



107 Attorney Management Workshop 2005

Gregory M. Allard
Vice President & General Attorney
Liberty Mutual Group

Mark K. Stephens
Vice President, Legal Services
CNA

Faculty Biographies

Gregory M. Allard

Gregory M. Allard is senior vice president and general attorney of the Liberty Mutual Group in Boston, which has the fourth largest legal department in the United States. Mr. Allard has national responsibility for Liberty's 72 in-house law offices, staffed by 650 attorneys who represent the company and its policyholders in litigation throughout the United States.

Mr. Allard is past national chair of ACC's Insurance Staff Counsel Committee, where he continues to serve as a member of the executive board. He is also a member of the ABA, the New York State Bar Association, the Defense Research Institute, and the International Association of Defense Counsel. He has presented on numerous occasions for ACC, the ABA, and the Minority Corporate Counsel Association.

He received a B.A. from Seton Hall University, an M.A. from the University of Leicester in England, and is a graduate of the St. John's University School of Law.

Mark K. Stephens

Mark K. Stephens is vice president legal services for CNA Insurance in Chicago. He provides oversight, direction, and strategy for staff and panel counsel representing CNA insureds in commercial, risk management and specialty lines business units. He also provides strategic litigation management direction for staff and panel attorneys nationwide. He balances the legal services between in-house staff and outside counsel for cost effectiveness and matching the business needs of CNA. The legal services group is also responsible for implementation of the visibility internet based billing system and centralized bill review for CNA.

Prior to joining CNA, Mark was the deputy general counsel for the United States Small Business Administration in Washington DC where he was the top career attorney overseeing the delivery of all legal services for headquarters and all field offices throughout the country. He was also in private practice in Washington DC and in western Pennsylvania.

Mr. Stephens is the past chairman of ACC's Insurance Staff Counsel Committee and a member of DRI Insurance Roundtable Steering Committee.

Mr. Stephens received his B.A. from Indiana University of Pennsylvania and is a graduate of Ohio Northern University law school.



Attorney Management Workshop: Session 107

Gregory M. Allard
Senior Vice President and General Attorney
Liberty Mutual Group

Mark Stephens
Vice President, Legal Services
CNA



Compensation Management Issues # 1

One of your highest performing attorneys comes to you and says that she has received an offer from an outside firm, and she is considering it. You know that if she leaves, your internal clients will be very upset. She asks if you will consider matching the offer, since her declared preference is to remain with your company, in house, “as long as the economics make sense.”



Compensation Management Issues # 1

Before you consider whether to match the offer, what else do you need to know?

What are the pros and cons of matching the offer?



Compensation Management Issues #2

One of your newer attorneys resigns, and at a “farewell” party that evening, (not organized by the company), he boasts to his associates that he will be receiving a \$25,000 raise over his current \$80,000 salary by moving to a new firm. The truth is that his current salary is actually only \$60,000. The next day, several of the other attorneys in your office, who have a similar level of experience, demand to know why they have been underpaid in comparison with the attorney who just resigned.

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Compensation Management Issues #2

What do you say to those attorneys?

What do you do?

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Paralegal Management

A mid-level paralegal approaches you with a complaint that the four paralegals in the office all have 1) different assignments and 2) inconsistent work loads. You review her performance ratings and see that she has been rated somewhere below range of “fully effective.”

How do you analyze this situation in the office?



Cost and Expense Management:

Your internal corporate clients have been complaining that the internal charge-backs from your group have been increasing at an alarming rate, a situation confirmed by your internal metrics. They are very pleased with the quality of the legal work performed by your attorneys, and in fact have commented that service levels and communications have never been better. As you work to control your costs: what are the priorities for your review?



Cost and Expense Management: Staffing Mix

Over the years, your office has experienced very little turnover, the attorneys have an average of 18 years of experience, and even the newest attorney has been practicing 12 years. 50% of the work performed by your office are basic level matters. The experienced attorneys are resentful of being assigned such work, and some are a step away from refusing to handle it.

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Cost and Expense Management: Staffing Mix

What is the threshold problem, and how do you fix it?

In the interim, what can you do to avoid the growing serious morale problem?

