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FOCUS

President's Message

Ingrid Etienne, counsel for NuStar Energy, L.P.

July 2010

In his book titled "Career Distinction," William Arruda asks if the things around you help you towards success or hold you back. For myself, and I would venture to say that our chapter's officers and board members would agree, the Association of Corporate Counsel is an instrumental tool that helps us in our success.

Most attorneys, through our work and actions, have leadership qualities and are in a leadership role. But the question we need to continue to evaluate on a personal level is what qualities can we further develop to help us motivate others and make good decisions? Those are the qualities that help one attorney develop principled leadership and stand out from his or her peers.

At our September meeting, our members will be asked to vote for a President-elect, chapter officers and board members. The indi-

viduals who have been nominated have shown initiative and dedicated time by chairing a committee or assisting with our chapter activities. Through those experiences, they have demonstrated how they strive for excellence, their ability to build relationships and most importantly, their willingness to serve others. They have set themselves apart because of their leadership and they have made many great first impressions. On behalf of our members, I would like to thank them for their continued involvement with our chapter.

I would also like to thank all of you for participating and adding value to our collective professional network. While some people believe leadership is a natural ability, most of us have to work hard on our leadership skills through practice. Our leadership skills will change over our careers as our own interests and



goals evolve. Wherever you are in your career, our chapter is a good resource for leadership ideas and opportunities. What better way to further develop those skills, stand out and have the opportunity to make a lot of great

first impressions than by taking a leadership role in a group that you're already involved with? Speaking of great first impressions, please take a moment to reach out to our newly elected officers and board members to introduce yourself and ask how you can be involved.

I also want to take this opportunity to remind you of our upcoming events. Please take the opportunity to connect with your colleagues and learn important practice tips at the events listed below.

Regards,
Ingrid

The Emerging Role and Responsibilities of Corporate Counsel and CCOs

Susan Hackett, senior vice president and general counsel, Association of Corporate Counsel, Association of Corporate Counsel (ACC)

I remember when I arrived at ACC in 1989 and was learning the ropes of in-house counseling and how fascinated I was, as an outsider then, to see how ACC members were defining and re-defining the role of the law department in the company. In my early years at ACC, I used to tell people who didn't know much about corporate counsel that what made in-house counsel's role unique was their focus on how to keep the milk in the glass, rather than doing what outside firms usually did, which was to respond and defend once the milk was spilt. In-house counsel were all about compliance and preventive law, which was still an emerging theory in the pre-Enron world: one that in-house counsel understood and embraced, but one that most other lawyers or observers did not.

Events in the intervening years, along with the continuing development of the in-house legal department's role, have led to a much stronger concern about (and fight over) the evolving role of compliance in the modern corporation. In recent years, regulators and commentators — such as those who proclaim to set the standards for what constitutes good corporate governance — seem to be most interested in physically moving the compliance function into the core of the business, with both good and bad effect for the role of in-house lawyers as compliance leaders. Many folks now suggest that the right way to structure corporate compliance is to give it a separate

and independent home in the company's management structure (or even house it in each of the company's many lines of business), through the appointment of a Chief Compliance Officer (CCO) and her reports, all of whom occupy a separate (and sometimes somewhat independent) office in the corporate hierarchy.

Everyone agrees that “the business” needs to own compliance, just like they need to own the decision to promote and live in an ethical culture. Tone starts at the top, and execution is the responsibility of each person in the company. Got it — I don't think anyone is arguing over that. And for that exact reason, is compliance (or for that matter, ethics?) really a separable silo? And for purposes of this issue, are law and compliance really severable “functions”?

