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# FOCUS

## President's Message

**Chris Wasson**

When preparing for my upcoming mid-year performance review with my boss, I thought that it was a good time to provide my "other boss" (you—the members of the Central Ohio Chapter), with a chapter "mid-year" performance review. Below are some of the highlights of what CO-ACC has accomplished to date.

### Continuing Legal Education

Through July 2008, CO-ACC has presented four half-day CLE programs in conjunction with our sponsoring law firm partners. Topics have ranged from cutting edge legal issues associated with nanotechnology, to how does a company respond when a state attorney general comes knocking at your door. These programs are specifically designed for in-house counsel and all feature in-house counsel as participants. In addition to the quality of the programs, at just \$15 for each three hours of CLE credit, these programs also provide incredible financial value, an important consideration as legal departments look to better control their expenses. Some programs even feature a social component included in the registration fee. Highlights to date include tickets to a Columbus Blue Jackets hockey game and participation in a golf scramble at the Columbus Country Club, one of Columbus' nicer private golf courses. Attendance at the four events has been outstanding, with an average of over 50 attendees per event. For the remainder of 2008, CO-ACC has an additional five CLE programs that are in the works.

Please keep an eye out for the upcoming announcements. To better serve our membership in Northwest Ohio, included in this number will be CO-ACC's first CLE program ever held in Findlay, Ohio.

### Preparation for CO-ACC's 25th Anniversary

ACC was founded in 1982 and the Central Ohio Chapter was founded shortly thereafter in 1984. For the math-challenged attorneys in the crowd, next year represents CO-ACC's 25th anniversary. Since the beginning of this year, three subcommittees have been working on a host of events and activities to be held in conjunction with our 25th anniversary year. Items under consideration include: celebrating this anniversary at the 2009 CO-ACC annual meeting; sponsoring a leadership forum in Spring 2009; and working with a public relations firm during 2009 to help promote CO-ACC as the "go to" corporate counsel leader throughout the community and recognizing CO-ACC legal leaders. You may have already received a CO-ACC Leadership Achievement Recognition Nomination Form. If you are interested in nominating an individual for consideration, please request a Nomination Form by calling 614.221.1900, ext. 228 or emailing at [CO-ACC@assnoffices.com](mailto:CO-ACC@assnoffices.com).



### Law Student Outreach

In February and March of this year, CO-ACC participated in the in-house counsel career programs sponsored by The Ohio State University School of Law and the Capital University Law School respectively. Members

of CO-ACC attended both programs, sharing with the students a description of their careers, the career path they took in becoming in-house counsel, and the benefits of being a member of CO-ACC. In mid-April, CO-ACC sponsored a happy hour at Bar Louie in the Short North for CO-ACC members and second and third year law students from both OSU and Capital law schools. The event was well attended but several law students suggested that attendance would have been even better if the event was held earlier in the year as law school exams were rapidly approaching! I certainly don't miss those days . . .

### Chapter Administrator

You may have noticed that CO-ACC has a new email address ([CO-ACC@assnoffices.com](mailto:CO-ACC@assnoffices.com)) and a new phone number (614.221.1900, ext. 228). This is because CO-ACC hired the management company Accent on Management (AOM) to assist CO-ACC with running the day-to-day operations of the organization. Nancy

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# Summer Fun, The Reading Undone, and Everything You Need to Go Back to School This Fall

Susan Hackett

Senior Vice President and General Counsel, Association of Corporate Counsel (ACC)

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Those of you with kids in your life know that this time of year is when kids who've been enjoying a lazier pace and unlimited play time look around and realize that there is still much to do before they're sentenced to another year in the classroom. And they haven't even started plowing through their summer reading list.

I hope that summer has brought many of you some needed playtime and relaxation. Since we sometimes let the reading pile slide a little in summertime, I thought I'd help you catch up since Fall will bring challenges to you, too, that require you to be on top of your game.

## **SCARIEST HORROR: STORY BEACH READING** **FASB and their proposed new loss contingency reporting rules**

Summer started with an unwelcome announcement from the Financial Accounting Standards Board, or FASB (pronounced FAZ-BEE), that they were going ahead with a proposal they'd been urged to discard: a revision of Financial Accounting Standard (FAS) number 5, which regulates public company reporting of disclosures regarding potential losses or liabilities of the company. This proposed rule was issued in June with a comment deadline of August 8. ACC filed comments, co-signed by more than 100 companies and many other organizations. At last count, FASB had received over 225 comment letters protesting the rule, which is a firestorm of activity in terms of these kinds of comment requests, especially considering they snuck it in while everyone was on vacation!

