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FOCUS

President's Message

Nathan Nelson

Dear Members of the Mountain West Chapter of the Association of Corporate Counsel:

I write this message at the beginning of 2009, knowing that it will likely not be read until well into the first quarter of the year. This year marks the transition from immediate past president, Kevin McMurray, to me, Nathan Nelson. Although I am grateful for the opportunity to serve you in this position, I admit that I was surprised by the news of my election; I believe that there are many others in our chapter who are well-suited for the responsibility. Please know that I am humbled by the opportunity to serve in this capacity. I hope to have your support as I strive to live up to the expectations of commitment and service that Stan and Kevin established.

As I thought about our chapter and the opportunities and challenges we face, I initially felt a little overwhelmed. I was reassured as I considered the fantastic group of committed volunteers that head this chapter: Officers Wayne Ipsen and Dawn Call; Committee Chair and Director TJ Fund, Directors-at-Large Michelle Wilson, Jeanne Baughman, Terry Uhling, Gordon Walker, Garry Pay, Daniel Day, and Chris Patterson; and, as mentioned earlier, Immediate Past Presidents Kevin McMurray and Stan Soper. Each of these volunteers (and our independent contractor chapter administrator, Nalisa Dunford) bring their own flavor of enthusiasm and commitment to our chapter. As members

of the Mountain West Chapter of the Association of Corporate Counsel, we are in good hands and cared for by leaders who share a common vision and desire to serve.

Our new leadership is excited for the opportunities this term will bring as we seek to make your membership and involvement with ACC a positive and rewarding experience. This term's leadership will hopefully not be much different from the previous two. We will focus on the strategic vision of our board (as outlined in the minutes of each year's annual planning meetings). However, as we stick to that vision, you'll also see a greater push toward membership growth, networking events, career development, and greater attempts to involve our members who are not located in the Salt Lake City or Boise metropolitan areas.

Essentially, this should all translate into a year full of great member benefits, pertinent CLE, and new and fortified career relationships.

Speaking of benefits, both Stan and Kevin previously wrote about some of the core benefits of being involved in the Association of Corporate Counsel. They explained how our active participation provides us opportunities to network with other professionals, grow both personally and professionally, continue our legal



education, and make a difference in our lives and the lives of our colleagues and communities. As a member and active participant in the Mountain West Chapter, I've enjoyed those benefits and encourage each of you to participate.

Some other benefits available to ACC members include 1) a subscription to the ACC Docket, which delivers in-depth information on issues facing corporate counsel; 2) access to "Find an Expert," where you can tap the specialized expertise of your peers through our network of in-house volunteers who provide advice on more than 150 specific legal issues; 3) more than 60 downloadable InfoPAKSSM that include articles, sample forms and policies, and case law on an array of topics—such as conflicts and waivers, records retention, outside counsel management and technology; 4) participation in the ACC Alliance; 5) the ACC Newsstand, which is a customizable daily newsfeed with updates on a range of legal topics; 6) the ACC Library of Legal Resources containing sample forms, policies, checklists, and articles; 7) educational benefits from various meetings (ACC Annual Meeting, New to In-house Institute, Mini MBA, Executive Leadership Institute and ACC Europe Annual Conference); and 8) the ACC In-house JoblineSM. In addition, members of the Mountain West Chapter benefit from local CLE and service events and activities.

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Three Essential Reminders for Saving Money On Outside Counsel Bills

Susan Hackett

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

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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.

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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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Renee Dankner (dankner@acc.com),
Mike Roster — ACC Value Challenge
Steering Committee Chairman
(mroster@earthlink.net)

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

Chapter News

Upcoming Events

February

4th Annual CLE & SKI at Deer Valley Resort

You won't want to miss this popular event at Snow Park Lodge, featuring a fantastic lineup of outstanding specialists and in-house lawyers as well as the opportunity to network with your peers at other companies during an afternoon of unbeatable skiing and relaxation at Deer Valley Resort.

The event kicks off with early registration and breakfast, and opens with an impressive lineup of panel presentations.

Over lunch, we will hear from our keynote speaker, Utah's Attorney General Mark Shurtleff. As you know, Mark has been the Attorney General of the state of Utah since 2001. Recently, Attorney General Shurtleff reviewed the Bowl Championship Series for a possible violation of federal anti-trust laws after an undefeated Utes team was left out of the national title game for the second time in five years. You won't want to miss this!

Following lunch, you are invited to take advantage of the excellent skiing that Deer Valley has to offer. Attendees will also have the chance to win fabulous prizes including a 30GB iPod video, Deer Valley ski passes & more!

