handled by them. In this instance, your organization will need to have an individual to approve rates, a process for accepting rate increase requests, and a method to monitor and track rates to insure that the approvals are being respected.

On the flip side, many organizations have high volume, low stakes matters such as small personal injury or workers' compensation matters where the overall exposure is low, and the legal questions are uncomplicated. You may opt instead to work with a series of higher volume specialized law firms that focus primarily on areas like workers' compensation and focus solely on the rates of specific positions within the firm. For these organizations, focusing on rates by position and only maintaining personal relationships with a few managing partners can take some of the administrative and bureaucratic overhead off of your plate.



The most important thing to remember when considering the different ways your organization can administer timekeeper approvals is that the process has to be simple enough to be supported by your day-to-day operation.

02

### How much control will you retain over staffing?

Some organizations will only approve certain timekeepers for specific matters or for limited tasks, and they may even limit the number of other law firm personnel who can work on a matter (e.g. paralegals, consultants, etc.). Other organizations intend to closely monitor their timekeepers, but never exercise any control over who works on their cases. If you never decline to hire an attorney or always accept attorney rates, then it's probably not worth interviewing every attorney a law firm sends your way.

The most important thing to remember when considering the different ways your organization can administer timekeeper approvals is that the process has to be simple enough to be supported by your day-to-day operation. You need a process you can actually manage, one that's simple to explain to your outside counsel and that doesn't take a lot of effort to keep up.

### Idea Two: *Billing Guidelines*

The utilization of legal billing guidelines has become the norm in the day-to-day invoicing processes of law firms. General Counsel willing to enforce billing guidelines can increase savings and promote accountability of tasks billed. General Counsel want to be assured they are receiving the best and most cost-effective representation while effectively managing their company's legal spend across all matters.

In drafting or updating billing guidelines, General Counsel and risk managers alike should consider specific guidelines for practice and communication standards, billing format, administrative tasks, time/task appropriateness, and authorization-required tasks.

#### Litigation Practice and Communication Standards

Litigation practice standards will provide outside counsel expectations for how your company's matters are to be handled and how much feedback and communication your company expects. A few matter management issues to think about are:

- Budget requirements
- Litigation summaries at the outset of accepting representation of a matter
- Timeframes or milestones for regular client updates
- Other requirements specific to outside counsel's representing the best interests of your organization



### **Billing Format**

Billing format standards should instruct outside counsel on the logistical considerations of their invoices as well as the basic level of detail that you expect those invoices to contain. Things to consider include:

- Expectations for billing frequency
- The invoice format preferable to your organization (e.g., LEDES, PDF, etc.)
- Where to submit the invoices
- Any other specific information that your company may need the firm to include

Receiving invoices on a regular schedule and in a format that your company can review goes a long way in informing you of how much is being spent on what and helps to avoid the shock of unexpected litigation expenses.

Besides the overall bill format, the guidelines should also include details on how to describe the individual tasks and disbursements being billed. Requiring more detail than “Work on legal matter, 6 hours” will help you know what actual work is being done, as well as how much is being charged. One of the best ways to accomplish this is by requiring law firms to submit each task as a separate time entry. Additionally, every line item should have sufficient information to answer the “who, where and why” of the tasks a law firm is performing.

### **Administrative Tasks**

This section of the guidelines identifies tasks that are not directly related to the practice of law. The following are some examples of administrative tasks which should be considered non-compensable:

- Scheduling
- Processing of vendor invoices
- Organization of a file
- Contact with court reporting agencies
- Conflict checking
- Checking on court dockets
- Organization of a file
- Contact with court reporting agencies
- Conflict checking
- Checking on court dockets
- Copying/scanning/faxing
- Calendaring



It should be noted that each of these tasks billed on invoices across the life of a case could easily add up to hundreds or thousands of dollars spent on what is essentially considered firm overhead if allowed as compensable.

