Board Members and Contacts

President
Reagan McCoy
Concord Oil Co.
210.224.4455
rsmccoy@concordsatx.com

President Elect
Diane Hirsch
Valero Energy Corporation
210.345.4172
diane.hirsch@valero.com

Vice President
John Bibb
Kinetic Concepts, Inc.
210.255.6838
Bibbj@kci1.com

Vice President
Ingrid Etienne
The Nature Conservancy
210.224.8774 x251
ietienne@tnc.org

Vice President
Kay Grimes
Lone Star Bakery
210.648.6400
kgrimes@lonestarbakery.com

Vice President
Richard Larsen
MDI, Inc.
210.582.2664
richard.larsen@mdisecure.com

Secretary
Abel Martinez
H.E. Butt Grocery Co.
210.938.8232
martinez.abel@heb.com

Treasurer
Robert Leckie
rbleckie@gmail.com

Immediate Past President
Lee Cusenbary
Mission Pharmacal Company
210.581.0680
lcusenbary@missionpharmacal.com

Executive Director
Amber S.Clark
830.336.2049
accasouthcentral@yahoo.com

Changed HR Policies

Casual Fridays:

Week 1: Memo No. 1
Effective this week, the company is adopting Fridays as Casual Day. Employees are free to dress in the casual attire of their choice.

Week 3: Memo No. 2
Spandex and leather micro-miniskirts are not appropriate attire for Casual Day. Neither are string ties, rodeo belt buckles or moccasins.

Week 6: Memo No. 3
Casual Day refers to dress only, not attitude. When planning Friday's wardrobe, remember image is a key to our success.

Week 8: Memo No. 4
A seminar on how to dress for Casual Day will be held at 4 pm. Friday in the cafeteria. A fashion show will follow. Attendance is mandatory.

Week 9: Memo No. 5
As an outgrowth of Friday's seminar, a 14-member Casual Day Task Force has been appointed to prepare guidelines for proper casual-day dress.

Week 14: Memo No. 6
The Casual Day Task Force has now completed a 30-page manual entitled "Relaxing Dress Without Relaxing Company Standards." A copy has been distributed to every employee. Please review the chapter "You Are What You Wear" and consult the "home casual" versus "business casual" checklist before leaving for work each Friday. If you have doubts about the appropriateness of an item of clothing, contact your CDTF representative before 7 am on Friday.

Week 18: Memo No. 7
Our Employee Assistant Plan (EAP) has now been expanded to provide support for psychological counseling for employees who may be having difficulty adjusting to Casual Day.

Week 20: Memo No. 8
Due to budget cuts in the HR Department we are no longer able to effectively support or manage Casual Day. Casual Day will be discontinued, effective immediately.

ACC America
Association of Corporate Counsel
South/Central Texas Chapter

ACC
1025 Connecticut Ave. NW
Suite 200
Washington DC 20036

ACC America
Association of Corporate Counsel
South/Central Texas Chapter

Second Quarter 2007

Focus

Reagan McCoy
President's Message

2007 is proving to be another banner year for the South/Central Texas Chapter of ACC. The board of directors and other volunteers remain dedicated to fulfilling our mission to enhance and expand our services to area in-house counsel. Guided by your survey responses earlier this year, we are continuing to offer a whole host of diverse and relevant activities.

In addition to several well-attended CLE luncheon presentations, we have filled our chapter events calendar with many opportunities and activities.

One of the most exciting new additions to our activities calendar is our practice group roundtable gatherings. The purpose of these meetings is to bring you together with your peers to weigh in on the latest issues, developments, and trends within your respective fields of law. So far we have had three successful roundtable gatherings for the fields of Financial Services, Labor & Employment, and Health/Regulatory. We are currently planning additional roundtable meetings for International Trade, Publicly Traded Companies, and Non-Profit Practice sectors. If you would like to propose a roundtable topic or lead a roundtable meeting, please contact Amber Clark at *accasouthcentral@yahoo.com*.

With the help of Ingrid Etienne, our devoted social concerns committee chair, we also continue to explore ways in which we can give back to our community. Thanks to all of you who participated in our Second Annual "Just Take One" pro bono event. We were able to take twenty cases in one evening. Those who participated really did make a difference to someone in need!

On the lighter side, many of you braved the rain at the end of March to attend our Spring Happy Hour at Dave & Buster's and discovered what a competitive group we have. Attendees raced around the Dave & Busters "midway" in teams, ruthlessly pulling out all of the stops in the hopes of wining the title for "The Great Race." Thank you IE Discovery for sponsoring yet another super-fun event!

These are exciting times for our South/Central Texas Chapter! There are opportunities everywhere for your involvement. Consider adding a little variety to your professional life by sharing and contributing your talents to help us achieve our goals.

I want to also express my appreciation to our fabulous group of annual sponsors. Their support and involvement play a vital role in bringing us the financial stability and expertise necessary for our chapter to be stronger and more valuable to you. There is no doubt a parallel between the excellence of our supporting sponsor partners and the quality of services we are able to offer you. Please take note of our supporters, thank them, and reward them with your business, whenever possible.

I encourage you to check the event calendar on the chapter website to learn about upcoming luncheons, roundtables, and happy hours. I hope to see you at the remainder of our 2007 chapter activities.

Viva la Revolution? 2,3
Busting the Myths of Alternative Fee Agreements 4
ACColades 7
The Art of Interview 8
Members' Companies in the News . . .9
Commercial Email, Website and Technology Agreements, and Cyber-Insurance 10
Recruit a Member and Win a Prize—Guaranteed! 11
Member Spotlight 12
Welcome New Members! 13
Chapter Photos 14
ACC News Briefs 15
Changed HR Policies 16

Viva la Revolution?

