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# *IN-HOUSE COUNSEL*



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## The Other Side of Paradise

**By Mark Herrmann**

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*Mark Herrmann is the Chief Counsel – Litigation and Global Chief Compliance Officer at Aon and the author of [The Curmudgeon's Guide to Practicing Law](#) and [Inside Straight: Advice About Lawyering, In-House And Out, That Only The Internet Could Provide](#).*

***Excerpted from [Inside Straight: Advice about Lawyering, In-House and Out, That Only the Internet Could Provide](#), by Mark Herrmann, published by the American Bar Association. Available at a discount to ABA members. Visit [www.ShopABA.org](http://www.ShopABA.org).***

I've received a couple of e-mails from associates at large firms saying that these folks sit at their desks dreaming about having in-house jobs: One client instead of many competing for your time. More manageable workload. A broader range of work. Less stress. An opportunity to think strategically instead of wallowing in minutiae. No more billable hours. No more [time sheets](#). Bliss!

Please, these correspondents ask, write a column explaining the tribulations of in-house counsel.

This is tricky. First, the in-house life is pretty good. I wouldn't want to understate the advantages. Second, I don't hide behind a cloak of anonymity when I publish these columns. If I faced any tribulations (and I don't, of course), this wouldn't be a wise forum in which to let loose. Third, my own personal experience doesn't prove very much generally, and I hear a wide range of varied reactions from others who work in-house.

But I'll give it a shot....

One client instead of many competing for your time: This is true, but largely irrelevant. The question is not the number of clients competing for your time, but the number of tasks competing for your attention. When I was in private practice, there were times when I would work for years on end for a single client (as a mass tort ramped up, played itself out, and then reached a resolution). Those were by no means recreational times. I had only one client, but I had a great deal of work.

So, too, in-house. Although you'll theoretically have just one client, you'll have many internal clients — business folks in different business units, or within a single business unit, clamoring for your time, or your colleagues in the legal department coming to you for help. You'll still occasionally have fierce, and competing, demands on your time. Having just one "client" doesn't necessarily change the demand for your services.

More manageable workload: This depends. The head of litigation at a large pharmaceutical company (formerly a partner at an AmLaw 50 firm) tells me that he works harder now than he did in private practice. It's now seven days per week, every week, which is worse than the old life. But another person who recently moved in-house to help manage litigation at a different pharmaceutical company tells me that the whole in-house staff works 8:30 to 5:30, five days per week, period. Overall, the evidence (both

anecdotal and the few empirics that I've seen) suggests that in-house life is less burdensome (perhaps in part because the crises can be handed to outside lawyers), but, as they say in the advertisements, your experience may vary.

A broader range of work: It depends on your job. A corporate lawyer serving a business unit is likely to become a generalist, being asked to handle whatever legal works needs doing in the business. But an in-house labor lawyer handling EEOC complaints may face a very different environment.

Moreover, some people are suited to handling a broad range of work and others are not. You can't be a specialist in everything. Folks who take comfort in knowing the details of every aspect of every matter may prefer life as a specialist. Folks who don't mind being set adrift may prefer working as generalists.

No matter your disposition, an in-house lawyer will live in only one industry, and only one business in that industry. If you want to think broadly about some set of issues or pursue a career in matters that cut across clients, it doesn't make sense to commit yourself to a single client. (I'm thinking, for example, of someone who wants to specialize in securities litigation. It would be a rare and unfortunate client indeed that had a steady diet of 10b-5 fraud cases brought against it. If you'd like to be a 10b-5 defense lawyer, it's unlikely that you could pursue that career in-house.)

Less stress: Different stress, anyway. Your clients in the C-suites may be quite demanding. Closing deadlines exist whether you work at a corporation or a law firm. Cases still go to trial and folks still pay close attention to the results. (At corporations where in-house lawyers try cases, the stress of trial is the same as in private practice. At corporations where in-house litigators supervise outside trial counsel, the stress level is quite different.) Moreover, in-house lawyers' days are occupied by internal meetings and attention to internal projects that outside lawyers are freed from.

An opportunity to think strategically: Again, it depends on your job. Higher-level in-house lawyers are further removed from the day-to-day aspects of particular issues. Those folks may think more strategically about legal issues. The percentage of your work that's strategic, rather than focused on particular projects, will vary by position. And remember: You can't do everything. People who are thinking strategically are unlikely to know the details of particular projects. Different people will have different tastes in jobs.

No more billable hours: This will probably be true. I'm told that some corporations do gently monitor lawyer time to allocate legal costs across business units, but I suspect that's a small minority of companies. For the most part, an in-house job frees you from the burden of billable hours. But that doesn't mean that corporations are ignoring the value provided by lawyers. People may not be tracking your hours, but they're surely looking to see if you're doing something productive. Being productive may be much harder than billing a few hours.

No more time sheets: On this, we can agree.

No more time sheets! Bliss, indeed.

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## **The Attorneys on the Inside: Functions and Goals of In-House Legal Counsel**

**By Pervin R. Taleyarkhan**

*Pervin R. Taleyarkhan is an intellectual property attorney at Purdue Research Foundation Office of Technology Commercialization.*

Why hire an attorney? The answer is quite simple: attorneys are hired to help resolve legal issues. Why hire an in-house attorney? The answer to this question is often not quite so simple. Many factors can influence an organization's decision of whether to hire an in-house legal counsel or create an in-house legal group. Here, I offer a glimpse into some of the functions of in-house counsel that can drive this decision-making process.

### **Cost-Saving Functions**

More often than not, finances are a key driving force behind an organization's decisions. Therefore, among the most common reasons to bring an in-house counsel onboard is to help control the organization's expenses, and in particular, its legal expenses.

Depending on the organization, this in-house legal counsel can have a general or specialized legal background. For example, a university technology transfer office focused on commercializing the university faculties' research work may feel that hiring an in-house attorney specialized in intellectual property law is a sound hire. Likely frequently dealing with a multitude of business transactions, this same office may also consider hiring an attorney seasoned in transactional matters. As with most decisions, the cost-benefit analysis is a key determining factor as to exactly which type of and how many in-house counsels an organization can afford to add. Simply put, the value added by having the in-house counsel must at the very least outweigh his/her costs to the organization. Those costs can come in the form of salary and benefits paid to the in-house counsel, any additional costs that may accompany legal work (e.g., costs of legal research), and value of the legal work performed.

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**Managing Outside Counsel**

While an in-house counsel has been brought onboard to perform legal functions within an organization, the hiring of an internal attorney does not always mean the role of legal experts outside the organization is diminished. Sometimes the role of the in-house lawyer comprises managing the work being performed by other attorneys. Such a managerial function can present important benefits to the organization. For example, in-house counsel can enhance the quality and value of outside counsel's work product. The in-house counsel is in a unique position to appreciate both the organization's legal issues and its overarching mission. Therefore, the goals of a particular legal assignment can be more concisely and accurately translated to the outside legal counsel. Likewise, the outside counsel's work product can be reviewed by another legal mind, to ensure that legal issues are appropriately addressed.

**Performing Legal Work In-house**

In addition to managing legal matters being performed by attorneys in outside law firms, the in-house counsel may also function as an "outside attorney on the inside." The in-house counsel is in a position to recognize legal issues at their outset, if not even before they occur. Such a function can prove invaluable to an organization. For instance, an organization generating and protecting technical knowledge may benefit from having an intellectual-property attorney, likely a patent attorney, on-hand to draft and file patent applications. The decisions for which patent applications the in-house counsel is to draft versus which the office will engage outside legal counsel to handle can themselves be based on a vast array of factors, including cost, efficiency within the organization, and complexity of the matter at hand.

