

CORPORATE COUNSEL NEWS

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Virginia State Bar Corporate Counsel Section

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Three Ways Corporate Counsel Can Add Value to Their Clients During the COVID-19 Crisis and Beyond

By Nicole E. Upshur, Esq.

The COVID-19 Pandemic has changed the way the world functions socially and professionally. As much as we want things to return to pre-COVID times, the reality is our clients cannot afford to sit back and wait for life to return to normal. Our business clients need to find solutions to continue making a living, running their businesses, and providing economically for their employees and their families.

How can corporate counsel bring value to their clients who are faced with this COVID crisis and help them persevere and even prosper through these uncertain times?

- (1) For starters corporate counsel can provide value to their clients by first letting their clients know they are there for them during this crisis and beyond. Show your clients that you are ready and willing to step in and lend a helping hand.

Corporate counsel should be demonstrating to their clients that they have not abandoned them, and that they are standing at the ready; willing and able to assist their clients with their legal and business needs. Corporate counsel can demonstrate these characteristics by reaching out routinely to their clients, even when their clients are not actively seeking any legal advice or assistance.

Some ways to go about doing this are by sending routine legal email updates in the form of memorandums, newsletters, and blogs on various changes to regulations, laws, and legislation that are COVID related and non-COVID related, but always relevant to your clients' industries. Any changes that would affect your clients directly or indirectly should be sent to them in a timely and continuous basis.

More creative ways of reaching out to your clients that will add value is to coordinate and invite clients to virtual social events. Corporate

counsel can coordinate webinars, virtual training and virtual industry networking conferences on topics that are important and seen as a valuable resource to your clients. Also, setting up and inviting your clients to virtual events that are "just for fun", such as virtual wine tastings, virtual book clubs, virtual end of week networking events adds value too by giving clients some sense of normalcy, connection and community during a time when they are lacking these vital aspects of their professional lives.

Continued after Chair's Message





David Newsome, Jr.
Chair
VSB Corporate Counsel Section
2020-2021

MESSAGE FROM THE CHAIR

It is my honor and privilege to serve as your Chair of the Board of Governors of the Corporate Counsel Section of the Virginia State Bar. In my five years on the Board, I have served as Secretary and as Vice-Chair. As a board member and as an officer, I have made it my primary responsibility to effectively discharge the duties of my positions, and to diligently serve the 1500 members of the section. To this end, I have striven to add value to the Board, the Section, and the VSB. As in-house attorneys, we are keenly cognizant of the pressure to add value - value to our employer, our divisions, and our teams. We strive to prove, day-in and day-out, that we are assets to our employers, worthy of our position and pay. This Corporate Counsel Newsletter, last published in 2016, is a goal that I set for my term as Chair. This is my attempt to add value. Herein are articles on adding value. Nicole Upshur, a section member, writes about how to add value to your clients in the COVID era with her article, *Three Ways Corporate Counsel Can Add Value to Their Clients During the COVID-19 Crisis and Beyond*. Lily Engle, a

board member, interviews Lisa White, also a board member and a general counsel, on *The Role of the Corporate Counsel in Today's (Very Strange) World*. You will also see that there are a number of upcoming section events that, we trust, will be valuable to you. So, enjoy this edition of the Newsletter, and please consider contributing to future editions. Indeed, such would be a great opportunity for you to add value to the section.

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COVID social gathering restrictions has changed the way the business professional is accustomed to networking and connecting with their customers and other professionals. Corporate counsel that can help their clients adapt to these social changes caused by COVID and facilitate solutions to keep their clients' businesses prospering during these uncertain social and economic times will become invaluable assets to their clients during COVID and beyond.

(2) Corporate counsel should be addressing specific COVID-19 business concerns such as cybersecurity and physical security issues that their clients are facing across all industries.

Due to the pandemic caused by the COVID-19 virus many businesses are having to transition to a remote workforce. Corporate counsel can provide their business clients with legal advice on transitioning to remote work structures. If your area of expertise is not in cybersecurity law now is the time to obtain training in this area for all corporate counsel.

Corporate counsel that are knowledgeable and can advise clients on remote work considerations, such as data privacy and data breach issues, and related legislation and laws will show their value as corporate counsel to their clients that are in "any" industry. Corporate counsel that do not usually practice or focus their attentions on cybersecurity and data privacy issues should start familiarizing themselves with entity advisories, guidance, resources and federal and state level legislation and laws that will affect their clients that are having to deploy remote workforces.