Post-Sarbox, when the movement to appoint a separate position as Chief Compliance Officer gathered wide-spread popularity, the first CCOs appointed were usually part of the law department's staff, and even the office was housed within the legal department: either the CLO or a deputy GC or someone similar was awarded the title, and the function remained a largely “legal” one, directed and implemented by lawyers with a legal focus. Now, CCOs span a much wider universe of credentials and responsibilities, and management or the board often appoints a CCO who may not be a lawyer, none-

theless someone drawn from the corporate legal staff. Today's CCO is very often an independent silo of authority in the corporate entity (intentionally so!). Sometimes the CCO function operates as a compliance czar who does not have staff, but has oversight for measuring and reporting to the board on how or whether each business function has fulfilled compliance directives; sometimes the CCO is a senior manager with a large staff, bureaucracy, and defined responsibilities to execute. But whatever their resume or operational mandate, today's CCO may or may not think about the relationship of compliance to the legal function, or even understand how to coordinate the role closely with the company's lawyers.

What does this mean to the role of in-house lawyers and the structure and responsibilities of legal departments? Did the company create a CCO position because management or the board wanted to be able to conduct training and investigations in concert with, but separate from, lawyers who carry privilege and defense responsibilities? Did the company create this role in response to perceived “best practice” requirements imposed by groups such as shareholder lobbies or consultants, such as ISS or The Corporate Library or the Ethics Officer associations? Did the role emerge while we weren't looking because management was concerned that lawyers didn't have the compliance skill sets or operational

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authority that is needed? Was the appointment awarded to a great achiever in the company title in order to allow that person to exercise vision and strategic re-direction in the aftermath of a failure the company hoped to recover from?

However the CCO office gets started, it is precisely because an embedded culture of compliance is indispensable to today's businesses that in-house counsel should want to either own or better understand how to coordinate the compliance officer function with the legal department's role and responsibilities.

ACC recently hosted a meeting with an astute group of CLOs who work in heavily regulated industries; the topic of conversation was the shifting focus of the CLO from what is strictly "legal" work to better managing risk, and especially entity-threatening risk. There was a significant conversation on whether the issue in most companies was even one of "legal" standards any longer: legal compliance has become the floor, and public expectations often stretch far higher than "did you comply?"

There is almost universal agreement that risk issues are far more likely to dominate board and executive management agendas today. The concern expressed was whether there was a misplaced presumption that "independent" compliance offices were consistent with the role of the CLO who is grappling with how to help the company assess, prepare for, and manage risk. Where separate compliance offices exist, there was a general

concern over whether the company's focus on compliance becomes one designed to train and measure, rather than one that seeks to help companies navigate far more complex waters, where judgment, risk, reputation, media, regulation, and legal requirements all interact. Everyone agreed that when the perfect storm combines all these elements under the umbrella of a potential disaster, the resulting challenges require a response and the ability to demonstrate corporate character that baseline compliance programs don't afford. How will law departments address these concerns if compliance is no longer their job — when some other corporate function is technically charged with "keeping the milk in the glass," to go back to my easy descriptor from days gone by.

Personally, I think this issue will be a dominant challenge to departments in the coming years as thoughtful leaders in companies struggle with increasing scrutiny from regulators, investors, commentators, and the media to manage risk and assure company compliance. And our concerns are augmented by the suspicion shared by many in the in-house world that the focus of many regulators on embedding compliance functions outside the legal department is partly designed to "remove" lawyers from the investigation process or prevent management from "hiding" from direct responsibility and liability for corporate failures. (After all, it is easier to show "compliance failed" (a strict standard) than whether management assessed and managed legal risk and developed appropriate and sufficient responses (a negligence or criminal

standard that requires proof of malintent or misconduct, and allows for defenses).

ACC is not only watching the trends and trying to assemble knowledge and best thinking, but is considering what our role should be in helping CLOs better shape the role and responsibilities of both compliance and legal departments (whether married or separated in the corporate hierarchy). Our goal, as always, is to find the best ways to help corporate clients both stay out of trouble, and successfully operate their businesses in a forward-thinking fashion.

What are you doing or thinking about in your company and as you develop your role as an in-house counsel. Is this a "false" discussion? Is it one that will drive the perceived value of legal departments in the future? Should CCOs be independent from or part of the legal function? How will the CCO's role, as it continues to emerge, be best coordinated with Legal?

