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FOCUS

President's Message

Teresa Johnson

Dear Colleagues:

By the time you read this, our Minnesota summer will be almost over and we will all be engaged in back-to-school and fall clean-up. During the spring and summer, our chapter sponsored some great events: In May we had our annual General Counsel Forum and enjoyed a lively panel discussion featuring chief legal officers Dave Boehnen, Supervalu Inc., Mary McConnell, Polaris Industries, and Dan Lee, Caribou Coffee Company. June brought us another educational opportunity in the form of a Lunch & Learn featuring Marty Provin of Jordan Lawrence who spoke about privacy and compliance issues around records management. In July we had the New Member Welcome at The View on Lake Calhoun where we celebrated our growing chapter and heard about the ACC Annual Meeting taking place in Seattle October 19-22. The Annual Meeting will be packed with over 100 CLE programs, an abundance of networking opportunities, and sponsors who can assist you.

I hope this fall you will consider adding MNACCA activities to your ever growing "to do" list as a way to enhance your career, gain CLE credits, and provide valuable networking opportunities. A handy reminder of upcoming events is listed on the back page of this newsletter.

The board of MNACCA is continually looking for ways to better serve our members and we would love to hear from

you. Feel free to pick up the phone or drop an email to any board member or to Betsy Handlson, our chapter administrator, if you have a request, suggestion, or even a complaint.

Last fall, our board engaged in strategic planning for the chapter. From that exercise, we determined to create a Community Service Committee, chaired by Nicole James, associate general counsel, Ameriprise Financial. For those of you who don't know Nicole, she is a quiet dynamo who has brought boundless energy and enthusiasm to this committee and to the board of MNACCA. I asked Nicole to provide some information about the Community Service Committee for this newsletter. I hope you will find it as inspiring as I do.

For the Public Good: Providing Volunteer Opportunities for In-house Counsel

Many of us have volunteered for various things: we've chaperoned a child's school field trip, served meals at a soup kitchen, or trekked miles to help raise money for worthy causes. Most volunteers will tell you that they gained so much more from the volunteer experience than they gave. Pro bono, for the public good, legal service is among those volunteer experiences that can be more rewarding for the volunteer than he or she ever imagined.



Maybe you have provided pro bono legal services in the past and would like to get involved again. Or maybe you are still contemplating whether you have the time or if it is the right volunteer activity for you. Well, we hope that you decide to give it

a try if you haven't already or to reengage in the effort, to whatever degree you can. MNACCA decided to reengage and help provide its members convenient, easy access to pro bono legal opportunities.

The mission of the chapter's Community Service Committee is to provide members opportunities to give back to the community and to build and strengthen relationships within the chapter. The committee strives to provide a variety of community service opportunities throughout the year, at least one event each quarter. So far, the response from members has been very positive. In March, the committee partnered with LegalCORPS to staff a pro bono legal clinic for small business owners at the Central Library in downtown Minneapolis. Volunteers provided legal advice on issues such as the formation of a business, intellectual property rights, and leasing matters. In May volunteers partnered with Volunteer Lawyers Network (VLN) to provide pro bono legal advice to homeless veterans on housing, family law, criminal

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

Susan Hackett

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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. 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' 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.

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. 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 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 dimestore 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)

ABA Model In-House Counsel Registration Rules (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!

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expungement, and bankruptcy matters as part of the Minnesota Assistance Council for Veterans' annual StandDown event.

Remaining activities for the year include a family-friendly community service activity on Saturday, September 20, where chapter members can take a break from the practice of law and bring their families to provide exterior home rehab for people in our community to continue living independently in safe and secure homes. We will partner with Hearts and Hammers, a private nonprofit organization that provides exterior painting and home improvement assistance for seniors and the physically disabled. MNACCA members will help staff another LegalCORPS pro bono legal clinic for small business owners on Tuesday, September 23, at the Central Library in downtown Minneapolis. You can volunteer for 1.25 hours or four—it's up to you. And on Tuesday, November 4, member volunteers can participate in the nation's largest non-partisan voter protection coalition by partnering with the National Campaign for Fair Elections. This is a program developed by the Lawyers' Committee for Civil Rights Under the Law. Volunteers will help monitor polling sites, serving as mobile field attorneys responding to immediate issues to help ensure the

fairness of the election process in various sites around the Twin Cities. You can find out how to participate in any of these activities by contacting our chapter administrator, Betsy Handlson.

You may have concerns or questions about pro bono legal services. For example, we frequently hear: *"I don't have enough time; I don't know enough about the laws and legal matters that most affect the indigent; I can't be away from the office for too long; or I don't have/won't be covered by malpractice insurance."* The committee addressed these potential concerns by providing opportunities that can take as little as an hour and a half to a full representation case. We have partnered with organizations that provide malpractice insurance, training and free continuing legal education opportunities, and other practice materials that focus on certain practice areas, e.g. family law.

If you're still on the fence about getting involved in community service activities, specifically pro bono legal services, consider the committee's "Top Ten Reasons" to get involved in providing pro bono legal services. So far we have had great volunteer participation in the committee's activities and we hope to continue growing that participation throughout the rest of the year and beyond.