I suggest all corporate counsel familiarize themselves with key entities advisories and guidance on COVID related data security concerns, such as The Financial Crimes Enforcement Network's (FinCen) advisories, The PCI Security Standards Council (PCI SSC) guidance and resources, and The National Institute of Standards and Technology (NIST) recommendations and best practices for protecting business information systems. Updates sent to clients accordingly and routinely on these COVID related cybersecurity

advisories, guidance and resources summarized in plain language for clients by corporate counsel will be much needed to clients that have had to make the transition to a remote workforce due to COVID restrictions.

All corporate counsel should also familiarize themselves with federal and state legislation and laws related to cybersecurity concerns, such as The Gramm-Leach-Bliley Act (GLBA) Safeguards Rule for nonpublic personal information (NPI) protection, The New York Department of Financial Services (NYDFS) guidance on cybersecurity controls and The California Consumer Privacy Act (CCPA). The above entities' guidance, regulations and laws listed are in no way an exhaustive list, rather they are just the beginning of establishing a baseline of knowledge to advise clients facing increased data security concerns due to the COVID crisis. Corporate counsel that can assist clients in establishing policies, procedures and practical working solutions that protect the data belonging to their businesses and their customers' data will be adding value in their legal services they offer to their clients.

Physical security is also a concern to all business clients. Businesses must ensure that they maintain a safe and non-hazardous work environment for their employees, and safe facilities for their customers. Remote work transition can help some clients maintain their workforce's health and safety, but what if your business client is in an industry that cannot thrive by making a remote work transition?

Corporate counsel that have clients who own businesses in industries that are not conducive to remote work, such as restaurants, bars, clubs, and live event planning can add value to their clients by giving them legal advice on how to maintain their businesses and stay afloat economically while adhering to all COVID guidelines and keeping their employees and customers safe and healthy.

One way corporate counsel can add value to their clients that own businesses in the restaurant and retail industries is by familiarizing themselves and advising their clients on all local, state and federal orders that restrict the nature of normal services these businesses provide and/or exclude the use of employees due to COVID risks and exposures.

Clients need to be advised of policies and procedures they can implement to adhere to these various COVID orders and laws. Corporate counsel should be advising their clients on COVID-19 employment-related laws such as employee eligibility under the Family and Medical Leave Act (FMLA) and The Families First Coronavirus Response Act, H.R. 6201 (FFCRA) currently set to expire the end of December 2020. Along with these employment-related laws, corporate counsel should be advising their clients on aspects of The Occupational and Safety Administration (OSHA) prompt identification policy, and The General Duty Clause of the Occupational Safety and Health Act, 29 U.S.C. section 654(a)(1), excluding the use of COVID exposed employees, and any other relevant state laws and orders that follow these type of COVID related policies and Acts.

Corporate counsel that advise their clients on these policies will not only assist their clients in keeping their employees and customers safe, but they will ensure their clients avoid liability, suits and claims against their businesses for failing to act and/or being allegedly negligent by not maintaining a safe work and business environment.

(3) Corporate counsel can add value to their clients by presenting innovative ideas and solutions that are economically feasible during COVID and financially prosperous for their clients' businesses beyond COVID.

Some of our business clients will need to do an overhaul of their current business plans and goals to sustain their operations and hopefully even flourish during and after this pandemic. This may mean that they will need to seek other alternative avenues of income generating ways of doing business. As corporate counsel you can offer to review and revise your clients' current business plans and present creative and alternative recommendations for additional options that they can utilize to generate income to stay afloat during COVID-19 and prosper beyond COVID-19.

These income generating solutions may consist of finding and pursuing new avenues of revenue. Your clients may want to consider expanding into related businesses that their current business could easily

transition into. For instance, many restaurants that focused on dining in services have transitioned into delivery and pick up options for their clients. All businesses should be looking at what additional services can they add to their current business plans that would benefit their customers impacted by COVID-19 restrictions and corporate counsel can assist their clients in pursuing these additional income generating services in a legally compliant and advisable way.

Also, corporate counsel want to ensure their clients are aware of and considering local, state and government grants, loans, and financial assistance programs. All corporate counsel should become knowledgeable of what local, state, and federal government COVID-19 related financial assistance programs are available for their clients to pursue. The Paycheck Protection Program was created under the authority of the U.S. Small Business Administration under the CARES Act Section 1102 to assist businesses during the COVID-19 crisis. At a bare minimum, all corporate counsel should be familiar with this program and the various provisions and forgiveness aspects of the program to advise their clients on them, since so many businesses have already taken advantage of the PPP program.

