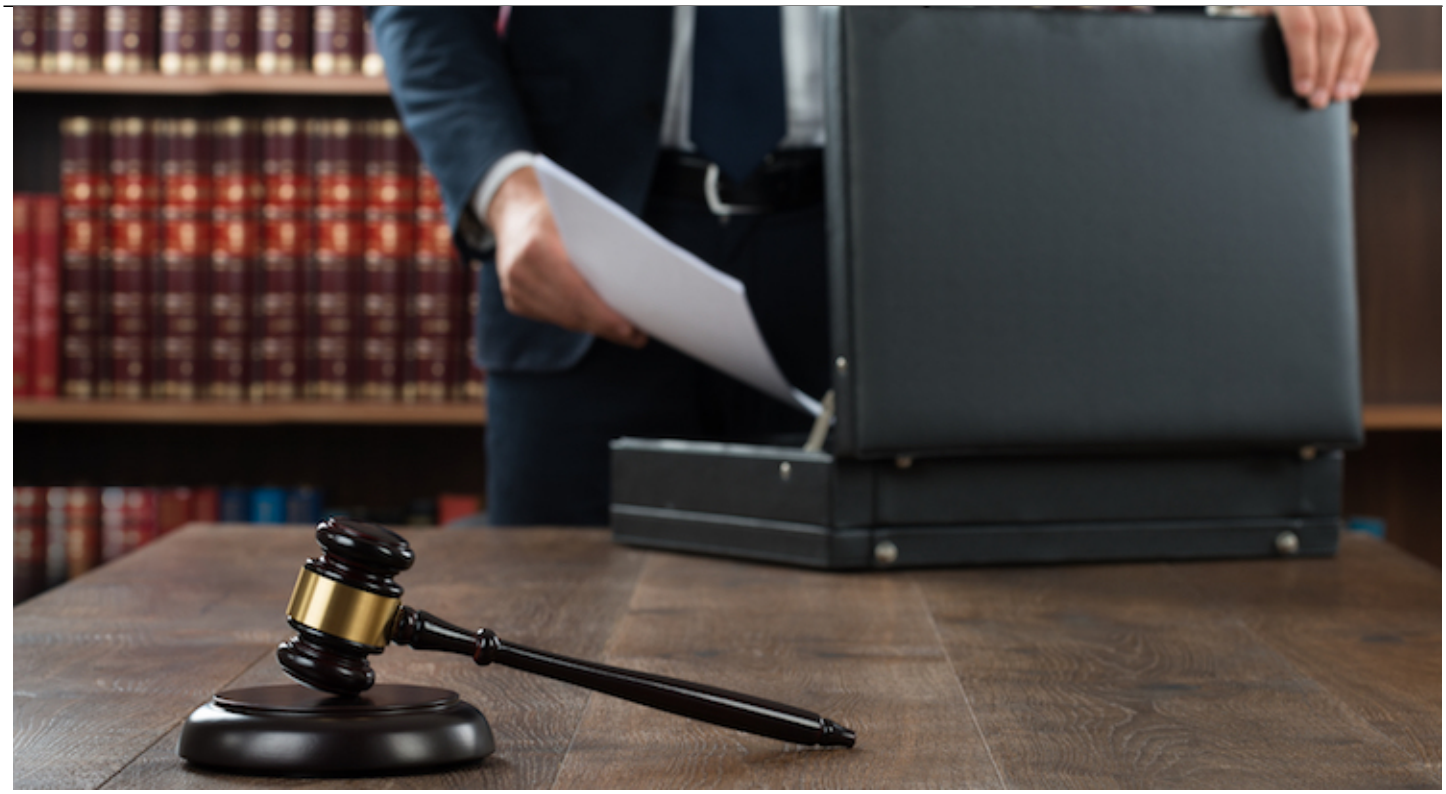
