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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*.

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Association of Corporate Counsel
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1025 Connecticut Ave. NW
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Fourth Quarter 2006

Focus

Lee Cusenbary
President's Message

A prospective member asked me a great question shortly after I became president of our chapter. He said, "What is ACC? Is it one of those groups that just exists to keep itself going, or does it do something that matters?" Oddly, I have repeated that phrase to myself each month as we plan for the next board meeting. It has helped me visualize what our chapter's needs are and what we can do for in-house attorneys.

With these words still ringing in my ears, I stood before the membership of our chapter last year at a CLE luncheon and proudly announced that we were voted first runner up for the Chapter of the Year for ACC in our category. We were all pleased to see the recognition, but more importantly it lit a flame under us to go for the brass ring. Without pausing, I announced to everyone that we would win Chapter of the Year next year. I then immediately realized I had made a promise that I did not have complete control over, but I did have a great feeling about our membership and board. Following a direction that has been set by the prior year's board, we charted a course to be the best chapter we could be. We added a community service committee, headed up by Ingrid Etienne, that helped many people get their lives, ex-spouses, children, wills, and real estate organized legally. We also helped clean up Brackenridge Park to give back to our community. We surveyed the membership to see what salary ranges were found in San Antonio in corporate legal departments. Kay Grimes and Nancy Anderson helped us get to know each other better with social events, including the Zinc Wine Bar party, which was fun. We also broke new ground, by putting on a full three-hour musical ethics conference with all local performers called "Ethics Follies" that was very well received. This was in and around organizing new CLE speakers every month for the luncheons at the Plaza Club. Nothing happened without the dedication of executive director, Amber Clark. She keeps the flame lit as we pass the torch from board to board. Many thanks to Amber for all the hard work.

With our chapter's eye on the prize, we did indeed win Chapter of the Year this year for our category. But the trophy isn't really as exciting as the fact that we grew as an organization and became even closer as friends. I feel like I can honestly answer the prospective member (who did join, by the way) affirmatively when he asked if we "do anything that matters." We did make a difference, and we had a good time doing it.Thanks for all your time and energy this past year. If you have any more ideas to help serve our in-house attorney membership, let me know, or visit with Reagan McCoy, the incoming president. We are lucky to have him take over the leadership of our fine chapter.

Ethics Follies cast at rehearsal

Chapter Photos

Ethics Follies

MIke Clark, Bob Leckie, Kay Grimes and Bill Detamore at Beat the Heat Happy Hour.

Reagan McCoy, Amber Clark, Lee Cusenbary and Bob Temple at National Meeting in San Diego.

Don't Miss

We continue to hold our monthly luncheons on the first Wednesday of the month from 12:00–1:30 pm at the San Antonio Plaza Club. The cost to attend the luncheons is $10.00 for members and $18.00 for nonmembers. (In-house counsel and sponsoring firm only, please.) Check out our chapter webpage at *www.acca.com/chapters/sanant.php* for our current calendar of events and registration information.

No other professional organization in San Antonio offers better CLE programs specifically geared to meeting the needs and issues of in-house counsel at a more affordable price.

Upcoming CLE Luncheons

Wednesday, December 6, 2006: December Luncheon: State Representative Trey Martinez gives a legislative update, sponsored by Shelton & Valadez.

Wednesday, January 3, 2007: January Luncheon: New Year's Employment Resolutions for 2007, sponsored by Bracewell Guiliani: What's new, what's changed, and what you need to watch out for in the new year. This presentation will review recent developments in labor and employment law, including court decisions, federal agency rulings, and union organizing activities, and provide recommendations for dealing with these issues in the new year.

HOLIDAY PARTY: Wednesday, December 6, 2006 at Lee Cusenbary's house 6:00 pm–9:00 pm

RSVP to Amber S. Clark, executive director at *accasouthcentral@yahoo.com* or 830.336.2049.

Member Spotlight

Alan Schoenbaum, *senior vice president and general counsel of Rackspace Managed Hosting.*

Where did you attend law school and college? What did you enjoy most about your college and law school experience?

I attended the University of Texas at Austin for both undergraduate and law school. I was an English major. The most enjoyable part of the college and law school experience was living in Austin in the late 70s and early 80s. I met and got to know some really great people. Hook'em!

Why did you become an in-house counsel?

Rackspace is a unique company, and I am very lucky to be able to work at the home of Fanatical Support. I don't think I would have left the firm life for any other company. I actually thought I would follow in the footsteps of my father, Stanley Schoenbaum, who is still going strong as a lawyer at 81. I have not been disappointed! The people at Rackspace—we call them Rackers—are truly special, and our company is a great place to work. Our leadership team, led by Lanham Napier and Graham Weston, is dedicated to building a world class service company.

What has been your most challenging legal issue to date and how did you handle the situation? What are your most memorable or significant accomplishments as a lawyer?

