



**ACC's Law Department Executive Leadership Series 2007**

**"STRATEGIC PRACTICE FOR MANAGING OUTSIDE COUNSEL & OTHER  
EXTERNAL RELATIONSHIPS"**

**Hosted by Janine Dascenzo, Managing Counsel- Legal Operation, General Electric  
Company**

**February 8, 2007  
10:00 a.m. – 3:00 p.m.  
Le Parker Meridien, New York**

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**Participants' Briefing Materials**

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## I. SUMMARY/OUTLINE OF DISCUSSION TOPICS

### STRATEGIC PRACTICES FOR OUTSIDE COUNSEL MANAGEMENT & OTHER EXTERNAL RELATIONSHIPS

The following outline is intended to provide a short overview of some of the issues at the heart of this discussion topic. There may be other issues we've not identified or perspectives on the identified issues that are not adequately represented in the outline: you should feel free to raise these additional thoughts, as you like. *The outline is merely intended as a starting point to help you identify discussion topics and tee up your conversation.*

#### A. Outside Counsel Management Practices & Strategies

- 1. Selecting and Retaining Outside Counsel for the Company- Organizational Responsibility:** Is the law department on point for selecting and retaining outside counsel? Are you as the law department executive ultimately on point for developing strategies for and managing outside counsel relationships? Can client groups call outside counsel directly to ask for services on a new matter or do your law department's practices require that clients first contact an in-house lawyer? Are there different practices and processes in place for clients regarding contacting outside counsel on a preferred provider list (or with an existing engagement agreement) vs retaining a first-time firm? If clients may directly contact outside counsel without first working through the law department, how and at what point do you include in-house lawyers in the process?

*Links to Resources*

*InfoPAK on Outside Counsel Management*

<http://acc.com/resource/v247>

- 2. Selecting and Retaining Outside Counsel for the Board/Company Executives:** Does your law department play a role in suggesting and retaining outside counsel for Board Committees and/or executives? What is the nature of the law department's role? Do you have a list of 'independent counsel' at the ready who may be called for these types of situations? What are the key considerations in managing or coordinating these engagements? Are there best practices you've implemented or heard of in these contexts?
- 3. Preferred Legal Service Providers:** Do you have a list of preferred legal service providers or relationship/partner firms? How many firms are on your list? What process did you utilize to select these preferred providers? How long did it take to arrive at your current list? Do your preferred providers know who the other firms are? Do they interact with each other in a structured way to share best practices in performing work for your company? Are there certain guidelines on which firm to use for certain types of matters or for work within certain geographic areas (e.g., is Firm A your 'go-to' firm for Intellectual Property Matters, and Firm B your Corporate & Securities firm OR are there firms for



certain business units or geographic areas)? What are the key benefits of having preferred legal service providers? What are your greatest challenges in working with these providers? Do your arrangements set a 'floor' for business? Do they include identifying key personnel to work on your company's matters?

*Links to Resources*

*Law Firm Partnering Survey 2005 –DataCert*

<http://acc.com/resource/v7546>

4. **Outside Counsel Engagement Letters & Guidelines:** Do you require that engagement letters be on 'your company's paper'? What do you view as the key terms or provisions in your engagement letters and guidelines? What terms are the most controversial and most often negotiated? Do your outside counsel sign these letters or guidelines to acknowledge review of the terms and certify that they will comply with them? Do these documents identify key law firm personnel to staff law department matters? Do they identify in-house counsel on point for the various outside counsel relationships? Do the guidelines address matters such as reporting ethical or other material or significant issues or matters to you or the CLO? Do they require that outside lawyers contact you or an in-house lawyer if they're contacted directly by a business client to perform legal work?
5. **Law Department and Law Firm Policies:** Do you provide outside counsel (or at least your preferred provider firms) with certain key policies for your law department (such as Sarbox 307 Up-the-Ladder Reporting policies or Records Management Policies, etc.) and require that they comply with these policies? Do you review your outside counsel's key firm policies to see how they manage critical issues and processes? Does your outside law firm have a Sarbox 307 policy and are you comfortable with their processes and time lines for considering issues and linking with your law department to communicate issues of concern? Do your outside firms have Ethics or Professional Responsibility Committees or processes and how might these committees or processes impact information received by your law department? Is it filtered?

