

FOCUS

President's Message

Steve Millsap

The new year is off to a great start for our chapter! The board and committee leadership met on January 8 to explore ideas to continue our chapter growth and bring additional value to your membership. Below are highlights of some of the new initiatives underway for 2010, in addition to our chapter events. These initiatives would not be possible without the solid state of affairs left by our former president Cindy Pitesa, with the strong support of our chapter administrator Jane Nohr. Thank you, Cindy and Jane.

Please consider the new year to be an opportune time to volunteer for one of the committees listed below and help make a difference.

Membership Committee:

Chair Tim Nohr (President-Elect)

- Continue growth and retention rates (and try to bring home another ACC chapter award from the ACC's Annual Meeting in October!)
- Host additional new membership luncheons and orientation opportunities.
- Watch for a member survey to share your input about what we're doing right and what we can improve.

Strategic Sponsorship Committee:

Chair Dennis O'Brien

- Partner with our 2010 strategic law firm sponsors (listed in this newsletter) to help drive our chapter initiatives.
- Liaison with sponsors to foster feedback.

- Plan our 2011 sponsorship program.

Programming Committee:

Chair Ken Wittenauer

- By the time you receive this newsletter, we will have hosted another successful Annual Gala. If you missed the Gala or would like to attend more social events, we're excited to soon announce additional social events for the year (e.g., food/wine tasting, museum crawl, etc.) including our first new social event (March 31st) listed in the Upcoming Events section of this newsletter.
- Looking to get a head start on your ethics and substance awareness CLE requirements? We've firmed up plans with a "law humorist" to present two hours of ethics and one hour of substance abuse awareness at our April 7th luncheon.
- Members outside the Charlotte area, stayed tuned. We're exploring webcasting some of our CLE events this year.

Career Development Committee:

Chair John Buckley

- By the time you receive this newsletter, John will have co-hosted, along with John Lassiter, a career development event at our February luncheon. I'm confident you will have found it a timely focus on market conditions, career



planning and opportunities for the in-house bar.

- Work with local business leaders to educate them about when to hire their first in-house counsel.
- Seek new ways to support attorneys in transition, and increase career development and pro bono networking opportunities.

Pro Bono Committee:

Chair Kimberly Owens

- Introduce a "Pro Bono Highlight Partner" at each chapter luncheon.
- Explore pro bono events for us to attend as a chapter and create opportunities for members to partner with each other and with our Strategic Sponsors on discrete pro bono matters.
- Broaden awareness about issues unique to the performance of pro bono as in-house counsel.

Communications Committee:

Chair Rob Wick

- Explore social media opportunities.
- Promote awareness of ACC National publications and resources.
- Continue to refresh website and newsletter content.

Please also watch for more announcements in the future about community outreach

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Ethical Issues in the New Service Paradigm

Susan Hackett, Senior Vice President and General Counsel, Association of Corporate Counsel, Copyright © 2010, Association of Corporate Counsel (ACC)

Many of you know me lately for my work as an evangelist for the ACC Value Challenge — our project to help corporate counsel and firms reconnect the cost of legal services to their value. But before the ACC Value Challenge dominated my agenda, I spent much of my time working on in-house ethics and professionalism issues.

It's no surprise then that I would eventually seek to marry these two tranches of work. And so I bring the couple before you for your consideration in this column: my goal will be to give you a short overview of some of the professional, ethical issues that will confront corporate counsel who are working with firms to reinvent the legal service provision model by employing new fee structures, new staffing options, new knowledge management techniques, new technologies and more.

We don't have the space or time in this column to go in-depth (see below for links to more material), but many of you will first run into new ethical challenges as you seek to restructure fees for service from hourly rates to other options, and then consider the staffing decisions that such fee structures may dictate. Basically, these arrangements seek to shift the risk of cost/profit from clients (who in the past both paid the firm's "guaranteed" profit, and bore the all the risks of the cost) to firms. Firms in the new paradigm will be asked essentially to "put skin in the game," making them responsible for not only their own efficiency and costs, but also for more of the outcome risk, which may make them less objective about the method of providing their services and the advice they provide. Firms will also face new (but not insurmountable) issues in professional liability and the responsibility to come up with "solutions," in cooperation with other service providers who are not lawyers or who may reside outside the

four walls and insurance coverage of the law firm.

