

Inside

2...WMAcCA Volunteer Leaders

3...2008 Corporate Counsel Awards Winners

FOCUS

President's Message

Kevin S. Lapidus

Creating a New Paradigm for Law Firm Relationships

A fundamental responsibility of in-house lawyers is managing our relationships with outside counsel. Frequently, however, this important and symbiotic relationship seems to evolve rather than be managed—as a result it is now time for relationship counseling. The current situation of ever-increasing billable rates and highly leveraged law firms focused on profits per partner has struck a nerve in members of the Association of Corporate Counsel. ACC has begun a comprehensive program named the Value Challenge to address the relationship between in-house and outside counsel with the goal of taking a holistic approach to examining how we work together and ultimately creating a new framework, set of goals, and paradigm for the relationship. The ACC organized a town-hall style meeting to begin this effort on September 26, 2008, at the Reagan Convention Center in Washington, DC. The recording of this meeting, as well as other material explaining the Value Challenge, can be viewed online at www.acc.com/valuechallenge.

At this town hall meeting, in which I participated, we discussed the need to understand the goals and drivers of both law firms and in-house attorneys in order to create a structure that aligns the interests of all constituents. Meeting participants generally agreed that both law firms and in-house attorneys are either unhappy with the current nature of the relationship or

agree there are significant ways to improve the relationship. Law firms noted the following points from their perspective:

- prefer to focus on a portfolio of business in order to institutionalize the relationship and to achieve efficiencies in service and pricing;
- disdain RFPs as depersonalizing the relationship, claiming they do not truly reduce aggregate fees and do not encourage risk sharing;
- must keep pace with profits per partner or risk losing leading partners and practice groups;
- request that they be managed with positive and not just negative feedback/incentives;
- question whether they will be rewarded for risk taking or creating new relationship structures; and
- note that not all matters are rush jobs and request realistic timelines.

In-house counsel noted the following points from their perspective:

- law firms focus on quality in their pitches, but need to understand that that is just a floor and value matters too;
- many business units purchase sophisticated services from vendors based on an efficiency emphasis/presentation; why don't law firms also market themselves in this manner: In other words, to



what extent are corporate purchasing lessons/techniques relevant to the selection and utilization of law firms?

- in-house counsel are swamped and do not have time to micro-manage matters, and law firm attorneys should understand their matter is not the only one on the in-house counsel's task list;
- law firms need to improve coordination across groups, resulting in one client-facing presentation/knowledge base;
- in-house counsel are pushed to achieve operational leverage by their executives/businesses, and want the same leverage/efficiencies from law firms;
- while data on profits per partner are telling in some respects, in-house counsel would also like to know about retention rates for associates and counsel that we rely on day to day; and
- law firms should move to the suburbs and drop the expensive artwork—that is not what impresses us.

I would add the following about the current state of the in-house/law firm relationship:

1. In many cases there are no metrics to manage toward and against which to track success.
2. We all need to slow down and spend time managing the relationship instead of just responding to crises in the moment.

continued from page 1

3. We need to break out of our current muscle-memory patterns whereby we revert back to old, familiar routines and methods of interacting.

In order to move the relationship forward, one key starting point is understanding what in-house counsel define as “value” from their law firms. Personally, I describe value as a law firm’s ability to calibrate the nature of their legal service to the matter at hand. Not all matters have the same economic impact or risk profile, and a knowledgeable and client-focused law firm is able to understand the nature of the particular issue and staff and manage the matter appropriately. Value also includes the timeliness of responses, getting things right the first go round and understanding and working toward achievement of business goals. In summary, customization and personalization of legal services, combined with a managed process that achieves efficiencies, is the key to creating value in legal services.

Once we have defined value and have a sense of what we would like from a law firm, how do we choose a law firm for a specific matter? One of the themes that emerged in the ACC Value Challenge meeting was that there are different tranches of legal work. For example, ten percent of the work sent to outside counsel may be price-insensitive “bet the company” work where work quality is the defining objective, twenty percent may be

more “commodity” type work where cost is the key consideration and the remaining seventy percent may be a middle tranche that includes an emphasis on both quality and value. Corporate counsel should think about what kind of legal matters they send out and then should match the appropriate outside counsel to the type of work. In addition, when selecting outside counsel it is helpful to utilize lessons learned or experiences from prior matters in the selection process, as well as metrics or statistical goals and criteria. For their part, law firms should understand the type of matters for which corporate counsel are requesting help, as well as their tracking metrics.

After a law firm has been selected to assist in a particular matter, a corporate counsel’s job switches to managing the matter to completion. In-house counsel may have stories or a litany of complaints about outside counsel’s work on matters and how their expectations were not met in a certain situation, but a central question is whether these in-house counsel informed their outside counsel exactly what those expectations were and then managed the outside counsel throughout the matter to achieve the objectives. At the Value Challenge town hall meeting, representatives emphasized how important it is for in-house counsel to be specific about their objectives at the commencement of a matter and then to continue the communication and matter management throughout the entire process. To the extent management or production

processes like “Six Sigma” can be utilized to improve operational performance, there may be an opportunity for a win-win resolution whereby law firms improve their performance on a given matter in a way that enables them to improve efficiencies, reducing client bills, while increasing the volume of work they can perform, which ensures high attorney utilization rates and law firm profitability. Optimally, law firms should not just manage their client workload, but should also understand and manage to client-defined matter resolution goals.