**The In-house Counsel Can Be an Asset as an Attorney on the Inside**

Organizations can greatly benefit from having at least one attorney onboard within its walls. In addition to performing a consultant-type role as a full-time attorney, the in-house counsel may also be a valuable asset in managing the legal work being performed by attorneys outside the organization. The in-house counsel must therefore become well-versed in the organization and its goals in order to effectively facilitate the organization's legal and business objectives, and thus add value to justify being brought onboard. When utilized appropriately, all parties involved can stand to benefit from the efforts of the in-house counsel, the attorneys on the inside.

## Six Rules for Making the Jump

By Tracey Lesetar-Smith

*Tracey Lesetar-Smith is currently the vice president of business & legal affairs at Bellator MMA. The opinions expressed are the views of the author alone and not attributable to any other individual or entity, including Bellator MMA, its parents, and affiliated entities.*

I find that each attorney's story about jumping to in-house practice is truly singular. Mine is no exception. It was early summertime when I got the call. I had foolishly forgotten to put on my shoes before picking up, and my bare feet blistered in the sweltering Sacramento heat as I paced around the pool—the only place at the house with any cell reception. After several weeks of back-and-forth, the call was brief and congratulatory; deceptively casual for what amounted to a life-changing event. I sailed back into the house with the news, met by hugs, delight, and alcohol over the din of endless questions. By autumn, I would already be in Chicago, applying for admission to the Illinois Bar as in-house counsel under Rule 8.9.

No two stories are alike. But especially for those of us who jumped into a small or nonexistent in-house department as young lawyers, it represented an ice-bucket shift; much like practicing advanced French for years in an academic setting and then suddenly getting dumped in the middle of the 12th arrondissement of Paris with a pocketful of Francs, a phone with no contacts in it, and a baguette. Good luck—and get used to it.

If that kind of wanderlust is what you long for, then it will require some preparation, guts, and creativity to build a ladder that will ultimately take you to an in-house destination. Here, I merely offer some time-tested advice on how to forge that path and cultivate success in your initial years.

### **Find Your Pond**

In my case, moving in-house was function of growing two assets:

Experience and Niche Expertise. Experience equates to how big a “fish” you are. Niche expertise is about which “pond” you choose to swim in. The more experience you have, the closer you are to being a big enough fish to boast qualifications that will garner you serious consideration for an in-house position. How big a fish do you need to be to make the jump? If you want to swim in the big pond, be prepared for the fact that as a young attorney, you may not be the beluga, or even the scrappy crawfish. But getting the opportunity to pay your dues as a smaller fish in a bigger corporate in-house department may pay off in spades with building experience and gaining mentorship from more senior attorneys. Choose a more sparsely populated niche pond, on the other hand, and a smaller fish may find a world of opportunities to truly maneuver, grow, and cultivate your body of experience as well. Personally, it was a thrilling ride to start an in-house legal department alone in a specialized industry. Although terrifying at times, it built important character, experience, and bonded me with my coworkers.

### **Cultivate Relationships**

Don't give short shrift to the old adage: *It's all about who you know*. I learned an important lesson in Big Law: Not everyone is going to like you. Deal with it. Stop obsessing over the elusive keys to universal likeability (hint: get out of law practice and into politics if you yearn for that). Instead, seek out practitioners whose style you want to emulate. Then go work for them. As a junior associate in a specialty department with a slew of powerful partners, I learned quickly that there were a handful of partners who placed paramount value on juniors who put their heads down, set their clocks by the billable hour, and waited patiently for good work to be bestowed upon them. In my view, those partners were probably not going to like me very much. Instead of agonizing over that incompatibility, I found partners who

saw me as a unique asset, got as much work from those partners as possible, and did everything I could to blow them out of the water with my product. It paid off. Just one week before I was offered my in-house position on that hot summer afternoon, my favorite Big Law partner had a private call with the company's president and CEO. As I was later told, he didn't mince words: "The question you should be asking yourselves isn't whether or not you should hire her—you should. The question is simply whether or not you can afford her." Even years later, I am still humbled by that review and ever-grateful for his confidence in me. But it goes to show that your best endorsement isn't always your resume; your relationships speak volumes.

But cultivating vertical relationships isn't all there is. In fact, external, lateral relationships may be some of the most influential in your career and life. "Big John" McCarthy, easily one of the most respected veteran referees in the sport of Mixed Martial Arts (MMA), taught me an unexpected lesson. Early in my years of practice, I had the privilege of taking his MMA judging and refereeing courses; the pass rate for each is less than a 10 percent. I assure you, there are few things as intimidating as judging a mock MMA round and having John review your scorecards, booming to the class, "Interesting, Tracey. Explain to me *exactly why* you scored the round that way." As a result of taking his courses, however, I ended up not only learning valuable lessons about the sport of MMA, its history, and the MMA industry, but also building a longstanding friendship with John and his family. John's deep knowledge, resources, network, as well as his good, old-fashioned loud and unapologetic opinions have been invaluable tools over the years that I would not have had if I hadn't taken the time to attend his daunting courses or to sit down and break bread with his family. If you want to be a part of an industry, cultivate relationships there, regardless of whether they are with businesspeople, fellow attorneys, or journeymen. Relationships will lead you to better knowledge, understanding, contacts, and rewarding bonds that will underscore your career in that business. Conversely, burn bridges sparingly. Your collective relationships and your reputation are like a scent that follows you everywhere you go; make sure you smell like Chanel.

### **Learn and Know Your Business**

As an in-house attorney, your primary value is that you marry legal expertise with background knowledge about the current state of your company and the broader industry in which it operates. The more you know about the business side of the industry you wish to jump into, the better off you will be. And the more you learn about your industry once you're in it, the more effective you will be at your job. You will learn that there are the "business-side folks" and the "legal folks" in any company. Business-side folks are effectively the "client," making the substantive calls about which direction the company (or a particular deal) is headed. The legal folks then provide counsel and implement the business vision. So you must have a grip on the business and its objectives in order to do your job as in-house counsel. Although this is an important concept to know going in-house in any industry, it is especially relevant in sports and entertainment. Business-side folks in this arena can be particularly harsh if you are brimming with overconfident "fan" knowledge and yet are clueless about the actual business behind the onscreen/on-field "magic." I have had people tell me before that they "know a lot about the MMA business" and yet are unable to intelligently talk about anything beyond what they have been spoon-fed by slickly produced media featurettes on their four to five favorite fighters. Being a respected in-house practitioner requires both business and fan knowledge. So talk to people who can inform your business understanding. Go to industry events where you can learn something new. Read the industry media outlets and non-legal trade journals daily. Rinse. Repeat.

### **Ride the Confidence Fence**

Confidence is always an important facet of successful practice. Let's face it: confidence projects competence. As a young lawyer, however, you may often find yourself at a disadvantage in the eyes of others because you have fewer practice years under your belt. That can be amplified both as you prepare to make the jump to in-house practice as well as during your initial time at your new company. This is a catch-22 for most lawyers; you want to project competence, but being too overconfident (i.e., hubris) can end up turning others off and pinning you under the weight of projects that are well over your head. The first step in combatting these pitfalls is religiously practicing Rules two and three above. In doing so, you will find that you confidently know all of the basics and are surrounded by people who trust and protect you. Once you are armed with that poise, exercising a bit of enthusiastic humility is important and something that hiring managers look for in corporate counsel departments. When confronted with a question or prompt by potential in-house employers that is beyond your knowledge base, there is nothing wrong with confidently saying, "I actually haven't had the opportunity to get very much experience with that particular issue, but I find it fascinating and would love to get a chance to learn more by working on matters like that . . ." Projecting confidence is entirely possible, even when you don't know the answer. And remember that pocketful of francs, baguette, and phone without contacts? You will need that humility when you have to start asking for directions to the Louvre.

