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ACC AMERICA
Association of Corporate Counsel
Northeast Chapter

FOCUS

President's Message

Paul G. Cushing

In these challenging economic times, we are reminded of our profession's call to serve those most in need. The Preamble to the Massachusetts Rules of Professional Conduct, in part, instructs that a lawyer "is a public citizen having special responsibility for the quality of justice." We are further reminded to "exemplify the legal profession's ideals of public service." Rule 6.1 calls us to provide pro bono publico legal services for the benefit of persons of limited means.

Despite ever growing demands on our time, we are aware of many examples of in-house lawyers rising to the needs of clients of limited means who require competent and zealous legal counsel in all disciplines of the law. We salute them and the numerous general counsels who actively encourage their staffs to seek out and participate in all kinds of pro bono efforts.

As the bar association for in-house counsel, the Northeast Chapter of the Association of Corporate Counsel America is proud of its tradition of offering opportunities for in-house lawyers to perform pro bono publico legal services. Most recently our Pro Bono committee has teamed up with both Greater Boston Legal Services and Southern Middlesex Legal Services to provide a variety of pro bono programs for in-house counsel.

Greater Boston Legal Services is the primary provider of legal services to those in need in the greater Boston area and works with several organizations and law firms to provide pro bono services in a structured format. For all cases and projects, there is screening of clients, training, mentoring and provision of primary malpractice insurance. Three ongoing pro bono projects that would be appropriate for our members include: 1) a low-income tax clinic, which assists taxpayers who are being audited by the IRS and who need assistance negotiating with the IRS to avoid potentially harsh levies and to establish more reasonable payment plans that will not threaten a family's financial stability; 2) an unemployment project representing low income individuals who are trying to secure unemployment compensation and related training and health benefits; and 3) the battered immigrant women's project in which attorneys working under GBLS supervision assist survivors of intimate partner violence to secure lawful immigration status through the Violence Against Women Act, freeing them from dependence on their abusers for their immigration status. The time commitment for these various projects ranges from ten to thirty hours depending on the case.

Southern Middlesex Legal Services covers 36 towns and serves 2,000 clients each year. SMLS also offers training for all work undertaken by volunteers and provides malpractice insurance. Pro bono opportunities through SMLS include: 1) foreclosure cases in which volunteer lawyers represent homeowners who face upwardly adjusting mortgages and who need assistance negotiating workout agreements with lenders to avoid losing their homes; 2) chapter seven bankruptcy cases representing low-income people who have burdensome debts they can't possibly pay and who need a fresh start free from continued harassment by debt collectors; and 3) preparation of wills, powers of attorney and health care proxies for financially eligible clients, often elderly individuals and single mothers, looking to put their affairs in order. The time commitment for these matters ranges from five to twenty hours.

Another well-established pro bono opportunity, which is ideally suited for in-house attorneys who negotiate business transactions and settle business disputes, is the Sheldon Rothstein, Esq., Memorial Mediation and Conciliation Program created by our chapter in 1991 and currently at work in the Dedham and Woburn District Courts. The program is named after a much-admired Polaroid Corporation in-house counsel who was tragically killed in an airplane crash and who was an example for his colleagues when he enthusiastically supported and volunteered to participate in the program.

The Rothstein Program utilizes approximately 70 in-house attorneys to help

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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 prophesies—the settlement floor, even in cases that otherwise have little merit.

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

HEARTWARMING "WILL IT ALL TURN OUT ALRIGHT?" NOVELETTE

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

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

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

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)*
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!

Chapter News

Programs Update

We had a busy spring, offering a host of interesting programs to our members. Topics ranged from "Going Green" with Nixon Peabody, "Tools & Tactics for Managing Trade Secrets" with Hamilton Brook Smith Reynolds, and "Preparing for and Managing Litigation" with Choate Hall & Stewart, to the second year of "Jeopardy!" with Goulston & Storrs. While most entertaining, all who attended the Jeopardy program said it was surprising how much you could learn in between the bouts of laughter.

Hilarity at the Jeopardy! program in July

Our Programs Committee has worked hard to come up with the following stellar programs for this fall, including:

September 10— "Barbarians at the Gate! Preparing For Compensation Issues in Business Acquisitions (for Barbarians and Romans), " sponsored by Skadden Arps

September 18— "Managing Outside Counsel Costs" (actual name TBD), in Portland, Maine, hosted by Pierce Atwood

September 25—"Third Annual Update of Critical Issues," hosted by Foley Hoag

October— Date still TBD, but you won't want to miss "Rock and a Hard Place: Boards, Budgets and CEOs," sponsored by Mintz Levin

October 28—"When the Tables Are Turned: In-house Lawyers as Witnesses," sponsored by Nixon Peabody in Rhode Island

November 19—Our annual all-day conference on Leadership and Ethics, sponsored by Choate Hall & Stewart, and Northeastern University, to be given at the Northeastern Campus in Burlington, MA

Early December—Corporate Compliance, sponsored by Greenberg Traurig

Mid-December—ACC-Northeast Holiday Party, sponsored by Ropes & Gray

For more info on upcoming chapter programs, go to *northeast.acc.com.*

Northeast Networking

Last spring, we held our first-ever "purely networking" evening, which was an unqualified success. We want to continue with this, and recently asked you about various networking opportunities—golf, harbor cruise, a simple evening such as the last time with great food and company, no sponsors. Responses poured in—golf would be popular with many, cruises with some, but overall, an evening cocktail party along Route 128 was the overwhelming choice.

