

The Case For and Against Outsourced Legal Bill Review

Two Professionals Outline the Case For and Against AFAs

By Michael Zeoli and Stacey A. Giuliani



THE CONS OF OUTSOURCED LEGAL BILL REVIEW

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Why are legal bills reviewed and who should most likely be performing this task? Today, some companies and law firms may believe that reviewing legal bills is a good way to reduce their legal spend. This mindset may have originated in the 1990s when outsourcing legal bill review became quite popular with third party bill review companies working on commission. This fee-based system may have provided an incentive for some bill review companies to make cuts to legal invoices which led to large adjustments and perhaps even damaged relationships with law firms. This process, in part, likely resulted in the incorrect perception that cutting legal invoices was a means for companies to reduce legal spend.

While review of legal invoices can result in adjustments to invoices, the driving force of the review is not to reduce legal spend. The purpose of legal invoice review is to make sure that the right amount is paid for the right amount of services provided. This includes ensuring that a law firm is compliant with policies and guidelines as well as ethical, professional and legal standards/authority.

Legal bill review is also a part of the litigation management process. Legal invoices offer a picture of the activities undertaken on a case. An invoice tells a story on what is going on and allows a check and balance with the actual case file and litigation strategy.

Third party bill review companies may not be the best suited provider of the legal bill review task, and the outsourcing of this

responsibility may have some potential disadvantages. Following are overviews of some potential disadvantages of which most are interrelated:

- ◆ **Insight/Knowledge:** The review of a legal invoice is a tool in the litigation management process offering insight into billing and case management practices, and that tool can be lost when a third party does the review. “Canned” reports provided by a third party vendor can help measure performance, but they do not generally offer first-hand insight into good and bad performance/practices.
- ◆ **Consistency:** Having the same workflow and individuals reviewing invoices provides a consistency that also helps educate firms regarding billing expectations. This is not to say that a third party cannot be consistent, but there is no assurance that one individual is reviewing legal invoices from the same firm, case or line of business.
- ◆ **Quality:** A third party vendor is at a disadvantage because of the inherent obstructions to deliver on the total bill review and litigation management experience. The quality of the review can be impacted by a variety of factors. However, the scope of quality is not limited to just the review, it extends to the overall relationship with the law firm. The lack of first party to first party interaction can result in delays, potential disconnect in the partnership, frustration when issues arise, etc., which may adversely affect the quality of the relationship with the law firm.
- ◆ **Best Position:** The individual handling the file is in the best position to review a firm’s invoice. When legal invoices are

reviewed “in-house,” whether by the claim handler or a centralized unit, the insight/knowledge of the file is readily available and can be contemplated in the invoice review.

When a third party reviews the invoices, an understanding of the file may not be available and collaboration not as easy. This can lead to quality and accuracy issues.

- ◆ **Relationship/Customer Service:** Reviewing invoices in-house allows for a better relationship with the law firm through open communication both in terms of the review and the ongoing business relationship. Law firms value feedback on their services/products, which includes their billing. Conversations with law firms on litigation management and billing can lead to better performance and stronger relationships.

With in-house bill review, a company or law firm is able to have its customer service issues heard and addressed more readily. This helps eliminate the challenge of working through a third party to address a company or law firm’s concerns.

- ◆ **Privacy/Security of Data:** There is always a concern over data security whether the bill review is performed by a third party or in-house. In either situation, the management and administration of data security policies and guidelines should be carefully examined and regulated. Access to and review of the invoices may be more easily controlled and monitored with an in-house review process, whereas with a third party there is an additional layer of privacy/data security that must be considered and ultimately relied upon.

- ◆ **Attorney-Client Privilege:** The attorney-client privilege should be considered with a third party review as some invoice information may be subject to this privilege. State laws/standards should be reviewed as some states may not permit a third party bill review without the consent of the firm’s client.

- ◆ **Control:** When outsourcing legal bill review, there is the obvious loss of control of the audit as well as many of the areas mentioned above. And when partnering with an outsourced legal review vendor the potential for loss of control is an overarching issue for all the components that make up the legal bill review process and aspects of litigation management.

As legal invoice review is an important part of litigation management, there are great advantages to in-house review. A third party may be able to provide effective and efficient audit/review services and could be a viable option. However with a third party, there are clear challenges and disadvantages that reflect “costs” that should be understood and contemplated.

Ultimately, the company and not a third party owns the legal costs and the bill review. The company and its employees are the ones who are vested in the relationships and litigation, who operate on the frontline with the law firm, and who are responsible for the bottom-line and end-results. Whether you use a third party or review in-house, do not lose sight of the importance of the legal bill review in the litigation management process.



