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## In-House Counsel Seek Fee Accountability

BY JUDITH A. BRONSTHER



It's no wonder that pressure on in-house counsel to reduce legal fees has increased as the new millennium has seen corporate profits erode, the

Dow-Jones slip under 10,000 and the NASDAQ slide under 2,000. Despite the grim economic data, legal fees have increased and many law firms have dramatically increased their billing rates.

As a result, in-house attorneys are being forced to become more sophisticated consumers of legal services and find innovative ways to control legal fees.

A sophisticated consumer of legal services, understands that there are many factors (*i.e.*, billing rates, methodology, staffing practices, efficiency, management style and complexity of a matter) that contribute to the cost of a legal product and develops appropriate tools to address all of these factors.

Legal cost control cannot be addressed in a piecemeal fashion, without any discernible pattern. This is not the way to achieve long-term savings. What is needed is a comprehensive cost control program that involves a billing policy, compliance monitoring, budgeting, benchmarking and, at times, legal audits.

*Judith A. Bronsther is an attorney with Accountability Services, Inc., a legal auditing and legal cost control firm with offices in Indiana and New York. The company serves businesses of all sizes, including Fortune 500 Companies, international organizations and governmental institutions. Information about the firm is available at [www.legalbills.com](http://www.legalbills.com).*

While a relationship with outside counsel requires trust and mutual respect to be effective and expenditures for attorney time cannot be judged as objectively as the components of an information system or locked into a schedule as predictable as a construction project time line, in-house counsel can make law firms accountable for cost effective legal representation. Fortunately, today the knowledge and technology exists to create such legal cost control programs.

### Billing Policy

A billing policy is the cornerstone of a legal cost management program. It sets the ground rules for an outside firm's billing practices, sending a clear signal that cost-effective legal management is expected. It also provides a standard for monitoring costs and facilitates comparisons among firms for future benchmarking.

At a minimum, the policy should address billing formats, record keeping, billing rates, staffing issues, appropriate use of attorney and paralegal time, reimbursable expenses and other issues that affect legal costs, such as when travel time and clerical tasks can be billed.

### Task-Based Budgets

Clients should require law firms to estimate the costs, fees and other expenses of any significant legal project on a quarterly basis. With budgeting, your company is able to anticipate legal expenses and make informed and timely judgments about case strategy and settlement options.

The exercise will also increase the cost-effectiveness of the law firm. But do not expect any budget your firm provides to be written in stone. Few litigations and business deals are without surprises and unanticipated expenses. A company that is reluctant to make adjustments in the case budget may find that the initial estimates are unreasonably high.

A basic budgeting form should include, at a minimum, the identification, billing rates and status of all timekeepers anticipated to work on the matter; the overall estimates of cost and duration of a matter; anticipated number of hours (broken down by partners, associates and paralegals) for each phase of the matter; motions contemplated, their estimated hours and fees, and their likelihood of success; and a narrative explanation for anticipated or current budget excess.

### Compliance Monitoring

Even the best billing policy and budgets will have little effect on legal fees if not monitored. This is best illustrated by a review Accountability Services performed for a "Fortune 100" company.

The company's billing policy was excellent and required only a few changes. However, none of the law firms engaged by this company complied with the policy. Examples of deviations from the policy included: excessive disbursements, increasing billing rates without prior notification, engaging in "formula billing" where minimum increments of time were assigned to specific tasks, billing in 15-minute increments instead of 6-minute increments, recording time in block entries as opposed to single tasks, inefficient staffing, duplications of effort, billing for clerical tasks and the like.

A company can perform basic monitoring in-house, if that function is assigned to an employee who will regularly review the legal bills for deviations from the billing policy and who will see there is appropriate follow-through for non-compliance.

Even rudimentary compliance monitoring will keep a law firm attuned to your concern about legal cost; but, a more serious commitment of time and talent is necessary to keep legal bills trimmed down. When reviewing legal bills for policy compliance, managers of legal services must remember that



they perform a business function, subject to the usual tests of efficiency. Although such reviews may be mundane and time consuming, they are an indispensable part of a cost control program.

Outsourcing this function is always an option for clients and may be the most cost-effective manner of review. An outside compliance reviewer will be more likely to have the expertise, tools (including appropriate billing software) and the objectivity to undertake systematic legal cost monitoring.

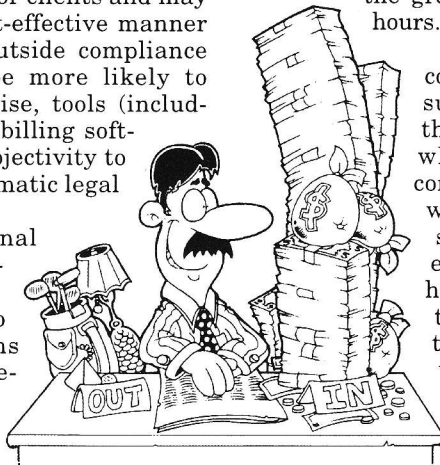
The professional cost control consultant will also be more likely to catch problems before they become serious or alert you to excesses that might otherwise slip between the cracks in your billing policy.

### Benchmarking

Benchmarking is a method of comparing the performance of multiple law firms and reveals the individual strengths and weaknesses of each firm. In essence, the company gets a score card, ranking each of its firms. The company learns not only what they have been paying for particular tasks and cases but also what they should be paying. Benchmarking studies is an invaluable tool for targeting areas in need of improvement and for obtaining baseline data for project budgeting, competitive bidding and fixed-fee arrangements.

An East Coast insurance company

was startled when it learned that one of its law firms, whose billing rates were 30 percent less than average, was actually one of its most expensive law firms because it billed in 15-minute increments and performed almost all of the individual tasks in the greatest number of hours.



chose to concentrate its work in its five most cost-effective law firms and was able to use the study to develop model practices to make even the best firms better.

Benchmarking studies are most informative when a company uses several firms for similar work — for example, a comparison of multiple insurance defense firms or a review of the regional firms handling a corporation's employment litigation, securities arbitration or franchise disputes. However, general management styles, staffing approaches and billing philosophies in a wide variety of legal fields can be constructively compared.

### Legal Audits

A legal audit, an after-the-fact cost control technique, may be the

most viable alternative when companies are unable to dictate legal cost control policies (e.g., statutory fee applications, bankruptcy matters, lending transactions, indemnification agreements and insurance matters), when there is a persistent failure on the part of outside counsel to comply with billing policies and budgets or when an objective third party opinion is required.

The insurance company was also surprised to learn that the law firms who had frequent communications with their adversaries made fewer motions and had fewer cases that reached the trial stage. For the first time, this company was able to look at the big picture. It

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A legal audit is a careful examination of the legal bills for the purpose of detecting billing errors, abuses and inefficiencies. The examination involves a detailed process of coding, data entry and computer-assisted analysis so that the reviewer, hopefully an attorney, can identify and quantify the financial impact of any billing excesses or other practices that do not conform to generally acceptable billing practices. The audit report then serves as the foundation for negotiating the appropriate reductions or, if necessary, is submitted as an expert report.

### Conclusion

The goal of any legal cost control program should be cost-effectiveness, not necessarily the lowest legal fees. After all, nothing is more expensive than a cheap lawyer. However, with that in mind, in-house counsel can still do more than slow the growth of legal costs, it can reduce them with the appropriate legal cost control techniques.

With a billing policy that is monitored, budgets that are prepared and revised, benchmarking to determine best practices and legal audits performed on an as-needed basis, corporate counsel will have a complete legal cost control tool box. □