### **Time/Task Appropriateness**

General Counsel should expect to pay for tasks at the rate for which the task is comparable. For example, drafting of a notice of deposition or examination before trial may be performed by an attorney. However, this task is one that is performed routinely in the defense of a case and could essentially be performed by a paralegal. This task could be viewed as one compensable at the firm's approved paralegal rate. To take it a step further, utilizing paralegals within a firm to perform certain identified tasks frees up the assigned attorney for more substantive work and is cost-effective to both the firm and General Counsel. Billing guidelines are a useful way of notifying law firms what level of work your company considers appropriate for paralegal and attorney time keepers.

### **Authorization-Required Tasks**

Authorization-required tasks are those the client may not necessarily consider as non-compensable, but may want to monitor more closely and in that respect, require the firms to acquire their approval before invoicing. The billing guidelines should lay out both the type of task requiring approval and the process for gaining that approval. Tasks requiring prior authorization might include:

- Local travel
- Long distance travel
- Legal research (per case) over a certain time limit, i.e. 2 hours, 4 hours
- Multiple attorney attendance at depositions, hearings, conferences
- Multiple timekeeper attendance or travel

Guidelines should be drafted based on General Counsel's specific needs, and should be built from the ground up. This allows for better tracking of work. The more specific the guidelines, the more specific the reporting.



### Idea Three: *Alternative Fee Agreements*

Managing legal spend when firms bill on an hourly basis can be challenging. Some companies are using alternative fee agreements (AFAs) to deal with these challenges.

#### **AFAs offer the following advantages over hourly billing:**

- **Control over the final cost.** From the beginning, the law firm and in-house counsel determine what work will be performed for a set price, whether that price is fixed or capped. This level of control is difficult to achieve under hourly billing because hourly billing is based on total work done and not the value of the work.
- **Predictability.** Even though outside counsel creates budgets based on the anticipated work for a case, budgets are often updated and revised. By setting the final cost, in-house counsel is able to create more accurate budgets and can allocate funds in advance.
- **Shared risk of the final cost of the case.** AFAs balance the risk between the law firm and the company more equitably. Under AFAs, the total amount to be paid is determined by the overall value of the work performed and the eventual resolution of the legal matter; whereas the focus of billable hours is the specific work performed in its entirety.
- **Better relationships with outside counsel.** By establishing the terms of the agreement at the outset, expectations are communicated clearly from the beginning. Clear communication prevents fee disputes later on and sets the tone for a more positive working relationship. Because AFAs are based on the value received by the company and reward the firm's expertise and efficiency, AFAs inspire confidence within the in-house counsel that the company's money is being well spent.

#### **When should you use AFAs?**

AFAs are frequently used for short-term legal services or transactional work. For example, fixed fee agreements are often used for drafting contracts and other documents. Contingency fees are not used very often for transactional matters, but you might consider entering into a contingency fee agreement for certain transactional services, such as the success or failure to obtain funding for a loan.

AFAs can also be structured to accommodate more long-term, complex legal services. Fixed fees for litigation matters should be structured on a phase-by-phase basis throughout the course of the entire case. Contingency fees also work well for litigation. While contingency agreements are most common on the plaintiff side, the agreement can also be structured for defense work. For the plaintiff, the agreement is often that the attorney will only get paid if the plaintiff wins. For the defense, the parties might agree on a specific end result (e.g., damages would not exceed \$500,000). If the attorney is able to successfully achieve the end result, the attorney is paid the agreed upon fee.



Even if law firms have not been retained by the company for very long, law firms are often open to AFAs because of the opportunity to build better relationships and to grow business.

Blended hourly rates can also be used for more long-term legal services regardless of complexity. In-house counsel can assign a specific blended rate for an entire section of the company's legal department or for certain firms. Less complex matters will often have a lower hourly rate while more complex matters might warrant a higher hourly rate.

#### **Which firms do AFAs work best for?**

In general, AFAs work best between companies and law firms that have a long-term relationship. When law firms and companies have been involved with prior legal matters, a foundation of trust has already been established and each party is familiar with the amount of work needed for a specific matter. Even if law firms have not been retained by the company for very long, firms are often open to AFAs because of the opportunity to build better relationships and to grow business.