We're interested in your opinions and experience. What do you think? Contact me at hackett@acc.com, or comment on this article as it appears on our blog post, Inhouse ACCess at www.inhouseaccess.com/.

Want More Info?

To follow and engage on topics of particular concern to law department leadership, please see any of our CLO ThinkTank reports, briefing materials and resource listings, which include several sessions on this and related topics, all available at:

<http://www.acc.com/community/clo/thinktanks/CLO-ThinkTank.cfm>

Don't Miss!

We continue to hold our monthly luncheons on the first Wednesday of the month from 12–1:30 PM at the San Antonio Plaza Club. The cost to attend the luncheons is \$10.00 for members and \$20.00 for non-members (in-house counsel and sponsoring firm only, please). Check out our chapter webpage at <http://www.acc.com/chapters/sanant/> for our current calendar of events and registration information.

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

Welcome New Members

Molly Campbell, Argo Group US

Ashley Farrimond, Bexar
Metropolitan Water District

Kay Mary Harrell, DPT
Laboratories

Janet Link, Clear Channel
Communications

Michelle Miller, Clear Channel
Communications

Peter Patterson, Toyota Motor
Mfg

Diane Sinclair, NuStar Energy L.P.

Alejandra Villarreal, San Antonio
Housing Authority

ACColades

Member company **H-E-B** has been named 2010 retailer of the year by Progressive Grocer magazine.

Promotions:

Christopher Cain has been named Associate General Counsel, Radio at Clear Channel Communications.

On the Move:

Pete Jackson, formerly in-house with Valero, has joined the Legal Services team at CPS Energy.

Upcoming ACC Events

Aug. 25, 2010: Healthcare Roundtable — Best Practices in Compliance, Monitoring and Auditing.

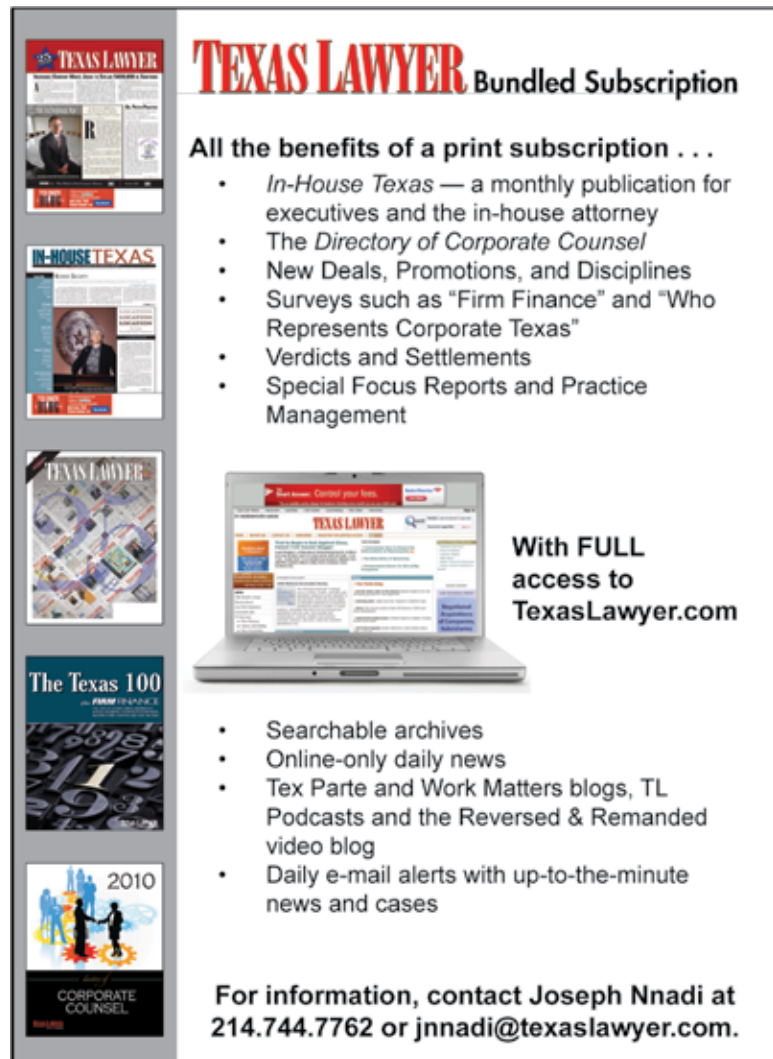
Sept. 1, 2010: September ACC CLE Luncheon 12 –1:30 PM, The Plaza Club, Topic TBA; sponsored by Davis, Cedillo & Mendoza, Inc.

