

Inside

- 2...Three Essential Reminders for Saving Money
On Outside Counsel Bills
- 4...Welcome New Members
- 4...ACC News

FOCUS

President's Message

Joseph Santos

The Connecticut Chapter of the Association of Corporate Counsel (CONNACCA) finished the year with a bang. On December 4, we held an event organized by Ken Bunge, titled, "In-house Counsel Under Fire: Navigating the Shoals of Government Investigations." The moderator was Michael Considine of Day, Pitney in Hartford, and key speakers were Kevin O'Connor, associate Attorney General of the United States, Gregory Butler, senior VP and general counsel of Northeast Utilities and Jonny Frank of Pricewaterhouse Coopers. The event was followed by a reception. There were 50 in-house counsel in attendance, including several general counsel from area companies. My thanks to Ken Bunge, the 2008 immediate past president, in particular, and to the CONNACCA board in general for a superb seminar event.

As we enter 2009 and its challenges, it is important to remember the unique value that CONNACCA brings to its members, not only in terms of networking but also in training and continuing education seminars that are unequalled anywhere. We will continue the excellent speaker and seminar series in 2009 that we have come to experience in 2007 and 2008. To address our members' desires for specific topics, we have issued a questionnaire that asks for each member's input regarding what topics they most want to hear about in 2009, as well as for comments about what else they would like to see from the organization. For ease of reference, the questionnaire will also list some of the past topics. We are now compiling and



reviewing results. If any member who has not responded still wants to do so, we will consider all additional feedback.

The organization is already on its way with 2009 events. We are planning an annual meeting tentatively scheduled in the Spring that will include a keynote speaker and dinner. This will be an exciting event that I urge all members to attend. This, and additional events to be announced, will make 2009 another exciting year in CONNACCA's support of its membership. For more information on upcoming programs, check out our chapter website at connecticut.acc.com.

Three Essential Reminders for Saving Money On Outside Counsel Bills

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Everyone's talking value: how to define and focus on value, how to assure that inside and outside counsel are adding value to the client's legal work, how to reinsert, reconnect or recalculate value into the cost of legal services.

When we launched the ACC Value Challenge last year, our premise was to help members drive greater value into their inside/outside relationships and management. We had no idea the markets would tank, that large firms would lay off lawyers by the thousands, that household-name companies would be going under, and that those still standing could be capable of cutting back to such a great extent.

So is it fair to say our timing was good with this project? Sure. But the client's tipping point of disgust had been reached even before the economy went south. Bad markets or good, when it comes to the cost of sophisticated corporate practice, especially at big firms, the emperor has no clothes. The downturn is "convenient" because it makes it impossible for lots of folks who'd prefer to continue to admire the emperor's wardrobe to do so.

You know you can't keep doing things the same way if you wish to respond to your client's directive to reinvent the company's cost structure, and yet the company's legal work will not conveniently cooperate and taper off. For many, their client's legal needs are expanding as their budgets and internal staff are shrinking. I'm here to help by offering what we have learned through the ACC Value Challenge.

Given the short space allotted here, here are my first three suggestions:

First, resist the urge to ask your firms for a rate cut. I know it seems like an easy and obvious fix, especially since the inelasticity in yearly firm rate increases is the only dependable metric we have in corporate practice. But trust me: it's not going to save you money at the end of the day and it's not going to create an incentive for

firms to re-think the way they do your work.

You've got a seismic change agenda to implement, so you need to ask your firms for something far more fundamental by way of change. And 10, 20, even 50 percent off of the inefficient way it's always been done is still going to leave you mired in the "way it's always been done."

Everything we're learning suggests that the all-in costs of a matter do not shrink when the firm agrees to cut their rates or discount their services. They simply bill more hours, assign less efficient staff to your work or add costs in other ways. They're not necessarily evil folks, but there seems to be this "gravity" that pulls them toward a higher bill regardless of what you negotiate for their rates. And this is the wrong result. If you want your firms to focus on value, you both need to rethink the way that the firm is charging for work and not just their hourly price tag.

Problem is, of course, that darned few of us know how to actually assess the value of a lawyer's contribution to a matter by standards other than how many hours they worked on a project multiplied by whatever rate the local or industry law firm services market will bear. This creates a financial disincentive for a smart lawyer to give you a 20-minute answer to your problem, rather than a 40-hour memo and 12 strategy meetings between four lawyers in the firm.

So here's my second suggestion: even if you've never done it before, spend some really serious time mining the knowledge that many of us either ignore or don't understand. Ask your firms to give you reports on the kinds of matters they've handled for you and the all-in costs for each. Then ask them to provide sub-reports on major functional portions of your matters that are regularly repeated: depositions, contract drafting, negotiation or settlement costs, whatever. Not law firm or lawyer tasks, such as meetings to discuss

strategies, research or phone calls with clients—all-in costs of every service provider and expense that led to the completion of the major functions that the lawyers were performing.

Then look at what you know about how much it costs you to do such things in-house (if you also share some of those jobs), and see if you can find out more about the costs that others in your industry or locality are paying. Then benchmark it. (Hey kids, that's what ACC local chapter meetings and committee listservs are for, right?)

I know the process won't be exact or perfect. Indeed, the accumulated costs you're researching are likely all-based amounts that were generated by the hourly system that we're trying to move beyond. But you have to start somewhere. This data is available and if it's not already packaged, then it's a first great exercise for you and your firm in looking at what the stuff we do really costs. And there are vendors out there with matter management systems that are designed to help you and your firms enter data going forward in ways that allow easy manipulations and, perhaps best of all, firm-to-firm comparatives.

