



Legal Writing and the Business of Law

Legal Bills, Clear Writing, and Establishing Trust (Part 1 of 2)

by Stephen D. Feldman

This column is the first in a two-part series about a type of “legal writing” that often goes overlooked—even though most private-practice lawyers do it every day.

I’m referring to the writing that appears in the legal bills that outside counsel send to their clients.

This writing really matters. For one, clients are more likely to pay bills that have clear time narratives compared with bills that have gobbledygook for narratives. But that’s not the benefit that I want to focus on—or even the leading benefit of clear narratives.

What’s that benefit? The potential to establish deep, long-lasting trust between lawyer and client.

This column and the next expand on this thesis.

In the first part, I will theorize about why easy-to-read legal bills can profoundly enhance the attorney–client relationship. In the second part, which is planned for the October 2016 issue of *For The Defense*, I’ll describe five specific writing techniques for preparing easy-to-read legal bills. And in both parts, I’ll seek your feedback. I speak only for myself, and the views in these columns are my own, based on my observations and experiences. I’d truly be grateful to know if I’m on the right track, or if I’m veering off-course like the 1969 Chicago Cubs.

With this orientation, let me start by disclose three assumptions on which I’m relying.

- Assumption number one: An in-house lawyer actually reads the bills submitted by outside counsel.
- Assumption number two: The client sincerely cares about measuring the value that the client’s outside counsel provides.
- Assumption number three: The in-house lawyer who reviews the bill has an actual budget, of actual money, available for use during a particular fiscal period.

These assumptions—if correct—show why a legal bill is important. The bill is the single document that reveals how much the client is paying and the services that the client is receiving in exchange for that payment. It reflects the lawyer’s value proposition from

the client’s perspective—which is the perspective that matters.

On top of these points, the client’s payment is real money. It comes out of a fixed budget. The client feels the squeeze when the payment is made.

In sum, a legal bill reveals whether outside counsel is fulfilling client expectations about value—expectations that likely prompted the client to hire the lawyer in the first place.

Against this backdrop, envision three different scenarios.

In the first scenario, an in-house lawyer receives a legal bill that clearly shows (1) what outside counsel achieved during a given month, and (2) a dollar amount in line with the in-house lawyer’s expectations for the cost of those services.

In the second scenario, the in-house lawyer sees a bill with the same dollar amount for the exact same work as the first scenario, but the narratives in the bill leave the in-house lawyer unclear about what was actually accomplished.

In the third scenario, the legal bill clearly explains the work that was done and contains the same dollar amount, but the dollar amount is too high in eyes of the in-house lawyer.

Two of these scenarios are good. One is bad. Which two are good, and which one is bad?

The good scenarios are the first and third—the scenarios in which the legal bills clearly communicate to the client the work that was actually done. In the first scenario, the client is happy with the value. In the third scenario, the client is unhappy with the value.

You might be asking, “Isn’t the third scenario pretty bad? What’s good about it?”

Here’s what’s good: The client’s unhappiness with the value tees up a terrific opportunity for the client to share his or her expectations with outside counsel. That conversation then gives the outside counsel the opportunity to share his or her views about services and value. If the client and the outside lawyer are willing to speak frankly, this conversation can be a springboard to clear expectations and a much deeper level of trust and understanding than they had before.

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■ Stephen D. Feldman practices complex business litigation, antitrust, and appeals at Ellis & Winters LLP, a litigation boutique in Raleigh, North Carolina. He is a member of the DRI Appellate Advocacy Committee and the Federation of Defense and Corporate Counsel. He also serves on the leadership of the American Bar Association Sections of Antitrust Law and Litigation. He is co-chair of the ABA’s Appellate Practice Committee.

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The second scenario is the bad scenario. This scenario is bad because the legal bill was poorly written, so the client can't figure out which services the outside counsel performed. The client isn't judging value because the client *can't* judge value. The client's discussion with the lawyer after receiving the bill won't be about value. It will be about the lawyer's failure to prepare a bill that the client even understands.

That's a bad place to be. If a client doesn't think that a lawyer can prepare a readable legal bill, imagine the client's perceptions about the firm's capabilities more generally. The client might be more inclined to flyspeck draft briefs. The client might ask more probing questions about issues that require attention to detail. The client might ask for more frequent status updates. All of these things erode the trust that's the fabric of the attorney-client relationship.

To summarize: When the reader of a legal bill truly, meaningfully understands which services have been provided, the opportunities for trust-building abound. That trust-building fosters a relationship that both the lawyer and the client find satisfying. The lawyer has confidence when a bill is transmitted. The client looks forward to receiving the bill. The relationship will likely blossom and expand over time.

As I wrote earlier, this column reflects my views alone. They're based on my experiences, my observations, and my gut instincts. I'd like to know how these concepts stand up to the experiences of in-house counsel and outside counsel alike. If you're willing to share your feedback, and your own views and experiences, I'd be grateful to receive it. My e-mail address is stephen.feldman@elliswinters.com. 