Sept. 2, 2010: Salary Survey Results Happy Hour at Paesanos on 1604 to reveal the results to participants only!

Sept. 29, 2010 (2 PM) and Sept. 30, 2010 (7 PM): Ethics Follies at Charline McComb's Empire Theatre

Oct. 24–27, 2010: ACC Annual Meeting, San Antonio Texas. The Texas chapters' "Howl at the Texas Moon" blow-out, sponsored by Lexis Nexis, Monday, Oct. 25 at Howl at the Moon (8 PM).

For more information, or to register for any of these events, email Amber Clark at accasouthcentral@yahoo.com.



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ACC Member Spotlight

Mark S. Howard

Senior Vice President and Deputy General Counsel, USAA

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?

I have been a member for the last 12 years. I joined shortly after coming to San Antonio to join USAA. The greatest value to me is the opportunity to get to know and visit with other in-house counsel in town. I have been very impressed with the participation levels of the membership. The Ethics Follies production continues to be a great catalyst for the chapter, really connecting our membership with the community at large in a very special way. Having the Follies perform this year at the ACC Annual Meeting in San Antonio will showcase the uniqueness of the South/Central Texas Chapter.

Tell us something about yourself that may surprise other people.

I spend part of my Sunday mornings teaching 1st and 2nd graders at First Baptist Church. They are fun and put a lot of things in perspective.

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

I went to college at Baylor University in Waco and majored in accounting. Baylor's emphasis on developing in all facets of life — mental, physical, social and spiritual — made it a great school for me. In addition to the classroom, some of my more memorable experiences included time on the soccer field playing for Baylor, lobbying in the Texas legislature to preserve the Tuition Equalization Grant and enjoying fraternity activities. I had fun attending athletic events in the days of the old Southwest Conference, with the wide range of schools from the size of Texas and A&M to the smaller private schools such as Rice.

After spending a year at Arthur Andersen upon graduation, I enrolled in the JD/MBA program at SMU. I debated between seeking a career in investment banking

and law. Then the 1987 stock market crash hit during my second year, and I determined investment banking might not be a very stable route so I focused on a legal career. While not terribly enjoyable, law school provided a real test of perseverance when I got off to a terrible start the first semester and had to claw back to a much better state of affairs. That turned out to be the most valuable experience for me—not learning the rule of perpetuities or the UCC.

Why did you become an in-house counsel?

Like others, the opportunity to interact more closely with business personnel and influence corporate strategy attracted me to an in-house environment.

What are your most memorable or significant accomplishments as a lawyer?

One of my most memorable experiences as a young DC lawyer was preparing and successfully representing the CEO of a Beverly Hills investment firm before the SEC at the SEC's regional office in Beverly Hills. The players involved and the facts had the makings of a TV drama.

Since coming to San Antonio, I have had the privilege of representing a company with a mission of facilitating the financial security of its members, the US military and their families. I consider my most significant accomplishments as a lawyer to be contributing to enabling the company to deliver highly competitive products and services while navigating various challenges affecting the ability to deliver on that mission such as parts of the Sarbanes-Oxley Act, Eliot Spitzer's reign of terror over the mutual fund industry, and now many aspects of the recent financial services reform legislation coming out of the current financial crisis.



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

I enjoy running, golf, tennis and reading. Outside of work you can find me at my kids' school activities or other functions, out with my wife and kids, at Spurs games or occasionally at Baylor and Dallas Cowboys' football games.