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Process – Paralegal Management

Your company is committed to the use of paralegals, and their presence appears to make economic sense, since they bill at a lesser rate, something which internal clients appreciate. You have pushed your attorneys to more fully use them, and the attorneys have complied. A junior paralegal comes to you and says that she feels frustrated, since some (but not all) attorneys to whom she is assigned, often review her work, sometimes change it, and frequently re-do what she did already.

Process – Paralegal Management

How do you determine whether her complaints are legitimate?

If there is justification, what can you do about it?



Good Lawyer, Bad Employee

Internal Clients

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Managerial Trap

(A Variation on the fact pattern presented in 2004)

A recently hired legal secretary asks to see you privately, and tells you that she has been the victim of sexual harassment. She relates sufficient detail for you to find her initial story credible. Despite your urging her to identify the person involved, she states that under no circumstances will she do so, fearing retaliation.

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Managerial Trap

(A Variation on the fact pattern presented in 2004)

You undertake an internal investigation in your office, appointing a two person team (one male attorney and one female attorney) who are both well-regarded in the office. You inform them of what you know, and tell them of your initial opinion that the person's complaint sounds credible. The team follows the standard suggested investigatory procedure which you have learned about in a recent employment law CLE course.

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Managerial Trap

(A Variation on the fact pattern presented in 2004)

They conduct interviews throughout the office, without identifying the secretary, and at the end of their work they write a report which contains summaries of their interviews and findings, as well as their conclusion “that there is credible evidence to support the allegations.” You provide this report to your supervisor.

What is the supervisor's reaction?

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Managing Staffing Levels and Capacity

The managing attorney of your litigation team reports to you that she has observed a steep decline, over the last 18 months, in the number of matters referred for handling from the various business units. Her group is staffed by 10 attorneys, 2 paralegals, a law clerk and 6 support staff. The total number of matters **pending** with her team has declined from 250 (18 months ago) to 175.

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Managing Staffing Levels and Capacity

During the same 18 month period, 2 attorneys and 1 support staff have voluntarily resigned to take other jobs, and those positions have been filled promptly.

She also tells you that an analysis of timekeeping records prepared by her attorneys shows that the average number of hours billed *on similar matters* has increased by 25% during the same 18 month period.

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Managing Staffing Levels and Capacity

Despite the decline in referrals, the financial results at your company are some of the strongest ever, and many other departments, such as Sales and Customer Service, are actually adding staff.

- *What else do you need to know before you address this problem?*
- *If you decide to proceed with reductions in staffing levels, what are the critical issues you must face?*
- *What are the key parts of your plan for reductions?*
- *What specific things can you do to address the morale issues?*

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Client Surveys and Managers: Part 1

Your office conducts a Client Survey every year of the various internal corporate clients served by your attorneys. Those clients are asked to rate the professional services provided by your group, and they are also given an opportunity to comment on specific attorneys.

You have always shared the general results of these surveys with your entire office, and have provided each attorney with any specific comments regarding their individual performance.

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Client Surveys and Managers: Part 1

This year one of the business heads advises that the last time this survey was completed, one of your attorneys – who was negatively evaluated by a number of clients, had contacted those clients – in fact almost confronted them – about their comments. He further states that this contact was disruptive to the relations between the departments. Based on this incident, the business head advises that his staff will no longer participate in the Survey unless

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Client Surveys and Managers: Part 1

- 1) *the results remain confidential, and*
- 2) *the identities of the participants are kept anonymous.*

What are the pros and cons of the business leader's demands?

What is your solution?

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Client Survey –Part 2–The Ethical Issue...

In the prior fact pattern, you meet with the attorney who “confronted” those clients who made negative comments about him. You discuss his behavior, and advise that it was disruptive and contrary to good client relations.



Client Survey –Part 2–The Ethical Issue...

He knows that you have agreed that the future Survey results as to individual attorney performance will not identify the person who made the comments, or identify which matters or cases were involved. He reminds you that after the last Survey, the negative comments from the Survey had been included in his Performance Appraisal.



Client Survey –Part 2–The Ethical Issue...

He responds that the comments against him were unfair and unfounded, invokes “Sarbanes Oxley,” and says that the evaluation of lawyers by non lawyers interferes with his independent professional judgment as an attorney for the corporation.

He states that:

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Client Survey –Part 2–The Ethical Issue...

