



## ACC Docket

### How to Save a Ton of Money in Legal Fees

There's a great exchange in the movie "Other People's Money" that I always think about when I think about the business side of my profession. It went like this:

*Kate Sullivan (played by Penelope Anne Miller): Well, for someone who has nothing nice to say about lawyers, you certainly have plenty of them around.*

*Lawrence Garfield (played by Danny DeVito): They're like nuclear warheads. They have theirs, so I have mine. Once you use them, they @#\$\$ up everything.*

Prior to starting my own firm, I worked for large law firms that liked to bill big. After that, I went in-house and served for eight years as a general counsel for a telecom company, where I dealt with law firms that liked to bill big. Sometimes, they called it "value billing." That's where they bill you not for the amount of time they spent on tasks in your case but on the value they thought they were giving you. So, if a senior attorney who has researched and written about the same issue a million times before now spends only five minutes on it, he may still bill you an hour for it because that's the value he thinks his five minutes on that issue is worth.



Face it: You are going to spend money. You are getting sued. You need to sue someone. You need to do a deal. You need to stay out of trouble. Unless your attorney works for the Legal Aid Society or the Public Defender's Office, in which case your fees on your current matter are probably not among your greatest concerns, then your lawyer wants to get paid. Because he is an attorney, he knows how to avoid payment problems; he knows you need him more than he needs you; he knows you are going to sign his airtight engagement letter without looking at it, and if you do look at it, that you probably won't question it.

But you are empowered, among other reasons, because you are reading this. So, here is what you are going to do:

1. **Review closely and, if necessary, revise your lawyer's engagement letter, and attach a good set of outside counsel guidelines.** If they tell you it's not negotiable, or that they need to take your changes to some executive committee, put your foot down. If they tell you they can't change the engagement letter, attach an addendum with your own outside counsel guidelines. This may be the most important factor to save money.

Here are some critical parts of your engagement letter or outside counsel guidelines: They must give you a budget, even if it's a range. Any amounts billed that are X percent over budget will not be paid unless you've approved them in advance and in writing. No billing you for overhead or overtime. Copying or scanning will be billed at no more than 3 cents per page, and then, only if free scanning is unavailable as an option. All litigation must be preceded by a litigation plan, with anticipated steps in the litigation and a suggested cost. No expenses over \$100 will be incurred without your approval, in writing and in advance.

Here are some more: Only one person is authorized to direct counsel, and no scope of work may be changed or increased other than by that person. You get copies of everything generated in your case (i.e., memos, research, briefs, drafts, etc). You must approve anything sent or to be sent. Prior approval is required for research or memos exceeding two hours of billable time. You approve proposed staffing and each attorney's rate (i.e., no changing to a higher-billing attorney mid-case). Billing must be detailed and broken down by task; block billing (where 30 tasks are listed in a paragraph, separated by semi-colons, with no internal times) and vague descriptions (e.g., "attention to ...") are verboten. Internal multi-attorney office conferences are highly discouraged; only one attorney billing at a time. No attorneys billing for paralegal or secretarial work. No paralegals billing for secretarial work. No secretaries billing ... ever.

You can Google "outside counsel guidelines" and get some good ones. Or just call or email me, and I'll send you a

good set that I've used.

2. **Negotiate.** The reality is that the attorney you're talking to is not the only game in town. There may be hundreds or thousands of them, and many of them are just as good as the next one. Prior to starting my own firm, I spent eight years as in-house counsel, combatting and overruling abusive billing practices. Much to the chagrin of our outside counsel, I have always viewed outside counsel as a commodity (albeit a valuable one) and not as a sacred relationship. In many ways, I think we attorneys are very much like basement waterproofers, plumbers, electricians and any other laborer. At the end of the day, our clients want their basements dry, their toilets flushing and their lights working. They don't want to pay for opulent conference rooms and partner retreats in Hawaii. They want their problems solved early and inexpensively. Period.

There are as many different fee arrangements as there are creative lawyers and clients. Just because an attorney typically charges by the hour, and for a certain rate per hour, doesn't mean she won't come off of that standard. She will if you need it and she wants your business. So, ask them up front to suggest an alternative fee arrangement, perhaps a success-based fee, a flat-fee, a capped fee, or a hybrid of any of the foregoing. Ask them also to confirm that they will use contract attorneys for document reviews or extensive, but relatively ministerial, tasks. These lawyers bill at a fraction of the cost of partners or associates at larger firms.

And please, make sure you ask them to reduce their hourly rate. Make sure you tell them that you're comparing different firms for your matter. All they can do is say no, and they are likely to agree. The rates they give you are probably the standard firm rates. They are generally not inflexible. Any reduction is going to add up when those hours multiply to the tens or hundreds.

3. **Use an RFP.** When you hire a builder, do you use the first one you talk to, or do you get a few different quotes? Why should lawyers be any different? Call the lawyer, discuss your case and tell them you are sending them a one-page Request for Proposal (RFP). In your RFP, describe your case and ask at least three (and possibly up to five or six) firms to tell you how they will staff your matter; to give you references; to describe similar matters they have handled, and when and what the result was; to give you their most aggressive fee structure, including alternative fee arrangements; and to give you a proposed budget. Then, attach your outside counsel guidelines to the RFP and ask for their thoughts on them up-front. Give them a deadline to respond. Make yourself available for follow-up questions. Then, await your responses, talk to their references and compare.

A caveat here: This process, and to some extent the ones before and after it, depend on leverage and need, supply and demand, basic principles of economics that apply to any business. A large matter will carry more weight over counsel than a smaller case. A lawyer in high demand who has a unique skillset will negotiate less than a lawyer who doesn't. Flexibility will also depend on your delivery. If you come off as a pain in the butt up front, your attorney will be inclined to believe that you are going to be a pain in the butt later, too, and may therefore dig in his heels up front. Choose your battles carefully and execute delicately. Strike the right balance between assertiveness and flexibility. Prioritize the issues most important to you; focus on those and be willing to give on others.

4. **Provide organized, responsive information as requested.** Once the case starts, make your lawyer's job going through your paper and emails easy. The last thing you want to pay for is your attorney combing through a disorganized file to retrieve the necessary information. If you are unsure of what information you are looking for, ask your attorney. Most attorneys will provide guidance or a worksheet of exactly what they need.
5. **Do some of the work yourself.** Yes, there are many tasks that you can tackle yourself. Requesting documents or public records is usually a straightforward process. There is a ton of online research you can do that your attorney is going to have a paralegal do and bill you for. Be careful with this one, though. Make sure you communicate openly with your attorney about your proposed division of labor so he can guide you on what is appropriate and what is not.

This is not an exhaustive list. Any combination of the above concepts will save you a ton of money. Use all of them and you'll save a boatload. They are not a secret. They are just not used enough.

You don't want a nuclear weapon for an attorney. You want a surgical strike. You want a lawyer who will accomplish your goals at the earliest point in time and for the least amount of money. From the attorney's perspective, I view the real value in "value billing" comes in exceeding your client's fee expectations by under-billing, not by giving yourself a ton of room up front in an engagement letter and then over-billing just because you can. Lawyers know that if we bill our clients more than our colleagues would, our clients will take their next case to them. If we address our clients' needs quickly and inexpensively, according to fee agreements that work for them, not just us, they will be our clients forever.