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

My parents had a friend that was a highly interesting and successful businessman that would tell me an individual with business and law degrees had all kinds of options for fulfilling careers. I developed an interest in both over time, and I'm glad I did. He was right.

I lean on my pastor, my wife and a small church group for moral and spiritual support.

What is your favorite book or movie? Why?

I really enjoyed *The Blind Side* because it was a true story of how having someone believe in an individual can lead to that individual achieving great things. That lesson can relate to our family relationships as well as those we may influence or lead in the workplace.

Health Care Reform: Significant Tax Changes Are Here with More to Come

By Bennett Allison, Shareholder at Sol Schwartz & Associates, P.C

Earlier this year, we witnessed a fundamental change in the way health care will be provided in America with the passage of the Health Care Reform Act. The Act is implemented in phases from the year 2010 through 2018. It includes tax savings opportunities, additional reporting requirements, and tax increases/penalties along the way. Businesses and individuals need to be acutely aware of the key changes happening now and over the coming years in order to plan appropriately.

Starting in 2010, the Health Care Act provides for a new tax credit for small businesses that offer health insurance to their employees. The credit is equal to 35 percent of employee's health insurance premiums paid by the employer for the years 2010 through 2013 and increases to 50 percent for the years 2014 and beyond. To qualify for the full credit an employer must have 10 or fewer full time equivalent employees with an average annual wage of \$25,000 or less. The credit phases out as the number of employees or average annual wage increases. The credit is not available if the employer has more than 25 full time equivalent employees or an average annual wage in excess of \$50,000.

Beginning in the year 2013, a new Medicare payroll tax (or "Medicare surcharge") is imposed on higher income taxpayers. This means that single taxpayers with incomes above \$200,000 and married taxpayers with incomes above \$250,000 will be subject to the new Medicare tax. It is important to note that the \$200,000 and \$250,000 income thresholds are not indexed for inflation, so more taxpayers can expect to be subject to the Medicare surcharge in the coming years. The tax comes in two forms: a 0.9 percent tax on earned income (on top of the existing 2.7 percent existing Medicare tax) and a 3.8 percent tax on net investment income.

To illustrate the earned income portion of the new Medicare tax, let us assume that a married couple has \$350,000 of wages in the year 2013. At this income level,

the couple would be subject to a \$900 Medicare surcharge.

The net investment income portion of the new Medicare tax is applied to interest, dividends, capital gains, royalties, rents, annuities, and passive business income. Distributions from certain retirement accounts (e.g. 401(k)'s and IRAs) are not treated as net investment income and thus are not subject to the new tax.

To illustrate the application of the net investment income portion of the new Medicare tax, let us assume that a married couple has \$350,000 of income which includes \$100,000 of dividend income. Under this scenario, the couple would be subject to a \$3,800 Medicare surcharge.

In the year 2014 and going forward, all U.S. citizens and legal residents will be required to maintain health insurance coverage or pay a penalty. The penalty for not maintaining health coverage will be the greater of a flat dollar penalty or a penalty based on a percent of income.

Year	Flat Penalty	Percent of Income
2014	\$95	1%
2015	\$325	2%
2016 and future years	\$695	2.5%

High-income individuals who do not currently maintain health insurance coverage should be keenly aware of this penalty. They will need to evaluate whether obtaining health coverage or paying the new penalty will be more economical.

2014 is also the year that large employers (i.e. employers with 50 or more employees) will be required to provide health insurance coverage to their employees. Those large employers choosing not to provide coverage will be subject to an annual penalty of up to \$2,000 per employee. However, in calculating the penalty the first 30 workers are excluded.