“Since the Survey results will be anonymous, and I will be unable to respond or refute without having any of the specifics, I demand that any negative Survey responses not be referenced in my Performance Appraisal, or included in my Personnel File, or used in any other way against me.”

How do you respond?

How do you handle the ethical issue he has raised?

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The Key Element of Performance Management

An attorney in your office with 10 years of experience has consistently been performance rated at 95 out of 100. He has been an excellent employee over the years, and delivered effective results. He is well liked in the office, and respected by his clients. In the past, this attorney's work was consistently reliable, and he did not require any significant levels of supervision. He was a self-starter, whom other attorneys went to with their questions.

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The Key Element of Performance Management

In the six months since his last performance review, you've heard a couple of casual comments from your internal clients which gave you some concern about the attorney's performance, but those clients minimized the impact, and told you that "it was nothing that required any intervention at this point." His secretary is a new hire, and relatively inexperienced. You also are aware that this attorney's spouse has experienced some recent serious health problems, and for that reason you elected not to discuss the comments you heard.

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The Key Element of Performance Management

Three quarters of the way through the year, his secretary advises you that the attorney missed a crucial date for filing an appeal; a day later, the attorney asks for FMLA to care for his ailing wife. He tells you that he expects to be out a month.

You reassign his matters to three other attorneys within the office, and within a week all three of them approach you with evidence that his cases have been significantly mishandled, with several instances of outright malpractice. The losses to the company directly attributable to the attorney's malpractice exceed \$500,000.

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The Key Element of Performance Management

The attorney returns to work two months later, after his wife has passed away. His performance appraisal is now due.

How do you handle the performance appraisal?

How do you rate him?

What other steps do you need to take?

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Performance Management II

In connection with yearly performance appraisals, one of your team leaders sends you the following e-mail about one of her professional staff members:

“Attorney Jeff Ernshaw’s performance over the last two years has been problematic. I’ve received a number of complaints from our internal clients about his manner of communicating with them. He is often abrupt and sometimes condescending.

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Performance Management II

Additionally, his work ethic has been relatively poor: he often comes in late and leaves early, appears unwilling to undertake any special projects or extra assignments, and has a lesser number of legal matters assigned to him than do similarly experienced attorneys.

“Some of this is understandable, since he was diagnosed with multiple sclerosis 12 months ago. Were it not for his illness, the significant amount of time he has been on sick leave, and the impact

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Performance Management II

that this had upon his work, I would be rating him less than what I have awarded him on the enclosed spreadsheet, 92 (out of 100). (Last year's rating: 99). I trust that this lesser rating will not have any impact on his yearly bonus or raise.”

What are the management issues with this e-mail note?

What would you do differently?

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Insurance Staff Counsel Specific Issues

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You are monitoring the trial of one of your attorneys and getting favorable daily reports. You get a phone call from the trial attorney telling you that the jury has come in with a verdict well in excess of the policy limits.

- You learn that the case could have been settled prior to trial at or under the policy limits.

- You hear that the attorney made a grave error during the trial.

- The attorney gets a great result, coming in far below the amount demanded or offered. This is expected of each attorney but you think that this result is remarkable and you think maybe he is deserving of some sort of bonus.

- What do you do from a manager's perspective?

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One of your staff attorneys is representing a policyholder in a litigated matter for their insurance carrier employer. By e-mail, he forwards you a note from the Claims Department of the carrier which indicates that they have plans to settle the case, and “counsel should take no further action on the file.” Counsel states that the case, with or without discovery, will be ready for trial in 6 months, and that there is a serious question as to whether the plaintiff's injuries are causally related to the underlying accident.

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Counsel states that at the least it would be appropriate to conduct an independent medical exam (IME) of the plaintiff, and fears this may be waived if it is delayed. Counsel ends his note to you with this statement: “At this point I feel that the Claims people are interfering with my independent professional judgment.”

- What management steps do you take to handle the immediate issue of the case, and of the IME?
- How do you handle the ethical issue raised by counsel?



Ethics and Office Management



A support person contacts you and tells you that an attorney is frequently asking her to move scheduled appointments for what appears to be personal reasons – to go to a baseball game, attend a Little League game with their child, etc. She asks you if this is “unethical.” What do you do?

During your discussion with the attorney you discover that he received the baseball tickets from an outside vendor. Company policy expressly prohibits acceptance of gifts other than of nominal value.