ACC's comments, the FAS 5 revision proposal, and a number of our co-commenter's letters are online for your perusal at [www.acc.com/php/cms/index.php?id=84](http://www.acc.com/php/cms/index.php?id=84). When you get to this page, you'll notice that this information is housed on the privilege protection page. Why is this story on the privilege page? That's why you need to catch up on your summer reading.

ACC's letter details our concerns over several facets of the proposal, but focuses most on the following three points:

1. These proposals are a solution in pursuit of a problem. The current standards aren't broken: there is no evidence that current disclosure requirements are insufficient or harming market transparency. Adopting significant new and ill-advised proposals without evidence that changes are necessary, without a focus on how the rules will improve reporting (rather than just suggesting we need "more"), or without assurance that the new rules will improve (rather than frustrate) meaningful disclosure is folly.
2. Heightened disclosure requirements will create unprecedented waivers of the company's attorney/client privilege and work product rights. Because the proposed amendments will require clients to produce more sensitive and speculative information about possible losses related to litigation, and require earlier production of loss analyses than currently required (namely, before an exposure is well documented or quantified by "facts" as opposed to by an attorney's initial evaluation of possible liability or harm), reporting will likely increase the risk of waiver of privilege and have related punitive effects. These required "qualitative" disclosures will broadly communicate the company's litigation assessments that previously were carefully guarded in adversarial proceedings. Additionally, independent auditors may seek more detail from counsel to test the estimates and disclosures reported, adding to the risk of privilege waiver to auditors.
3. Deeper disclosures of attorney-client privileged assessments will coerce undesirable outcomes in matters on which companies are only asked to report. The proposed amendments' requirements to provide qualitative assessments of likely outcomes, timing of resolution, and the company's assumptions on loss amounts "give away the store" to any interested

adversaries, providing invaluable detail about the company's litigation strategies and settlement coercion-points. The result would be a perverse twist on the FASB's stated desire to disclose more accurate and timely information about loss contingencies: companies' litigation counsel would likely become more circumspect about providing their clients with legal assessments and detailed contingency analyses to assist in their decision-making in order to avoid unnecessary disclosure or liability. Further, since contingency reporting under the rules must be made earlier and include disclosures on cases that are not well quantified or even likely, there's a concern that setting and publishing such numbers will become self-fulfilling prophecies—the settlement floor, even in cases that otherwise have little merit.

ACC has requested an opportunity to testify before the FASB when they meet to discuss these rules further. We'll keep you posted.

## **HEARTWARMING "WILL IT ALL TURN OUT ALRIGHT?" NOVELETTE**

**The saga continues: Can the DOJ overcome tremendous odds to save itself and untold numbers of innocent ACC members's clients from perilous privilege erosion?**

In July, U.S. Attorney General Michael Mukasey announced to the Senate Judiciary Committee that new Deputy Attorney General Mark Filip was crafting another U.S. Department of Justice (DOJ) guideline that would replace the McNulty Memo and offer "real, significant proposed changes." The DOJ's McNulty Memo, like its predecessors, the Holder and Thompson Memos, have been criticized by ACC and its coalition partners for including privilege waiver, amongst other inappropriate terms, in the DOJ's list of criteria for cooperation in corporate failure investigations. Deputy Attorney General Filip issued a letter to the Senate Judiciary Com-

mittee leadership that offered an executive summary of the memo he said was still in draft, angering Senator Specter, who called for the DOJ to stop stalling and for the mark-up and passage of *The Attorney Client Privilege Protection Act of 2008*. And yet, the outlined terms of the proposed memo in this executive summary, if realized, are significant steps in the right direction. As always, the proof will be in the pudding, so watch the ACC site for info on the publication of the new DOJ Memo to be issued by the end of August. To read the Deputy Attorney General's executive summary of the memo he's promising and Senator Specter's response, visit the ACC Privilege Protection page at [www.acc.com/php/cms/index.php?id=84](http://www.acc.com/php/cms/index.php?id=84).

### **TIMELESS TEAR-JERKER**

**You done me wrong, but our relationship—while often dysfunctional—is everything to me, so I'm taking you back. But under new terms.**

More than 120 top CLOs and law firm managing partners have been in therapy with ACC this summer, and talking about how to get their relationships back in order. This sizzling summer best-seller is about to expose their clandestine meetings in top hotels around the country as they attended focus-group sessions for ACC's new initiative: the ACC Value Challenge. So tune in for this summer's hottest reality show, and see many of them caught on tape, telling everyone who will listen about the errant ways of their inside/outside counsel relationships, and how they plan to make it up to each other (and their clients).

