

Implementation of Outside Counsel Billing Guidelines

Oct 31 • Written By Virginia Griffith

As a company grows and its legal needs become increasingly complex and even multi-jurisdictional, it often retains ongoing outside counsel to provide the experience and agility necessary to respond efficiently to legal needs. To define this relationship, in-house legal teams frequently provide guidelines to outside counsel that set out certain policies and procedures. These guidelines commonly provide direction regarding legal fees, billing and expenses, conflicts of interest, budgeting, diversity, confidentiality, data security, privilege, and more.

Why is it Important to Implement Outside Counsel Guidelines?

The American Bar Association (ABA) has recommended rules that in-house teams should follow when billing their clients (outside counsel). As a result, outside counsel guidelines (OCGs) have become standard practice in the working relationships between corporate legal teams and their outside counsel.

OCGs benefit both in-house teams and their outside firms because they function to memorialize the details surrounding the financial and operational aspects of the business relationship. However, while OCGs are often extremely helpful in creating commonly understood frameworks for all parties involved, they should not take the place of the discussions that in-house lawyers should have with outside counsel regarding expectations and responsibility for performing legal work that meets client expectations.

...can vary, many, seemingly to the point of being overly comprehensive and include dozens of pages, seemingly to cover every possible issue that might arise between an in-house legal team and its outside counsel. However, longer, detailed guidelines aren't necessarily better.

"The most jaw-dropping outside counsel retention document guideline I ever saw was one issued by a large company/large department that was 327 pages long. The idea that anyone was conversant with what was in that document (on either side) or had any intention of either implementing or enforcing it (until they wanted to prove their point in an argument) is crazy."

-Susan Hackett, CEO, Legal Executive Leadership, LLC

Outside counsel guidelines commonly include specific dos and don'ts for billing entries and provide guidance on more nuanced scenarios. For example, although law firms should not bill clients for making copies, some exceptions may apply and should be outlined, i.e., appellate filings and briefs). A more nuanced example might state that only senior-level attorneys should perform a specific task in a reasonable amount of time.

Here are some ways that OCGs can improve the relationship an in-house legal department has with outside counsel:

- **Offer guidance, not a rulebook.** Outside Counsel Guidelines (OCGs) should serve as guidelines, not a list of demands from in-house legal teams to their outside counsel. Instead, these guidelines should establish the framework for a transparent and productive relationship between in-house teams and outside counsel. To be most effective, OCGs need to be instructional, helpful to all parties, and keep everyone on the same page. To make your guidelines more successful, consider inviting your outside lawyers to become partners in creating them.
- **Explain the invoice processing procedure.** If an in-house team automates certain aspects of invoice processing and automatically flags, rejects, or reduces certain line items, your OCGs should explain this. While outside firms are often

adhering to the agreed-upon budget.

- **Allow for human review.** As valuable as AI can be, it will never replace human expertise when it comes to legal bill review and the consistent enforcement of OCGs. As sophisticated as an automated system might be, a human viewpoint provides a greater understanding of the value of the work outside law firms perform. Using an experienced human analyst in conjunction with an automated system helps encourage compliance with the guidelines.
- **Provide clear summaries.** The goal of OCGs should be to lay out the most critical points of the relationship to maximize the likelihood that the guidelines will be followed. No matter how well-written your OCGs are, they won't be helpful if your outside counsel doesn't read them. Including an easy-to-read, skimmable summary highlighting each section's main points can significantly increase the chances that long, information-heavy guidelines will be read and followed.
- **Include a signature page.** To confirm that your outside counsel has received and understands your OCGs, you should include a signature page verifying receipt and understanding. Although a signature page will not force or guarantee that the lawyers at your outside firm read your OCGs, it might make them reconsider completely ignoring the guidelines.
- **Conduct a regular review.** Many companies create OCGs early on and then add to them over the years, frequently resulting in an unnecessarily long and potentially repetitive document that includes outdated and even obsolete guidelines. Since your processes have likely been updated since your original OCGs were produced, you should review them at least once a year to eliminate unnecessary information and ensure they remain up to date.

"Many guidelines are legacy documents, initially written in another day and time (which is completely divorced from the realities of today's relationships and goals) and constantly appended with 35 years of 'Oh, yeah! Let's add that to the document's items.' This creates a fantastic hodgepodge of stuff.

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–Susan Hackett, CEO, Legal Executive Leadership, LLC

How to Turn Your OCGs Into Cost Savings

More and more in-house legal departments are implementing OCGs to form solid relationships with outside counsel. However, to generate additional efficiency and reveal opportunities for cost savings, in-house teams need to evaluate their current guidelines and the performance of their outside lawyers by considering their ability to manage matters successfully, generate reasonable timekeeping data, and deliver accurate billings. Unfortunately, in-house attorneys don't typically have time to comb through piles of invoices line by line, meticulously reviewing legal bills for errors. But luckily, options exist.

In-house teams are utilizing legal spend management services to review their bills from third-party counsel for errors and discrepancies. A legal bill review expert is qualified to determine the accuracy and reasonableness of legal charges. In addition, some services hire attorneys to analyze every charge on every legal bill received from outside counsel to ensure that each time entry adds fair value. These services also negotiate bill adjustments when appropriate, removing the friction surrounding legal issues and allowing in-house teams to avoid difficult conversations with their outside lawyers, at least about billing issues.



Why is Third-Party Bill Review Necessary?

Should Procurement and the CFO Be Involved in Legal Spend Management?





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