For example, an employer with 49 employees in 2014 would be exempt from providing health insurance coverage. If the same employer, instead, had 50 employees in 2014, it would be required to provide health insurance coverage or be subject to a penalty of up to \$40,000 each year. Other important aspects of the Health Care Reform include:

- 2010 - Increased adult dependent age
- 2010 - Expansion of the adoption credit
- 2011 - Disclosure of health benefits on W-2s
- 2012 - Expanded Form 1099 reporting requirements
- 2013 - Additional limitations on medical deductions for individuals
- 2013 - Flexible spending account contributions capped at \$2,500
- 2018 - Excise tax imposed on high-cost employer plans

The Health Care Reform Act significantly changes America's approach to health care and institutes major tax law changes. Businesses and high income individuals need to begin planning now to take advantage of tax breaks within the Act, minimize the impact of the new tax increases/penalties, and prepare for the new reporting requirements. Health care reform is here. Are you prepared?

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Law Department Business Operations Managers — Not Just for Big Business

Contributor Rich L. Seleznov, Huron Consulting Group

A law department business operations manager is now an integral part of the management team of most large law departments.¹ As the position has matured since its infancy 15 or 20 years ago, so has the level of responsibility and the education and training of those who hold the job. Today, law department business managers usually report to the general counsel² and are akin to law department chief operating officers. They frequently have MBAs, JDs or other advanced degrees, and some are CPAs³, further attesting to growing recognition of the importance of the business of law. Both their titles⁴ and duties vary depending on the department's needs, but in the most sophisticated law departments, business managers are involved in everything the department does except the practice of law.

Depending on the size of the company, they may manage anywhere from a handful of individuals to very large organizations of 100 or more employees who support the business of the law department.

But are business managers only for large law departments? When should a mid-

sized or small department consider hiring a professional in that role? While every company's needs differ, our expertise suggests that most law departments can benefit from professional management, regardless of size. Even small law departments may need a business manager, depending on how much time attorneys spend on budget and operations management and how comfortable the attorneys are with those tasks.

The question for general counsel to consider is whether a business manager will add value to the department, i.e., whether the cost of the business manager is offset by properly managed legal spend and improved legal services. Although it may seem counter intuitive to take on new staff in lean times, general counsel may find that a good hire will actually save money. Other department members will be free to perform more substantive legal work, while a good business manager can implement cost-saving efficiencies and/or risk-reducing policies and processes. Even if it is not feasible to hire a full-time employee, general counsel can consider alternative solutions such as outsourcing the work or hiring a part-time business manager.

What can a business operations manager do for your law department?

While business managers' responsibilities vary depending on the organization, some typical functions are described below.⁵ They serve, in essence, as chief operating officers and chief financial officers for the law department.

Financial management

Financial management and planning is an important aspect of a business manager's responsibilities. The business manager is charged with overseeing departmental accounting practices and policies, as well as accurate financial reporting. Planning aspects of this responsibility include

budgeting, maintaining updated forecasts, and measuring actual performance against budgets and forecasts. The business manager normally relies on information management tools in order to track and communicate financial information to senior management. These tools typically include a matter management system that enables electronic billing by outside counsel and other vendors. These systems facilitate the presentation of financial information in a form that permits the legal management team to apply financial discipline while helping the business prevent, manage, or mitigate future business and legal risks. The business manager also may serve as the law department's primary liaison with the company's financial division and assist the general counsel with his or her communications to the CFO.

Outside counsel and vendor management

Responsible for controlling expenses, business managers may coordinate outside vendor relations, including overseeing vendor rates and billing as well as compliance with billing guidelines and contracts. They are responsible for tracking and reporting vendor expenses, working with senior leadership to select vendors and develop vendor assessment tools, identifying and addressing vendor relationship issues, and developing strategies for leveraging vendor relationships. In many cases, the business manager's responsibility will include the outside counsel management program. The program often includes the selection, evaluation and negotiation with preferred counsel. The business manager's involvement in these activities helps provide a focus on an overall cost control program.

Human resources

Human resources (HR) is another area of responsibility for most law department business managers. They hire and manage all non-attorney department personnel and are responsible for workload allocation, training and development, and performance reviews. They work with the corporate HR department to ensure

1. In November 2008, InsideCounsel published the results of its first survey of law department operations professionals, developed by the Blickstein Group and a survey advisory board, in cooperation with Huron Consulting Group. Based on that survey, InsideCounsel reported that the role of professional law department business operations manager has come of age. Cambria, David. "Coming of Age: The Changing Role of the Law Department Operations Director." InsideCounsel. November 2008. It is still a relatively new profession however. More than half of the respondents' companies added the position in 2004 or later. Stickel, Amy. "A Position—and a Survey—20 Years in the Making: Operations Directors Earn the Right to Sit at the Table." InsideCounsel. November 2008.