By Susan Hackett, Senior Vice President and General Counsel, ACC

Am I the only one who sees the pink elephant dancing in the room? I'm still waiting for the in-house counsel community to rise up and protest, but the silence is deafening. What's going on out there? Many of the top-tier law firms announced their most recent round of first-year associate pay hikes, and though the legal press reports one major firm after another following suit, there's been surprising little action in response from the in-house bar. Disgust? Sure. But no hint of the revolution that I thought was coming. In-house counsel of the world: Who's managing your legal spending—you or the firms?

Let's do the math. Be conservative and say that an average employer pays about one-third of an employee's pay on top of their salary in order to offer benefits (such as paid vacation/sick time, health, life, disability insurance, retirement or 401K-type contributions, etc.). The newly announced first year salary level of $160,000 plus $50,000 in benefits takes us to a total of $210,000. Then there's overhead, including a portion of the law firm's high-market rent, top-notch administrative support, computer, library, other office technologies, and the art-filled lobby. So let's add another $100,000 on top of the previous $210,000, and for the sake of keeping it simple, let's say that our highly recruited first year associate is now costing the firm $300,000 year. Every associate will get this hike, even the not so competitively recruited ones get it.

That doesn't even take into account the cost of the cocktail-cruising summer associate program, the firm's high-power recruitment, or the cost of attrition. For every 10 of those really expensive first years less than half will make it to partnership and profitability before they're either pushed out or run screaming from the building.

Then, there's the added bonus that the majority of big firms operate on a lockstep salary system for associates, so a raise for the first-rung associates necessitates a corresponding $15,000/year increase (at least) for every other successive class. This way, the natives won't feel bad that the least experienced workers who've labored a shorter time are making more than them. Let's say, conservatively, that the $300,000 cost of a first year associate, when combined with the very real costs of attrition and recruiting, brings us to a nice "blended" rate of about $400,000/year in costs.

Who's paying for this? Do you think that when the decision is made to up first-year salaries that the partnership votes to take less money to pay for it? Or do you think that the associates will be expected to "earn their keep?" The latter is a nicer way of saying that clients will be billed for the overworked first-year associates' time and efforts, and the associates will be expected to perform the feat of billing more than anyone thinks they're worth. Both clients and associates lose.

I'm having so much fun with the math, I think I'll keep going.

If you assume that every one of those associates will bill 2,000 hours that can actually be invoiced to a client (as opposed to a certain amount of time that will be billed, but written off as non-collectable for pro bono, incompetence, client objections, learning curve, you name it), that means that their 2,000 hours will have to be billed at an average of $200 per hour in order to reach the break even point. We all know that firms don't charge associate rates to break even. Large firms bill up to $400 per hour for these newcomers.

Perhaps a few of those new-to-the-profession associates are so smart or have amazing previous experience, making them worth every dime of $200+ per hour, and perhaps every one of their 2,000 hours billed is actually providing efficient and meaningful value to the clients they serve. But perhaps the vast number of those hired—smart, hardworking, and deserving as they are—are worth nowhere near $200 per hour.

Do you remember how much you knew or what your functional worth was the first day you entered the workforce to take your first "real" job? I remember feeling incredibly incompetent and very confused that I'd not learned any of the stuff that I needed in private practice during my summer work, or in law school. Indeed, law school may teach students how to think like a lawyer, but it does very little to produce graduates who are capable of providing valuable and efficient legal services right out of the box. And that's okay, the value of a lawyer is something that's learned and earned over time with hard experience. But clients are expected to pay for it from day one, since firms don't seem to think it's their cross to bear, and I don't see associates volunteering to do internships until their services are worth what they're charging for them either. Most attorneys in the corporate bar are willing to pay for entry level associates working under supervision; it's how it's done...but at a rate that within the last five years was reserved for only the most experienced partners? Come on.

Sanity check: You can hire an incredibly smart and experienced partner-level lawyer in the next town over from New York or DC or Chicago or LA who bills at $250 hour, and who can do the same work with a better result in half the time. That lawyer is very likely a refugee from the big firm and every bit as smart. Let's not forget about those nice folks in India or Iowa or ConsultantLand, or about your favorite vendors who will do the work for even less.

Sanity check: The members of the federal judiciary, who we hope will be composed of the best in our profession, and who must be attracted to engage in public service on the bench at the pinnacle of their careers, are paid less than these new first-years. Most of these newbies will make more in their first year than an associate justice of the US Supreme Court. Our underpaid judiciary is not the fault of large law firm associates, but it's a sign of how out of whack the law firm world's artificial pricing structure is.

Sanity check: Most new associates spend their time—as they should—learning the ropes by doing legal drudgery: endless, painstaking research; document review and shuffling through terabytes of discovery material; making necessary appearances and filings in courts; writing form contracts and pleadings; and hopefully learning their craft at the elbows of their seniors who have the experience necessary to bill $500 per hour and more for their time and counsel. Associate apprenticeship is necessary and supervision of those on the learning curve is professionally mandated by every state's legal regulations, but billing for the time of the supervising lawyer and the learning associate is part of a time-honored legal tradition that often amounts to double-billing. Those in the non-law-firm vending community who can expertly perform a variety of the services performed by first-years at a third of the price are gaining ground and expanding their business lines daily. Why not hire a legal research company or a team of ediscovery consultants to do document work, or another in-house paralegal to do the routine and repetitive contracts and pleadings work? I hear of more and more in-house counsel who: 1) won't pay for entry level associates any more—they are "outlawed" in the retention letter,
2) mandate that their firms work with vendors on some of the less exciting aspects of the case or matter that can be severed and done for a fraction of the firm's costs, and
3) give increasing amounts of work to a couple of savvy law firms who've started creating and offering those alliances with preferred out-sourcers so that they can be more efficient.