### **Hone Areas Outside Your Comfort Zone**

Specialty legal departments exist in most large companies (employment, IP, licensing, etc.). But in-house counsel are more often jacks of all trades, especially in small legal departments. The more you bill yourself as a one-trick pony with a singular expertise, the more you may box yourself out of these general practitioner roles. For anyone determined to go in-house, I always recommend that they gain two types of experience: 1) Go to the other side of the aisle. If you are a transactional attorney, get some litigation experience. If you strictly litigate, try your hand at drafting. 2) Try different flavors of expertise. If you have gone years as a labor and employment attorney, try a little soft IP/trademark work. If you are a die-hard insurance attorney, try dipping into a little wrongful termination work. Getting variety isn't just the spice of life; it's necessary perspective that will give you a better understanding of other aspects of the law that can (and will) impact whatever in-house department you eventually join. If you have cultivated fruitful vertical relationships in your current position, you will need only to ask around to see if anyone has a small matter that they would permit you to help out on.

### **There Is No Spoon**

Unless you have been living under a rock since 1999, you have seen the Wachowski Brothers' sci-fi epic *The Matrix*. In one of the seminal scenes, the main character, Neo, watches a little boy bend a metal spoon using only his mind. Sitting on a floor littered with misshapen spoons, the little boy explains to a puzzled Neo: "Do not try and bend the spoon. That's impossible. Instead, only try to realize the truth . . . There is no spoon." Although Neo assumes the ironclad rules that he has always steadfastly subscribed to—concepts of matter, force, gravity—universally apply to everything he sees, his lesson is that those rules are illusory, and it is only his unwavering belief in them that forces their application. Now back to the exciting realities of legal practice: The conventional rule is that one must toil away in law firms for eight-plus years before earning the right to jump in-house; and if you want to go in-house as a relatively junior lawyer, prepare to go to a very large company and tuck into obscurity under endless strata of more senior attorneys in your specialty department. These are the rules, right? Maybe not. Perhaps the

only thing making these rules universally apply is our collective, unwavering belief in them. In fact, there are myriad ways to forge a path into an in-house position, all of them singular and different, many of which deviate sharply from the “rules.” I know people who landed a legal fellowship at their company out of law school and subsequently earned a full-time gig. Other friends networked as very junior attorneys until an equally junior opportunity opened up at a large company. And yet I also know lawyers who handled so much of one client’s business as mid-level associates at their firm that the client eventually decided that they couldn’t live without their full-time services. So get creative, tread new territory, and break your own ground. The only thing you may regret is being afraid to break the rules for years, only to later find out that in fact, there really was no spoon.

## Best Practices for Outside Counsel

By **Tomas J. Garcia**

*Tomas Garcia is an associate at Modrall Sperling in Albuquerque, New Mexico. He is a 2014–2015 ABA YLD Scholar and an associate editor for TYL.*

Lawyers in private practice who represent corporate clients as outside counsel have regular dealings with their clients’ in-house legal teams. Outside counsel often work at the direction of in-house counsel and report directly to them on the status and developments of a case. The following practice tips from experienced lawyers who represent organizations as outside counsel highlight some of the key challenges—and opportunities—that exist when representing a client who also happens to be a discerning lawyer.

**Keep in-house counsel informed.** Every client, and every in-house counsel, will have different preferences regarding communications. It is the responsibility of outside counsel to learn what the client’s communications requirements and preferences are. But err on the side of communicating more detail rather than less until directed otherwise. Copy in-house counsel on all communications with others in the organization, with opposing counsel, and on pleadings. In-house counsel want, and have the right, to be involved in making critical decisions about the case as it progresses. To do so effectively, they need to know what’s going on.

**Pay attention to client-specific requirements.** Many in-house legal departments have specific billing standards and other requirements for reporting periodic assessments or written plans and budgets. It is the responsibility of outside counsel to be aware of in-house counsel’s requirements when handling a matter. This responsiveness is particularly important when a new development in a case affects your prior strategy and risk analysis.

**Be candid.** From the outset of your engagement with in-house counsel, be honest and upfront about the strengths and weaknesses of the case and don't blame bad outcomes on the judge or opposing counsel or other factors outside your control. In-house counsel can have reasonable expectations, but it is important to recognize key challenges with a case from the outset so that in-house counsel can help devise the best possible strategy and not be caught off guard when things don't turn out as planned.

**Be cost conscious.** Candor is also important when it comes to the budget. Be realistic about your budget, if you're asked to provide one, at the outset of your engagement. Even if your client's outside counsel policies and billing guidelines don't require a budget, in appropriate cases, ask in-house counsel if they want one. Don't offer a low-ball estimate just to appeal to the client but provide a reasonable range and offer suggestions for minimizing expenses wherever possible. When unanticipated expenses arise, don't just exceed the budget without explanation. Be proactive and tell in-house counsel why initial budget parameters were not right. If you expect to take certain actions in a case that will cost a lot of money, let in-house counsel know in advance and get their approval.

**Make sure your bills are meaningful.** When preparing time entries for your bills to in-house counsel, make sure to explain what work you've done and why it's important to the case. Take the time to review your billing statements carefully, and make sure they conform to the billing guidelines provided by in-house counsel. Be willing to discuss billing issues with in-house counsel when they arise and be willing to cut time when appropriate. For example, writing off time may be suitable if you followed the wrong lead when researching a particular legal question and a different approach would have been more efficient, or if you get an associate involved in a case to participate in a way that enhances the associate's professional development but does not necessarily require two billing attorneys. Don't assume that in-house counsel are agreeable to anyone in your law firm working on a particular matter. Even when billing guidelines do not require advance approval for each timekeeper working on the matter, consult with in-house counsel whenever additional staff is necessary and explain the added benefit to the case.

**Take time to explain.** Don't just send (or have your assistant send) copies of pleadings, letters, discovery requests, orders, etc. to in-house counsel without explaining the significance of the document to the case. Tell in-house counsel how the document affects the case, what challenges or issues it raises, and what opportunities it presents.

**Be responsive.** Answer emails and phone messages from in-house counsel within a reasonable amount of time. Work with other people in your law firm that you trust to be able to field phone calls from in-house counsel when you know you won't be readily available. Although outside counsel work on many different matters at any given time, it's important to demonstrate that you care about the problems your client and its in-house counsel are facing.

**Ask for feedback.** Most in-house counsel appreciate a "client assessment" meeting, where in-house counsel, as your client, have an opportunity to provide feedback to you about the services you've provided. For larger cases or clients for whom your law firm handles several matters, offering to visit for a

client assessment (at your law firm's expense) is always a good idea. If an in-person visit is not possible, send written communications or ask for an assessment meeting by telephone. It is important for outside counsel to show in-house counsel that their satisfaction with your services is a priority.