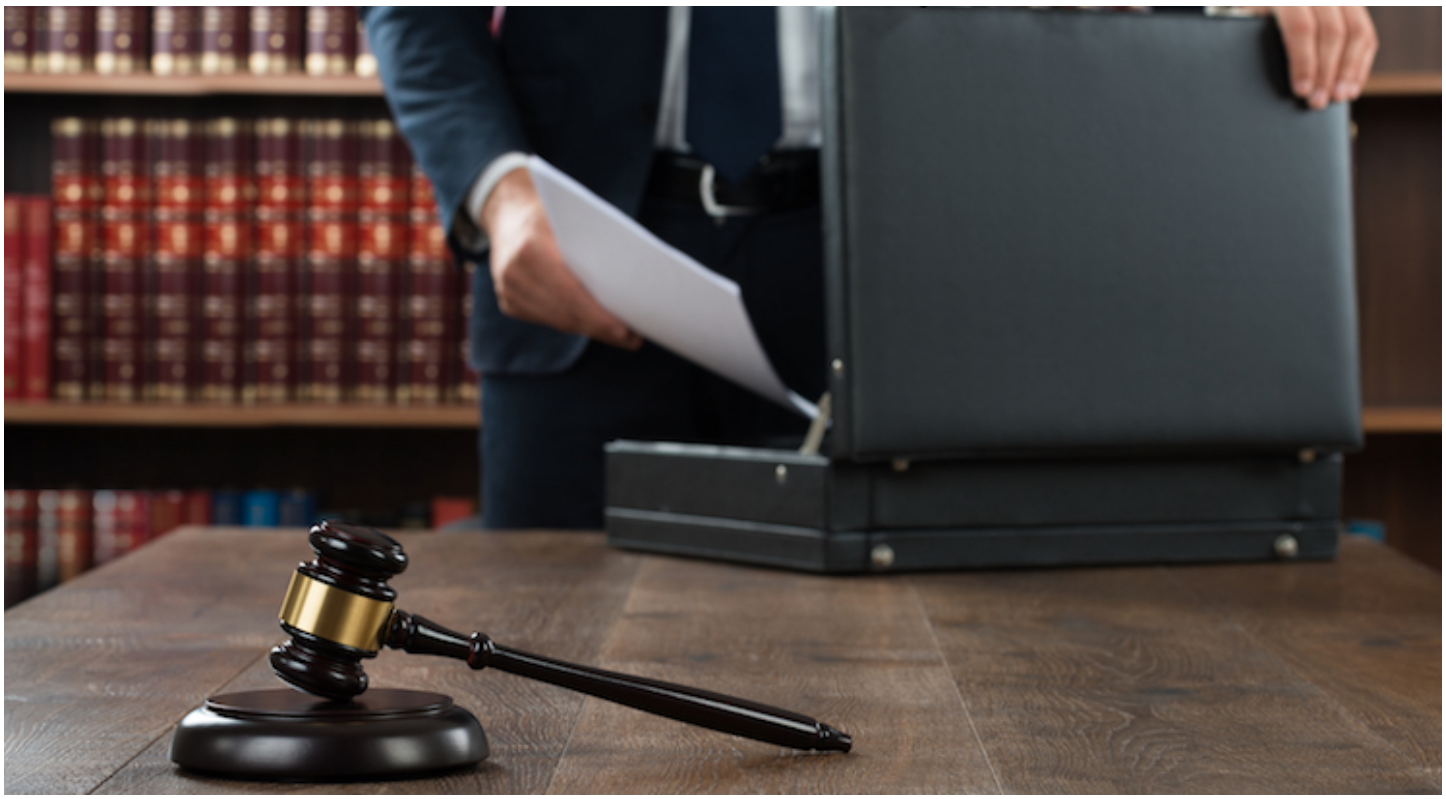