#### **How can legal data help determine when to use AFAs?**

Firms often track the amount of time it takes to perform certain legal services and use this data to determine which AFAs are to the firms' advantage. While clients do not have direct access to the firms' data, in-house counsel can collect data by requiring firms to include a shadow bill that details the specific work performed and the hours spent for each task. Companies can also use their legal spend management provider to view the cost incurred for certain types of cases handled by certain firms. The company can use this data to decide which agreements might work best for certain types of case and which firms should be retained, as well.

04

### **Idea Four: *Objective & Subjective Review***

Compliance review is a vital component of legal spend management. Compliance review examines law firm invoices and compares them with how completely they conform with the client's billing guidelines. In depth compliance review requires knowledge of the law firm, the law firm's billing experience, the common practices of the legal industry, as well as insight into the particular body of law that is being practiced.

Although the specifics of the tasks and costs vary, there are a few consistent methodologies used to review legal invoices for compliance with client's billing guidelines, including the objective and subjective review of invoices. The objective review is usually a surface level review that looks at the basics of whether the bill itself is complete and made without errors. The subjective review digs into the meat of the work being completed to see how appropriate it is in light of the client's overall litigation goals.



**In depth compliance review requires knowledge of the law firm, the law firm's billing experience, the common practices of the legal industry, as well as insight into the particular body of law that is being practiced.**

### **The Objective Review**

On objective review looks at the surface level of the invoice for technical problems with the billing. Were the services billed on the invoice submitted within the correct timeframe? Does the invoice contain any mathematical errors? Are the timekeepers authorized, and are they billing at the correct rate? Was the proper support documentation provided for disbursements?

Objective review measures if the law firm has provided the minimum basic information and checks that the calculations all add up. Most of the issues seen during an objective review can be identified through a basic e-billing solution, but there are also many areas where a billing clerk can circumvent the requirements to get the billing submitted.

A question often asked by law firms is "What UTBMS billing codes can we use?" These firms have learned that if they use the correct codes, their invoices will be accepted and paid. An objective review of legal invoices that relies on UTBMS billing codes will not identify non-compensable tasks that are being billed under the incorrect code. This is one reason why it's important to incorporate a subjective review into your legal spend management strategy.

### **The Subjective Review**

A subjective review will determine if non-compensable or improper work is being billed on invoices. With a subjective review, a legal professional looks at both the work being performed as well as the person billing it and considers if the work was appropriate or not. This type of review helps to ensure that timekeepers are working efficiently and not just working on their minimum daily quota of billable hours.

Subjective review goes beyond UTBMS codes to understand what's actually being done. A good subjective review requires law firms to add full descriptions for the work they perform and to separate tasks into individual line items. This prevents law firms from cramming a variety of tasks under the few codes they know will be paid by the client.

The subjective review can be boiled down to a few questions: What work was being performed, and why? Was the time billed for this task appropriate? Should the work being completed be performed by a licensed professional? Was this work completed by an appropriate class of timekeeper?

In order for a subjective review to be completed, law firms must give enough information for the task being completed to be identified. Tasks should be action verbs that adequately describe the work being completed: Review, draft, conference, correspond, etc. Depending on the type of task being completed, the timekeeper should give additional detail. For example, if they are reviewing, they should identify the documents being reviewed and the purpose. If they are drafting correspondence, they should identify the recipient and the purpose. Some tasks are too vague to adequately describe what is being completed.





Some tasks are too vague to adequately describe what is being completed. Some common examples are “Prepare for hearing” or “Attention to file” because it is impossible to know if the timekeeper was “Preparing” by having a conference call with another timekeeper or getting the suit they intend to wear to the hearing from the dry cleaner. Once we know what work was performed, we can begin to think about how much time is being spent on a task and if the correct person is completing that task.

Beyond reducing legal spend on an invoice level, objective and subjective review can provide substantial insight into outside counsel’s billing. In a data-driven world, this kind of actionable information can enable organizations to efficiently allocate their resources, save money, and contribute more to the bottom line.

## Ready to find out more?

Contact our team!

**More information at [getstarted@quovant.com](mailto:getstarted@quovant.com)**