## Know When and How to Talk to the Media

By Phillip Long

*Phillip Long is an Employee Benefits/ERISA attorney with Branch Banking and Trust in Greensboro, North Carolina, and is editor-in-chief of TYL.*

Something scandalous has happened with your company—a class-action employment discrimination claim, a massive environmental spill, an SEC action for misstated financial statements. The media is clamouring to get a statement from the company. Who they gonna call? Whomever they can get to first! That may be you, as in-house counsel. Your contact information is often easily available on the State Bar's website. So, you have an email sitting in your inbox from the local newspaper, a voicemail waiting for you from the local TV station, or, worse yet, you didn't screen that unknown call and you are now stuck on the phone with the media wanting the company's statement now. What do you do? First, don't freak out. Next, like any crisis, it's best to take a deep breath and plan your response. Here are some steps to ensure you effectively represent your client—the company—while not evading the media.

### Check Your Internal Policies—Are You Authorized to Talk?

The biggest mistake you can make is to violate your company's preestablished policies, if any, concerning engaging with the media. Obviously, you should speak only if you have authorization from the company to do so. Remember that speaking comes in many forms. Never directly speak to media, post on websites, including LinkedIn or Facebook, or tweet your views on a particular issue without authorization.

Larger companies likely have a preestablished authorization procedure. Your employee handbook may require all employees to route any media inquiries to a corporate communications department, which may communicate on behalf of the company with the media. If you must transfer the media inquiry to corporate communications, follow up with that department to ensure that the matter is being handled.

You've now passed the buck to the communications department. Does that end your work? Not necessarily, because you are still the company's lawyer. You may need to work with your corporate communications department to assist with the particular legal issues involved. While your communications

department may be well versed in effective communication, the complicated legal issues may become muddled. You need work with the communications experts to ensure that the content of any communications is accurate and does not adversely hurt potential future legal arguments.

Suppose you can't pass the buck to another department. What do you say to the media?

In all cases, you should respond in some way to the media inquiry, even if the response is no more than, "The company declines to comment at this time." If you fail to provide any response, a story could run without the company having an opportunity to respond.

In crafting your response, remember the reporter does not command the situation. You may be able to negotiate a response on your and the company's terms. Consider the following tips for negotiating your response:

- Know with whom you are speaking and the publication for which they work;
- Try to get the questions ahead of time. Be wary of questions that are "off script" or out of line with the other questions. Know that any of your "agreements" with the reporter (for example, to get the questions ahead of time) may be reported.
- Research your answers, and craft your responses carefully. Think of how many ways your answer can be twisted. This process will be especially important with TV, radio, or other audio interviews, where there will be few if any re-dos. You may be able to negotiate with a print reporter to review and revise your answers.
- What is the ideal content of your response? Of course, there is no ideal, but your response can be on your and the company's terms. Do not be pressured into giving a statement before you or the company are ready. Just because you accidentally picked up a media cold call does not mean you have to provide a shoot-from-the-hip response. Politely ask for additional time, and ask if there are any immediate questions for which you can prepare. Should you just give the "no comment" response? It may be entirely appropriate in a situation. Just remember whatever the reporter writes, it will be followed by, "The company has no comment."
- Not only your words, but also your body language, mannerisms, facial expressions, and other body cues may be reported. Be aware of how you look and act while you are being interviewed.
- Watch for reporters who will carry you to an extreme statement with leading questions. They may try to get you to grossly overstate a position, but you must be on the defensive. However, do not get visibly defensive or emotional

Whatever you say, be sure it is not legally protected from disclosure. The company is your client, and Rule 1.6 of the Model Rules of Professional Conduct, which is substantially identical in most jurisdictions, prohibits the disclosure of "information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation," or the disclosure is permitted by the exceptions outlined in Rule 1.6. Be sure your statement complies with other applicable law. For example, a public company may be limited by SEC rules and regulations

in what it can disclose to the press, such as when a merger or acquisition is contemplated. For public companies, be particularly sensitive to disclosure of non-public information that can affect your company's stock price.

### **Conclusion**

Talking to the media can be a win for your company or a tool for more trouble. Use these tips to plan your measured, careful response to benefit your company, your client, greatly.

## **Alternative Litigation Fee Arrangements: Pricing for a Win-Win Partnership**

**By Henry Turner Jr.**

*Henry Turner Jr. is a partner with Valorem Law Group LLP in Chicago, Illinois.*

Clients want results. And they want to know the amount they will be required to invest to obtain those results. Alternative fees infuse these concepts into the attorney-client relationship. As a partner with Valorem Law Group, a business litigation boutique, my experience is with alternative fees in commercial litigation. But many of these points apply to alternative fees for transactional work.

The structure of alternative fees is limited only by imagination but generally falls into two categories: contingency fees and fixed fees.

### **Contingency Fees**

Contingency fees are familiar and often used by plaintiff's counsel in personal injury cases. The mechanics are simple: the lawyer takes a percentage of the recovery as her fee. There are also "reverse contingencies" where lawyers receive a percentage of the amount saved. In a litigation context, this means that if a client has \$1 million in exposure, then the lawyer gets a percentage of any resolution less than \$1 million. And the structure can be graduated so that outside counsel get a higher (or lower) percentage the greater the savings. But because there is a risk of a complete loss, clients and outside counsel should scrutinize contingency fees like any investment.

### **Fixed Fees**

Fixed fees are, in my experience, more common in defense work than contingency fees. The fixed fees can be for a portfolio of cases, a single case, or each phase of a case. The fixed fee should be the product of collaborative discussions between clients and outside counsel prior to engagement. Two concerns I have often heard clients express with fixed fees are that:

1. Outside counsel will stop working when costs equal the fixed fee; or
2. Outside counsel will only staff the case with cheaper, ill-suited labor.

Those concerns can be addressed by holding back a percentage of the fee until resolution. The holdback represents a material portion of the lawyer's profit on the case, and its disbursement is tied to whatever outcome the client agrees is a successful result. In a simplified example:

- the fixed fee is \$100,000; and
- the holdback is 25 percent to be paid when the lawyer secures the agreed outcome.

The lawyer gets \$75,000 in the door on the fixed payment schedule and only gets the remaining \$25,000 if achieving the desired result. The client gets cost certainty. And outside counsel has the incentive to manage its resources to not spend more than \$75,000 to get the desired result. This often means using experienced but more costly personnel who can efficiently achieve the desired result. For my firm, the holdback shows clients that the firm is sharing clients' risk and betting on our ability to get the best outcome for them.

The fixed-fee model can be altered in several ways:

- Lower fixed fee with a higher percentage of the outcome when cash stream is an issue for the client but likelihood of success is high;
- Flat fee for each month the case is alive but with a performance bonus to resolve a case at certain times, creating an incentive for the lawyer not to "sit" on the case; or
- Different tiers of fixed fees, with each tier having an agreed scope of work. The higher the tier, the more services are included, lessening clients' risk but increasing their investment. For example, Tier A includes three depositions at \$15,000, and Tier B includes five depositions at \$25,000. Choosing Tier A risks not depositing two people who may know key facts. But the additional \$10,000 cost may not be worth the client's investment in light of the potential damages at stake.

There are other structures but the principles are the same: (1) budget certainty for the client; (2) shared risk; (3) managing costs and risks relative to the client's investment; (4) fixed revenue for the lawyer; and (5) a financial incentive to get the client's desired and agreed outcome.

Alternative fees share risks of litigation between clients and their lawyers. Clients are comfortable with risk. They know nothing in life is certain. But they still need a result. Structuring alternative fees requires open and up-front discussions between clients and outside counsel. But such discussions are the hallmarks of any partnership and help marry outside counsel's process with the client's desired result.