Top Ten Reasons to Participate in MNACCA's Community Service Activities

10. You don't have to deal with boring malpractice insurance agents.
9. Training, instruction, and helpful resources either not required or provided free of charge.
8. You believe in the Minnesota Rules of Professional Conduct despite the sometimes unflattering perception of attorneys.
7. You want to assist your employer in maintaining its status as a good corporate citizen.
6. A change of scenery, away from your workspace, is refreshing.
5. You can meet and network with some fun-loving, good-natured, and caring colleagues.
4. Step out of that box and broaden your practice areas at your own pace.
3. Experience and strengthen a sense of community.
2. Helping people and Karma. Need we say more?
1. Your heart will grow three sizes that day!

All the best to each of you. I hope to see you soon at a MNACCA event.

Teri

Welcome New Members

We wish to welcome the following new members who have joined our chapter recently:

Ralph W. Beha, Carlson Companies, Inc.

Alana Bergman, Boston Scientific Corporation

Beth Bjerke, EquaTerra, Inc.

Megan A. Blazina, Carlson Hotels Worldwide

Scott Brener, SFM

Frederick L. Budde, Cargill Incorporated

Melanie J.D. Holder, Thomson West

Adam Stewart Jones, Smiths Medical

Lonnie Keene, MoneyGram International, Inc.

Amanda B. Parker, Cargill Incorporated

Damon E. Schramm, Lakes Entertainment, Inc.

Kelly J. Shannon, G&K Services, Inc.

Susan C. Snyder, Pentair, Inc.

Amber S. Stevens, Land O'Lakes, Inc.

Mary B. Thomas, Best Buy Co., Inc.

Doris K. Tuura, Alliant Techsystems Inc.

Michael R. Watters, Catholic Health Initiatives

Christopher Lloyd Wendt, Mayo Clinic

Upcoming Events

5th Annual Legal Sampler

September 9, 2008, 5:30–8:00 PM, at The Grand Hotel, 615 2nd Street S., Minneapolis, MN 55402. This event offers a fun way to earn 1.5 CLE credits while drinking wine and munching on hors d'oeuvres. This year's sponsors are Blake Cassels & Graydon, Bowman and Brooke, Fredrikson & Byron, and Halleland Lewis. Each sponsor will offer a short session on a timely legal topic. Participants can choose three out of four of the offerings to attend.

Networking Social

October 2, 2008, 5:30–8:00 PM, at The Metropolitan, 5418 Wayzata Boulevard, Golden Valley, MN 55416. Network with your colleagues while enjoying cocktails and hors d'oeuvres. This event is free for both member and non-member in-house attorneys. Sponsored by 2008 Bronze Sponsor Stroz Friedberg LLC.

Lunch & Learn

October 7, 2008, 12:00–1:30 PM, at The Metropolitan, 5418 Wayzata Boulevard, Golden Valley, MN 55416. Topic to be announced. Sponsored by 2008 Silver Sponsor Fulbright & Jaworski LLC.

Wine Tasting

November 6, 2008, 5:30–8:30 PM. Last year was the first time we hosted a wine tasting and it turned out to be one of our most popular events. We were able to taste six different wines paired with gourmet food offerings to compliment each wine. This year, Chris Foster of Grand Pere Wines will be back to tell us about wines from other successful vintners. Sponsored by Bronze Sponsor The Esquire Group, A Special Counsel Company.

If you have questions or wish to register for one of these events, contact Betsy Handlson, chapter administrator, at 651.771.1218 or mnacca@acc.com. For more information on upcoming chapter events, go to minnesota.acc.com.

New Online Registration System Available!

Are you tired of filling out check requests for MNACCA events? Does your company balk at issuing checks for small amounts? Are you bothered by the process of asking for reimbursement for your MNACCA activities? Well, help is on the way!

The chapter has contracted with Thriava, a secure online registration provider. Now you can click on a link embedded in our invitations and on our website, fill in some easy information, and submit your corporate credit card number. This tool allows you to create an online account upon the first time registering; after that, you just login and you'll be ready to register. Betsy Handlson is still available to process your checks if you choose to go that route, but we think you're going to love this new tool.

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.

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 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 or 202.293.4103, x.451.

ACC Top Ten: Key Questions (and Answers) for Complying with US Export and Embargo/Sanctions Law and Regulations

As markets, supply chains, and workforces become increasingly global, more and more businesses are confronted with the need to comply with US export laws. But, the diversity and complexity of these laws and the implementation of regulations make benchmarking obligations and adopting sensible internal compliance mechanisms a difficult challenge. Read ACC Top Ten at www.acc.com/resource/v9984 to gain a better understanding of US export control laws and learn how to manage the compliance risks inherent to global business.

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If You Lead Will They Follow? Make Sure with ACC's Executive Leadership Institute!

If you manage attorneys, you know that being a good lawyer does not necessarily mean you have the ability to lead others. ACC's Executive Leadership Institute (ELI) will provide you with those skills: leadership styles, motivation, strategic planning, providing positive feedback, managing lawyer personality types, and more. ELI covers them all and in an in-house context. Skeptical? Don't believe us—believe your ACC colleagues. Here's what they have said about ELI:

- This course is a public service to law departments.
- I have been looking for a course like this for many years.
- I had high hopes based on the course description, but was skeptical about the ability of the program to live up to the advance billing. My expectations have been far exceeded!
- What a great course! Beautifully tailored to be meaningful to and applicable for attorneys.
- One of the best courses I have ever attended.

Join your ACC colleagues in San Francisco, September 15–17. For more information and to apply, go to www.acc.com/leadership.