Both the use of hourly fees and the use of value-based fee arrangements¹ can present ethical issues. And the ABA's Model Rules of Professional Conduct in the US, and codes of conduct in other jurisdictions such as Canada, Australia and many European jurisdictions, typically purport to detail the ethical considerations in setting and collecting fees, but are usually unhelpful. Indeed, model rule platitudes — such as, "A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses" (ABA Model Rule 1.5 on Fees), are not only of no help, but often serve to support the proliferation of everything but the most ethical practices. Unreasonable to a client may not be unreasonable to a firm or an ethics authority.

So what are the ethical risks behind the implementation of both hourly or value-based fee arrangements?

Hourly billing can create disincentives to efficiency or encourage waste; it is often cited as supporting "make-work" for firm lawyers who need to bill a certain number of hours per cycle, regardless of whether the work warrants the additional time and effort; it does not encourage firms to assign the right (as opposed to the available/unoccupied/need-to-be-trained) talent to the matter or improve the efficiency of staff members who perform repetitive tasks; it removes accountability from both junior and senior lawyers for the outcome (they see themselves as only

1. I don't like to use the words "alternative fees" since I think that all fees are alternatives that should be considered and chosen based on the matter and the client/firm relationship. The use of the term "value-based fees" infers fees that have been structured to provide the best alternative from the choices available based on what the work is worth and other priorities the client may have, such as speediness, priority, budget pressures, whether the work is repetitive, etc.

responsible for engaging in necessary legal analysis or process), and more, all of which are problems under legal ethics guidelines such as the ABA Model Rules.

Likewise, newly negotiated fee arrangements based on value (and not just hours x rates) are often the result of experimentation between clients and firms with fee and staffing formats they've not tried before; thus, firms and clients may set fees for service that may not be based on an understanding of what the cost will actually be, and this could give rise to wildly inaccurate or unrealistic estimates that firms or clients don't want to be held to. Additionally, new staffing structures can create a lack of responsibility or lack of proper oversight for supervisory relationships (both in poorly coordinated lawyer teams and for outsourced non-lawyers working on matters that the firm used to be entirely responsible for on their own); lawyers without management skill sets will become responsible (a competence issue) for management services or for supervising work done by others that they aren't competent to supervise; a decrease in diligence might be suffered in matters governed by a fixed fee, which removes incentives for lawyers to continue working on a matter that requires investment beyond the normal amount the fee was intended to cover; and lawyers in firms could be deemed to lack objectivity and independence in their guidance if their fees are determined based on outcome.

But let's be clear: the challenges associated with value-based fee and staffing arrangements, albeit different than the challenges associated with hourly fees, are no greater in magnitude. Indeed, I would argue that many of the value-based fee structures that clients and firms are experimenting with offer better incentives to better behavior and remove many of the ethical tensions that have

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plagued lawyers who increasingly feel disenchanted with practice, precisely because they see the misalignment of their firms' business models and billing practices with their client's best interests, and their oath to behave according to the highest principles of professionalism. Bottom line: Ethical lawyers make sure that they behave ethically: there are simply new issues to consider and navigate in the process.

ACC is developing a line of resources to help lawyers in both firms and departments understand these new challenges and assure that their re-designed relationships operate both smoothly and to the highest standards of professionalism. Our initial treatise on the topic is now online on the ACC Value Challenge homepage at www.acc.com/valuechallenge. We are also available to travel to chapters and large departments to help them plan ethics workshops that qualify for ethics credits, examine these issues and discuss both best practices and pitfalls to avoid.

