

St. Louis Chapter Newsletter

President's Message



Welcome everyone, and happy 2008! I am honored to serve as your Chapter President for this next term. The Saint Louis Chapter has a rich tradition of providing quality continuing legal education events, social networking opportunities, and involvement in activities that benefit our Saint

Louis community. If you have not been engaged in the Chapter's activities lately, you don't know what you are missing!

In addition, ACC membership brings you access to national and international resources, with connection to over 20,000 ACC members in over 72 countries around the globe. Are you looking for that next exciting employment opportunity? Check out ACC's in-house employment section. Are you looking for Continuing Legal Education? Check out ACC's national, and our Chapter's, CLE events. Are you concerned about issues that affect the in-house practice of law? Check out ACC's lobbying efforts and amicus briefs in cases that set national and international precedent. Whatever your interest, ACC provides opportunities to get involved, have a voice, and make a difference.

During my term, I will be working hard with our Chapter's Board of Directors to enhance the value of your membership, continue to grow our Chapter, and offer you enhanced membership opportunities. I extend a warm welcome to all members who have ideas or suggestions for ways in which we can improve our service and offering. Simply send them to me or another member of the Board and we will insure they are brought before the Chapter Board for consideration. Together, I'm confident we can accomplish great things for our Chapter, advance the in-house practice of law, and enhance our Saint Louis legal community.

Corporate Counsel's Role in Record Retention

By Kara L. Horton and Paul J. Cambridge
Polsinelli Shalton Flanigan Suelthaus PC

Regardless of size or industry, all companies create vast amounts of both electronic and traditional paper documents in the course of business. Failure to properly retain these documents in an appropriate manner and for appropriate time periods can result in increased storage and retrieval costs and could have negative implications in case of future litigation or other business issues. As an in-house attorney, you should be involved in the creation and implementation of your company's record retention policy to ensure that documents are retained and destroyed in compliance with applicable law. You will then be in a position to be your company's first line of defense with respect to records production in the face of litigation.

A company's legal department, together with a company's officers, directors and department heads, should coordinate the adoption of and ongoing compliance with a comprehensive record retention plan. Such plan should be in writing and not only dictate the period that specified documents should be retained, but also, among other items, (i) charge a specified person or committee with overseeing the plan, (ii) dictate appropriate retention and destruction schedules and procedures to be followed, (iii) list which supervisors or other employees in each area of the company are required to implement the components of the plan, (iv) describe procedures for instituting a litigation hold (prohibiting destruction of any records that are or could be necessary for pending or anticipated litigation), and (v) establish procedures for retaining electronic documents and media.

Under a company's record retention plan, a record retention manager and/or committee should be charged with implementing and monitoring compliance with the plan, instituting litigation holds, training other officers and employees, designating appropriate facilities for storage of records and periodically reviewing and amending the plan as necessary. The members of the record retention committee should be high-level employees familiar with the various types of records maintained by the company and at least one member should be familiar with the company's information technology sys-

Annual Meeting & Election of Officers

Dan Lett, Outgoing President, welcomed 50 ACC of St. Louis members to the association's Annual Dinner and Election in January. The dinner was once again held at Busch's Grove in Ladue. Following a brief cocktail hour and dinner, Lett presented the following slate of officers and directors for 2008. By a voice vote of the members the following were elected as officers and directors to serve the Chapter:



Tyrus R. Ulmer	President
Kathleen S. Northcutt	Vice President/President Elect
Jan Robey Alonzo	Treasurer
David E. Wilson	Secretary
Mary Shea Tucker	Director (term to expire 12/31/2010)
Timothy C. Mooney	Director (term to expire 12/31/2010)
Stephen T. Shrage	Director (term to expire 12/31/2010)
Timothy W. Luft	Director (term to expire 12/31/2010)

Committee Chairs for 2008 will be:

Corporate Counsel Institute	Tyrus R. Ulmer
Externship Program	Thomas C. Burke
General Counsel Dinner	Sarah A. Siegel
Membership Committee	Randy E. Hayman
Pro Bono Committee	Harry Greensfelder, III
Social Committee	James R. Bowlin
Program Committee	Kimberly Shaw Elliott
Sponsorship Committee	Matthew W. Geekie



And the Award Goes To...

The Bill Jaudes Award is one of the highest awards that a St. Louis Chapter member can receive. In fact, this award is not given every year. It is only given in years when an exceptional candidate has been chosen by the Board.