I think my most challenging legal issue to date relates to an engagement at my former firm, Akin Gump. We represented a public company which had an audit committee investigation, an SEC investigation, Justice Department investigation, and stock exchange delisting procedure—all at the same time. I assembled a great team of lawyers to attack each of these issues, and ultimately we were 100% successful.

My most memorable accomplishment as a lawyer was being part of a terrific law firm for 21 years, and generally just practicing corporate and securities law in a wonderful city for some fabulous clients. Akin Gump has some truly remarkable lawyers, like Cecil Schenker and Thomas Weir. These guys were great partners and mentors. I also had the good fortune of being able to work on transactions with some of the city's finest legal talent, like Dan Webster, Jamie Smith, Drew Cauthorn, Daryl Lansdale, Patrick Tobin, and many others.

What are some of your hobbies and interests? What do you enjoy doing outside of work?

My primary interest outside of work is my family. I have been married to Kathleen for 26 years, and we have two grown sons and a beautiful and intelligent daughter-in-law, Lauren, who attends UT Law School. I enjoy cycling in the Hill Country and I read a lot.

Who influenced you the most to become an attorney? In what ways? Who do you "lean on" for moral or spiritual support?

This is an easy question to answer. My father, Stanley Schoenbaum, was my strongest influence. He led by example, and I always liked what I saw. He is the most ethical, compassionate man I know. I get plenty of moral support from my wife and my two sons, Alex and James. Each of them offers a unique perspective on the world.

What is your favorite book or movie? Why?

My all time favorite book is One Hundred Years of Solitude by Gabriel Garcia Marquez. Why? It is one of the greatest stories ever told.

Tell me something about yourself that may surprise other people.

I can cook the most delicious veal stew on the planet.

What is your most embarrassing moment? How did you handle it?

I was caught unprepared during two consecutive classes one Monday morning after a particularly enjoyable weekend during my first year of law school. I winged it, but it was not pretty. Believe me I was never unprepared again!

National Public Lands Day Project

Thanks to the members and their families and friends who participated in the Bracknridge Community Service Project on October 21st:

Alex Brown
Steve Brown
Amber Clark
Chad Cusenbary
Lee Cusenbary
Linda Drozd
Ingrid Etienne
Diane Hirsch
Chance Kinnison
Tessa Resendez
Cynthia Smith

If anyone has ideas or wants to help plan the next event, please contact Ingrid Etienne at 210.224. 8774 x 251.

ACC Volunteers Painting curbs at Brackenridge Park.

Diane Hirsch helping to clean up Brackenridge Park.

SEC Adopts New Disclosure Rules Regarding Executive and Director Compensation and Related Party Transactions

By Thomas W. Adkins, Partner Bracewell & Giuliani LLP

The SEC's new rules regarding executive and director compensation disclosures, related party transaction disclosures and other matters will have a significant effect on proxy statements (beginning with the upcoming 2007 proxy season), Form 8-K requirements (effective November 7, 2006) and other SEC filings.

Public companies should begin preparing the new disclosures for their 2007 proxy statements right away. The information required for the new Compensation Discussion and Analysis (think of it as a new MD&A requirement focused on compensation matters) will require significant input from the compensation committee. In addition, the revised compensation tables will require information that is not likely to be readily available in the Company's records, and it will take time to prepare the information for these new tables. Among the things that have changed under the new rules are the following:

- How to determine which executives' compensation must be disclosed;
- What information goes into the summary compensation table and the supporting tables;
- What constitutes a perquisite or other personal benefit, and when must they be disclosed;
- What information is required regarding severance and change of control payment arrangements;
- The rules regarding disclosure of related party transactions, including changes to the indebtedness disclosure threshold;
- The rules regarding disclosure of pledges of Company securities by executive officers and directors; and,
- The requirements for disclosures about option grant practices and about the operation of the compensation committee.

In addition, beginning November 7, 2006, companies must be prepared to comply with the new Form 8-K disclosure triggers and requirements. New Item 5.02 of Form 8-K requires prompt disclosures about the appointment, election or departure of directors and an expanded group of officers, and about their compensation arrangements. It also requires prompt disclosures about the entry into, or material amendment of, compensation arrangements involving the principal executive officer, principal financial officer, or a "named executive officer" (determined under the new rules mentioned above), even if not related to the appointment or departure of the officer.

Although the SEC has provided a limited safe harbor from claims under Rule 10b-5 and from loss of Form S-3 eligibility for failure to file some Form 8-K reports on a timely basis, the safe harbor applies only to a portion of the required compensation disclosures, and then only to the due date of the Company's next quarterly or annual report. The safe harbor does not cover all of the potential compensation disclosure and Form 8-K filing requirements.

These are merely brief highlights of the changes. For a more detailed review and the format of the new compensation tables, please go to our web site at *www.bracewell-giuliani.com*.

Is it Necessary to Avoid Probate in Texas?

By Martin I. Roos, Shareholder; Oppenheimer, Blend, Harrison & Tate, Inc.

