

Value Practice:

Nationwide Mutual Insurance Company: In-House Relationship Managers Play Key Role in Structuring and Maintaining Successful Relationships with Approved Counsel

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Background

Nationwide Mutual Insurance Company's law department implements an Approved Counsel Program (ACP) that includes as a key component of the program in-house 'Relationship Managers.'

Today's ACP list includes 28 law firms—down from approximately 68 in 2008 and over 300 firms prior to inception of the law department's Approved Counsel Program. In-house counsel are required to select outside counsel from the ACP. If they wish to use a law firm not on the ACP list, they must go through a formal request and justification or Exception Process that includes receiving approval from one of two in-house senior leaders in order to go forward with the exception engagement.

Key elements of the law department's ACP include:

- Approved Counsel Program Billing and Staffing Policy
- Relationship Managers (within the law department and within the firm)
- Annual Meetings with ACP firms
- 5-Star Rating Process

This ACC Value Practice piece highlights key elements of the law department's ACP and provides insights into some of the key success factors.

ACP: Approved and Limited Use firms; Exception Requests

The law department's ACP includes two categories of approved counsel: Approved and Limited Use.

- ***Approved:*** those firms identified by the law department as strategic partners and with whom the law department drives additional business; the law department designates

an internal Relationship Manager (more on this below) for each Approved firm and requires the firm to do the same.

- **Limited Use:** those firms that the law department uses on a regular basis but for limited practice areas because of a specific area of expertise and to whom the law department does not drive additional business; the law department designates an internal Relationship Manager for each Limited Use firm and requires the firm to do the same.

If, in certain circumstances (e.g., conflict, geographic need, need for specialty firm, opportunity to enhance diversity), in-house counsel wishes to use a firm not on the ACP list, the in-house attorney requesting the exception must submit an [Exception Request Form](#) for evaluation. For an exception to be granted, it needs to be approved by one of two senior leaders within the law department. The law department contacts the exception firm by providing the Approved Counsel Billing and Staffing Policy, provides billing instructions, and requests timekeeper information.

Approved Counsel Billing and Staffing Policy

Each firm within the law department's ACP is expected to execute and abide by the terms of the [Policy](#), which constitutes an engagement agreement with the firm. Importantly, the Policy states up front that, "the company values contributions of both in-house and outside counsel and strives for a collaborative relationship between the two."

The Policy covers:

- **Roles and Responsibilities:** including providing timely status reports, use of paralegals, intra-firm conferences (must be reasonable and appropriate in frequency and duration, number of firms to attend activities (generally one unless prior approval is obtained), role of in-house counsel in all material decisions, process for initiating projects, communicating with the company (regular and full communications are expected), process for exploring settlement possibilities (including ADR) and requirements regarding substantive review of legal work.
- **Staffing:** including expectations on avoiding duplication of effort, assigning a lead lawyer for each matter, limits on delegation (expectations that outside counsel will not delegate significant parts of the matter without discussion with in-house counsel), staffing plans and a provision on retaining local counsel, experts and other litigation support personnel (no retention without prior approval of in-house counsel).
- **Budgeting and Reporting:** within 60 days of the engagement, a cost estimate or *budget* must be provided by outside counsel to implement the agreed upon strategy for the matter; this section of the agreement also covers *strategic planning requirements* (in-house counsel may request that outside counsel prepare a strategic plan to be reviewed in draft before finalized), and *litigation early case evaluation* (within 90 days of receiving a complaint in which the company is named as defendant, outside counsel should perform and provide an early case assessment).
- **Fees and Billing Practices:** this section includes a description encouraging and expecting firms to consider *alternative fee arrangements* and addresses *invoice format requirements*, procedures for submitting *electronic invoices* and *records retention requirements*. The agreement also describes expense and disbursement policies, including non-billable items, travel, meals and accommodations, photocopying, research and litigation expenses.

- **Privacy:** expectations regarding privacy are addressed, including compliance with laws and regulations and use of confidential material and non-public information.
- **Confidentiality:** provisions regarding handling of confidential and proprietary information and the need to seek protective orders and company authorization prior to producing confidential or proprietary information through discovery.
- **Publicity/Public Comment:** prohibitions regarding public comment absent specific authorization from in-house counsel.
- **Ethics/Business Conduct:** outside counsel is expected to conduct activities on behalf of the company with honesty and integrity and in accordance with high moral and ethical standards; in addition, outside counsel is expected to follow the company's policies relating to gifts.
- **Commitment to Diversity:** includes statement informing outside counsel that the company's CLO is a signatory to the ACC "Call to Action," and requires outside counsel to participate in the Vault/MCCA Annual Law Firm Diversity Survey plus provides a link to the company's Commitment to Diversity.
- **Conflict of Interest:** expectation that outside counsel is free from conflicts and will conduct appropriate checks.
- **Conclusion of Engagement/Termination:** provision requiring 'lessons learned' discussion at the conclusion of a matter and provisions describing termination of representation.