Until then, here are a few ideas to consider to ensure that any "value-based" fee and staffing structures you implement are grounded in sound ethical practices:

- Draft agreements that focus the firm on diligent representation regardless of the fee structure — such as fixed fees with "safety valves" or decision trees that plan for variances in how the matter may unfold. Such arrangements should allow for renegotiation or "change orders" when the client objectives change during the course of the representation or allow the firm to assume a new direction when unexpected difficulties arise that could not have been planned for;
- Ensure the fees fairly and adequately compensate the firm's lawyers for the services provided throughout the representation, so as not to provide an incentive to improperly curtail services — the issue is usually not to try to go cheap, but to assure the firm

- that the sustainable profitability that makes the work worth their while yet aligned with client needs;
- Consider up front (and then stick to the agreement) whether firms who put skin in the game and "win" will be able to keep 100 percent or some portion of the windfall; if the firm takes a risk, it should be rewarded so long as the client receives the value it negotiated for.
- Refrain from using a fee arrangement with incentives that could impose a significant material limitation on the lawyers' representation; or if the material limitation is "consent-able," obtain the client's informed consent;
- Base fee prices on data and experience in previous matters, and communicate early and often, enabling clients to make informed decisions regarding representation and to incent the firm to engage in better process and project management and continuous improvement; and
- Explicitly state in the agreement when fees are to be considered earned.

Also, because many law firms' internal cost structures create high-priced fees, some firms can only "stretch" so far; many value-based fee arrangements will make use of legal outsourcing or off-shoring for parts or stages of the work that can be done by non-lawyers. Additionally, many firms are struggling with the appropriate role of their entry-level lawyers or para-professional staff and how they can be trained and contributing. Firms engaging in outsourcing or "pushing the work down" must ensure that the service providers they choose are properly supervised and that they and their work product complies with the requirements of the rules of professional conduct — such supervision can be contracted to the provider (if an outsourcer or contract lawyer company) or made the responsibility of the client's law department or the law firm (when the work is assigned to para-professionals). To successfully make use of legal outsourcing or non-legal staff, lawyers must:

- Ensure the use of properly skilled and well-educated professionals who are trained to the client's needs, and ensure that their work is being monitored and checked upon by licensed lawyers (in the jurisdiction in which the matter takes place);
- Carefully consider when lawyers vs. paralegals vs. business or legal process staffers are the best choice, and make sure that adequate supervision of non-lawyer work is in place;
- Ensure the local legal landscape is adequate to protect the clients' interests or that the contract for services mandates the standards by which you wish their work to be performed (conflicts, professional standards, etc.);
- Assure confidentiality and security through non-disclosure agreements and mandated IT security procedures; and
- Obtain the clients' informed consent regarding any outsourcing plans if there is a risk that clients will believe the firm's lawyers are performing services and not others.

These are but a few of the issues we see arising as the new legal service paradigm shifts the way that clients and firms traditionally related to each other. Do you have suggestions or questions about the ACC Value Challenge and ethics/professionalism issues affecting in-house practice and your client's service? Feel free to contact me at hackett@acc.com, and let me know how ACC can help.

Pro Bono and the ACC Charlotte Member

Kimberly Owens, Pro Bono Committee Chair

On October 29, 2009, the ACC Charlotte Chapter hosted the 2009 Inaugural Pro Bono Forum at the Charlotte School of Law. Attended by approximately 30 members, the event highlighted several opportunities to provide pro bono legal services and addressed certain gateway member concerns such as state licensure, training and professional liability insurance. With the help of Street Law, Corporate Pro Bono, Private Attorney Involvement (PAI) of Legal Aid of North Carolina and the Mecklenburg County Bar Volunteer Lawyer Program, many important issues were discussed and opportunities were presented to our members. The CSL Dean, Dennis Stone, and the CSL Pro Bono Professor, Sean Lew, indicated that as part of their student pro bono program, CSL students are available to assist members in pro bono projects.