*Links To Resources*

*InfoPAK on In-House Counsel Standards*

<http://www.acc.com/protected/infopaks/sarbanes.pdf>

*LPP on Sarbox 307*

<http://acc.com/resource/v6328>

6. **Conflicts and Waivers- Law Department Practices:** Does your law department have processes for considering law firm waiver requests? Who, within your department, is on point for granting waiver requests and what processes do you implement to track and manage these requests and their disposition? As part of your engagement process, do you provide to your outside counsel information on corporate affiliates, joint ventures, etc..? Do you have processes to regularly update this information (e.g., when your company has an acquisition, do you provide an updated affiliate list, etc..)? How do you manage conflicts situations

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with outside firms when mergers and acquisitions (either on the company business side or on the law firm side are involved)? What types of conflicts provisions do you include in your outside counsel engagement/guidelines documents? Do you have a set ‘no waiver’ policy or do you handle these requests on a case-by-case basis?

*Links to Resources*

*InfoPAK on Conflicts & Waivers*

(<http://www.acc.com/resource/v4987>)

*Article: Perils of Joint Representation (ACC Docket 2001)*

(<http://acc.com/resource/v813>)

- 7. Conflicts and Waivers- Law Firm Practices:** Do you review your outside counsel’s policies and processes regarding conflicts checks? How do you handle advance waiver requests? Do you find that advance waiver requests are more of an issue for certain types of legal work? What are your experiences dealing with conflicts and waiver situations in the context of law firm mergers? What types of thorny issues have you had to manage and what practices have you implemented to successfully navigate these issues?

*Links to Resources*

*LPP on Conflicts & Waivers*

(<http://acc.com/resource/v6298>)

- 8. Alternative Billing Models:** What types of alternative billing models have you successfully negotiated with outside counsel? Are certain types of work more amenable to certain models? If your models include ‘fixed or capped fee’ arrangements, do you have sharing clauses to include revisiting the arrangements if actual fees would be more than a certain percentage over estimated caps and vice versa for sharing the value of performing work that is under budget by more than a certain percentage? What are the most creative arrangements you’ve implemented or heard of? What are the greatest challenges?

*Links to Resources*

*Alternative Billing InfoPAK*

(<http://www.acca.com/infopaks/billing.html>)

*Article: Electronic Billing Enters the Mainstream (Docket 2006)*

(<http://acc.com/resource/v7173>)

*Article on Reviewing Outside Counsel Bills (ACC Docket 2006)*

(<http://acc.com/resource/v6649>)

- 9. Evaluating and Comparing Outside Counsel:** How do you measure performance of outside counsel? If your law department sets metrics for outside counsel, what are the key metrics? How often do you evaluate outside counsel performance and what is the process? Do you communicate the results of these performance evaluations broadly within the law department? How do you communicate the performance results to the outside firms? Do you implement different processes for preferred providers? Do you share the results among all of



your preferred providers (e.g., do you publicize and acknowledge the firm who performed best)? What do you consider to be best practices in this area? What are your greatest challenges?