Often I am asked the difference between a Will and a Revocable Trust. The use of revocable trusts in estate planning has grown tremendously in the last few years. In many estate plans the revocable trust has replaced the will as the principal estate planning document. This is due, in part, to current publicity about and marketing of revocable trusts, which avoid the expensive and time consuming probate process of many states. California, for instance, has a statutory fee that allows the attorney for the estate to be paid a fee of 6% of the decedent's gross estate. In Texas no such statutory fee for probate applies in most cases. So, is it necessary to avoid probate in Texas? To answer this question, an understanding of the difference between a Will and Revocable Trust is required.

A Will is a testamentary document that takes effect at a person's death. It transfers the decedent's property to designated beneficiaries after he or she dies, names the person that will administer the estate, and provides for guardians for any minor children, if applicable. If a person's estate is large enough, the Will should incorporate tax planning.

A tax planning Will incorporates use of a person's available federal estate tax exemption amount. For married couples who are coordinating their estate planning and have combined estates close to or in excess of $2 million, use of a bypass trust (also commonly referred to as "credit shelter trusts" or "exemption trusts") in both wills is a relatively simple and effective way for a couple to pass property up to $4 million to subsequent generations without the payment of any transfer taxes, and to ensure that both spouses take full advantage of their exemption equivalents from the federal estate tax to the extent possible.

A bypass trust is created by the will of the first spouse to die, and is funded with an amount of property from the first spouse's estate equal in value to the amount of the first spouse's remaining exemption from the estate tax. The bypass trust can be structured so the surviving spouse is the trustee and also the beneficiary; and if the bypass trust is properly structured, then upon the death of the surviving spouse the property remaining in the bypass trust will not be included in the surviving spouse's estate. The bypass trust is a spendthrift or creditor protected trust.

A Will must be probated. Probate is the process of submitting your Will to a court for recognition as a valid instrument and appointing a party (normally an Executor) to carry out the terms of the Will. Texas, unlike California and other states, does not have a mandatory fee that is paid to the attorney for the estate. Texas is one of the easiest and least costly states to probate a Will. Texas uses a probate process called independent administration, which means your Executor (the person you name in your Will to administer and distribute your estate upon your death) only has to file the original Will for probate and file an inventory with the Probate Court detailing your probate assets as of date of death. In Texas, the Probate Court does not take an active role in the administration of an estate where an independent executor has been appointed.

A revocable trust is created during your lifetime. Assets that are transferred to the trust during your lifetime do not go through probate, but rather the trust instrument itself controls the disposition of the assets.

One of the major reasons suggested for creation of a funded revocable trust is the avoidance of probate. Generally this alone is not a valid reason to establish a funded revocable trust in Texas if all the grantor's property is located in Texas. As described above, Texas law authorizes the independent administration of a decedent's estate free of court supervision. In contrast, many states have expensive and time consuming court supervised estate administrations.

There are legitimate reasons to avoid probate, however, even in Texas. Many persons wish to avoid the publicity associated with the probating of the will and do not want an inventory of their probate assets in the public records. A trust instrument typically is not recorded and therefore the terms are not public knowledge.

Revocable trusts are also useful to avoid the need for ancillary probate proceedings when a person owns property outside the State of Texas. Where a Texas resident dies owning real property located in another state, then it may be necessary to probate in the non-Texas state as well. This ancillary administration problem can be avoided by transferring the record title to the real property outside of Texas to the revocable trust during the grantor's lifetime.

In addition, a revocable trust may also incorporate the same tax plan described above with use of a Will. The Revocable trust does not afford any greater savings from the estate tax that use of a Will.

Under appropriate circumstances the revocable trust should be used in a person's estate plan. However, revocable trusts constitute only one tool in the estate planner's arsenal of estate planning techniques. Since every person's situation and estate is not the same, the decision of whether to use a revocable management trust requires the examination of the person's specific needs and situations. Use of a revocable trust should not be used if the only reason for it is to avoid probate or to avoid estate taxes for the reasons discussed above.

New Members Since August 2006

Timothy Alcott, San Antonio Housing Authority
Kathleen Devine, USAA
David Hutton, HollyHills Group
Raquel Perez, USAA

Chapter Roundtable Practice Groups

We are excited to announce the creation of several new chapter roundtable practice groups. Our goal is to provide a special forum for our members to meet with other members to share ideas and expertise, and discuss concerns and developments within a particular industry.

We are currently planning roundtable discussions for the following practice areas:

- Energy
- Financial Services
- Healthcare and Pharmaceuticals
- Labor and Employment
- Publicly Traded Companies

Keep a watch out for more information! If you are interested in serving on the planning committee for one of these groups, please contact Amber Clark at *accasouthcentral@yahoo.com* or 830.336.2049.

ACColades

Members on the Move:
Cynthia S. Escamilla has joined the University of Incarnate Word as legal counsel. Cynthia was formerly with USAA.

Have you received a promotion lately? Changed jobs? Do you know of someone who is new to in-house or who deserves a little recognition for a job well done? Please email us at accasouthcentral@yahoo.com *with your "ACColades" tips.*