These are uncertain times so, even as I write this, many new bills are being proposed to assist businesses impacted by COVID-19 so corporate counsel need to stay abreast of all new and extended bills, regulations, guidelines and extensions to current Acts and Orders that may be forthcoming due to the continuation of the spread of the virus in some areas. We all are hoping and praying that a cure for this virus is around the corner, but no one really knows when life will return to normal. That being said, the best way for corporate counsel to continue to be a value to their business and corporate clients is to consistently keep clients informed of alternatives, updates and changes until life as normal resumes, and in doing this we may find that we have helped our clients not only persevere during this crisis but helped them strengthen their businesses and even prosper and succeed through these challenging times.

Nicole E. Upshur, Esq.
Regulatory Compliance Counsel
Ncontracts



The **CORPORATE COUNSEL AWARD**

Planning to take the Virginia Bar Exam and aiming for a career as an in-house counsel?

Apply for the Virginia State Bar's Corporate Counsel Award.

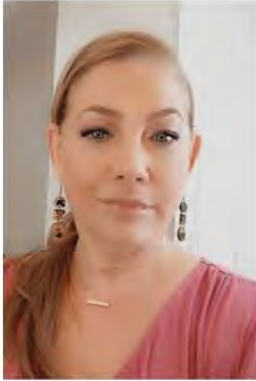
Upon successful passage of the Virginia Bar Exam, the applicant will receive \$1,200 to offset the costs of the exam application and the first year's annual dues to the Bar. One award will be given after each administration of the exam.

The selection of a winner is determined by a reviewing committee of the Section solely on the basis of a 300-word (or less) essay that answers the following question:

“Presuming you have landed your ideal in-house corporate legal job, how do you now improve the practice of law in Virginia?”

Essays should be submitted, along with the applicant's name and contact information, via email to vsbsections@vsb.org, by the application deadline set by Virginia Board of Bar Examiners for the exam for which the applicant is sitting. Please include “Corporate Counsel Award” in the subject line. A winner will be announced in the same month as the exam, with payment to be made following and contingent upon the applicant's successful passage.

Any applicant who has accepted an offer of employment that includes a comparable benefit prior to applying for this award is ineligible to receive it.



Barbara Mardigian
Deputy Clinical Director
Virginia Judges and
Lawyers Assistance
Program



Margaret H. Ogden
Wellness Coordinator
Supreme Court of
Virginia

FREE CLE

Occupational Well-Being for Corporate Counsel:

Understanding the Risks and Building Our Resilience

Wednesday, January 13

2:00 – 3:00p.m.

[Register Here](#)

COVID-19 and community unrest have added uncertainty and rapid change to an already fraught landscape of occupational risks. Lawyers are certainly addicts who are expected to constantly hold expertise in refined areas, which is increasingly difficult to accomplish. However, corporate counsel attorneys have pre-existing strengths, such as independence and resilience, that can help them to thrive in the face of a daunting future. Margaret Ogden and Barbara Mardigian will address some of these risks and share ways to combat them. 1.0 hour Live/Interactive CLE credit.

The Role of the Corporate Counsel in Today's (Very Strange) World

By Lily G. Engle, Esq.

Lisa Crockett White is General Counsel for Electro-Mechanical Corporation, a global provider of products used in the generation, transmission, distribution and control of electricity. She also acts as legal counsel for The Reserve at Leonard Farms, a residential real estate development located in Tennessee.

In her non-professional life, Lisa is Vice Chair of the Sullins Academy Board of Directors and a Trustee of the First Baptist Church in Bristol, Virginia, where she grew up. She is a past president

of the Bristol Child Study Club and the Paramount Center for the Arts Board of Directors and a former board member of the William King Arts Center. She resides in Bristol, Virginia with her husband, Chris. They have a daughter Collin, who is in her first year at the University of Virginia, and a son Christopher, who is in ninth grade. Lisa enjoys writing romance novels but most of her time outside work centers on her family and their interests, including volunteering with the Bristol Ballet and the Bristol Rage Lacrosse Club.

Lisa agreed to answer questions about herself and the role of the corporate counsel in today's (very strange) world.

Where did you go to college?

University of Virginia, BA 1988 – majored in Italian language and literature – I thought I wanted to go into International Law – but after living in DC for a short while after college, I realized I’m more of a small-town girl.