Relationship Managers

One of the keys to successful implementation of the law department's ACP is its approach with regard to Relationship Managers. Specifically, the law department has internal Relationship Managers—senior lawyers within the law department who are on point for managing the relationships with its ACP firms. In addition, the law department has input into the relationship manager within the firm responsible for the company's account.

What is the role of the Relationship Managers? Ten key aspects of the role include:

- Work to deepen relationships with the firm
- Understand how the law department uses the firm
- Involve those attorneys using the firm in the evaluation process
- Facilitate direct communication between the firm and the law department attorney that is engaging the firm for the first time
- Meet at least once a year with the firm relationship manager to discuss relationship and define expectations
- Facilitate a meeting to debrief at the conclusion of large matters
- Establish a process for regular feedback with in-house attorneys using the firm
- Partner with the firm to demonstrate the law department's commitment to diversity by using women and minorities to lead the company's projects when appropriate and through discussion guided by the Diversity Tool Kit
- Review and report to the firm the results of in-house attorneys' surveys on the firm's attorneys' work performance
- Implement cost containment strategies such as alternative fee arrangements and budgets

5-Star Rating Process

Another key component of the law department's ACP is its 5-Star Rating Process. The 5-Star Process is implemented annually for each of the ACP firms. As part of the evaluation process, each Relationship Manager meets face-to-face with the firm's relationship manager to discuss the results of the evaluation and to also ask for feedback on how the law department is doing.

Using the process, firms are evaluated on five key categories:

1. Compliance with the Approved Counsel Billing and Staffing Policy
2. Billing/Alternative Fee Arrangements
3. Technology solutions compatible with the company
4. Diversity
5. Overall satisfaction with firm/expertise/location

How are these categories measured? For categories 1 through 3: a star is awarded for each category if the firm complies. Compliance for category 4 is measured by participation in the Minority Corporate Counsel Association (MCCA)/VAULT Law Firm Diversity survey which each Approved firm is required to complete.

Category 5 is measured by a satisfaction survey generated when a matter is closed in the law department's matter management system. The firm's overall satisfaction is calculated on the average of all matters closed. The categories measured are: (a) Overall Cost Effectiveness, (b) Counsel Professional Skill, (c) Billing/AFA, (d) Overall Satisfaction with Representation, and (e) Responsiveness.

In order to receive a star in category 5, the firm must be rated as Acceptable or better using the following scale:

- Role Model -Consistently exhibits outstanding behavior and serves as a role model.
- Proficient - Consistently demonstrates effective behavior.
- Acceptable - Often demonstrates proficient behaviors but could enhance performance by being more consistently effective.
- Some Improvement Needed- Behavior is inconsistent in this category.
- Significant Improvement Needed- Effective behavior is severely lacking. Significant improvement is essential.

A 1-pager describing the law department's 5-Star Rating Process may be accessed [here](#).

Approved Counsel Summit

In 2010, the law department is conducting the first annual ACP Summit. Relationship managers for the Approved firms are invited to the company's headquarters to help increase their understanding of the company and the company's strategy so the Relationship Managers can identify their firm's role in advancing the company's strategy. The Summit provides collaborative opportunities for the law department's Relationship Managers and the Approved firms' Relationship Managers to engage in meaningful dialogue with the company's Senior Leaders that will help outside counsel and the law department work together in the most efficient and effective way.

Keys to Success

Following are some of the stated keys to success for implementing the law department's ACP:

- **Ongoing Infrastructure within the law department:** ensure that the department has infrastructure to help support and sustain the program; within Nationwide's law department, this includes: professionals available to answer questions, forms on the law department's website, training for relationship managers, and a professional on point to help administer the program.
- **Control checks:** once a law department completes the 'culling process' to identify ACP firms, having a formal process to help ensure the list doesn't grow is important; also, having an exceptions process that includes tracking exceptions is helpful to determine the types of situations that call for exceptions and the firms that are being used in those circumstances.
- **Shared objective:** implementing an ACP with focus on value and relationships needs to be a shared objective of the law department in order for the ACP to be most successful.

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