Sanity check: Many of the best and brightest students graduating from school today say that they don't want to work the hours or make the sacrifices that their senior partners did when they entered the profession. But they'll take the money, thank you. They'll still apply for the jobs in firms where they know that they're expected to put their lives on hold in perpetuity in order to earn the salary and have an eventual shot at a seven-figure income. And their partners, unable to get over their own frustrations, will continue to demand the same rituals of crazy hours that caused their pain.

Sanity check: Who says that firms that are paying these rates will recruit the best talent? Skyrocketing salaries and the need to bleed revenues from the resulting associate classes will do more to prevent these firms from hiring anything other than driven and "pedigreed" applicants, even though that may not be the only kind of talent that clients want. Perhaps what clients actually want is not the editor of the law review from one of the 25 "top 10" law schools in the country. Perhaps they want talent more broadly defined: experienced, diverse, and with life experiences beyond those normally held by the majority of "highly-pedigreed" graduates. Maybe clients want lawyers with a more developed ethical compass to work on their complex corporate-quagmire problems. Maybe clients are more interested in graduates with a pronounced passion for public service, or who communicate really well with juries, or who—dare I say it? —are actually satisfied with their jobs because they work in a more balanced work environment. There are plenty of bright lawyers who are actually a pleasure to work with because they are happy, and their lives are a bit more balanced with a mix of work and non-work activities and interests. Some of them might be in that rarified air of graduates who get the $160,000 per year (read: $400,000) offer; a great many of those people work elsewhere, though, and don't carry the baggage or the price tag of large law firm life.

Every study out there says it over and over: You don't get more—indeed, you get less—from folks who are working at surge capacity 24/7/365. Those workers are less and less productive and more and more inefficient. The business model of hourly billing in firms exacerbates the problem by encouraging work to be done in greater quantity, rather than with greater efficiency.

So who will stop the madness? Are we going to wait until firms announce in 2009 that the class of 2010 will be offered $180,000? Will that finally be enough? Or have you reached the end of your rope now?

The corporate legal community needs to stand up and exercise its not inconsiderable influence. You and your clients are being overcharged for legal work in the largest firms. Do something about it. Tell your firms that charge too much that you won't pay increased rates, and that you don't want any of those nice new associates (or their increasingly expensive senior associate colleagues) billing to your account unless the firm can quantify why it is that they'll provide more value to you as the client than a partner in a less expensive firm, or an expert legal service vendor/consultant. Ask why, if the top 20 recruits in the nation need this much, it is that firms can't just give a raise to them, rather than to every associate in the firm's pool? Explain to them that they're killing the practice of law by driving associates into the ground, and that you're not going to help them do it.

Then go out and hire from the abundant pool of talent in less expensive places, whether it be smaller firm lawyers, or lawyers working outside the confines of the really big cities. Let your expensive firms' management know that while you'll miss their high quality work, they've just got it wrong and you won't be forced to pay for their continued lack of business principal and judgment. Remind them that in spite of what they tell themselves and you every-day, there's quality legal service to be had at a fraction of the cost. After all, most of those large firm's mid-level and experienced associates will be secretly interviewing for jobs in your legal department or these alleged "second" and "third" tier firms as soon as they realize that the cycle of pain at the most prestigious firms just won't stop. We all know they'll be willing to take half the pay in order to earn the privilege of working somewhere they're valued for more than the number of hours they bill, but rather lauded for the high quality legal services they're bright enough to provide.

What can ACC do to support you on this matter? We're considering the alternatives and would like to hear your views. Let me know by emailing me at *hackett@acc.com*. After all, my bill to you is only $225 per year if you're eligible for membership!

Busting the Myths of Alternative Fee Agreements

By Kevin Young

Have you ever found yourself sifting through invoices from outside counsel or reviewing the latest status report on a significant matter, and asked yourself any of the following questions?

- Does our fee agreement with outside counsel create the best relationship for the company's present needs?
- Are we on the same page regarding goals and expectations?
- Am I paying too much for my lawyers? Too little?
- Am I satisfied with the communication and effort of outside counsel?
- Do my lawyers really understand our culture?
- Is there any way to improve accountability (metrics, budgets & goals)?

If so, you are not alone. In a January 15, 2007, article in *The National Law Journal*, some of these issues were discussed. See, "*With Legal Services, World is Flat*", by Laura Lewis Owens. These are the types of questions many corporate counsel are asking, these days and with good reason. Consider this statement by Ms. Owens:

"As the world goes flat, the law goes flat, and companies and law firms have opportunities to think differently about how legal services are performed and managed. The exponentially increasing volume of information that must be managed, the budget constraints of in-house counsel and the expectations of courts challenge lawyers to evolve. No longer locally but globally, law firms have opportunities to partner with vendors and utilize technological advances that promise to make their work faster and more cost-effective."
Id. At p.18.

The way that companies do business is always on the table for discussion, as products and services continuously evolve to meet competitive demands of the marketplace. Yet, the relationships between companies and their outside counsel have remained largely untouched over the last forty years. Until recently, the concept of "alternative fee arrangements" was not often raised between companies and their outside attorneys. However, things are changing and it might be time to consider whether such an arrangement is right for your company. If you do not speak the language, here are some of the basics.

Alternative Fee Arrangements

For starters, the parameters of any arrangement are limited only by your imagination and should be carefully tailored to fit the precise needs of your company. The foundation of any alternative fee arrangement is formed when the client "partners" with its outside counsel to shift some of the risks and rewards inherent in the client's current need for legal services. In crafting the appropriate arrangement, corporate counsel must consider the relationship with its outside counsel, the resources required for the project and the desired results. Although there are unlimited variations, typical arrangements tend to follow one of the following basic patterns.

Contingency Fee

In this arrangement, outside counsel earns no fee unless client obtains the desired recovery. Because outside counsel assumes more of the risk, the potential fee is usually substantial. Obviously, motivation is very high for outside counsel to maximize recovery, so it is imperative that goals and objectives are clearly outlined in advance.