# You Can Do Pro Bono as In-House Counsel: How You Can and Why You Should

By Kim Takacs

*Kim Takacs is counsel in the global operations and corporate transactions group at ACE Group [www.acegroup.com](http://www.acegroup.com) in Philadelphia.*

The first sentence of Rule 6.1, Voluntary Pro Bono Publico Service, of The Model Rules of Professional Conduct states: “*Every lawyer has a professional responsibility to provide legal services to those unable to pay.*”

The Rule goes on to give guidance on what that pro bono work should look like, including how many hours of pro bono service a lawyer should engage in. And while the guidance varies state to state, the idea behind the Rule does not. Lawyers have a responsibility to give back.

That responsibility can seem a bit challenging for lawyers practicing in-house. More often than not, corporate legal departments do not have formal pro bono programs. Resources and support staff are more limited in-house than at a law firm. Reasons for not engaging in pro bono, reasons that seem legitimate, creep into the mind of the in-house lawyer.

## **1. I don't have the time.**

Yes, you do. Pro bono service comes in all different shapes and sizes, and that means that the time required varies. You can spend as little as an hour at a one-time clinic once or twice a year. You can take on a case that may require your involvement over a longer period of time but that averages out to be limited hours per week or month. You have options! It is possible to find types of cases or clinics that will have little interference with your full-time job.

## **2. I don't have the skills.**

Yes, you do. You are a licensed attorney and that in and of itself is the most important skill. Do you know how to follow directions and fill out paperwork? Do you know how to write? Do you know how to speak? Negotiate? Figure out solutions to problems? As lawyers, the skills we use every day do not change when doing pro bono work. While particular cases and case law may not be something you are familiar with, there will be plenty of help and training provided along the way by legal organizations that offer pro bono opportunities. The gaps in your legal knowledge can be filled in by those organizations.

**3. I don't have malpractice insurance.**

Not to worry. Many legal service organizations that use volunteer attorneys for pro bono service have malpractice insurance that will cover you. If necessary, you could decide only to work with legal service organizations that do offer malpractice insurance. In addition, the malpractice insurance that your company purchased for you as in-house counsel may cover you for pro bono work as well. Ask your risk management department to check.

Once you've convinced yourself that you can do pro bono, we can move on to the more important "why" question. Besides the obvious professional responsibility reason we talked about above with Model Rule 6.1, here are some other equally important reasons to do pro bono work.

**4. It builds skills.**

You can use pro bono cases or clinics to build skills that you may not otherwise get in-house. Some in-house lawyers have an interest in courtroom skills, and pro bono work is a perfect way to get that experience. Others may have an interest in building skills in a different area of the law and again, pro bono cases provide that opportunity.

**5. It keeps you connected.**

Doing pro bono work can keep you connected as an in-house lawyer to your community, non-profit organizations, and the private bar.

**6. You make a difference.**

This reason is the most important one. The impact that you can have on someone's life, from keeping a family in their home, protecting the right of a veteran, or advocating for a child, is extremely rewarding. You should never overlook or forget that the skill set that you have as a lawyer can make such a difference in the lives of others.

To have the best pro bono experience as an in-house lawyer, connect with a legal services organization (or a few!), whether local or national, that can help you move forward in getting training, taking a case (or two!), or participating in a clinic of some type. If you previously worked at a law firm that had a pro bono program, use those connections to jump-start your pro bono work in-house.

Finally, if your corporate legal department does not have a formal pro-bono program, start one. Reach out to other colleagues that may be doing pro bono on their own already and talk about a plan. Form a committee. Partner with a legal services organization and an outside law firm partner to assist with resources and training. In addition, the Association of Corporate Counsel has an amazing amount of resources for helping a corporate legal department get involved with pro bono and starting a formal pro bono case. Make the case to your general counsel about why pro bono is important and why they should get behind it. It can serve as an excellent team building exercise, with lawyers and non-lawyers participating in cases and clinics. You and your corporate legal department will be better because of it.

## In-House Career Paths

By Mark Herrmann

*Mark Herrmann is the Chief Counsel – Litigation and Global Chief Compliance Officer at Aon and the author of *The Curmudgeon’s Guide to Practicing Law and Inside Straight: Advice About Lawyering, In-House And Out, That Only The Internet Could Provide*.*

***Excerpted from [Inside Straight: Advice about Lawyering, In-House and Out, That Only the Internet Could Provide](http://shop.americanbar.org/eBus/Store/ProductDetails.aspx?productId=213134), by Mark Herrmann, published by the American Bar Association. Available at a discount to ABA members. Visit <http://shop.americanbar.org/eBus/Store/ProductDetails.aspx?productId=213134>.***

Career paths are easy at big law firms: As an associate, stay fully occupied doing great work, and become a partner. As a junior partner, stay fully occupied doing great work, and become a powerful partner. As a senior partner, generate enough business to keep you and others fully occupied, and become an even richer and more powerful partner.

These things may or may not be attainable, but everyone understands the career path.

Things are much trickier in-house. Corporations tend to have fewer lawyers than big law firms do, and in-house law departments tend to be flatter. Turnover tends to be less common. Six or eight people often report up to a single supervisor. In that environment, staying fully occupied and doing great work may not move you up the ranks. You can be fully occupied doing great work, but your boss is competent, happy in her job, not close to retirement age, and in good health. She’s going nowhere, so you have nowhere to go in the corporation.

The corporation can actually be very good to its lawyers—investing in leadership and management training, using incentive or equity compensation, and employing other tools for recognizing achievements—but still fall short in actually creating career paths that make sense.

How do corporations create career paths for their in-house lawyers?

Corporate law departments tend to answer that question in two ways.

First, in-house lawyers can often “graduate” from the law department into the business. “You’ve worked diligently as our in-house real estate lawyer for five years. Congratulations! We’re promoting you to being a site selection specialist who will work in the business unit to pick locations for our new stores.”

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That route can occasionally be a happy one. Lawyers who work in-house will naturally tend to learn the business in which they work, and they may develop an interest in working on the revenue-production side of the organization. But that's not a particularly satisfying career path for someone who went to law school because he wanted to be a lawyer. The corporation may view moving "up" into the business as a promotion, but the switch may involve changing the lawyer's career aspirations.

The second way that in-house law departments create career paths is by giving lawyers "stretch projects" — latching a specialist lawyer onto a different lawyer (or business person) to permit the specialist to learn new skills. For example, an intellectual property lawyer could be asked to serve as the business counsel for a small business unit, supported by one of the full-time counsels to another business unit. This would give the IP lawyer a chance to work more closely with his business (and inventors) and to learn the contract, employment, and other issues that arise in the business.

Stretch projects can be a win-win situation for the lawyer and the corporation. The lawyer learns more skills, and the corporation develops a more talented employee. But that doesn't overcome the inherent limits on career paths imposed by a pyramidal structure — unless a job opens up, there's nowhere to go (except to a different corporation, which hardly serves the employer's interest).

Law firms, too, have pyramidal structures, and it's plainly not possible for the hordes at the bottom all to rise to the top. But it's easier for law firms to maintain the fiction of unlimited career opportunities, insisting that the partnership is open to all qualified associates and that a partner can always improve her lot through superior performance. Without the luxury of that fiction, in-house law departments must think more creatively about how to keep their lawyers satisfied with the progress of their careers.

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## **The Rocky Relationship Between the General Counsel and the Corporate Compliance Officer**

**Zane Gilmer**

*Zane Gilmer is with Stinson Leonard Street LLP, Denver, Colorado.*

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Today's in-house counsel is under more pressure than ever as organizations face ever-mounting compliance, regulatory, litigation, and other legal challenges. And those challenges are only compounded in multinational organizations. As a consequence, the roles and responsibilities of the general counsel (GC) and corporate compliance officer (CCO) continue to expand. At the same time, the pressure to increase profits and decrease costs continues to mount. As a result of these competing interests, organizations have begun to consolidate the roles of GC and CCO. Yet that decision should not be made without consideration of the myriad compliance, litigation, and other risks posed by such a decision, particularly as they affect multinational companies.