Seriously though, we all recognize that there have been decades of conversations about the problems in-house counsel have with rising costs, a lack of focus on value (rather than profit per partner), the perverse disincentives to efficient service inherent in the billable hour system, and much more. And law firms are tired of arguing over bills, constant RFPs that have replaced the longer-term relationships that made practice satisfying for them, clients' willingness to trade in meaningful project management for a 10 percent discount, and a tendency to suggest they want innovation and a revised relationship, but at the end of the day, a decision that it's easier to chuck all that and continue to purchase over-priced billable hours

from legacy firms. What can be done that will actually move the needle? That's what these focus groups were meeting to discuss this summer. ACC hosted off-the-record discussions to explore how we can change the focus from griping to acting on what is necessary to move us out of these unproductive cycles and help in-house and outside counsel rediscover the value of their relationships.

You can read ACC's magnus opus on how we're planning to help in-house counsel begin a (r)evolution in their outside firm relationships online at [www.acc.com/public/accvaluechallenge-overview.pdf](http://www.acc.com/public/accvaluechallenge-overview.pdf). And if you're bored with all the reading and just want to veg in front of the big screen, you can tune into the launch of ACC's Value Challenge by tuning in on your computer or getting your colleagues together in the conference room over lunch to pick up the live, free video feed of the Town Hall Meeting at which we'll "reveal all!" Contact [ACCValueChallengeEvents@acc.com](mailto:ACCValueChallengeEvents@acc.com) for information on how to tune in September 26 (or download the archived version from the website).

Get past "you done me wrong": it's best left in dime-store novels. ACC's Value Challenge is committed to working with you over the course of the coming months and years to help you take control of your outside spend and "(r)evolutinize" your outside counsel relationships and in-house budget and matter management.

### **THE TRAVEL JOURNAL THAT TAKES YOU PLACES YOU WERE NEVER LICENSED TO GO**

**ABA House passes model in-house counsel registration guidance for states that are seeking to accommodate in-house lawyers who've moved to a new job, but lack a local license where they're now employed.**

Two-thirds of US states have now passed a version of the rule that ACC worked so hard to "encourage" the ABA to adopt: namely, Model Rule of Professional Conduct 5.5, which authorizes lawyers who are licensed and in good standing in their "home" jurisdictions to practice on a temporary basis (when taking a deposition, or negotiating a matter, etc.) in another jurisdiction in which they are not licensed. In-house counsel got further relief under the rule; under the provisions of section

5.5(d), in-house counsel who are licensed and in good standing in one jurisdiction are authorized to engage in "permanent" practice for their employer-clients when they move to a new job in another jurisdiction in which they are not licensed. While 5.5(d) is a complete authorization in and of itself, quite a number of states adopting the rule have coupled it with a registration system that allows the state to keep track of these in-house lawyers and usually collect payment from them comparable to local members' bar dues. Unfortunately, in their zeal to regulate, many state bar licensing authorities lost sight of the purpose of the rule, and the registration systems they adopted became more like mini-Spanish Inquisitions than simple registrations.

Not liking to see great disparity amongst the state rules regulating any aspect of lawyer practice, the ABA formed a group that proposed a model in-house registration system to provide some level of consistency and to suggest best practices. The first versions were overly complex. The new and improved model was adopted by the ABA House at the ABA Annual Meeting, and could be reading that saves you from much more reading studying for the bar exam next time you move to a job in another jurisdiction!

ACC's comment letters, our concerns that the ABA not adopt a model that pre-empts the underlying logic of 5.5(d) (namely, that no registration is needed at all in states that adopt the rule—the authorization is complete and the burdens of administering a rule may not be justified by any quantifiable threat the rules seem to suggest exist), and the new rule all appear online at:

ACC's Fall 2007 comment letter to ABA ([www.acc.com/php/chapters/filespace/All\(admin\)/accabainhousecomment.pdf](http://www.acc.com/php/chapters/filespace/All(admin)/accabainhousecomment.pdf))

ACC's Summer 2008 comment letter to ABA ([www.acc.com/public/acc-comment-aba.pdf](http://www.acc.com/public/acc-comment-aba.pdf))

ABA Model In-House Counsel Registration Rules ([www.acc.com/public/aba-sect-lega-educ-admi.pdf](http://www.acc.com/public/aba-sect-lega-educ-admi.pdf))

Alright, now that you're caught up on the essentials and can approach fall equipped with the knowledge you need to move to the next grade, enjoy these last few days of warm weather and summer fun!

