

[Back to
Virtual
Library](#)



the in-house bar association SM

Additional materials from 1998 ACCA Annual Meeting Program, "In-House Ethics: Dispelling the Oxymoron."

In-House Ethics: Dispelling the Oxymoron Hypotheticals

Woowee! What a Mess!

David is in-house counsel to Woowee!.com, the provider of an innovative Internet browser system and Internet services for a large number of subscribers. Woowee!.com has just been named as a co-defendant in a class action suit and is being investigated by federal authorities for a number of related and unsavory incidents, including the widespread listserv distribution of some very graphic, sexually explicit pictures. It appears that some malevolent hackers found their way into the "back of the house" operations of Woowee!.com and corrupted several protocols in order to disseminate this information. Woowee! has now become the butt of jokes on late night TV and radio talk shows, wherein hosts have made the company's name a jingoistic catchword for dirty sex jokes.

David knows that he would like to interview a number of people and that the professional rules of conduct regulate his doing so. He also understands that a number of others -- plaintiff lawyers, investigators, press, government prosecutors, etc. -- will want to talk to Woowee! people as well. Using the attached material on Rule 4.2, advise David about how he should proceed in the following scenarios, and help him unravel any confidentiality issues he may encounter.

- a. David would like to interview Bob, a former Woowee!.com employee, who is responsible for a significant part of the programming that runs the portions of the network which were infiltrated by the hackers; Bob is now working for a major competitor of Woowee!'s and is openly critical of Woowee!'s services and management. His terms of departure, including a disagreement over his non-compete clause and the ownership of certain intellectual property David asserts is rightfully Woowee!'s, is the subject of some dispute. In his last correspondence with David on this subject of his departure terms, Bob implied that he was talking to a lawyer and would sue Woowee! if it in any way disturbed his continued employment with his new company. David doesn't think Bob (or his new company) had anything to do with the hackers, but Bob's testimony/statements are crucial to showing that Woowee!'s system was properly designed.
- b. A number of press contacts and plaintiff lawyers investigating the misuse of Woowee!'s system want to interview Woowee!'s CEO, the chief programmers, the marketing team, and a number of the system maintenance employees. Some of these interviews have been requested through David's office; most have not.
- c. David wants to talk with three young children and their parents who have complained about the system, but who have not (yet?) joined with the class of other children who are represented by Weir, Gunna, Makah, Yewpay, P.C.
- d. Government investigators have requested copies of notes that David took at a recent

d. Government investigators have requested copies of notes that David took at a recent meeting of the senior-most management of Woowee! to discuss the multiple fronts of threats that this fiasco presents to the company and its stockholders, as well as notes from David's interviews with daily system administrators who had access to identifying information about the hackers who perpetrated this mess and might "infest" other systems if not stopped.

What IS the Value of an In-House Legal Function?

Sally is the general counsel of a 13 lawyer department employed by a multi-national conglomerate. Sally's lawyers work for a large number of internal "clients" whose interests span virtually every practice area and whose needs are diverse. She has set up a very complicated system with her co-lawyer colleagues that "bills" internal legal services (and the services of outside counsel and other "out-of-pockets") back to client groups in order to help them and senior management understand and track the cost of the legal services provided to them.

This internal billing system takes into account a great number of factors*, and spits out internal "receivables" each year which total more than the fully-loaded operating costs of the legal department (an assessment that includes a portion of rent, office equipment, salaries/benefits, supplies, travel expenses, and so on). Sally is proud of the fact that her department is thus able to prove its value to the client each year; she further provides the client with a yearly assessment of how much she calculates the company would have spent on external legal fees if she and her department did not exist. This portion of the study again underlines her department's value since it shows that "making rather than buying" most of the services the company needs saves the client as much as 50% off the cost of legal services in the marketplace.

Sally and two of her lawyers are now involved in a breach of contract suit which has been decided favorably for her client. The contract in question had a provision which awards attorney's fees for the prevailing party in the event of a suit between the parties over the terms of the contract. The judge has ruled, however, that since Sally and her lawyers are in-house counsel, there is no "cost" to her client for her services.

Sally wants to argue that decision and needs your advice. What is her argument for the award of fees? If she collects fees, is her company engaged in the practice of law by a corporation? What "system" should she advocate to provide a method of calculating those fees/costs to a client? Are her internal systems appropriate benchmarks for this calculation? Can her system include a "profit" to the employer as a law firm's hourly rate does? What is "profit" in this calculation? Can an in-house counsel "value-bill" for expertise and knowledge of the company that makes her time more valuable than the minimum hourly cost calculation? Can a court sanction fees that include costs other than strict "out-of-pockets"?

*The factors Sally considers in calculating the charges for her internal client billing system include, but are not limited to:

- the market cost of outside legal services in the local jurisdiction
- the fully-loaded overhead costs of her department attorneys
- the type of substantive practice involved (sophisticated vs. mundane expertise required)
- the expertise and seniority of the lawyers she staffs for the work

- the expertise and seniority of the lawyers she staffs for the work
- the opportunity costs to the company of having her lawyers work on one matter rather than another
- the profitability of the matter or division requiring services, and the amount of work they ask of the legal department
- the amount of time her lawyers will need to come up to speed to effectively represent the client on the matter
- whether this expertise would be subject to value billing were it done outside
- external, out-of-pocket costs and supervision requirements

Intern Problems Again?

Monica is a summer intern in the marketing department of the Fiscally Prudent Company (FPC), a large international financial services consulting firm that provides accounting, business management, and benchmarking/performance reviews for Fortune 1000-type clients. Monica just had a wonderful idea that she and her friend, Linda (who is interning with FPC's law department) were discussing at length on the phone last night. They envision a new business line for the company: the provision of legal services consulting. So many of FPC's largest clients find that changes suggested in the course of FPC's consultations have legal ramifications or involve the curtailment of skyrocketing costs -- including litigation defense. FPC's outstanding in-house lawyers often are solicited by FPC non-legal consultants to informally advise them on creative solutions for clients that include legal risk analysis or the anticipation of possible regulatory ramifications, etc.

Monica and Linda thought they would pitch senior management with an idea to formally and aggressively market and bill the law department's services which are now provided informally to external clients without cost; they believe that this idea is sure to cinch an offer for them to return as full time employees after graduation. They envision the future development of an entire legal services department for external clients who want one-stop shopping for all their "consulting" needs; they believe that FPC may want to hire even more lawyers to staff this external legal services division. They decided to pitch the idea to senior management at the next meeting of the department.

Monica and Linda want your help in putting together their presentation; what will you tell them about the repercussions that FPC might encounter should they decide to become a purveyor of legal services? Who regulates the operation of businesses providing professional services, such as law, accounting, etc., and does it impact whether FPC can undertake this new venture? Does the fact that they operate internationally affect the content of your counsel?

[Back to Top](#) | [Back to Virtual Library](#)

American Corporate Counsel Association. 1025 Connecticut Ave, NW, Suite 200, Washington, DC 20036-5425. 202/293-4103. webmistress@acca.com. © [Copyright 1998](#) American Corporate Counsel Association. All rights reserved.