Hybrid Fee

Under this arrangement, the client shares some risk with outside counsel, but typically less than a straight contingency fee. This type of agreement has elements of both an hourly agreement and a contingency agreement. The potential contingency fee is limited in exchange for certain guaranteed payments along the way. For example: Instead of paying rates of $500 an hour; the client agrees to pay $250 an hour plus a 15% contingency if the desired result is achieved.

Guaranteed Incentives

This type of agreement looks like a traditional hourly agreement, except the client offers a "bonus" of varying levels depending upon result. As with all such arrangements, goals and objectives must be clearly laid out in advance.

Fixed Fees

Also called "flat fees," "block fees," "retainer contracts" or "bundling," the number and type of fixed fee arrangements is truly unlimited. However, the key component is predictability. The client and outside counsel must have reliable information regarding historic costs and then both must project how that data relates to future expectations. The advantage for the client is in knowing the total cost of legal expenses that will be paid to outside counsel for a given term. The following are the most common fixed fee arrangements:

Flat Fee Per Matter

Client sets the fees in advance for each individual legal matter and outside counsel chooses to accept/reject each matter at the time offered by Client. May resemble a menu or line-item price structure. Client may offer each matter to more than one outside counsel on a first come, first served basis.

Retainer Contracts

Client contracts with outside counsel to handle a certain volume of legal matters or cases (however defined by client) for a fixed amount, to be paid in installments over the life of the contract. This arrangement is best suited for long-term relationships which involve a high volume of legal matters.

Fixed Fee for Unique Projects

This arrangement is designed for the company with a unique legal need that is easily defined and divided into phases, but the duration and scope of the ultimate resolution is uncertain. For example, a company's product may be subject to government scrutiny and the company desires outside counsel to investigate, research and prepare the company's response to a particular issue raised by the agency. The outside counsel does not "handle" or "quarterback" the company's response, but rather addresses a limited issue for an agreed fixed fee. Other examples include litigation coordination for a designated time period, focused discovery projects, phases of due diligence analysis, and other such projects. The key characteristic of this arrangement is that the client needs accountability along with outside counsel's immediate attention on a relatively short-term basis.

Myth-Busting

My partners and I have been working with clients under alternative fee arrangements since 1995. It all started with a request from one client and, honestly, we had to be pushed into the deal. We had no experience with fixed fees and knew nothing other than traditional time & expense agreements. We had no idea what to expect, but we knew one thing for sure: The client was important to us and we needed to change in order to preserve that relationship. We did our best to compile accounting statistics, project trends and compare our data with metrics provided by the client. We also suspected that if we embraced the concept and performed well, the relationship would be strengthened. However, in the end, we just took a leap of faith and said, "count us in."

Looking back, it was probably the single most important decision we ever made as a partnership. Over the last twelve years, our firm culture has changed, our client base has grown and a wide variety of alternative fee arrangements now make up 75% of our revenue. The client who initially approached us in 1995 is our biggest client. We now totally embrace the entrepreneurial nature of these fee agreements and welcome the opportunity to partner with our clients in this way.
We serve clients under contingency agreements, hybrid agreements, retainer contracts and fixed fee per project agreements, and we customize the terms to fit the needs of each client.

When discussing this topic with my peers and with corporate counsel, I am typically confronted with the same basic questions and concerns that we came face-to-face with in 1995. Perhaps you are wondering whether alternative fee arrangements could work for you, and you have questions about the unknown. In anticipation of those concerns, the following is my attempt to bust some of the common myths related to alternative fee arrangements.

Myth #1

"We have a long-standing relationship with outside counsel and they will not like this type of arrangement at all. Therefore, if we insist on a change in fee structure, our relationship with will suffer."

continued on page 6

continued from page 5

Fact

Under most scenarios, a well-designed alternative fee arrangement will actually strengthen relationships with outside counsel. This is true because of the "partnering" aspect of the new fee agreement. Communication improves and teamwork becomes more than a buzzword, as outside counsel truly invests in understanding the client's corporate culture. Additionally, there is incentive for outside counsel to perform a serious and realistic early evaluation of the legal matter, which is exactly what the client wants. Efficiencies and optimum use of technology are realized when outside counsel's rewards are tied to performance. Nickel & dime invoicing issues vanish. In our practice, we have found that by increasing the detail on our invoices and billing electronically (which costs us nothing), our clients stay better informed and receive desired metrics in a format they can use for multiple purposes. In fact, we routinely customize the format of our invoices to best suit our clients' needs. Coincidentally, this practice appears to be right in line with the goals of corporate counsel.

> *"It is e-billing that's at the top of in-house lawyers' wish list. Electronic invoices are typically broken down into exquisite detail, so company lawyers and CFOs can see exactly how a case was staffed, what the firm charged for late-night dinners for the paralegals, and whether the amount billed falls within the budgeted range…If I'm controlling the rates, I'm only controlling half the story."*
>
> The American Lawyer (March 2007) *"All Aboard - As Law Departments Get More Tech-savvy, They're Insisting That Firms Come Along For The Ride"*, by Anthony Paonita.

Implementing some form of alternative fee arrangement definitely shakes up the dynamics, but that usually means the client has more (not less) information and additional quality time with the desired point person at the law firm.

Myth #2:

"If I partner with outside counsel, I will lose control of how the legal matter is handled and conflicts of interest will develop."