In summary, the goal of the ACC Value Challenge is to help restructure and focus the relationship between in-house counsel and their law firm service providers. Particularly in a difficult economic climate, achieving operating efficiencies by utilizing purchasing and management techniques employed by other parts of our businesses is becoming increasingly important. By implementing some core practice tips, such as being able to articulate what value is in a given situation, thinking about and matching law firms to the types of matters, communicating goals and managing outside counsel throughout the engagement, and rewarding firms that take chances and experiment with new structures, we can help create a new paradigm in the law firm-corporate relationship that better aligns interests and ensures that we receive the appropriate combination of quality and value-based legal services.

WMACCA Volunteer Leaders

WMACCA would not be the vibrant organization it is without our tremendous volunteer leaders.

As the year draws to a close, we want to thank the following retiring board members, who have served for six years and provided strong leadership to the organization:

- **Mary E. Kennard**, Vice President and General Counsel, American University, who was WMACCA president in 2007; and
- **Eric D. Reicin**, Senior Vice President and Deputy General Counsel, Sallie Mae, who was WMACCA president in 2006.

We urge you to get involved in WMACCA—by attending programs and

networking events, volunteering for pro bono or community service projects, helping with our substantive specialty committees—the Forums, or starting a new project or initiative. For more information about the possibilities, take a look at the WMACCA webpage (wmacca.acc.com) or contact Ilene Reid, WMACCA executive director (Ilene.Reid@WMACCA.com).

2008 Corporate Counsel Awards Winners

WMACCA congratulates all the finalists and winners of the Fourth Annual Corporate Counsel Awards. The awards honor the work of the region's leading in-house counsel practitioners over the past year in the categories of Outstanding Chief Legal Officer, Outstanding In-House Counsel, Outstanding Law Department, and Community Service. The awards reception, held on October 29, attracted a crowd of more than 370 people from the legal and business communities.

"The successful in-house practice of law requires a unique blend of legal and non-legal skills, attention to company standards and industry trends, and an ability to provide tailored and proactive advice and counsel to our colleagues in our businesses and organizations. WMACCA is pleased to recognize our colleagues for their abilities and achievements," said Kevin S. Lapidus, WMACCA president.

"The achievements of the finalists and award winners demonstrates all the energy, creativity, integrity and intelligence found in the in-house bar," said Charles E. DeLeon, WMACCA board member and chair of the Corporate Counsel Awards.

The winners of the 2008 WMACCA Corporate Counsel Awards are:

- **Outstanding Chief Legal Officer**—**Simone Wu, XO Holdings Inc.**
- **Outstanding In-House Counsel**—**Christopher R. Ryan, K12 Inc.**
- **Outstanding Large Law Department**—**Capital One**
- **Outstanding Small Law Department**—**XM Satellite Radio Inc.**
- **Community Service Award**—**Brett Coffee, Computer Systems Center Inc.**

Simone Wu, senior vice president, general counsel and secretary of XO Holdings Inc., was named Outstanding Chief Legal Offi-

cer for her strong leadership of a talented legal team in handling a challenging refinance transaction for the company, and for their success in litigation that was important to the core business of the company. Denise Esposito of Emergent BioSolutions Inc., Sol Glasner of The MITRE Corporation, and Judith B. Kassel of ICF International, Inc. were finalists for this award.

Christopher R. Ryan, deputy general counsel of K12 Inc., was named Outstanding In-House Counsel for playing a lead role in the company's initial public offering and the transition to public-company processes, as well as his work in support of two major acquisitions done by K12. David A. Kessler of Symantec Corporation, Victor J. Miller of Honeywell Defense & Space, and Andrew S. Mullin of BAE Systems Information Technology, Inc., were finalists for this award.

The Outstanding Large Law Department award went to the legal department of **Capital One**, which was recognized for taking a creative approach to two major litigation matters that significantly reduced the company's risk and exposure in these matters. Altria Client Services Inc. and Freddie Mac were finalists for this award.

The Outstanding Small Law Department award went to the legal department of **XM Satellite Radio Inc.**, for the lead role its lawyers took in the closing of XM's merger with Sirius Satellite Radio Inc., the completion of several governmental inquiries, a major refinance of the company, and the successful conclusion of a Copyright Royalty Tribunal proceeding concerning copyright royalties that would be payable by XM. Airlines Reporting Corporation and XO Holdings Inc., were finalists for this award.

Brett Coffee, vice president and general counsel of Computer Systems Center Inc.,

was honored with the Community Service Award for his work in support of the SemperComm Foundation and his service at the organization's general counsel. The Foundation provides US service members stationed at remote overseas bases with the means to communicate with their loved ones back home and with access to entertainment equipment to make life at their postings more pleasant. Coffee was also recognized for his involvement in the local community. He has served on the board of Leadership Fairfax and on the board of the Springfield District Council, an umbrella group of more than 200 homeowner and civic associations.

The awards reception also featured the presentation of a special WMACCA Corporate Counsel Career Achievement Award to **Sol Glasner**, vice president, general counsel, and secretary of The MITRE Corporation, who is also a former WMACCA director and treasurer. Glasner was recognized for the important role he has played in the growth and development of the company during his 16 years as its chief legal officer.

The panel of judges for the Corporate Counsel Awards was comprised of: Mike Daniels, former chairman and CEO of Mobile365; Mr. DeLeon; Robert E. Gans, senior employment counsel, CSC; Mary E. Kennard, vice president and general counsel of American University; Fred Krebs, president of the Association of Corporate Counsel; Caroline Little, former CEO and publisher of Washingtonpost.Newsweek Interactive; Mr. Lapidus; Thomas Mutryn, CFO of CACI International Inc.; Manik K. Rath, vice president, general counsel and secretary of LMI; Louise Wager, vice president of Commerce Bank; and Dendy Young, managing partner of McLean Capital LLC.

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