How do you handle?



A support person contacts you and says that their attorney has a letter from the court indicating that they have been sanctioned, but the attorney has not told you yet. What do you do? How do you preserve the attorney/secretary relationship? After reviewing the file, the court pleadings indicate the attorney has not yet responded. Do you take further action?



You conduct a review of business e-mail and find that an attorney that you believed was a hard worker, is using their business e-mail extensively to stay in touch with friends and family during business hours. Are there any privacy issues with you reviewing the e-mails? If there is written company policy in place, what do you do with the attorney?

Same scenario, but you find out that the attorney is conducting a separate personal business on their e-mail. How do you handle??

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You learn that an attorney will never leave the office to bring work to the secretary or paralegal. The attorney expects both support personnel to pick up the work from the attorney's out basket, and yells from the desk. When the secretary is out on vacation, the attorney still will not bring any work outside of the office to give to the substitute.

Approach?

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An attorney hovers over the secretary after giving her work, or consistently asks when the work will be done. The secretary has work from two attorneys and has the work organized according to priority as designated by the due dates given by the attorneys, yet the attorney not only hovers but insists his work is more important and should always have first priority. What should you do to support the secretary? What if the "due dates" are unrealistic, or untrue?

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An attorney chats for a significant amount of time each day with a secretary causing the secretary to fall behind in her own work. Although you do not want to destroy a good relationship, what can you do to cure this situation? After investigation, you are concerned the relationship may be more personal out of the office. Whom do you contact, if at all?

What potential impact does this have on the office?


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Managing Attorney Work Habits

You conduct an office review and are shocked that the office of one of your best trial attorneys is an organizational disaster, with papers and files everywhere. His secretary tells you she is concerned about lost documents or missing court dates. The attorney gets great results and just won a huge case. The attorney is very marketable by reputation as a good trial lawyer, but is labeled "difficult" by support personnel. What do you do? What are some of your concerns as a manager?



An attorney gets great results; however, that attorney is poor at grammar and reporting, and prepares documents which contain serious grammatical errors. In addition the attorney will only dictate, even 2-3 line letters.

What do you do?



A client comments to you about the personal appearance of two of your attorneys, male and female. The clear implication is that while the dress is not completely unprofessional, it is certainly distracting and noticeable. They do not "look like lawyers." What do you do? What can you do without overstepping your position?



Clerical Management

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In your office there is constantly an under-current of tension. You determine that the Lead Clerical Supervisor, a long time employee, is perceived as difficult and is the actual reason for high turnover. The supervisor has good skills and in fact is the most proficient in operating your company's systems. You have spoken to the person but "cannot get through." There are significant deadlines which the office needs to meet within the next 6 months. No one has the skill set to replace her and the office will miss deadlines if the person leaves. What do you do?

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Attorney/Adjuster Conflict

An attorney is handling a serious case and is given authority up to \$300,000 to settle the case. The internal client tells the attorney to proceed with negotiations slowly, and to settle for less than \$250,000. Neither employee documents the file. The client advises you the attorney just offered \$300,000, without any negotiation, during mediation. You know the facts of the case and agree with the client that the handling attorney should have negotiated and could have achieved settlement for less than \$300,000. What do you do?

NEW CHALLENGES / NEW SOLUTIONS

Baltimore Marriott Waterfront

May 21-23, 2006

Have you recently entered a new phase in your legal career? If you are new to in-house practice, or moving up as a manager in the law department, ACC's **4th Annual Corporate Counsel University: New Challenges, New Solutions**, is for you.

We face a number of challenges during our legal careers, but a move in-house or a move to legal management are two of the toughest. At the same time, the role of in-house counsel has recently started to change, and continues to evolve.

Open only to in-house counsel, Corporate Counsel University will teach you how to excel in your new role during this time of change. You will learn first-hand from your in-house colleagues, with a focus on the basics you need to succeed. Like all ACC programs, Corporate Counsel University will emphasize practical tips and hands-on advice, with plenty of opportunities to interact with faculty and other attendees. The schedule includes networking time to meet and talk with other members, so you can establish contacts that will help you long after the meeting.

Join us in Baltimore, May 21-23, 2006.