Fact:

Actually, this can be a delicate issue. Certainly, not every alternative fee arrangement ever developed has been successful and there are risks inherent with the process. However, the risks are manageable and with the appropriate level of disclosure and communication, a satisfactory arrangement can almost always be obtained. Like any good relationship, expectations must be clearly articulated and understood in order to be appropriately managed. The client needs to manage its resources and achieve the desired results. Outside counsel needs to make a profit. Both sides desire some predictability and everyone wants to preserve and improve relationships. None of that should be a surprise to anyone. However, if the margin for profit is too small, outside counsel has built-in incentive to cut corners and do as little as possible to comply with the terms of the deal. The client does not want to be in that situation and good lawyers do not like to practice that way. In that scenario, there can certainly be conflicts of interest. The key is to strike the right balance, which will always involve some give & take on both sides. Preliminary meetings should include discussion of the level of representation desired (e.g., does every stone need to be unturned? How much investigation is enough? Are partners expected to perform every task? Can goals & objectives be prioritized? What, exactly, does the client desire in the way of periodic communication?, etc.). These conversations will reveal the essential desires and concerns on both sides and will allow for a realistic arrangement to be constructed.

When the right balance is achieved, the client allows outside counsel to manage some of the day-to-day details, while still retaining exclusive control of the goals, objectives and ultimate decisions. Once everyone is on the same page and truly partnering toward success, there are no conflicts of interest and this becomes a more enjoyable experience for all involved.

Myth #3

"It's not worth the effort because this type of arrangement just won't work for my company."

Fact

It is true that, like most good things, it takes hard work to get a successful alternative fee arrangement off the ground. However, extra effort put in today should decrease the effort required later. You cannot be the architect of a great fee agreement until you know exactly where you have been and where you want to go. At a minimum, that means collecting data and making projections consistent with the overall goals of the company. As stated above, sharing accurate data and communicating expectations is critical to the creation of every successful arrangement. Outside counsel cannot be expected to join the adventure unless given the necessary information. This may require significant work to develop metrics and compile statistics or the information may already exist in another format, just waiting to be found. The essential components needed for any analysis are:

- The historical cost of legal services for each particular matter;
- The anticipated need for legal services for each particular matter;
- Goals and objectives for each particular legal matter;
- Performance metrics on proposed outside counsel and any relationship considerations that may override other concerns;
- Corporate budgets and constraints which affect the resources allocated to each particular legal matter; and
- Other corporate goals that must be factored into the analysis (e.g., diversity, political, etc.)

By doing the prep work, your ability to forecast and control legal expenses will almost always improve. In most cases, expect outside counsel to welcome the challenge. However, if you are serious about changing the way you do business and existing counsel has reservations about partnering with you in this endeavor, you might think about changing law firms. Consider this quote from Ms. Owens' article:

> *"Consistent with the highest ethical and professional standards of practice, most law firms can do more to improve the services they provide and lower the cost. Partnering with clients to evaluate the task and select the best source from a collection of available tools will allow law firms and their clients to meet the challenges and exploit the opportunities of the early years of the 21st century."*
>
> The National Law Journal (January 15, 2007) *"With Legal Services, World is Flat"*, by Laura Lewis Owens at p. 18.

Bottom line: Like other aspects of business in the 21st century, relationships with outside counsel should reflect the culture and goals of each company. If your company's traditional approach needs a makeover, you can customize an alternative fee arrangement that works for you. It just takes hard work and a little creativity.

Kevin Young is a 19-year attorney specializing in commercial litigation, and is the managing partner of Prichard, Hawkins, McFarland & Young (www.PHMY.com), a law firm based in San Antonio, Texas.

ACColades

New to San Antonio

Judy C. Norris was recently appointed senior vice president and general counsel of Clarke American, Inc. Prior to joining Clarke American, Norris was in-house counsel for Blockbuster, Inc. from 1998 until 2006, with her most recent position as senior vice president and co-head of the Law Department.

CPS Energy has appointed Carolyn Shellman as their new general counsel. Prior to joining CPS, Shellman was vice president, general counsel, and corporate secretary of Electric Reliability Council of Texas (ERCOT), where she was responsible for corporate legal, governmental affairs, and external communications matters. Additionally, she handled ERCOT's 16-employee legal department.

The Art of Interview

PART 2 OF A 3 PART SERIES

By Morgan M. Matson

Typical legal hiring occurs in two to three interview stages. Thus, the goal is to excel during the first interview so that a "call back" interview occurs. The best way to achieve this is by preparing for the interview and adhering to certain guidelines and techniques which, when employed (pun intended), should leave the employer with a clear and positive impression of your abilities and your specific interest in the position. All too often candidates speak in generalities which leave the interviewer uncertain as to his/her interest in their organization. This article addresses interviewing techniques to prevent that from occurring.

(1) Become a subtle storyteller. Come to the interview with an agenda of 3 key points you want to communicate that illustrate your qualifications. Be sure to focus on results instead of activities. For example, a litigator might discuss a particular deposition where testimony was used to support dismissal of a case. The key is to be able to communicate substantive knowledge without sounding braggadocios. Having this information at the tip of your tongue will also come in handy when the inevitable "tell me about yourself" question is asked. You can then proceed to answer the question by describing your skills and accomplishments in a succinct manner.

(2) Be prepared to answer stock interview questions. Aside from "tell me about yourself," think long and hard about how you would answer the following, keeping in mind that your answer could make or break you (if you need help, contact MLA and we can tell you how to approach these traps and how to avoid disastrous answers):

(a) What are your biggest accomplishments?
(b) Why do you want to leave your current position?
(c) Why us?
(d) Why are you the right person for the position?
(e) What are your strengths/weaknesses?
(f) Where do you see yourself in 5 years? 10 years?
(g) You have been given truth serum, now tell us one reason we should not hire you? Or another goofy question, "If you could have one dead person brought to life for dinner, who would it be and why?
(h) Where else are you interviewing?