The interplay between the GC and CCO and the issues it gives rise to are of obvious interest to in-house counsel, but outside litigators should be familiar with this ongoing debate as well. Indeed, organizations and in-house counsel often turn to outside litigators for advice on compliance and litigation matters. It is therefore important for outside litigators to understand the organization's internal structure, hierarchy, risks and benefits associated with a particular structure and hierarchy, and allocation of internal responsibilities. In addition, outside litigators are routinely the lawyers who will ultimately be litigating and defending issues that arise from the organization's decision to consolidate the GC and CCO, including issues of privilege, as discussed below.

### **The Traditional Roles of the GC and CCO**

To understand the risks associated with consolidating the GC and CCO positions, consider first their primary roles, responsibilities, and duties. Contrary to public perception in the United States and overseas, the roles of the GC and CCO are not usually coextensive.

In general, the GC is the organization's lawyer with general supervisory responsibility for the corporation's legal affairs. More specifically, the GC often serves as legal counsel to the organization's board of directors and helps the organization comply with applicable laws and regulations, as well as identify and evaluate business concerns related to those legal risks.

The CCO, on the other hand, is a relatively new position entrusted to reduce a company's risk by focusing on both ethics and legal compliance, instead of relying solely on the law. More specifically, the CCO shoulders the responsibility for not only preventing corporate misconduct but also uncovering and investigating it. In that role, the CCO must act as a neutral fact finder in the interest of the organization's stakeholders.

Thus, unlike the GC's job, the CCO's job is to help ensure compliance rather than just advise about it. Moreover, far more than being a management resource, the CCO has independent duties to the board of directors and is part of today's governance "checks and balances." Failure to appreciate these bedrock distinctions can result in business-disrupting government intervention and unwanted, costly litigation.

**The Appeal and Risks of Consolidation**

The most common arguments for consolidation are cost and efficiency. Other organizations, whose budgets are less of a concern, see consolidation as a practical approach to fulfilling their compliance and legal needs.

The benefits gained from consolidation often exist at the expense of other important corporate interests. GCs around the globe are responsible for a wide array of day-to-day legal issues, from general corporate legal advice to employment matters, contract drafting and negotiation, and litigation management. Attention to any one of these responsibilities means less attention paid to compliance. Large litigations, for instance, can be extremely disruptive to the normal duties of the GC.

Multinational organizations face particular complications as they are subject to regulatory schemes in various countries of operation that are not always consistent with one another (indeed, often the opposite is true). A prime example of those competing interests is the whistleblower provisions in the Sarbanes-Oxley Act. These provisions are frequently at odds with the competing privacy-driven laws and regulations in the European Union and elsewhere. It is crucial that an organization have a CCO focused on understanding the applicable and sometimes conflicting regulations.

The consolidated model may also jeopardize an organization's privileged communications. That is, a GC may find himself or herself conducting typical CCO duties—which are viewed more as business, rather than legal, functions—and, at the same time, providing legal advice to the organization. Because not all communications flowing from the GC are privileged, issues arise as to which are protected. Communications intended as business advice rather than legal counsel are not protected by the attorney-client privilege.

This, of course, becomes crucially important when the organization finds itself involved in litigation or, worse, in the crosshairs of a governmental investigation. Deciding which documents are privileged is increasingly difficult if the GC regularly provides legal and business advice as part of the same communications. In addition, there is precedent holding that communications between a GC who also acts as a CCO are not protected by attorney-client privilege. U.S. courts, moreover, have routinely rejected the argument that a CCO's communications are privileged. This puts organizations at an increasing risk of disclosing and waiving arguably privileged communications.

U.S. federal regulators and prosecutors, for their part, have made clear that they disfavor the consolidated model. Recent federal prosecutions of financial and health care industry organizations illustrate this point.

In December 2012, United Kingdom-based HSBC agreed to pay \$1.92 billion for failure to comply with anti-money-laundering laws. HSBC avoided indictment in part because it separated the CCO from the legal department and gave the CCO direct reporting lines to the board of directors. In 2013, J. P. Morgan Chase & Co. settled a host of regulatory and legal issues with federal regulators and, as part of that

process, agreed to divide its compliance and legal departments. Also in 2013, Johnson & Johnson made a similar deal with federal prosecutors, and other companies in the health care industry have followed suit.

While the reasons for this preference are not entirely clear, experience demonstrates that federal investigators have grown increasingly skeptical of the consolidated model, in part because of a perception that organizations take an aggressive approach to claims of privilege. Another reason may be a belief that separate roles create and foster specialization and reduce conflicts between the CCO and the GC.

In sum:

- While there is no absolute right or wrong way to structure an organization's legal and compliance departments, trends suggest that organizations are better served if they have separate GC and CCO positions.
- If that is not possible, steps should be taken to ensure that the person acting in the consolidated role pays ample attention to both typical GC and CCO roles.
- The organization should appropriately safeguard its privileged communications and documents by separating them from normal business activities, marking them appropriately, and expressly stating that communications are for the purpose of requesting and providing legal advice.
- As appropriate, management should ensure that all personnel involved understand that the CCO is acting at the request of the legal department.
- Steps should be taken to avoid involving non-lawyers (including the CCO) in privileged communications under circumstances that might threaten the privilege.

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## **Working with Corporate Clients in the New Legal Landscape**

**By Alan Nathanson**

*Alan Nathanson is CEO of Align Matters, provider of secure, cloud-based predictive planning and management for legal matters.*

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In 2009 Amy Shulman, general counsel for Pfizer, Inc., required a handful of law firms to abandon the billable hour and insisted that their lawyers find new ways to assess the value of their work. She created the Pfizer Legal Alliance, which assigned its law firms a portfolio of litigation cases at a flat annual fee. The date is important. The global financial crisis had caused the bottom to fall out of the demand for legal services. As firms were letting go legions of lawyers, the legal industry transformed into a buyer's market. Pfizer is only one example of the countless companies worldwide that were suddenly empowered to demand their outside law firms reduce costs and deliver business value for every legal issue.

Today, cost is not the only criteria clients have when selecting outside counsel. They also have choice. Only a few years ago, in-house counsel had just two modes of operation: Send non-standard work to their preferred law firms and retain the remaining work for their relatively small internal departments. For sole practitioners as well as partners in large law firms, the requirement to win work was straightforward: Build a relationship and remain in good standing with key in-house lawyers.

Now in-house counsel have multiple options. They can outsource, co-source, offshore, or unbundle. They can use project-based high-tech firms or technologies that minimize or eliminate lawyers. And they have access to free or low-cost, high-value web-based legal content. (For more, see the sidebar on page 54.) At the same time, in-house legal departments have expanded in size and expertise, making it increasingly feasible to retain the work in-house.

### **More Data, Greater Scrutiny**

Solos and partners in large firms are coming to terms with the fact that the manner in which matters are assigned and managed has fundamentally changed. As fee delivery demands and service options gain traction, they are concerned that in-house counsel may be weighing selection factors outside their control. I am often asked, "Do institutional clients maintain a history of costs for similar matters? Do they compare my rates against an industry benchmark? Can my client compare my time estimates against the time other firms take to deliver the same type of matter? Do they analyze my billing history to compare my estimates against the final budget?" Although a few in-house legal departments have partial data, they all want detailed, real-time data that will allow them to make and manage legal purchasing decisions similar to the way in which their companies make other business decisions.