Ah, comparatives. Now you'll know more about whether you've got a couple of firms that are doing great and doing it for less. How come? What do they do that's replicable in other firms or in your future management of matters? Is it fewer people billing the project? Is it the lawyers' location that makes them cheaper? Is it an ethic within the firm simply not to gauge clients? Do these firms have a better grasp of legal process management and available staff and technology options? Whatever it is, those firms should get rewarded with more work from you, and you can suggest price reductions to others—not on their rates, but as a percentage off of the accumulated bills that represent the total fees charged for the matter.

continued on page 3

continued from page 2

So the conversation goes: “I’d like to retain you to do this matter at this cost—all in. If you can’t agree that this is a price you can live with, or if you can’t figure out if that’s profitable for you since you don’t know what it costs you to do my work, that’s fine. The X firm will take the work. If you take this work at this cost, there will be no additional fees (unless these predefined kinds of unlikely events happen). I don’t need to see weekly or monthly bills, and I don’t care how you staff the matter so long as Cathy is in charge of the project. I don’t care if you fly first class or take two associates with you to court to learn the ropes. I kinda hope you will. I’m paying this cost and you decide how you want to pay your bills and do your business. If you get more efficient and make a good profit on our work while accomplishing the objective we’ve set and offering us the quality we know is your hallmark, I will not ask for any of the money back—you’ll have earned it, because you’ve provided me with the value I defined at the cost the matter was worth.”

Something like this is what you’re after if you really want to save money and create the budget management and predictable results that your company expects of everyone who supervises client assets and procurement of services.

Third and last tip: I’m obviously making this sound easier than it is. You can’t reinvent your or your firms’ processes overnight. You can’t expect that everything you do will fit well into this format, especially as we’re all just learning this value game. We’re going to have to work toward it incrementally. And we may discover even better solutions along the way. You all are really smart and inventive people. So here’s my offering to you on how to start to make it happen: Meet/Talk/Act.

Meet/Talk/Act is perhaps the most important initiative for members in the ACC Value Challenge community. There are no pat answers to any of these questions and no “one-size-fits-all” solutions (indeed, one size fits one!) The only way you’ll discover what can work for you, especially given the personal relationships and highly qualitative factors that often defy easy quantification, is to sit down and talk about all

this in a collaborative fashion with your department team (take yourself out for a contemplative lunch with friends if you’re a solos) and your outside lawyers.

So here’s the task: Pick their three best firms, however you define that. Meet with them. Set an agenda (there’s a menu of possible agenda topics for you to consider on our Meet/Talk/Act information sheet online—see links below). Talk about what’s most important to the continuation of your relationship in a more productive and value-driven fashion. Solicit ideas from each other for lowering costs, process and staffing improvements, budgeting and planning or metrics to evaluate progress. And then act. Just choose a few of the things you talked about as first focus points and do them. Don’t try to change the world on the first day or tackle lots of things at once. Choose something quantifiable, something measurable, something that drives efficiency and value as opposed to rehashing “more of the same.”

ACC will be helping to take Meet/Talk/Act around the country by cohosting ACC Value Challenge events with selected chapters. At these sessions, we’ll put about 20 top in-house and 20 top outside counsel leaders (folks with executive decision-making capacity and influence within their institutions) at round tables of 10. We’re going to give them problems that have been identified by large numbers of members and firms like, what are the appropriate metrics by which to evaluate a firm’s or lawyer’s performance on a matter? How can early case assessment and resolution be better integrated into the cycle of litigation at a company? How can we address the entry-level associate crisis? What kinds of staffing options work best on each of the following matter types? And so on.

Then we’re going to make them talk and capture their ideas, benchmarks, solutions and further queries. And we’re going to publish them for you. So maybe you ask for an invite to come to a session—the events schedule is posted below. Or maybe you just read some of the findings that will begin to trickle out from these sessions and use them as agenda items for your own Meet/Talk/Act sessions with your firms. Or maybe, since we’re asking firms to do the same (call three of your best

clients and invite them to lunch to talk about...), you’ll get invited to a Meet/Talk/Act session by one of your firms. How refreshing!

Want more detail? Want to see the ideas and practices that we’ve already captured and posted that can help drive your practice toward value? Want to host a Meet/Talk/Act with your firms or an internal meeting on this topic in your department? There are resources online for you at acc.com/value_challenge. And, as always, you can contact ACC staff or our Steering Committee leadership with your thoughts and questions, too!

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Meet/Talk/Act Overview (a 1-pager on how law departments and law firms can get started to reconnect value to costs of legal services): www.acc.com/valuechallenge/meetTalkAct

Leadership Resource Page (for those who want to host a meeting or review project summary-type documents on this topic): www.acc.com/advocacy/valuechallenge/Leadership-Resource-Center.cfm

ACC Value Challenge “Covenant with Counsel” (a sample charter for firms and departments that want to reinvent their relationship and set the terms of their partnership): www.acc.com/valuechallenge/covenant

ACC Value Challenge Toolkit (a library of practical resources for those interested in driving value): www.acc.com/advocacy/valuechallenge/toolkit/index.cfm

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Welcome New Members

We wish to welcome the following new members:

Christine Frederick, Lincoln
National Life Insurance Co.

Jane Parker, W. R. Berkley Corporation

John Todd, ING Americas



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ACC News

Recruit a Member and Win a Prize—Starting March 1

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 June 30—so don't delay, recruit today! For more information, go to www.acc.com/everybodywins.

Find Your Leadership Solution at ACC's Executive Leadership Institute

During these tough economic times, companies take drastic measures to improve bottom-line performance: downsizing, reorganization, budget cuts. ACC understands how these changes can affect law department management and we can help you meet these challenges head on. Come to ACC's Executive Leadership Institute, April 20-22 in Atlanta, and learn to become a valued and effective leader. Register today at www.acc.com/leadership.