(3) Always go for the offer. At the initial interview, the employer is usually in the driver's seat with all the bargaining power. They have something you want and you role is to persuade the interviewers that you are the right candidate for the position. As a matter of strategy, your goal should be a slight role reversal whereby bargaining power is equalized. How do you do that? Simple, follow these two rules. First, avoid asking the "what can you do for me questions?" That means don't inquire as to salary, vacation, billing, bonuses or other benefits. Second, don't lose excitement about the position if something is said during the interview that does not resonate with your previous expectations. Instead, share those concerns with us. As headhunters we can work behind the scenes to gain additional information. Often times a potential "deal breaker" on your part is a mere misunderstanding as to what the interviewer was attempting to communicate. However, if you let your sudden lack of enthusiasm show, you will be sunk. Following these rules will help to ensure that the firm selects you as "their guy." Once the firm makes that psychological decision, the balance of power will equalize and you will be in a better position to negotiate. Even if you ultimately don't accept the offer, the mere fact that an offer has been extended can be used in good faith discussions with competing opportunities with other entities. In fact, an experienced headhunter should use this to create a "feeding frenzy."

(4) Bring your "A" game, even with peers who would be at the same reporting level. Too often candidates become lax and let their guard down when interviewing with other peers. They treat it as a "meeting" and less of interview. Be careful of this purported relaxed atmosphere and what you discuss (work ethic, career path, etc.) as it will make its way back to the one(s) whose blessing you will need. Also, be sure your questions and answers place the associate interviewer at ease. You do not want that person to feel threatened that you will be invading his/her turf.

(5) What's good for the goose… Just as interviewers will have stock questions of you, you should come prepared with at least 8-10 stock questions to ask of them. Few things will kill an interview quicker than responding "no" when the interviewer asks you, "Do you have any questions of us?" It will leave the interviewer with the impression that you are disinterested and ill-prepared. Be sure you use the questions strategically as you don't want the interviewers to be impressed with your questions only to compare notes afterwards and realize you asked each of them the identical question. Similarly, while the questions are "stock" you should tailor them much as possible to the specifics of the company. Good questions include, "how are matters staffed?," "all companies talk about camaraderie, culture, commitment to excellence, good management… what distinguishes your company in your mind?", "what's a typical day like?," "what do you enjoy about working here?," "how will my work be evaluated?," and "if I exceed your expectations, what career growth can I reasonably expect?"

(6) Avoid the negative. At this stage, adhere to the rule that if you can't say anything nice, don't say anything at all. So, avoid badmouthing your current employer, associates or other colleagues. No matter how accurate your comments, you will be perceived as a negative person. Moreover, they will likely believe that if you badmouth your current employer you will likely do the same to them should you part company down the road. If you must discuss your current situation, become a spin artist and discuss how you overcame a challenging environment and how you matured from that experience.

(7) Be observant of your surroundings. While you don't want to appear nosy or like a creepy stalker, take a quick glance around the interviewer's office. Perhaps you are a fly fisher and you see a collection of flies on display. Perfect ice-breaker opportunity! Other mementos or artifacts can serve as a way to keep the conversation rolling.

(8) End on a positive note. Remember, you want a call-back and an offer. Be certain to let them know that you are interested in the position and would like to continue discussions. Be enthusiastic as our clients frequently tell us that they want to hire people who want to work for them. Shake hands, maintain eye-contact and thank the person for meeting with you. In a competitive market gusto for a position is a key factor that can weigh heavily in whether an offer will be extended.

Morgan Matson is a Managing Director in MLA's Austin and San Antonio offices where he works in the firm's associate practice group.

Members' Companies in the News

Clear Channel Radio inked a multi-year partnership with Google, Inc. That will allow the Internet search giant to sell 30-second advertising spots on more than AM/FM radio stations nationwide. This business relationship will give Google advertisers the ability to reach a national radio audience, as well as the option to advertise on a medium they had previously not used.

MDI Inc. was selected by the Red Nacional De Transporte Terreste (RNTT) and the Dominican security integration firm ID Corp. SA to provide its security technology and systems to track cargo and transportation activity in the Dominican Republic.

Rackspace Managed Hosting unrolled a new on-demand hosting service designed to host the websites of client companies on a short-term basis.

Rush Enterprises reported double-digit increase in first-quarter profits.

*Company News taken from the *San Antonio Business Journal www.bizjournals.com/san antonio/*

Commercial Email, Website and Technology Agreements, and Cyber-Insurance

By Bart Huffman, Brett Schouest and Meagan Gillette

Commercial Email

Commercial email is regulated by CAN-SPAM[1], the federal legislation which also provides penalties for those who spam and companies whose products are advertised in spam. CAN-SPAM divides the universe of email messages into two categories – commercial email and transactional or relationship email. Commercial email is that which promotes commercial products or services, while transactional/relationship email is that which facilitates a transaction or otherwise communicates with a customer concerning an existing business relationship. CAN-SPAM's requirements are directed to the commercial email category

The statute's requirements are designed to ensure that a recipient can recognize an advertisement as such, to help minimize deception, and to provide a recipient the ability to opt-out of receiving commercial messages from the sender in the future. If the sender has not obtained the recipient's prior affirmative consent to receive the message, a commercial email message must contain clear and conspicuous notice that the message is an advertisement or solicitation. The most common way to obtain affirmative consent (and thereby avoid the "solicitation/advertisement" label requirement) is to provide an Internet user with a dedicated opt-in "click" box clearly reflecting the user's consent to be included on one or more email lists.

The requirements of CAN-SPAM should not be taken lightly. The federal legislation provides several enforcement mechanisms, including civil actions by state attorneys general and Internet service providers, as well as the possibility of criminal prosecution.

Website Agreements

Commercial transactions on the Internet differ in some respects from transactions that occur on paper. When constructing the terms of the agreements that will govern the parties' relationship, it is important to remember that website users and customers are typically not represented by attorneys. Accordingly, while the operator of a website (and its attorney) has substantial freedom in crafting a website agreement, a rule of reason will bear heavily on the enforceability of the chosen terms.