New technologies automate detailed, comparative data that enables fast, high-value decision making, allowing in-house counsel and executives to choose the right team for the right task and choose the team that has a history of delivering predictable budgets and expected business outcomes.

The good news is that the data is also available to outside lawyers and firms, setting the stage for an unprecedented collaboration. The bad news is that without these data, outside lawyers are effectively pitching in the dark and face the consequences of exposing their work practices in hourly billing. Companies now have the data to question every line item in a bill, potentially making it an ever-more-painful thorn in the side of solos and large firm partners, as well as reducing outside counsel profits. Extrapolating billing analysis from a range of law firms, it is evident that mid- to large-sized law firms write off an average of 20 percent of the time their lawyers submit on hourly based invoices. For any other business this would be tantamount to a 20 percent discount across its product line.

### **Changing Costs, Changing Demand**

The change in the demand for legal cost analysis did not suddenly occur overnight. Before the great recession of 2008, the majority of matter budgets doubled, tripled, or worse and were paid in full with little impact on the relationship between in-house legal departments and outside counsel. Clayton Christensen, a Harvard professor, observed in 2004 that, “Law firms are among the most profitable and least risky businesses in the world. The profit margins of the top 100 U.S. law firms are at least twice those of America’s largest publicly traded corporations” (“Transforming Legal Services,” Clayton M. Christensen and Scott D. Anthony, [tinyurl.com/lbh5xpj](http://tinyurl.com/lbh5xpj)).

Six years later, the Association of Corporate Counsel (ACC) noted, “Over the past ten years, overall costs to U.S. companies rose 20 percent, while legal costs rose 75 percent” (“ACC Value Challenge: Guide to Value-Based Fees,” Association of Corporate Counsel, [tinyurl.com/pqc8a65](http://tinyurl.com/pqc8a65)). It is difficult to validate this statement because viable legal cost data is not consistently tracked. Christensen based his findings on research that likely was derived in part from the self-reported responses to surveys from major law firms who benefit most when declaring the highest profits. The ACC assumption is, however, in line with other anecdotal reports that estimate that annual worldwide legal costs in 2000 were approximately \$50 billion. Today, they have climbed above \$400 billion. What is the cause of this dramatic rise?

In 2000, when costs had been growing robustly for many years, in-house counsel ascribed cost increases to business growth and therefore saw them as out of their control. They noted that business growth was inevitably accompanied by increased legal transactions, disputes, regulatory requirements, and risks. But only an infinitesimal fraction of businesses grew at the feverish pace of legal cost increases. By the time the ACC issued its Value Challenge in 2010, it had become clear that the root cause of mushrooming legal costs was uncontrolled and unpredictable matter budgets. In an attempt to get costs under control, in-house departments brought in consultants and billing analysis software to comb through the minutia of hourly billing, providing a road map for analysis and a stick to keep outside counsel in line. Notably, nothing in legal invoicing analyzes the *value* to the business of the time billed.

It is not surprising that a growing number of solos and partners in large firms worldwide today feel that they are under a billing microscope. Winning the right to represent a client on a matter involves “the cost discussion,” which is likely to include discounts, budget predictability, and billing guidelines. Having won the work, counsel then learn that the detailed billing narrative for every tenth of an hour is sub-

ject to review and demand for alteration. Outside lawyers sense that their clients know more about them and their firms than they do. In fact, as matter budgets continue to spiral out of control, the burden falls on in-house lawyers, who spend more than 25 percent of their time managing law firms and billing.

### **Legal Planning versus Other Planning**

The clear reason that costs are skyrocketing is that it is difficult to budget a legal matter. Lawyers have been asked to rely on their hunches to estimate budgets and then to make promises based on these assumptions. Other industries budget their projects first by detailing their objectives and requirements in a project plan. The project plan is the road map that guides and coordinates the work of all the project's teams. It provides everyone the tools to deliver the project on budget and on schedule. Companies then collect and share "best practice" information to benchmark budgets, schedules, and outcomes.

Is legal work inherently different? The answer I get when I pose this question is that so much is unknown at the onset of a matter that legal work cannot be reduced to a project plan. Lawyers must constantly respond to new issues and the tactical moves from the other side. The resulting assumption is that a detailed legal project plan and budget quickly becomes irrelevant. But is this different from *any* other complex project?

Other industries understand that every project will encounter unforeseen issues and requirements. Knowing that the end project will be different from what it looked like at the beginning does not nullify planning or the validity of the original budget. Instead, other industries plan and budget what they know, allow a limited contingency for small variations, and deal with large and small changes with formal scope change agreements. Not only do scope changes provide the tools to revise the plan and budget, they also communicate the change to the entire team. Scope changes also enable industry learning. They provide a growing body of knowledge, allowing the budgeting and planning of new projects to build in and prepare for the "likely to happen" requirements. The result is that project plans and budgets become increasingly viable, empowering companies to confidently budget big expenditures for important projects with a clear picture of the final outcome and delivery date.

### **The Problem with Hourly Billing Data**

Recent technologies attempted to extract hourly billing data to reconstruct the matter into a project plan. These tools recognize the difficulty lawyers have in planning the matter at the beginning and attempt to reengineer the project plan by analyzing hourly billing. Essentially, by annotating their completed work in hourly billing, lawyers define the project plan backward.

Lawyers dislike the hourly billing process. Every legal professional who works on the matter must find the time to reconstruct their work from several days or even weeks earlier. In analyzing the results, recent technologies found two significant drawbacks that nullified the value in recreating viable work data. First, there is no consistency in how lawyers define their work, not only across law firms, but even within the same firm. Second, lawyers use shortcuts and abbreviations to save time. The most common shortcut is "same as." Lawyers see their own work sequentially in billing software. "Same as" refers back to an earlier date that they can see on their screen. The invoice, however, assembles the entire team's

work into an invoice, scrambling repeated “same as” annotations, many pointing to the same date across the bill. Without the person to translate the annotations, the results are, from the computer’s point of view, inconsistent and random and therefore of limited value.

Lacking plans and the ability to track the factors that cause changes to matters means that solving today’s guesswork is beyond simply saying “cut the costs.” The industry challenges, organizational programs, armies of consultants, and technologies that have been thrown at this problem clearly demonstrate that holding only one side accountable for managing costs goes nowhere: Matter budgets continue on an uncontrolled upward spiral, as does the frustration of limited business value.

### **Aligning Law Firms and their Clients**

The first requirement in solving this is to stop all argument about divergent profit and business goals. Attempting to align a law firm’s basis of profitability with a corporation’s and asking outside lawyers to consider their client’s need to cut costs and deliver business value has produced limited results.

The *only* common factor that the business and their outside law firm have is the matter. By focusing solely on the matter, all the parties are able to shut out the noise of competing and contradictory business models. It facilitates collaboration between legal departments and law firms and brings them to the same side of the table to agree on and work toward explicitly shared goals, and to intelligently manage costs.

The various attempts to bring project planning to legal work resulted in these two universes (corporate legal departments and law firms) managing anticipated plans and budgets independently of one another, with different systems and different philosophical or “cultural” underpinnings, and misaligned outcomes. Project plans *only* work when all teams agree on the objective and collaborate transparently on the same plan.

The technologies that enable joint legal predictive project planning are now mature. It is no longer necessary to ask each team to independently manage costs and communicate with the other teams. Instead, the new joint legal project plan provides the means for all the teams to transparently do all the required work and collaborate in real time.