2. Cambria, David. "Coming of Age: The Changing Role of the Law Department Operations Director." InsideCounsel. November 2008.

3. 36% of survey respondents had MBAs and 20% had JDs. Four percent were CPAs. Stickel, Amy. "A Position—and a Survey—20 Years in the Making: Operations Directors Earn the Right to Sit at the Table." InsideCounsel. November 2008.

4. Representative titles include Law Department Operations Director, Director of Legal Administration, Legal Department Business Services Manager, Vice President of Legal Operations and Administration, and more.

5. For examples of job descriptions, see Munneke, Gary A. and Anthony E. Davis. "The Essential Formbook: Comprehensive Management Tools for Lawyers, Vol. II." American Bar Association, Section of Law Practice Management. July 2001.

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compliance with corporate policies and to address specific personnel issues as they arise. Some business managers are also involved in HR functions related to department attorneys, including working with the general counsel to develop succession plans and performance metrics, and coordinating attorney professional development.

Systems and technology

Many business managers have systems and technology responsibilities. They identify the law department's needs, oversee technology solutions, and manage technology resources. This often includes the development and execution of an overall technology strategy. They also manage the legal systems and processes such as matter management, e-billing and document management. Law department business managers oversee departmental workflow and identify productivity opportunities. They may also serve as liaisons with the corporate IT department to coordinate technical support for the law department and integrate the law department's processes with companywide systems.

Knowledge management

Some business managers lead their law department's knowledge management functions, developing and overseeing systems and technology for efficiently creating, storing, and sharing the intellectual capital of the department and content provided by its law firms.

Litigation support

Some business managers are also responsible for the department's internal litigation support function. They identify cost-effective means, including appropriate systems and vendors, to support litigation discovery processes. The law department manager may be involved in the development of enterprise-wide discovery processes and

policies as well as managing the discovery response team, if one exists.

Department operations and management Law department business managers oversee day-to-day department operations issues, including anything from floor space needs to equipment issues. As a member of the department's leadership team, they are also frequently involved in strategic planning for the department. They may develop metrics to evaluate and communicate departmental goals and progress toward those goals.

Who should fill the role?

When asked for the attributes needed for managing law department operations, respondents to *InsideCounsel's* first Law Department Operations Survey most frequently identified (1) legal department knowledge, (2) business acumen, (3) business process knowledge, (4) self-motivation and (5) financial acumen.⁶ Data analysis skills can also aid in the ability to identify efficiency improvements and cost savings.⁷ The four most common previous positions held by survey respondents were (1) working outside the law department but within the company, (2) working outside the company in a similar law department role, (3) working in the law department in another capacity, and (4) working outside the company as a consultant.⁸ As discussed previously, many companies hire managers with advanced degrees or CPAs.

6. Stichel, Amy. "A Position—and a Survey—20 Years in the Making: Operations Directors Earn the Right to Sit at the Table." *InsideCounsel*. November 2008.

7. Cambria, David. "Coming of Age: The Changing Role of the Law Department Operations Director." *InsideCounsel*. November 2008. See also the Association of Legal Administrators survey list of competencies for legal administrators (includes law firm administrators). www.alanet.org/education/analysis.aspx

8. Stichel, Amy. "A Position—and a Survey—20 Years in the Making: Operations Directors Earn the Right to Sit at the Table." *InsideCounsel*. November 2008.

Is it time for your law department to consider a business manager?