Where did you go to law school?

University of Richmond 1993

Has there been any professional mentor or person you feel had an effect on your career or development as a lawyer?

I was blessed to have two legal mentors. When I was in elementary school, a close family friend, Wayne Bell, was a young judge for the Twenty-eighth Circuit in Bristol, Virginia, and I used to go to the courthouse to watch his trials. I fell in love with the law watching him, and knew I wanted to be a lawyer as early as fifth grade. After college, but before law school, I worked at the Sullivan County Tennessee District Attorney’s Office. There, I was fortunate to work with Assistant District Attorney Becca Davenport. She was tough while still being kind and was “one of the guys” while still maintaining her femininity. At the time, the legal world was a male-dominated profession so, while Judge Bell taught me to love the law, Mrs. Davenport taught me how to be a lawyer who also happens to be female.

What was your first job out of law school?

Law clerk for the Honorable H. Clyde Pearson, former Chief Judge of the U.S. Bankruptcy Court for the Western District of Virginia

And how did you come to your current job?

EMC didn’t have any in-house lawyers, so they contacted me and asked if I was interested. I initially worked in the HR department, learning the business and industry for about a year, and thereafter moved to Compliance/Legal.

What do you like about your current job?

That’s easy: the people. Our corporate culture recognizes that everyone has a role to play in our company’s success. The comradery and team mentality prevalent at EMC make even the most stressful days tolerable.

Do you have any advice for young lawyers or law students in general or about working in house specifically (this can also be personal advice)?

First, have a team mentality. Recognize everyone has a gift to bring to the table and not one person is more important than another. Don’t concentrate on moving up the corporate hierarchy, instead concentrate on being the best lawyer/team player and the cream will eventually rise to the top. Second, be professional and have manners. Some people lose all professionalism during stressful times but that is exactly the time when we need to remember our manners and be respectful in our words and actions. How we present our message is just as important as the message itself so be respectful of your coworkers even if you are on opposite sides of an issue. Be the best lawyer you can be, but be an even better person.

What has been your biggest challenge (personal or professional) of COVID-19 situation?

Keeping my kids’ world as “normal” as possible. While I get to interact with my coworkers every day, my kids rarely see their friends with virtual school. So, we are trying to do all we can to keep them connected with friends while still staying safe.

What have you learned about yourself because of COVID-19 situation?

That I can work anywhere. So many of us think that we need the four walls of an office to get anything done – but a lot is getting done without physically going into the office.

Would you like to see any changes in your professional or personal life that were caused by COVID-19 continue after things get back to “normal”?

I think COVID has made people more conscious of their own personal responsibility for other people. It would be nice if we were not so self-centered and could continue to be accountable for the well-being of others.

How do you add value, or how can corporate counsel add value to their employer?

One thing I love about the law is that it touches every aspect of life which means, as corporate counsel, I am involved in a different issue each day – one day I may be working with human resources,

the next day with the finance department. Corporate counsel adds value by supporting all business functions and spotting issues early which helps mitigate costs – while we may not know how to immediately resolve all the issues, being aware of the issue’s risk is the first step toward its resolution.

How do you add value during this COVID era? During this COVID era, both federal and state laws have been passed and amended at an unprecedented rate. As corporate counsel, our job is to keep track of these rapidly evolving laws and interpret them for our team in a way that is easy to understand and

relatable to our business. We don’t use legalese – we determine what the COVID rules mean for our company in particular and give our team the rules under which we must make fast-paced decisions. The only good decision is an informed decision.

Lisa C. White, Esq.
General Counsel
Electro-Mechanical Corporation



Article by Lily G. Engle, Esq.



To get involved with the section, consider volunteering by serving on one of [these committees](#).

Want to contribute to the next newsletter? Send submissions to mralston@vsb.org

Programming for 2021

Soft Skills Series:

Part 1: Occupational Well-Being for Corporate Counsel (registration information on Page 5)

Part 2: Building and Maintaining Your Brand (Relationships) in a Virtual World January 20, 2021
 Webinar, non-CLE
 Registration opening soon

Part 3: More information to come

VSB 2021 Annual Meeting:

Your Corporate Counsel Section is co-sponsoring a showcase CLE: “100 Years After Passage of the 19th Amendment Granting Women’s Suffrage: How Far Have We Come and How Far We Still Have to Go?”

Corporate Counsel Section Board of Governors 2020-2021

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