Our chapter has now established a Pro Bono Committee, chaired by Kimberly Owens of TIAA-CREF. The Committee's mission for 2010 shall be to serve as an on-going resource for members with respect to education, training and identification of available opportunities for pro bono services within our community. In collaboration with the Career Development Committee, we will align interested members in transition with pro bono opportunities during their period of transition to keep skills sharp and to assist with networking in a difficult market. In collaboration with the Strategic Sponsorship Committee, we will invite sponsoring law firms to partner with our chapter members on pro bono projects within the sponsors' existing pro bono programs. Such strategic partnerships should provide our sponsors the additional benefit of getting to know

our members better and should enable our members to get training and guidance with respect to an area of law with which they might not be familiar. Our committee will also encourage such pro bono collaboration between members already involved in pro bono and those wishing to become involved.

By drawing member attention to a particular pro bono organization at each monthly meeting the committee hopes to encourage increased participation in pro bono services at a time when our community could truly benefit from our assistance.

Meet the 2010 ACC Charlotte Chapter Board of Directors



Back left to right: Tim Nohr, Joe Hayes, Cindy Pitesa, Michael Shor, Peter Barr, Doug DeMoss, Ken Wittenauer. Front left to right: Luther Moore, Steve Millsap, Anna Blackwelder and Christopher Tucci. Not present are: Bill Forgione and Bill Robinson.

Charlotte Career Development Committee

John Buckley, Chair

During these difficult economic times, the Career Development Committee of the ACC Charlotte Chapter has been putting in place programs to assist in-house counsel who may have been displaced, or find their positions in jeopardy, by helping them chart new career paths. While these programs may be especially useful to counsel who have not had the benefit of out-placement services, even those who have that benefit may find the networking opportunities valuable.

The committee has identified a LinkedIn group for Charlotte area in-house counsel to post information of interest to in-house counsel. You must be a member of LinkedIn to join, but membership is free. The join link is: www.linkedin.com/groupRegistration?gid=146874
The committee has also identified a blog where Charlotte area in-house counsel positions may be posted or reposted. The link is: charlotteinhousecounsel.blogspot.com/

If you would like to talk to the chair to see how this committee might assist you, or a friend, please feel free to email John Buckley at jbuckley@ppmsllc.com. All current or former in-house counsel are invited to contact the committee, even non-ACC members.

Recent Chapter Events

On December 2, 2009, the Charlotte Chapter conducted its Annual Meeting and hosted a social networking lunch. This event had great attendance with more than 75 participants and was an opportunity for the Charlotte Chapter to express appreciation to our 2009 Strategic Sponsors. All six of our Strategic Sponsors were present to mingle and enjoy lunch with Charlotte Chapter members and guests. In addition, this Annual Meeting included the election of four officers: President Steven Millsap, President Elect Tim Nohr, Treasurer Michael Mullican, and Secretary Christopher Tucci. We wish Michael Mullican well as he begins his new in-house opportunity and welcome Bill

Robinson who the Board approved to fill the Treasurer vacancy this month.

Lastly, and certainly not least, Cindy Pitesa was presented with a gift and recognized for her two years of dedication and service as President of the Charlotte Chapter. Please join the Charlotte Chapter in congratulating Cindy on her achievements.

On Friday, January 22, 2010 the Charlotte Chapter held another successful Annual Gala at Bentley's on 27 Restaurant. The event was very well attended by members, guests and our strategic sponsors. Everyone enjoyed a relaxing evening, which included great food, music, drinks and conversation. The Annual Gala was

a good opportunity to demonstrate the strength of our chapter, to build relationships, and to express appreciation to our members and 2010 Strategic Sponsors. Thank you to all that attended!

The Charlotte Chapter meeting on February 3, 2010 featured John Lassiter, President of Carolina Legal Staffing who spoke on the very interesting topic of current market conditions and employment opportunities after the 2009 recession. John Buckley, chair of our Career Development Committee joined him for this presentation to highlight the committee and our services available to help those chapter members in-transition.