*Links to Resources*

*Article on Benchmarking the Performance of Outside Counsel (ACC Docket 2006)*

<http://acc.com/resource/v7174>

*Top Ten Methods to Managing Outside Counsel (2006)*

<http://acc.com/resource/v7740>

*Program Material on Working Effectively with Outside Counsel (CCU 2006)*

<http://acc.com/resource/v7429>

- 10. Creative Use of Technology; Knowledge Management; Security:** What types of technology interfaces do you and your preferred outside counsel implement (e.g., electronic billing, matter management, firm knowledge management systems accessible by members of your law department, customized libraries or webpages developed by outside counsel and accessible by members of your law department, interactive advice tools, etc.)? What processes did you implement to help create these technology interfaces? Who, within your law department is on point for administering the technology? Does your law department have its own embedded IT personnel? Do you require outside counsel to use your preferred electronic billing or matter management systems or do they use an interface that enables them to link their system to yours? Do you perform periodic security assessments of your preferred providers IT systems?
- 11. Lawyer/Paralegal Secondment, Swapping:** Does your law department implement practices that include bringing select outside lawyers or paralegals on site for a defined period of time to perform work within your law department? What is the scope of the relationship and what have been the key terms? Have you sent in-house lawyers or paralegals to outside firms for a defined period of time to gain a greater appreciation for law firm practices and processes and gain law firm practice experience? What are the pros and cons of secondment and swaps? What best practices have you implemented in this area?
- 12. Law Department Meetings; Training:** Do you include within your global law department meetings or periodically gather with lawyers from your preferred partner firms? Do you bring together lawyers across your various preferred partner firms to share ideas on best practices? What types of meetings and practices do you implement to leverage best practices across your firms? Do your preferred partner firms provide routine or periodic training or CLE for lawyers and paralegals within your legal department? Does your law department provide training on key business areas and issues to certain key service providers within your preferred provider firms? What types of training initiatives have you and your firms implemented?

**13. Diversity; Pro Bono:** Does your law department have diversity or pro bono policies and do these extend to your outside counsel and legal service providers? What is your role as law department executive in implementing these policies? Is your law department a signatory of the Call to Action? Is it a signatory of the Corporate Pro Bono Challenge? Is law firm diversity a consideration in selecting outside legal service providers? Do you include diversity metrics within your overall outside counsel metrics assessment process? Have you partnered with outside law firms to help encourage pro bono initiatives and processes for lawyers within your law department? What types of practices have you implemented? What types of training do you or outside counsel offer for law department staff interested in participating in pro bono? What types of insurance or liability protections does your law department implement for staff participating in pro bono initiatives? What are the benefits of participating in these initiatives? How do you communicate your law department's successes in these areas more broadly within the company and within the broader business community?

*Links to Resources*

*Leading Practices in Law Department Diversity (2005)*

(<http://www.acca.com/resource/v5898>)

*Achieving Diversity in Law Departments, InfoPAK*

(<http://www.acc.com/infopaks/diversity.html>)

*MCCA Research Uncovers Best Diversity Practices of In-house Counsel*

(<http://acc.com/resource/v7717>)

*Minority Corporate Counsel Association*

(<http://www.mcca.com/>)

*The Business Case for In-house Pro Bono, Esther F. Lardent*

(<http://acc.com/resource/v7718>)

*Ten Steps to Start a Pro Bono Program*

(<http://www.cpbo.org/resources/displayResource.cfm?resourceID=1396>)

*Six Key Principles for Creating an Effective and Sustainable Pro Bono Program:*

*Insights from Ken Handal, Executive Vice President, CA, Inc.*

(<http://www.acca.com/news/clo/cakenhandal.pdf>)

**14. Law Firm General Counsel:** Do any of your preferred outside counsel firms have a General Counsel? What role does this individual play? How do you as your company's law department executive interface (if at all) with the law firm's General Counsel? Is this a relatively new position within the law firm? Has this impacted your relationship with the firm in a positive way?

**B. External Legal Service Providers-** Does your law department use other legal vendors (besides law firms) to provide legal services (e.g., legal research service vendors, web-based compliance training providers, document production services, contract lawyers or paralegals)? What are the advantages and challenges of these types of service relationships?