Event sponsors to date include: Ballard Spahr, Christensen & Jensen, and Jones Waldo.

3.5 CLE credits pending. Panel topics and speakers TBA. For more information, please contact nalisadunford@msn.com.

April

CLE Luncheon at Market Street Grill Cottonwood, date TBA.

Third Annual CLO Club

Our inaugural meeting of the General Counsel Roundtable was held in May 2007 at the Alta Club in Salt Lake City and was hosted by Thomas C. Jepperson, vice president and general counsel for Questar Corporation. This was the first large-scale gathering of the area's general counsel and chief legal officers. In July 2008, sponsor Ballard Spahr hosted a successful event at their offices in downtown Salt Lake with more than 40 attendees. Participants had the opportunity not only to meet and network with others in their exclusive peer group, but to discuss some of the pressing legal issues of the moment in a roundtable format. We look forward to the 2009 meeting of the General Counsel Roundtable, which we anticipate taking place in the spring. If you are a CLO and would like to be invited to the next event, please let us know.

September

Annual Community Service Events in Salt Lake and Boise.

November

Annual Awards Gala, University Museum of Fine Art.

For more information on upcoming chapter programs, visit www.acc.com/chapters/mtwest.

Member Contact Information

If you have changes to your contact information, we would like to know! If you haven't submitted your email address or have a change of job, please update your membership contact information by emailing to nalisadunford@msn.com.

Unemployed? Good News!

You will be able to keep your membership during your unemployment period for up to one year. Please contact the chapter for more information regarding your membership details.

Goodbye and Welcome to Board Members

We are sad to say goodbye to Craig Hale, Win Apel and Vonda Hall for their board positions with the MW Chapter. We are very grateful for all the hard work and service they have contributed. We are also excited to welcome newly elected director TJ Fund of Nature's Sunshine Products in Utah, and Daniel Day from SUPERVALU, Idaho. In the next newsletter, we'll give you some more background information on our new board members.

Get Involved!

We love to have members get involved in our CLEs or chapter events. If you are interested in getting more active in our chapter, please contact Nathan Nelson at nnelson@albionminerals.com.

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.

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These events bring us together with our colleagues, introduce us to service providers, help us fulfill our CLE requirements, and offer us a chance to share best practices with other in-house counsel.

Again, I am thankful for the opportunity to serve as a leader of our Mountain West chapter. Our team of committed volunteers will implement our vision of pertinent

CLE and continuously improving member benefits. If you want to learn more about the chapter's upcoming programs or if you would like to help as a volunteer, please contact me. My email address is nnelson@AlbionMinerals.com. I'd enjoy hearing from each of you. Please send me your comments, thoughts, suggestions, etc. They will be helpful as our team works to do our best to make this upcoming year

memorable, fulfilling, and germane to the quality of your lives and careers.

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Save the Date!

for the 4th Annual

Winter CLE & SKI '09

At Deer Valley Resort
Tuesday, February 24th

**Featuring Utah Attorney General
Mark Shurtleff
on
"Building an Anti-Trust Case
Against the Bowl Championship Series"**

ACC AMERICA
Association of Corporate Counsel
Mountain West Chapter

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Gordon Walker

Jeanne Baughman

Chris Patterson

Garry Pay

Terry Uhling

Michelle Wilson

Daniel S. Day

TJ Fund

Executive Director

Nalisa Dunford

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Welcome New Members

We wish to welcome the following new members:

Kim Andereck, Grubb & Ellis|Wyoming

Kari Baardson, SirsiDynix

Howard Baik, LANDesk

Keith Facer, Varian Medical Systems, Inc.

L. D. Farnsworth, Microsoft Corporation

Seth Hobby, Dyno Nobel Inc.

Stanton Huntington, ProPay, Inc.

Jamon Jarvis, NSP, Inc.

John Jensen, LANDesk Software, Inc.

Craig Johnson, Rio Tinto Services Inc.

Thomas Jolley, The Sundance Group LLC

Kelli Kast, Coeur d'Alene Mines Corporation

Jennifer Kohler, Utah Transit Authority

Andre Litster, Questar Gas Company

Douglas Luehr, SirsiDynix

Jacque Palmer, Syngenta Seeds, Inc.

Rand Peebles, Power Engineers, Inc.

Ronald Price, Basic Research Corporation

Jared Quincy, Rio Tinto Services Inc.

Amanda Schaus, Brighton Corporation

Martin Sinclair, Great Falls Clinic, LLP