Upcoming Events — Save the Date!

March 3, 2010 — Please join us for the next chapter meeting during which Robinson, Bradshaw & Hinson P.A. will offer a presentation regarding the Multijurisdictional Practice of Law for In-house Counsel. RB&H will review the current status of the adoption of Model Rule 5.5 (Unauthorized Practice of Law) by various states. They will also provide a framework for the process that in-house counsel could follow to understand the law in a particular state and the resources available to support compliance with state requirements.

March 25, 2010 — One of our newest sponsors, Smith Moore Leatherwood LLP, will offer a Lunch N Learn on “Getting

the Insider's View on eDiscovery in North Carolina.”

March 31, 2010 — Join your colleagues for a fun evening of bowling, billiards and networking from 6:00 – 8:00 p.m in the QueenCity Room at StrikeCity (Epicenter). This social event is hosted by Womble Carlyle Sandridge & Rice.

April 7, 2010 — We are excited to bring in an outside speaker for the first time to give us a three-hour presentation on substance abuse and ethics! Sean Carter, Humorist at Law, promises to be very entertaining, with a one-hour substance abuse presentation titled “Lawgther is the Best Medicine,” a one-hour ethics presentation titled “Thou

Shalt Not Lie, Cheat and Steal” and one-hour professionalism presentation titled “Sue Unto Others As You Would Have Them Sue Unto You.”

2010 Meeting Calendar — Please mark your calendars with the tentative chapter meeting dates for 2010. These meetings are in addition to the Lunch N Learn sessions and the other social events planned for the year. We will provide further detail regarding those other events soon.

March 3, April 7, May 5, June 2, September 1, October 6, November 3, and December 1.

For more information on upcoming chapter events, go to charlotte.acc.com.

2010 Strategic Sponsor Firm Profiles

K&L Gates is a global law firm with lawyers in 33 offices located in North America, Europe, Asia and the Middle East, and represents capital markets participants, entrepreneurs, growth and middle market companies, leading FORTUNE 100 and FTSE 100 global corporations, and public sector entities. Founded in 1957, the Charlotte office of K&L Gates is one of the city's largest law offices. It has a long history of serving industries such as banking and finance, real estate, health care, technology, manufacturing and the services sector.

Our corporate lawyers provide comprehensive legal services to clients of all sizes at all stages of development and in many industry sectors. We have been identified by Corporate Counsel magazine as a "go-to" law firm for America's largest companies. Over the last three years we have closed more than 700 merger and acquisition transactions ranging in size from a few million dollars to more than \$15 billion.

With six offices in North Carolina, South Carolina and Georgia, Smith Moore Leatherwood LLP has been serving clients throughout the southeast, the nation, and abroad since 1919. Smith Moore Leatherwood boasts more than 180 experienced attorneys with excellent reputations for quality, and responsive client service in five core areas: business, litigation, commercial real estate, labor and employment, and healthcare.

Our Charlotte office is home to some of the firm's most experienced and well-recognized commercial litigators. Our team is comprised of trial lawyers who have handled cases in forums throughout the southeast and the United States including state and federal trial and appellate courts, as well as arbitrations, both domestic and international. Our clients' businesses are diverse, covering a wide range of industries, such as technology, consumer products, chemical, manufacturing, health care, banking, insurance, and real estate. We pride ourselves on listening, and understanding our clients' businesses, working with them to achieve their unique goals. We

Our private equity and mezzanine finance practice in Charlotte is one of the most active in the Southeast.

Our clients include leading firms in the Carolinas, as well as firms and funds based throughout the United States, and foreign investors. Our securities lawyers have a wide range of experience in securities and capital market transactions. Other key corporate strengths include mergers and acquisitions and fund formations.