## Central Ohio Association of Corporate Counsel Supports the Foodbank

Mid-Ohio Foodbank keeps the food shelves stocked for a network of more than 530 emergency food pantries, soup kitchens, emergency shelters, senior dining centers, day care, and after-school enrichment programs. Because of food industry donations and the Foodbank's buying power, our \$2,000 donation will provide \$16,000 worth of groceries. Summertime is a busy time for the Foodbank. Families whose kids received free or reduced-cost school breakfasts and lunches often turn to the Foodbank's network of pantries and soup kitchens to help keep their families fed over the summer months.

## Program Recap

On March 13, 2008 CO-ACC participated in the Capital University Law School In-House Counsel Career program. The event took place at Capital University Law School in downtown Columbus. CO-ACC members Russ Dempsey, Nick Zuk and Jenny Marks shared with the students their careers and their career path in particular their in-house experiences, networking, and benefits of being a member of CO-ACC.

CO-ACC in conjunction with Jones Day offered a CLE program titled "Emerging Legal Issues For In-House Counsel" on March 12, 2008 at the Jones Day office in downtown Columbus. Topics included: "Legal Trends and the Supreme Courts," "Security Breaches and Workplace Privacy," and "Emerging Issues in E-Discovery." The seminar was a success with 68 attendees. Thanks to Jones Day for sponsoring this event.

On April 10, 2008, CO-ACC and Kelly Law Registry sponsored a Meet and Greet at Bar Louie in downtown Columbus for third year law students from Capital and Ohio State's law schools.



**Left to right: CO-ACC Secretary Robert Hust, general counsel, Honda of American Mfg., Inc.; CO-ACC President Chris Wasson, assistant general counsel, Nationwide Insurance; president and CEO of Mid-Ohio Foodbank, Matt Habash; CO-ACC Immediate Past President Jenny Barnes, associate legal counsel, The Ohio State University Medical Center; and CO-ACC Treasurer Nancy J. Dixon, vice president, compliance, Cardinal Health.**

## ACC News

### Recruit a Member and Win a Prize—Guaranteed!

Each time you use the ACC network, you get access to valuable skills and experience only available through ACC. More members provide improved educational opportunities, enhanced networking, increased online resources, and advancement of the profession worldwide. You can expand your network by taking part in ACC's "Everybody Wins" membership drive. Recruit a member and you will win prizes ranging from Starbucks' Cards loaded with \$5 and cutting edge electronics including portable DVD players, digital cameras, and new computers, to free ACC Annual Meeting registrations and a \$750 travel stipend. ACC's "Everybody Wins" membership drive ends on September 30—so don't delay, recruit today! See the attached brochure for more information. Also, for tips on recruiting members, including a sample email to send to your colleagues, go to [www.acc.com/everybodywins](http://www.acc.com/everybodywins).

### 2008 Annual Meeting: Become Indispensable to Your Company's In-house Legal Team

Don't miss the educational and networking event of the year for corporate practitioners. With over 100 programs with special sessions for new in-house counsel, new legal managers, chief legal officers, small law department practitioners and much more, the 2008 Annual Meeting, October 19–22 in Seattle, WA, has something for every in-house practitioner. To help you become the most informed and indispensable member of your company's legal team, ACC's Annual Meeting offers a variety of opportunities to meet, interact with, and learn from fellow in-house counsel with a wide variety of experience. Check out [am.acc.com](http://am.acc.com) to register, select your sessions, and book your hotel! Don't delay. Register today for only \$1400. This early rate expires on September 5. Questions? Contact [education@acc.com](mailto:education@acc.com) or 202.293.4103, x.451.

## Golf Outing

Golf outing that was held in conjunction with the July 25, 2008 CLE program "Employment and Labor Law 2008: Cutting Edge Issues" sponsored by Littler Mendelson, Columbus Country Club.



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Waterhouse is the new CO-ACC chapter administrator and Cami Collingwood is the CO-ACC chapter assistant from AOM. Nancy and Cami have been invaluable behind the scenes this year helping CO-ACC become even more effective in serving our membership. CO-ACC's ability to communicate both internally and externally has improved dramatically thanks to AOM's assistance.

### **Growth of CO-ACC**

The ultimate measurement of the value that an organization provides to its membership is to look at the total number of members the organization maintains and whether it is retaining those members. Membership numbers continue to be a highlight for CO-ACC, whether measured in terms of total members or retention of existing members. CO-ACC currently has a total of 359 members, an increase of nearly 17 percent from the year before. Even more impressive is CO-ACC's membership retention rate—97.95 percent. This retention rate was the best among all of ACC's chapters.

While my "employment" as your CO-ACC president will come to an end this year regardless of CO-ACC's "mid-year" performance review, I am confident that CO-ACC's performance to date and the valuable benefits that CO-ACC provides to you every day will help you continue to "retain" CO-ACC each year when you decide whether or not to renew your membership.