Working together on the same matter project plan manages costs and delivers business value.

Only a few years ago, it was not possible to achieve this requirement. The big change has been a robust and secure Internet cloud. Moving joint legal project management to the cloud benefits all. And because the cloud eliminates costly internal technology and support, every type and size of team, from the sole practitioner to the global law firm, from the one-lawyer legal department to the multi-hundred, global legal department, is finally on the same playing field. The only valid question today is, “Are you the right and the best team for this matter?” If you are a solo with unique expertise, you compete equally with name-brand, international law firms. If you are a small law firm outside the United States, the secure, cloud-based legal project plan makes you an ideal candidate to deliver the best results on an international matter.

All parties benefit from joint project planning. Individual lawyers are freed from much of today's administrative work, allowing them to focus on what they do best. Outside law firms no longer pitch in the dark because they know what their clients expect, relieving them of the burden of writing down lawyer time and giving away significant margins. In-house law departments gain control of every matter, with the means to monitor and hold outside counsel accountable while eliminating the 25-plus hours a month their senior lawyers spend on managing budgets and outside law firms.

Joint predictive planning technology is changing the hit-and-miss, aim-in-the-dark history into a *matter-based* approach that aligns everyone around business value generation, and where data and analytics benefit the client *and* the law firm. ?

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## New Options for In-House Legal Departments

The flexibility to parcel out tasks rather than matters has opened new options for in-house legal departments when selecting for the right resource for any given job:

- **Unbundle.** A matter can be broken into component parts and assigned according to the best resources for each part.
- **Outsource.** A new breed of legal vendors in the United States provides project-based expert resources for specific tasks, allowing legal departments to define and pay only for what they need.
- **Co-source.** The work of a very large task can be split between two or more parties—whether as a mix of in-house and outsource firms, two or more outsource firms, or some other combination.
- **High-tech law firms.** These firms are loose organizations that deliver services by leveraging state-of-the-art technologies. Their costs are low because they need neither office space nor full-time staff, allowing them to take on complete matters or specific tasks, or to work with other teams in co-source arrangements.
- **Offshore.** Work can be outsourced to significantly cheaper resources in another country. Large document review, for example, is frequently offshored.
- **Lawyer-free legal technologies.** New technologies can perform certain types of work more accurately, significantly faster, and at much lower cost than a small army of lawyers. E-discovery is an example of this kind of technology.

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- **Free or nearly free web-based legal content.** Web-based legal content started out as highly beneficial to consumers. The first successful use of this technology was web-based wills and trusts. Web-based legal content has subsequently exploded, much of it posted by top-tier law firms giving away core documentation to demonstrate their expertise and lure clients.

## **ABA Resources for In-House Counsel and Those Interested in This Area**

The American Bar Association is home to membership groups that are dedicated to the area of in-house counsel. Members of the following groups receive various benefits, which can include substantive newsletters and communications, participation opportunities, and webinars and meetings. Current ABA members can join these groups for a nominal fee, while non-ABA members can join the association today to take advantage of the many opportunities offered by the American Bar Association.

### **Young Lawyers Division: Corporate Counsel Committee**

The committee focuses on solutions to corporate law and practice issues through dialogue between inside and outside counsel representing corporations. Its membership is balanced between inside and outside counsel. It works to keep young lawyers informed on methods of controlling the cost of corporate litigation through the study of innovative billing and budgeting techniques and new client relations techniques. [http://www.americanbar.org/groups/young\\_lawyers/committees/corporate\\_counsel.html](http://www.americanbar.org/groups/young_lawyers/committees/corporate_counsel.html)

### **Business Law Section: Corporate Counsel Committee**

The mission of the committee is to provide a forum for corporate counsel to discuss the myriad issues facing corporation counsel today. It also seeks to generate discussion with lawyers from private practices and with representatives of agencies that regulate corporate activity. The committee also publishes a newsletter for members. <http://apps.americanbar.org/dch/committee.cfm?com=CL240000>

### **Section of Administrative Law and Regulatory Practice: Corporate Counsel Committee**

The committee offers programs for members and publishes books on this practice area. <http://apps.americanbar.org/dch/committee.cfm?com=AL307500>

### **Section of Antitrust Law: Corporate Counseling Committee**

The committee focuses on antitrust issues that are relevant to in-house legal counsel and those who advise them. The group examines both issues of current concern as well as the process of counseling in order to aid companies in effectively complying with the antitrust and consumer protection laws. The committee is one of the most active committees of the ABA's Antitrust Section, with a long tradition of sponsoring informative and timely programs, newsletters and books. <http://apps.americanbar.org/dch/committee.cfm?com=AT304000>

**Section of Dispute Resolution: Corporate ADR Committee**

The committee is the link between the section and the corporate community. It creates opportunities for information sharing, education, discussion and networking for lawyers and neutrals for corporations and in-house counsel. <http://apps.americanbar.org/dch/committee.cfm?com=DR014200>

**Section of Environment, Energy and Resources: In-House Counsel Committee**

The committee was established to facilitate communication and networking among in-house counsel who practice in the environmental, energy and/or natural resources field in a variety of settings—corporations, associations, and non-profits. The committee serves as a conduit for the rapid distribution of news and information of particular interest to in-house lawyers and focuses on emerging trends in the substantive areas of energy, environmental, and resource practice and on the lawyer's role in environmental management and corporate/ organizational decision making.

<http://apps.americanbar.org/dch/committee.cfm?com=NR506000>

**Health Law Section: In-House Counsel Sub-Interest Group**

The group encompasses all areas of health law with a particular focus on meeting the needs of in house practitioners. [http://www.americanbar.org/groups/health\\_law/interest\\_groups/facility/inhouse.html](http://www.americanbar.org/groups/health_law/interest_groups/facility/inhouse.html)

**Section of Litigation: Corporate Counsel Committee**

This committee focuses on solutions to corporate law and practice issues through dialogue between inside and outside counsel representing corporations. Its membership is balanced between inside and outside counsel. It has led the profession in focusing on methods of controlling the cost of corporate litigation through the study of innovative billing and budgeting techniques, imaginative litigation management methods and alternatives to litigation. The committee publishes a quarterly substantive newsletter for members. <http://apps.americanbar.org/litigation/committees/corporate/about.html>

**Section of Real Property, Trust & Estate Law: Real Property In-House Counsel Committee**

The committee focuses on issues of particular concern to members of the section, including associate members, who are employees of for-profit and not-for-profit corporations and federal, state, and local governmental departments and agencies. The committee will work with other committees of the section to design programs and arrange for articles that are of particular interest to in-house counsel, and otherwise to promote opportunities for participation by in-house counsel in section activities.

[http://www.americanbar.org/groups/real\\_property\\_trust\\_estate/committees/real\\_property\\_committees/rp\\_in\\_house\\_counsel\\_membership.html](http://www.americanbar.org/groups/real_property_trust_estate/committees/real_property_committees/rp_in_house_counsel_membership.html)

**Solo, Small Firm and General Practice Division: Corporate Counsel Law Committee**

This committee is responsible for monitoring developments related to practice in the corporate counsel setting and to encourage involvement in the division by lawyers who practice in this setting.

<http://apps.americanbar.org/dch/committee.cfm?com=GP300000>

**Tort, Trial and Insurance Practice Section: Corporate Counsel Committee**

The committee consists of in-house corporate counsel, and those in private firms who work closely with them. The committee's goals are to educate in-house counsel on topics of interest to them, and to educate those in private practice on how best to work with in-house counsel. <http://apps.americanbar.org/dch/committee.cfm?com=IL205600>