The Charlotte office has established one of the premier real estate groups in the southeast. Experienced in all phases of real estate development, our attorneys represent national, regional and local clients in all areas of real estate, including development, finance, leasing, joint ventures, public/private developments, environmental, land use and zoning, as well as acquisitions, mixed-

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use/planned development matters and real estate-related litigation.

Lawyers in our Charlotte office assist clients with matters related to employee benefits, intellectual property, and tax and estates. The litigators in the Charlotte office handle complex litigation, including class actions, in state and federal courts throughout the country, as well as arbitration, mediation and other alternative dispute resolution. Charlotte's financial restructuring practice is predominantly a creditor-oriented practice, involving consensual loan restructuring and workout transactions, non-judicial and judicial enforcement actions, and representation of creditor entities and committees in business bankruptcy cases, both in local and in national jurisdictions. For more information, visit www.klgates.com.

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also routinely advise clients on preventative measures, and regularly work in the less formal environment of alternative dispute resolutions.

Our experience in commercial litigation matters, includes:

- Antitrust
- Commercial and Consumer Fraud
- Consumer Finance
- Contract
- Corporate Control
- Fiduciary Duty
- Franchises
- Intellectual Property
- Professional Liability
- Securities
- Trade Secrets
- Toxic Torts
- Unfair Trade Practices

Additionally our Charlotte office boasts a prestigious tax and wealth transfer planning

group that works not only with individuals and families, but also with corporations. We regularly work in tax and business transactions that include structuring purchases and sales of closely held business interests and real estate, partnership agreements, operating agreements for limited liability companies, corporate bylaws, and shareholders' agreements for corporations.

2010 Strategic Sponsors:

K&L Gates LLP

McGuireWoods LLP

**Parker Poe Adams &
Bernstein LLP**

**Robinson, Bradshaw &
Hinson, P.A.**

**Smith Moore Leatherwood
LLP**

**Wishart Norris Heninger
& Pittman, P.A.**

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opportunities including chances to partner with local charities and sponsor an internship program.

We value your membership and participation in chapter events and initiatives in the new year. Your involvement can take on many forms such as joining one of the committees above, proposing a new one, serving as an officer or board member, or attending our events. If you have ideas as to how the Charlotte Chapter can better serve you, please don't hesitate to reach out to any of your chapter leadership. We look forward to a fun and rewarding new year!

New Committee Chairs and Committee Members

Thank you to our newest committee chairs and committee members for 2010:

Robert Wick
Tim Nohr
Bill Robinson
Ginger Daly
Peter Ryan
Ken Wittenauer
Natasha Alexeeva
Dennis O'Brien
Cindy Pitesa
Kimberly Owens
Robyn Davis
Jennifer Rucks
Julie Sovern

Communications Chair
Membership Co-Chair
Membership Committee
Membership Committee
Membership Committee
Programming Chair
Programming Committee
Strategic Sponsorship Co-Chair
Nominating Chair
Pro Bono Chair
Pro Bono Committee
Pro Bono Committee
Pro Bono Committee

Chapter Website

Please remember that all of our upcoming events, past presentation materials, job listings, chapter leadership and committee contacts, and new members are listed on our webpage at charlotte.acc.com.

Call for Articles

If you would like to publish an article in the newsletter, or know an in-house lawyer who has made a difference in the community, please consider publishing the information in our newsletter. If you are interested, please contact us at charlotteacc@gmail.com.

Member Announcements

Congratulations to Amy Cisrow-Peterson who welcomed a baby girl, Amiee Camille, on October 23, 2009. Congratulations also to Julie Mueller who welcomed a baby boy, Henry, on November 12, 2009.

We want to hear about your latest professional and personal accomplishments or exciting events in your life. Please send these to Jane Nohr, Charlotte chapter administrator at charlotteacc@gmail.com

Welcome New Members

We welcome New Members who have joined our chapter in November and December 2009:

Charles Castle, Duke Energy Corporation

Marcy Hingst, Bank of America Corporation

Marcus Liner, ACN, Inc.

Richard Topping, PBH