The right business manager will develop operating strategies and take ownership and responsibility for supporting and enforcing solutions to the law department's business needs. He or she can help the department take control of its people, processes and technology by:

- Freeing attorneys from administrative and supervisory tasks, allowing more time for substantive legal work and client "face time"
- Giving responsibility for issues such as human resources and financial management to someone with that expertise
- Implementing financial controls through tracking and timely invoice payment to support early payment discounts and partner-ing arrangements
- Ensuring optimal personnel utilization resulting in reduced overall spending, as well as more even distribution of workload and consistency in quality
- Developing or improving business processes and implementing department-wide policies and procedures
- Streamlining systems and technology management, allowing for internal efficiencies and resulting cost control

The presence of business managers can assist law departments in addressing these critical issues. Regardless of size, the right manager can help to reduce total spend and mitigate risk while at the same time improving the department's ability to deliver superior legal services.

Social Media — Is a Written Policy Really Necessary?

By David Whittlesey

The meteoric rise in the use of social media tools such as Facebook, LinkedIn and Twitter has many in-house lawyers shaking their heads and asking questions. Should we restrict our employees' use of social media at work? Should we ban it altogether? Should we allow our marketing teams to fully utilize and embrace social media as a marketing tool? What are the risks associated with the use of social media at work? If we allow our employees to use social media, should we implement a comprehensive social media policy that would govern the use of social media? This article will address some of these questions ... and raise a few new ones.

The first question that in-house lawyers are often confronted with is whether the use of social media should be allowed at all by employees while in the office. There are a number of legitimate risks associated with employees' use of social media for personal purposes in the workplace. Some of these risks include (i) increased hostile work environment and discrimination claims, (ii) improper (and many times inadvertent) disclosure of the employer's confidential information and trade secrets, (iii) defamation claims, (iv) invasion of privacy claims, among many others.

The implementation of a social media policy is an essential tool to help guard against the harm that can result from these types of claims. But it is simply impossible to guarantee that the use of social media by employees, even with a policy, will eliminate all risks. As a result, some recent estimates have shown that roughly half of U.S. workplaces surveyed are actually

banning their employees from personal use of social media while at work.

Many employers who have banned their employees' personal use of social media at work nevertheless recognize that social media can have many benefits as a marketing tool. Many companies have created positions in their marketing department dedicated solely to the utilization of social media. Essentially, social media sites simply provide another avenue for companies to stay in contact with (and advertise to) their customers, potential customers and their various stakeholders. No longer must someone seek out the company's website to find a press release or other updated information about the company. If you follow the company on Twitter or Facebook, for example, it is possible to receive up to the minute reports about current events and developments.

A company's "official" use of social media tools brings with it an entirely new set of concerns and risks that must be dealt with in the form of a social media policy. These risks include (i) Federal Trade Commission rule violations for failing to properly disclose certain affiliations with individuals touting the company's products or services online; (ii) false advertising claims; (iii) deceptive trade practices act claims; (iv) intellectual property claims; (v) claims relating to data security breaches, (vi) securities law violations,



particularly regarding Regulation FD; and (vii) the increased e-discovery obligations that accompany the use of social media for business purposes—i.e., you may be forced to gather the communications for use in a lawsuit with a third party.

The bottom line is this—if your company allows any of its employees to use

social media at work—whether for business or for personal reasons—you should have a social media policy in place. A social media policy should be tailored to your specific needs. Cookie cutter forms may create more problems than they solve. It is never a good idea to set up a policy that, due to your company's unique circumstances, cannot reasonably be followed or enforced from day one.

Finally, while a social media policy cannot guarantee that your company will be free of problems with regard to the use of social media at work—if properly drafted and enforced, it should reduce the risks of claims and lessen the severity of any claims that do arise.

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Don't miss Ethics Follies® — the ethics conference like no other — **Wednesday, Sept. 29 at 2 PM and Thursday, Sept. 30 at 7 PM.** Ethics Follies uses music and comedy, performed by local attorneys, physicians, judges and actors to raise awareness of the business and legal ethics issues in 2010.

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For more information on sponsorships and seating selection for the event, email Amber Clark at accasouthcentral@yahoo.com or Mark Howard at mark.howard@usaa.com.



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