This year, Craig Ingraham, was so chosen by the Board and received this award at the Annual Dinner Meeting on January 17, 2008. Craig has served as a Board Member, Committee Chair and a Past President of the Chapter. Craig continues to attend Board meetings on a regular basis and his counsel to the Board has been invaluable. Craig's dedication to helping the Board and other corporate counsel has been much appreciated over the years. In addition, we are glad to see Craig at so many of our Chapter social events. Craig has spent most of the last twenty years as counsel to May Company and then MasterCard. He recently retired after serving as General Counsel of Talx Corporation.

Please join us in congratulating Craig Ingraham as the 2007 Bill Jaudes Award winner.

General Counsels Receive Insight on the Economy

On February 12th, the first General Counsel Dinner of 2008 took place, with twenty-three (23) general counsels from St. Louis area companies attending. Our special guest was Dr. William Poole, who is completing a 10-year term as President of the St. Louis Federal Reserve Bank. Dr. Poole shared his insights into the challenges currently facing the U.S. economy, and his perspectives on the role of the Federal Reserve Bank. His presentation was followed by a lively discussion by the group.

Our next General Counsel Dinner will take place in the Spring. If you know of any St. Louis area general counsels who should be invited to these events, please notify Sarah Siegel so she can add them to the mailing list. Likewise, please let her know if you have any suggestions for future speakers or programs.

Save the Date

Annual St. Louis Corporate Counsel Institute Set for May 8

This year's program promises to be the best ever with speakers on labor and employment law, doing business overseas, e-discovery, responding to government investigations, intellectual property law and a General Counsel Roundtable.

Don't miss this outstanding event brought to you by The Association for Corporate Counsel, the Bar Association of Metropolitan Saint Louis and the generous contributions of our program sponsors and legal service providers.



Craig Ingraham (left) accepts the Bill Jaudes Award from President Dan Lett at the associations' Annual Dinner.

Pro Bono Training Series Continues

The series of BAMSL sponsored pro bono training CLE programs continued on Wednesday, February 13, 2008 when over 40 attorneys, including several in-house attorneys, attended the second in the series of programs.

The program on Landlord/Tenant Issues was presented by Judge Michael F. Stelzer at the Saint Louis City Civil Courts Building. Judge Stelzer provided a handout that outlined the basics of Landlord/Tenant cases, together with a copy of *King v. Moorehead*, which he described as the leading Landlord/Tenant case. Judge Stelzer reviewed the nuts and bolts and key considerations for representing parties in Landlord/Tenant cases and fielded numerous questions from the attendees. The program was extremely useful for those now handling or considering handling Landlord/Tenant cases as volunteers for Legal Services of Eastern Missouri. Two lawyers from the LSEM Housing Section attended, and reaffirmed the support available from the Housing Section for attorneys who volunteer to handle a Landlord/Tenant case.

The next pro bono training program will be scheduled for the spring and will cover a business related topic. Members are urged to take advantage of these programs to obtain training in areas in need of pro bono volunteers and to volunteer through the LSEM Volunteer Lawyers Program.

Extern Program Update

The 2008 Extern Program is well under way and the writing competition for participants has been announced. The Saint Louis University School of Law is very grateful to the Chapter for this enhancement to our partnership and Professor Weinberger has urged his students to take full advantage of the opportunity.

To date, Professor Weinberger reports that four students have indicated that they are going to submit articles for the Chapter sponsored writing program. Winners will be announced at the Corporate Counsel Institute.

Welcome New Members!

The following individuals joined the ACC of St. Louis between January and March 2008

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Upcoming ACC of St. Louis Program Events

April 11, Friday — Limited Space
Art and the Law
Prof. Michael Tansey of Rockhurst University
will lead the tour of the museum
Saint Louis Art Museum
6:00 p.m.
Sponsored by
Williams, Venker & Sanders, LLC
The Boeing Co.

May 8, Thursday
Corporate Counsel Institute
Sheraton West Port Hotel
Reservations through BAMSL (314/421-4134)
8:00 a.m. – 4:00 p.m.

May 22, Thursday
How Major Changes in the Patent Law Will
Impact Corporations
Sponsored by
Husch Blackwell Sanders, LLP
Bellerive Country Club
3:30 p.m.

September 18, Thursday
Sponsored by Robert Half Legal
Program and location to be
Determined

October 16, Thursday
Business and Intellectual
Property Evaluations
4:00 p.m.
Sponsored by UHY Advisors

**Membership Information
may be obtained by contacting:**

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Corporate Counsel's Role in Record Retention

tems, as many of the records subject to the plan will be in electronic form. All questions related to or issues concerning any provision of the plan or application of the plan should be directed to the records retention manager and/or committee, as specified in the plan. Any proposed revisions or amendments to the plan must be reviewed and approved by the records retention manager and/or committee, and such persons should disseminate any plan changes to the company's employees.