**MAY
21-23,
2006**

**Register by
December 15
to save \$50!**

CORPORATE COUNSEL UNIVERSITY REGISTRATION FORM

Baltimore Marriott Waterfront

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Peers!

1 Registrant Information*

AM05

MEMBER NUMBER (OPTIONAL) _____

MR. MS. FIRST NAME _____ MI _____

LAST NAME _____

BADGE NICKNAME _____

TITLE _____

ORGANIZATION _____

STREET ADDRESS _____

CITY _____ STATE _____

POSTAL CODE _____ COUNTRY _____

PHONE () _____ FAX () _____

EMAIL _____

UPDATE MY MEMBERSHIP RECORD WITH THE ABOVE INFORMATION.

2 Rates

Registration is limited to in-house counsel and includes courses, written materials, and scheduled meals/receptions. It does not include housing, travel, or personal expenses.

ACC Member

- \$600 Special Advance Rate (payment received by December 15)
 \$650 Regular Rate (payment received after December 15)

Nonmember (in-house counsel only; includes one-year membership)

- \$825 Full Program Registration & Membership

Group Rates

Any company registering two or more in-house counsel for this program will receive a group discount of \$50 off each person's registration. Each attorney should complete his/her own form and then send all forms to ACC together noting the group discount. Questions should be directed to Lauren Kokernak; 202.293.4103, ext. 310; kokernak@acca.com.

(Note: group registrations cannot be submitted online.)

How To Register

Use only ONE of the following methods to avoid duplicate charges:

ONLINE:

www.acca.com/ccu/06

MAIL:

ACC's Corporate Counsel University
P.O. Box 791044 • Baltimore, MD 21279-1044

EXPRESS SHIPMENTS ONLY:

ACC's CCU
1025 Connecticut Ave., NW, Ste. 200
Washington, DC 20036-5425

FAX:

202.293.4701

MAY
21-23,
2006

3 Payment

Please do not send this form without payment. You will not be registered to attend until payment has been processed. Do not consider your registration complete until you have received confirmation by mail.

- Check (make payable to ACC's Corporate Counsel University)
 Visa Mastercard AmEx (no other credit cards accepted)

CARD NUMBER _____

EXPIRATION DATE _____

CARDHOLDER'S NAME _____

CARDHOLDER'S SIGNATURE _____

4 CLE Credit

Indicate your need for CLE credits below:

- I do not need CLE credits.
 I need CLE credits and have provided my jurisdiction(s) and bar number(s) below:

JURISDICTION: _____ JURISDICTION: _____

BAR NUMBER: _____ BAR NUMBER: _____

CONFIRMATION

Written confirmation of your registration will be mailed within 10 business days of payment processing. Do not consider your registration complete until you have received such confirmation by mail.

CLE

ACC is an approved sponsor in all states with mandatory CLE requirements. Be sure to complete section 4 on this registration form and visit CLE Online onsite to apply for CLE credit. Questions should be directed to Erica Piña; 202.293.410, ext. 340, pina@acca.com.

SPECIAL REQUIREMENTS/QUESTIONS

Participants with special needs or questions regarding Corporate Counsel University should contact ACC's education department: 202.293.4103, ext. 451; education@acca.com.

HOUSING

ACC is holding a block of rooms at the Baltimore Marriott Waterfront at the rate of \$179/night (single/double.). For reservations, call 410.385.3000 and indicate you are attending ACC's Corporate Counsel University to receive the group rate. The reservation cutoff date is April 28, however, we recommend you make your reservations now as rooms often sell out in advance of the cutoff date.

CANCELLATION POLICY

All cancellations or substitution requests (substitutes must be eligible to attend) must be sent in writing to education@acca.com. Cancellations received in writing by April 28 will be fully refunded minus a \$50 administrative fee. Cancellations received in writing between April 29 and May 23 will receive a full credit toward attendance at ACC's 2007 Corporate Counsel University (only monies paid for the 2006 meeting will be credited). If written notification of cancellation is not received by May 23, no refunds or credits will be issued of any kind; no exceptions.

QUESTIONS?

Contact Lauren Kokernak at 202.293.4103, ext. 310 or kokernak@acca.com.

* Your mailing address may be disseminated to Corporate Counsel University sponsors for meeting promotion purposes. In no event will ACC share your phone, fax, or email address with these sponsors.