THE PROS OF OUTSOURCED LEGAL BILL REVIEW

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At one time many companies believed it was cost effective to use in-house personnel to audit legal bills. Companies either hired individuals whose primary purpose was to audit legal bills or they asked other employees to incorporate the review of legal bills into their current duties. Executives and managers thought that they would be able to control spiraling legal fees while keeping down the costs required to implement an auditing program. However, many companies are now choosing to hire independent legal auditing firms. Why? There are several reasons, but the most significant are: cost, expertise and objectivity.

- ◆ **Cost:** Staffing affects the costs associated with maintaining an in-house legal audit program. Corporate decision makers once thought that instituting a legal auditing program in-house would be less expensive. A company would hire a person(s) whose primary function would be to audit legal bills. This person(s) could be assigned other duties within the company as needed. If the scope of the legal auditing program expanded, the company would hire additional people to audit legal bills. Training would be conducted in-house, thereby keeping costs associated with the legal audit program low. The company would not have to pay an outside, independent legal auditing firm, thereby retaining all of the savings obtained from the legal auditing program.

The reality, however, is quite different. Every time a company hires another individual it incurs significant overhead expenses such as rent, supplies, salaries and benefits. Companies incur other hidden costs as well. Because the specific need for a legal audit is unpredictable, it is difficult to achieve the appropriate level of staffing. After the project is completed, the cost of increased staffing continues. The corporation must either assign other duties to the audit team or decrease the size of the staff. In either event, when the next large auditing project arises, the staff is not available to respond immediately.

Service support for a successful legal auditing program is very capital intensive. To successfully manage a series of legal auditing projects or programs, the auditor(s) must be able to avail him or herself of the latest, most up-to-date computer technology. This technology enables the auditor to review and analyze the legal bills from several different perspectives, collect and assimilate disparate data, and complete and revise audits quickly and efficiently.

- ◆ **Expertise:** Executives and managers once thought that legal bill audits were best handled in-house because an independent firm would not be as familiar with the legal needs of the company and the background of the litigation. However, the thinking among many executives and managers is changing in this area as well.

The key to effective legal auditing is knowledge of billing practices and the ability to spot potential billing abuses, not in-depth knowledge of the factual background of the litigation. Experienced legal auditors are familiar with complex litigation. Independent legal auditing firms often spend their time analyzing legal fees arising from complicated lawsuits with complex legal issues. The in-house auditor does not have this breadth of experience. The in-house auditor's knowledge and experience in auditing legal fees may be further limited by the other duties he or she has been assigned.

The in-house legal auditor may not bring to the job the same professional background and expertise as someone who works for an independent legal auditing firm. A high quality outside legal fee auditing firm includes on its staff trained, experienced auditing professionals.

- ◆ **Objectivity:** Another reason the trend in legal auditing has gone from creating in-house legal auditing staffs to contracting with independent legal auditing firms is objectivity. In-house corporate personnel may have developed a personal relationship with a law firm, which makes it difficult for them to scrutinize specific questionable billing practices with the degree of detachment that an independent legal auditor can bring to the situation. Additionally, a senior partner at the law firm might have a strong personal relationship with someone higher up the corporate ladder, thereby inhibiting the in-house auditor from scrutinizing that law firm's billing practices too closely.

By employing the services of an independent legal auditing firm, the corporation avoids these potential problems. Professional independent auditors do not have a vested interest in the outcome of the audit. They did not recommend the law firm and have no personal relationships either within the corporation or between the corporation and the law firm to tiptoe around. The auditors' only agenda is to report their findings honestly and objectively. In other words, the independent auditors are free to "call it as they see it."

- ◆ **Special Focus:** Corporations may have thought they could rein in the explosion in legal fees by hiring employees to audit legal bills on a full- or part-time basis. However, the demands placed on individuals within the corporate structure make it exceedingly difficult for these employees to devote the time and energy necessary, and have the critical support needed, to properly audit legal bills. At the same time, independent legal auditing firms, created to tackle the complex assignment of auditing legal fees, offer the services corporations are demanding.

Armed with experienced, specially trained auditors, the most current computer technology, the independence of a third party ready to stand behind its findings, and the ability to complete legal auditing projects quickly, efficiently and comprehensively, the independent legal auditing firm provides the corporation with the most cost-effective means of controlling one of the largest factors affecting the bottom line. [LM](#)



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