You asked, we responded! Another networking evening is scheduled for October 7, and will take place at the Marriott Hotel in Burlington, MA. This will be unsponsored, pure networking, as you've indicated you prefer! Brief presentations on the work of our chapter committees will be given, in case you would like to volunteer to help with membership, programs, pro bono, diversity, or advocacy. Details will follow shortly.

ACC Annual Meeting: Register Now!

Plan on attending ACC's 2008 Annual Meeting, October 19–22, in Seattle, WA. The meeting offers three days of sessions geared to help you do your job better. It's also an excellent time to network—the time you spend with your peers benchmarking and discussing your in-house practices may be the most valuable benefit you gain from ACC. There will be numerous opportunities for you to meet other in-house counsel to share ideas, develop new contacts, and form new business relationships. Scheduled networking events will provide you with the chance to meet in-house counsel with similar practice needs, from your local area, or simply in a similar career stage. Plus, you will have the unique opportunity to meet legal service providers that specialize in products focused on serving the business needs of corporate counsel. Secure your spot today at *am.acc.com.*

Check Out Resources!

The "resources" section of the chapter website is growing! We post materials from our programs there, and are beginning to also post webcasts of selected programs. Additionally, useful articles from our sponsoring law firms are available for your review, and these are updated regularly. Make checking out the resources section a "weekly to-do."

And of course, the ACC National website is a vast resource for all in house attorneys, as follows:

- InfoPAKS, which offer you the opportunity to tap into the in-house legal community's storehouse of knowledge and experience so that you can provide the best possible client service. They contain helpful articles and other substantive materials which address some of our more frequently posed questions.
- Surveys from chief legal officers from 2001 through 2007, gathered each year at the annual meeting. Browse through and see what issues are at the forefront of the in-house community.
- Listservs dedicated to a number of specific practice areas
- Newsfeeds, the ACC blog, and "greenhouse counsel" to help your environmental efforts.

This is all in addition to the Virtual Library, which you can search on an endless number of topics.

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ACC Blog—Are You Connected?

ACC recently launched the first blog by in-house counsel, for in-house counsel. Help us make the blog a success by expressing your own opinions, or by simply perusing the dialogue. Recent blog discussions include "Why Does Historical Perspective Appear to Minimize the Impact of Change," "Why Federal Courts Do Not Apply the Rule of Law Part 2," "Federal Erosion of Business Civil Liberties: Part 5." Check them out at www.acc.com/blog

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the district courts reduce their backlog. A high percentage of the original mediators who volunteered in the early 90's remain active. Our members participating in the program serve as neutrals in the strictest sense and their efforts are highly successful in resolving disputes among those of limited means through mediation and conciliation techniques. A new lawyer in the program is teamed with an experienced mediator for the first few experiences as a conciliator or mediator. The training and a court orientation we provide comply with the guidelines under Rule 8, Qualification Standards of the Supreme Judicial Court Uniform Rules on Dispute Resolution.

At the Woburn District Court our neutrals engage in small claims civil mediation/conciliation and housing disputes. At the Dedham District Court our neutrals handle small claims and small claims appeals and are assigned cases from the court's trial docket. Mediation is strictly voluntary and not imposed on the parties by the court.

The chapter is grateful to Bill O'Brien and our Pro Bono Committee as well as GBLS and SMLS for coordinating a number of new pro bono programs for our members. We are also grateful to William Wise, a past president of the Northeast Chapter, who devised the longstanding Rothstein Mediation and Conciliation Program and who continues to supervise it and provide training for our members. We also wish to thank Chief Justice Linda Connolly who has supported the Rothstein Program from its inception and who has expressed an interest in seeing it expand into other areas of the state, where our members and potential members live and work, and could assist with the local court's crowded docket.

The Northeast Chapter is pleased to be able to offer so many opportunities for our members to heed the call of our profession to serve those most in need in our communities. We are particularly proud of our members whose pro bono efforts are improving the quality of justice in the Commonwealth of Massachusetts. We hope you will join them. Please contact the chapter for more information by emailing Louise Rothery at *acc-northeast@comcast.net.*

I hope you are enjoying this fine New England summer.

Sincerely,
Paul Cushing, President, ACC-Northeast

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Northeast Chapter JobFind: Post Your Positions

Many of you receive our monthly listing of in-house positions in the New England area, but are you aware that member companies can also post their available in-house positions on the JobFind? We will post legal, paralegal, and administrative positions for you—just send a brief description and contact information to *acc-northeast@comcast.net* before the 12th of each month.

Discount on "Think Twice" Insider Trading Videos for ACC-Northeast Members

For more than a decade, the dramatic and memorable "Think Twice" videos have been the leading training tools for educating employees and executives about insider trading and tipping. Three excellent videos are offered at a 10 percent discount to ACC-Northeast members. For more details, or to order, contact Brumberg Publications at 617.734.1979.