In setting appropriate retention and destruction schedules for the various records of a company, record retention plans should take into consideration (i) applicable state and federal laws, rules and regulations, including Sarbanes-Oxley, (ii) statutes of limitation with respect to contracts and other records, (iii) federal rules of civil procedure dictating the retention of certain electronic documents, and (iv) industry best practices and potential business reasons for maintaining certain types of documents (which may lengthen the retention period from that required by law or provide the company with a retention period for certain documents not explicitly covered by applicable laws or regulations). In preparing a plan, companies should review the types of records they maintain, both in hard copy and electronic formats. The record retention plan can then be tailored to a company's specific needs, listing the types of records maintained, clearly identifying the responsible officer or department and setting forth the protocol for retaining, storing and destroying records. With a record retention plan that retains documents in compliance with applicable laws governing retention periods, best practices and a company's business needs, employees can easily refer to and follow retention and destruction schedules for the records they encounter.

As the business world becomes increasingly paperless, retention of electronic documents and other media (including personal e-mail) is as important, if not more important, than retention of paper documents. As such, record retention plans should be drafted to meet the expectations set out under the federal electronic discovery rules that became effective in December 2006. The e-discovery rules provide a safe harbor for the disposal of electronic communications and other records being sought in litigation, as long as there is a good faith system in place for the maintenance and retrieval of such information. A number of factors should be considered in adopting a good faith system under the e-discovery rules, including: (i) providing that the preservation and deletion of information is based on applicable law, business requirements, technical needs and expense, (ii) communicating the plan to all levels of the company, (iii) providing for preservation and retrieval of electronic records in anticipation of litigation, and (iv) providing a mechanism to monitor compliance with the retention and disposal aspects of the plan, both in the ordinary course of business and in anticipation of litigation. Satisfaction of these elements should not only guide a company in adopting policies related to electronically stored information, but can serve as a benchmark in adopting policies to govern all documents maintained under a company's record retention plan.

In today's world, lawsuits are a reality that must be taken into consideration in record keeping. Establishing appropriate retention and destruction policies helps companies avoid problems in future litigation. Both failing to have retained a record that later becomes important in a lawsuit and keeping an unnecessary document longer than needed can have serious ramifications. In addition to the obvious ramifications of failing to maintain documents in violation of law, in-house counsel should advise the company with respect to balancing over-saving versus under-saving of documents to avoid possible negative consequences. For example, in litigation a document that could have strengthened the company's case or provided it with an affirmative defense may have been destroyed because the company's record retention policy did not set an appropriate retention schedule for such document. Perhaps more likely than under-saving, especially with the vast amounts of informal e-mail communication among employees prevalent in today's business world, companies face the risk of saving a document in the absence of a requirement to do so that could hurt their position in future litigation. For example, an e-mail between employees that contains "off the record" information that was retained longer than appropriate could have serious implications in pending litigation. Implementing and complying with a record retention plan could prevent the negative consequences of under- and over-saving illustrated in the previous examples.

An important part of record keeping is to not only effectively plan for the possibility of litigation, but govern what steps should be taken when litigation is anticipated or pending. Especially in light of potential liability under Sarbanes-Oxley obstruction of justice statutes with respect to alteration or destruction of documents, when a company has reason to believe that legal proceedings may be commenced against it or if a company is named a party in a lawsuit, the company's record retention plan should provide that the in-house counsel and outside counsel be notified and the litigation hold policy of the plan should be implemented. The litigation hold policy should provide for suspension of destruction of records that could be subject to the proceedings and establish the manner of disseminating notice of the litigation hold to employees who have access to the applicable records. Properly enacted, a litigation hold should help prevent sanctions against the company or individuals who destroy records required for litigation.

With the large number of records created in a business, regardless of the industry or size of the company, a written record retention plan should be adopted and followed. To avoid future liability, as in-house counsel you should coordinate with the other departments of your company to craft and administer a good faith retention and destruction system by means of a comprehensive record retention plan tailored to your company's business.

Kara L. Horton is a shareholder and Paul J. Cambridge is an associate with Polsinelli Shalton Flanigan Suelthaus PC, in its St. Louis, Missouri office. Each concentrates a majority of their practices in the areas of Corporate, Securities and Financial Services, serving a wide variety of needs of public and private companies. In the past year, Kara and Paul have addressed the issue of record retention policies on several occasions. If you have questions about this article or any other matter, please contact Kara or Paul at (314) 889-8000.