**1. Legal Research Service Vendors:** Does your law department regularly use a legal research service vendor to perform legal research? What types of working



models have you developed with the vendor (e.g., do you ‘buy’ a certain level of service and then adjust up or down, or is it case-by-case, etc.)? What practices and processes do you use to initiate work on projects and monitor workflow? Do you have a primary relationship contact within the vendor company? What are the advantages of using this type of service for legal research vs traditional outside counsel legal services (e.g., cost, turn around time)? As part of your relationship with the legal research vendor, have you developed customized technology interfaces? Do legal research providers implement knowledge-sharing practices that enable you to tap into research they’ve performed for others? How do you measure the quality of service and performance? What feedback have you received from lawyers within your department on using this type of service? What training do you provide to in-house lawyers or paralegals on using this type of service?

- 2. Document Production Services:** Does your law department use outside document imaging or production services? What types of relationship models do you use? Do they sign confidentiality agreements? What are some of the key provisions included in engagement documents for these services? What are the pros and cons of using an outside service?

*Links to Resources*

*Article on Keeping Secrets: The Growing Challenge of Protecting Data in Outsourcing and Service Provider Arrangements (2004)*

<http://acc.com/resource/v6211>

- 3. Contract Lawyers and Paralegals:** Does your law department regularly use contract lawyers and/or paralegals? Do you have a preferred provider-type relationship with an external service firm? What are the key components of that relationship? At any given time, about how many legal service providers working on matters for your law department are contract personnel? How do you select lawyers/paralegals from these contract service providers to perform your work? Who manages the relationship with the external service firm? Who manages the workflow of the contract lawyers and paralegals? Do these lawyers or paralegals sign confidentiality agreements? Do they receive and sign company policies? How do you handle professional liability/insurance issues? Do these contract lawyers or paralegals work on site or from another location? What types of training or orientation do you provide? What types of performance measurement tools do you implement? What do you view as the pros and cons of working with these types of legal service providers? Ideas on best practices?

*Links to Resources*

*LPP on Use of Nonlawyers*

<http://acc.com/resource/v5904>

- 4. Compliance Training Using External Web-based Products:** What role does your law department play in selecting external vendors and evaluating and/or customizing compliance training modules? Does your company have a

centralized Compliance and Ethics office on point for managing these relationships or is the law department de facto on point? If the law department plays a primary role in administering the implementation of training, who has access to data regarding training module completion? How do you report and manage this information within your company? What practices has the external service provider implemented that you consider best practices?

*Links to Resources*

*Compliance Training and E-learning Programs InfoPAK (2005)*  
(<http://www.acca.com/resource/v6384>)

5. **External Help-lines:** What role does your law department play in working with external help line vendors? Are individuals within the law department the primary interface or contact for these external providers or are there personnel within a centralized compliance and ethics group who are on point? If the relationship is managed through the law department, are you on point to manage the business side of things? What are the key components of the working relationship and service delivery model? How do you handle privilege considerations and what types of processes do you implement?
6. **Investigators:** What role does your law department play in working with outside investigators? What are the key considerations in determining whether to use internal investigators or outside investigators? How do you scope the parameters of the outside investigator's role? Does the law department generally retain these outside investigators?

*Links to Resources*

*Article: When Should you Outsource Investigations?*  
(<http://acc.com/resource/v7530>)

7. **Other Key External Service Relationships?**

C. **Outsourcing** – Are there services areas/types of legal work that your law department has outsourced entirely?

1. **Types of Services:** What types of services or legal practice areas does your law department outsource? Have you outsourced entire substantive practice areas to law firms (such as Intellectual Property, Litigation, Employment, etc.) or work for certain business groups or in certain geographic locations? What was the internal process for determining which services to outsource? What were the primary factors driving the decision to outsource these services?