The Pros and Cons of Sending In-house Counsel to Appear in Court

Litigation and Dispute Resolution





Recently I appeared in court on behalf of my company. As in-house counsel, I routinely supervise the preparation of outside counsel for appearances in court, but watch from the wings as they present argument. Eager for the opportunity to get back in front of a judge, I jumped at the chance to flex my

courtroom skills.

Using in-house counsel to argue in court has advantages, such as saving costs, when used in the right circumstances. As I worked on the motion, the most important advantage became apparent. Sometimes you can gain a persuasive edge by using in-house at a hearing.

Selective use of in-house counsel

You can use an in-house lawyer to appear selectively in court, even where outside counsel is handling litigation for a corporation. The outside law firm and any local counsel can support the in-house lawyer as needed. The amount contributed by each part of the team depends on factors, such as the complexity of the facts and law, as well as each lawyer's experience, familiarity with the case, and proximity to and knowledge of the particular court. For instance, outside counsel can draft the motion briefing and local counsel can appear in court together with the in-house lawyer.

It can also be more convenient for in-house to participate in court early in a case when issues are relatively routine and factually dependent, or late in a case on appeal when issues are developed. Early matters that in-house might personally handle include scheduling conferences, motions to transfer, motions to dismiss, or early discovery disputes.

My colleague Dan Shulman, chief intellectual property counsel at Reynolds Group Holdings, has appeared four times as in-house counsel in appeals before the US Court of Appeals for the Federal Circuit. Below are insights we learned from appearing in court.

Reasons to have in-house appear in court

Here are several possible advantages to having in-house counsel appear in court:

- **Cost savings:** Using in-house counsel can save substantial outside counsel fees and costs (e.g., travel). Your clients in the business's management will appreciate the extra efforts to stay on budget.
- **Morale:** Experienced in-house counsel relish the challenge of appearing in Court, as Dan and I did. Enlisting members from your own team can enhance their professional experience and increase company appreciation.
- **Development:** A court appearance can be a professional development opportunity for an in-house lawyer, especially for one who has not had much in-court experience.
- **Scheduling:** Outside counsel can often have scheduling conflicts. Having in-house as an option can help relieve these pressures.

Potential difficulties

Using in-house can have issues, as compared to using only outside counsel. Here are some items to consider:

- **Divided responsibility:** Where outside counsel might usually bear most of the responsibility for a hearing, the approach divides responsibility for it. The risk of creating such ambiguity can be mitigated by working collaboratively and agreeing on the scope of everyone's role

before you begin preparing for the hearing.

- **Court requirements, such as protective order confidentiality:** Court orders and other requirements need to be observed. For example, any orders prohibiting in-house access to produced discovery can interfere with access to key information. Such orders might need to be addressed before in-house can participate in certain hearings.
- **Can't request to "talk to my client":** Outside counsel can obtain additional time to respond to complex questions from the court by requesting time to speak with the client after the hearing. An in-house lawyer might need to request time to speak with the boss.

Circumstances where in-house counsel may be more persuasive

Based on my own experience, I noticed that an in-house lawyer could present certain arguments more persuasively than outside counsel:

- **Familiarity with the court and the facts of the case:** A party can use local counsel for a hearing because of his familiarity with a court. An in-house lawyer can likewise know a court well, but also have detailed knowledge of a case and the inner workings of a company. Intimate knowledge of the facts can help in-house craft strong arguments on the fly when responding to court questions and arguments of opposing counsel.
- **Personalizing the story:** As an employee who may have been present around the time of key events, an in-house lawyer can describe the events from an interesting first-person perspective.
- **Owning up to an issue or mistake:** Appearing in court can be a way for an in-house lawyer to take responsibility for corporate actions and the implementation of corrective measures.

This approach is something to implement at the right time. Whether the potential advantages will make it worthwhile in your litigation depends on your team, judge, and other circumstances.

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Noah Webster is chief legal & compliance officer for Everbridge, a global software company that empowers enterprises and government organizations to anticipate, mitigate, respond to, and recover stronger from critical events. In today’s unpredictable world, resilient organizations minimize impact to people and operations, absorb stress, and return to productivity faster when deploying critical event management (CEM) technology. Everbridge digitizes organizational resilience by combining intelligent automation with the industry’s most comprehensive risk data to Keep People Safe and Organizations Running.