When constructing an online agreement, the first step is a solid understanding of the data involved. Different types of data – submitted data (e.g., names, email address), generated data (e.g., reports, purchasing history), or user content (e.g., pictures, video, essays, music) – will raise different concerns and require different approaches. In addition, an operator should always aim to manage the users' expectations. Non-deceptive communication of terms, conditions, intended use, and other policies can go a long way in protecting the operator from subsequent criticism and liability.

While many provisions of website agreements are typical of consumer contracts, the website context generates a number of nuances. For example, website operators may want to carefully consider and craft provisions governing termination rights, targeted advertising, the ability to assign/transition business and data (e.g., when companies and websites are bought and sold), indemnification rights (especially when users upload or manage content), and security concerns. Somewhat challenging topics, which call for more creative approaches in the Internet context, are liability limits, choice of forum and governing law, and alternative dispute resolution provisions.

Internet Technology Agreements

Often, the approach of the Internet technology provider is similar to that of a pure software licensor – the provider seeks to disclaim all responsibility and to place all responsibility on the purchaser or Internet business partner. The technology "purchaser" will, on the other hand, often view the Internet technology provider similar to other service providers, believing the Internet technology provider should accept full responsibility (including representations, warranties, and indemnification and insurance obligations). It is easier (and far less costly in attorneys' fees) if the business representatives negotiate on a somewhat more detailed basis when they are in the process of deciding whether to pursue the "deal." The attorneys should be able to assist by providing a checklist of terms to be worked out, to the extent possible, in advance.

Insurance Issues

Just like many other methods of conducting business, e-commerce services and transactions involve significant issues and risks. Like all other business functions, it is important to insure against such risks where possible. Relatively new products are offered in the insurance market, referred to as "cyberinsurance," which are designed to bridge gaps between traditional insurance coverages and those needed for e-commerce transactions. First-party or "cyberproperty" coverages include data theft/destruction and rehabilitation, extortion/"cyber-ransom", e-theft/e-fraud (unauthorized e-transactions) and business interruption/denial of service. Third-party or "cyberliability" coverages include libel/slander/defamation and trademark/copyright infringement liability associated with websites and emails, hyperlinking liability (passing computer viruses), contextual liability (professional services over Internet), network security breaches and denial of service liabilities.

One size does not fit all and, like other insurance risks, it is important to consider your business model for risks to cover. Assessment of security of your current computer system and programs, as well your current insurance coverages, is important in identifying and obtaining the right cyberinsurance for your needs. Insurers offering cyberinsurance provide questionnaires and application documents to guide you through such assessments. At this point, cyberinsurance remains largely untested in the market and courts, but it is becoming increasingly popular and necessary as doing business through e-commerce continues to take hold in the American and world-wide economy.

Messrs. Huffman and Schouest are shareholders with the law firm Cox Smith Matthews Incorporated. Mr. Huffman's practice is focused on Internet and other intellectual property matters, and Mr. Schouest's practice is focused on business litigation and insurance coverage issues. Ms. Gillette is an associate in the firm's Intellectual Property section.

1. Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, 15 U.S.C. §§ 7701-7713, 18 U.S.C. § 1037 (2006).

Recruit a Member and Win a Prize—Guaranteed!

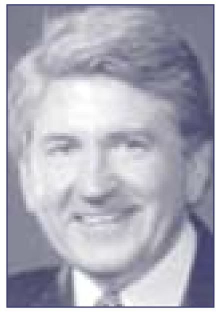
Help increase ACC's membership by participating in the ACC's Share the Wealth Membership Drive. Each time you use the Association of Corporate Counsel network, you gain valuable skills and experience only available through ACC. More members in ACC translate into improved educational opportunities, enhanced networking, increased online resources, and advancement of the profession worldwide.

Each time you recruit a member, you will receive a Starbucks Card loaded with $5.00. Recruit two or three members and win a chance to receive a portable DVD player. Recruit four or five members and receive a chance to win a digital camera. Recruit six or more members and receive a chance to win a Mac or PC valued at $1,500 or a free ACC Annual Meeting or ACC Europe Annual Conference registration and a $750.00 travel stipend.

ACC's Share the Wealth Membership Drive ends on July 31—so don't delay, recruit today! Get more information and tips on recruiting members at *www.acc.com/sharethewealth*.

Job Openings? Is your company looking to fill an in-house position? Do you know about a current in-house job opening? If so, please let us know so that we can advertise the position to our membership. Send an email to Amber S. Clark, executive director, at *accasouthcentral@yahoo.com*.

Member Spotlight



Stan McCormick *is executive vice president and general counsel for the Frost National Bank. He is a past president and current advisor to the board, and is the longest standing member of ACC South/Central Texas Chapter.*

How long have you been a member of ACC? What is the greatest value you get from the organization and how have you seen it grow over the years?
Since the inception of the chapter—Mid-1990's. The value I get from the organization is, first, the relationships which make life more enjoyable and, second, the information on timely legal subjects provided by excellent speakers.

Tell us something about yourself that may surprise other people.
Contrary to popular belief I enjoy serving as Mayor Pro-Tem of the City of Alamo Heights and would rather work on city issues than play golf.

What is your most embarrassing moment? How did you handle it?
During the annual Pooch Parade involving close to 1,000 people and dogs, (which was during the political campaign season) my golden retriever, Harley, went right up to one of my political yard signs and proceeded to lift the preverbal leg much to the astonishment of all of the parade participants. Figuring that the participants did not know me, I blurted out "boy, that dog sure doesn't like that candidate." Need I say more?

Where did you attend law school and college? What did you enjoy most about your college and law school experience?
The University of Texas at Austin McCombs School of Business and The University of Texas Law School

Establishing relationships with the other students, serving as Chairman of the Moot Court Board. Also, I worked with an Austin attorney named Larry Neiman in creating The Order of Barristers in a number of meetings we held in a coffee shop on the drag.

