

[Crossing the Divide: Coordination Between In-House and Outside Counsel](#)

Editor's Note: This is the first article in a two-part series on coordination between in-house and outside counsel to determine expert needs, establish expectations and locate the best experts. It is based off an article by IMS Vice President of Business Development [Bill Hueter](#) that was published in the Summer 2011 In-House Defense Quarterly.

Many attorneys have - admittedly valid - reservations about asking their clients to recommend experts for litigation. There are concerns of discovery, conflicts and preserving the business relationship.

As IP attorney John P. Hutchins [points out](#), "If ... it doesn't work out, there may be bad feelings afterwards."

Hutchins, a partner with the Atlanta office of Troutman Sanders, has had bad experiences asking clients for expert referrals and refuses to do it again. In one case, he did not learn of a significant financial relationship between his client and the expert until much later in the case. For this reason, he says, "Never let your client pick the expert. They don't understand what is required. Don't even ask them for recommendations."

Asking your client for an expert is still an option, but Hutchins' experiences point out the need to effectively communicate with in-house counsel to establish expectations and gain valuable knowledge.

Even if an attorney wished to avoid coordinating the expert search with the client, many companies are becoming more involved in every step of litigation to manage costs and stay abreast of developments. Expert selection can make a huge difference in the outcome of a case. Add to this the high costs of litigation and it is easy to see why several in-house attorneys are taking a more direct role in the expert selection process.

While the advantages to in-house counsel of being involved are more obvious, there are just as many advantages to outside counsel in coordinating the expert search.

Experts Talking to Experts

By virtue of their daily involvement in company operations, in-house counsel may have a greater awareness of the technical issues at hand. By the time the case is brought to outside counsel, in-house counsel is already well-versed in the details of the technology that is being infringed, the company policies being questioned, the branding that is being diluted or the contract being breached.

In the example Hutchins gave above, his client was a premier collector of vintage automobiles who was immersed in the field. Although the expert selected was ultimately conflicted, the client was easily able to name a range of experts in this niche area. While outside counsel

specializes in litigation, in-house counsel specializes in their specific field and is often in a better position to recommend experts.

Budget Considerations

As mentioned earlier, many in-house counsel have been taking a more active role in an effort to reduce litigation costs. This is an opportunity to show a need for the expert selected and the tasks to be performed.

The need for in-house counsel's direct involvement was exhibited in a recent high-profile software case. In an effort to reduce expenses, the outside law firm voiced expectations that the expert complete the project in less time than was realistic. As soon as the expert started communicating with in-house counsel and staff at the software company, his progression of work was understood and his estimate of the work needed was approved.

This is a classic example in which in-house counsel's direct [involvement led to a better outcome](#). If the expert had been limited by the number of hours he was originally asked to work, his analysis would not have been as thorough or as compelling to the jury.

In addition to allowing the client to see the need for increased hours, this is also often an opportunity to justify experts with a higher hourly rate. If one assumes that the potential gain from resolving a case eclipses the cost of litigation, the difference between a \$400 per hour expert and his \$500 per hour counterpart is immaterial to the choice. An expert who comes with litigation experience, patent knowledge or experience with the opponent's product can save huge sums by doing the work more efficiently, even if his fee is more per hour. Better experts also construct a stronger case, often resulting in an earlier settlement, better settlement or more favorable judgment.

By being involved in every step of the expert selection process, in-house counsel will be more inclined to select the expert that best fits their case as well as their budget.

Step by Step

Now that the advantages of coordination between in-house and outside counsel have been established, the next post will cover exactly who should be involved in which steps of the process. Thursday's article will discuss the different considerations for the attorney and the client.

Tell us: Have you had positive or negative responses from coordination between in-house and outside counsel? Are there any other advantages to working together?

This article was originally posted on [BullsEye](#), a legal blog published by [IMS ExpertServices](#).