*Links to Resources*

*LPP Strategic Outsourcing And Alternative Service Models, Practice Profile*  
(<http://acc.com/resource/v5903>)

*Top 10 Legal Issues in Technology, Ecommerce, and Information Management Outsourcing Agreements*

(<http://acc.com/resource/v4881>)

*The Brave New World of Global Outsourcing*



2. **Process for Procuring Services:** Did you use an RFP and/or auction process? Who within your law department was on point for managing the service definition and procurement process? What were the key terms of the RFP? What were the pros and cons of using this type of approach? How long did it take? Did you go to the firm's offices and evaluate their systems and processes prior to selecting them? Ideas on best practices?
3. **Service Models & Relationship Management:** What type of service models do you use? Who is on point within the law department to manage the relationship? What role do you play as the law department executive in managing this relationship? What processes do you implement to help ensure that the outside service provider is keeping the law department 'in the loop'? Do they provide periodic reports (electronic, verbal, other) on matters handled? Can business clients pick up the phone and call the outsourced service provider directly or do they first notify the law department? Do outside service providers for outsourced areas participate in regular business client staff meetings? Do they perform their work on site or from another location? How is staffing for your company's matters handled (e.g., are there certain key personnel)? How do you track the services provided? How do you evaluate the services? For purposes of reporting and internal controls, how do you help ensure that key issues are brought to the attention of contacts within the law department? What are the pros and cons of entirely outsourcing an area of practice or service line? Where have you seen the greatest efficiencies?
4. **Billing Models:** Who pays the bills for outsourced services? Do client groups pay directly or is the law department on point for procuring and paying these services to the provider? What types of billing models do you use? Do you estimate a budget or set a payment floor to ensure a certain level of staffing and service is available or are you billed on a per project or hourly basis? How did you estimate the budget for these outsourced legal services? Do your outside service providers use your law department's electronic billing systems? How do you ensure that you are being billed for services performed?
5. **Off-shoring:** Does your law department off-shore any legal services? Is the off-shore service provider an affiliate of your company or an external provider? What process did you use to procure these services? Did you perform an on-site assessment of the capabilities of the off-shore service provider? What types of technology and security measures do you require? What type of service delivery model do you implement? What are the key terms of the off-shoring relationship? How do you evaluate these services and stay 'in the loop'? Who is on point to manage the service relationship? What are the pros, cons and best practices? What are the greatest challenges?

*Links to Resources*

**D. Privilege Considerations**

- 1. Document Creation and Management Practices:** What types of practical steps does your law department take to help preserve privilege protections when creating and maintaining documents? How selectively or broadly do you wish to assert confidentiality generally, and privileges in specific? How does this impact strategies on use of outside counsel or outside legal service providers? What types of provisions do you include in retainer agreements or external services guideline documents? Do you train in-house lawyers on steps to take to preserve privilege? If you have a global law department and a law department intranet, do you implement different practices/restrict access to certain shared system drives, etc.. to preserve privilege for those portions of the law department located in jurisdictions that don't recognize attorney-client privilege for in-house lawyers? Do you have a presumption of differing standards of privilege protection for documents or advice generated by in-house counsel, as opposed to documents and advice generated by outside counsel? How do in-house counsel's concurrent business responsibilities affect their ability to provide privileged and protected advise? Can the privilege survive for advice given by lawyers for one entity to clients across the corporate family (in subs or affiliates, for instance)?
- 2. Legal Advice - oral or written:** Has there been a shift in the way that in-house and/or outside lawyers provide legal advice? Is more advice being provided verbally instead of in writing due to privilege considerations? How do you think this impacts the role of in-house counsel and the ability to provide meaningful legal advice on complex issues? Does your law department have policies or guidelines (written or unwritten) on ways for providing legal advice in sensitive situations? Do these policies or guidelines extend to outside counsel or outside legal service providers?
- 3. Auditor Requests for Information:** Are internal and/or outside auditors requesting access to privileged information? Have you experienced an increase in these requests? What practices have you implemented in response to these requests? What role do you play in interacting with auditor's counsel or business relationship manager? How do you protect documents produced to your auditor from being producible in litigation? Can you use labeling of documents and instructions to auditors to maintain privilege over the documents? Can you avoid the problem by seeking to provide the information needed without producing source documents, or are source documents the new holy grail for accountants worried about professional liability for leaving stones unturned?