Why did you become an in-house counsel?
Because I really enjoy business and I believe that an effective in-house counsel must operate from a perspective of being 80% businessperson and 20% lawyer. Every day is totally different and it is hard to believe that lawyering can be so fun. And, no more billing by the hour.

What has been your most challenging legal issue to date and how did you handle the situation?
Perhaps the most challenging case we have handled involved the tragic death of a young mother of two little boys who was abducted on a Sunday evening at one of our ATMs. The facts showed that she was assaulted, shot, and set on fire, which gave rise to the lawsuit. This case involved all of the challenging elements such as the personality of judge, jury, out-of-town plaintiff's counsel, the two surviving young boys, insurance issues requiring coverage counsel, liability issues concerning lack of ownership of the building, media exposure, and possible settlement negotiations. Thankfully, this is the only such case we have had.

What are your most memorable or significant accomplishments as a lawyer?
As a private attorney before going in-house, I handled an appellate criminal case before the DC Court of Appeals regarding a conviction for the offense of uttering. An experienced, senior criminal attorney told me that there was no basis for appeal and that I should so instruct the court. Being a brand new lawyer, I decided that if there was a will there was a way and thoroughly researched the law. I discovered an 1887 US Supreme Court case that was on all fours and appeared in the Court of Appeals for oral argument against a table full of US Attorneys. During oral argument, I simply told the court that the 1887 case was controlling and that the conviction should be reversed and that every indictment for the subject offense was and is defective. Ultimately, a printed decision was rendered reversing the conviction based on the 1887 case.

What are some of your hobbies and interests? What do you enjoy doing outside of work?
Attending spinning class at the YMCA with my wife; rough housing with my golden retriever, Harley; talking to my children about their activities; working on City of Alamo Heights issues; reading and writing in my journal.

Who influenced you the most to become an attorney? In what ways?
I was influenced by the concept of equal justice under the law which encompasses the rule of law and not the rule of men.

Who do you "lean on" for moral or spiritual support?
I lean on my wife and friends, both Bank and non-Bank. The Frost Philosophy is foundational. I have "leaned on" Buckner Fanning—a genuine spiritual leader.

What is your favorite book or movie? Why?
Mere Christianity by C.S. Lewis: insight into the meaning of life; *Magnificent Obsession* by Lloyd C. Douglas: the secret to joy in life; *Shackleton's Way. Leadership Lessons From The Great Antarctic Explorer* by Margot Morrell, Alexandra Shackleton, Stephanie Capparell: an excellent insight into timeless leadership traits; and *If Aristotle Ran General Motors* by Thomas V. Morris: creativity and the human need to create as being at the heart of all successful organizations.

Welcome New Members!

Jason Cone, Kinetic Concepts, Inc.
(4/1/2007)

Michael Cubeta, Security Service Federal Credit Union
(1/1/2007)

Bradley Ipema, USAA
(2/1/2007)

Chapter Photos

Spring Happy Hour at Dave & Busters

Richard Larsen, David Woodard and Julie Truss Team Up for the Great Race

Kay Grimes

David Woodard and Dan Lopez at Dave & Busters

Reagan McCoy with Tim and Laura Alcott

First Financial Services Roundtable Lunch, hosted by Jackson Walker

Inaugural Financial Services Roundtable

Clear Channel Group at March Luncheon

Dan Lopez, Helen Moore, Linda Thoede, Chris Cain, and Rick Wolf

ACC News Briefs

ACC: Planning for the Future

ACC strives to be the premier association for in-house counsel and we have made significant strides towards that goal. Consider last year we crossed the 20,000 membership threshold, while averaging a net gain of 1,400 members per year for the past 5 years. The Annual Meeting has doubled in size in 5 years and we expect total attendance to surpass 3,000 people in Chicago this October. ACC Online and the *ACC Docket* provide a wealth of useful and practical information that in-house counsel can use for their professional development. In addition, the committee network continues to expand and the chapter network has never been stronger or more robust.

ACC's Strategic Plan constitutes a critical component of our success. The Board of Directors as well as chapter and committee representatives first developed this plan over 3 years ago. This January, the directors and a group of chapter and committee representatives met to assess and refine the plan based on the results of our recent member needs assessment survey. As a result, two strategic initiatives were added as initiatives for ACC to focus on in the next year or two. This plan provides the guidance and focus that is critical to our recent success and our future challenges.

Here are the major goals of the strategic plan with examples:

- Be the Voice of the In-House Bar by advancing the in-house practice of law and the professional standing of in-house attorneys. (E.g., preserve the attorney-client privilege and promote MJP reform.)
- Provide value to in-house counsel at each stage of their career through targeted resources and services. (E.g., Corporate Counsel University for new in-house attorneys and CLO Think Tanks.)
- Build a global network. (E.g., a thriving chapter in Europe and 1000 members outside the US in 60 countries.)
- Improve awareness of ACC in the in-house community while developing and expanding our brand in the legal and business communities. (Recognition in the media as the source of information about the in-house practice, including such publications as *Business Week*, *Forbes*, *USA Today* and the *Wall Street Journal*.)
- Provide more training on general business and management issues. (E.g., Executive Leadership Institute, Mini MBA Program covering financial and business issues)
- To leverage technology resources and skills. (E.g., enhance our website and expand our use of technology to deliver resources to and facilitate networking among our members.)

On the Minds of In-house Counsel: ACC Listservs

Every day ACC members use the committee listservs to get insight and advice from their in-house peers. Here's what ACC members are talking about:

- Recommendations for outside counsel in particular geographic areas and legal specialties;
- Hourly rates law firms are charging for the use of paralegals;
- The legal and accounting costs for taking a company public;
- Malpractice insurance;
- Best ways to avoid duplicate inquiries to the legal department;
- Cell phone use policies; and
- Holding departing employees accountable for returning company property.

Take advantage of this great resource, go to *www.acc.com/php/cms/index.php?id=55*.