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# **ACC DOCKET**

*INFORMED. INDISPENSABLE. IN-HOUSE.*

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## **The “Counsel” in “In-house Counsel”**

**Compliance and Ethics**



It seems to me I get an awful lot of coworkers in my office who want to either vent about the company, their jobs, or even ask questions about personal legal matters. They will talk, and I will gladly listen, and as they leave they inevitably say something to the effect of, "I'm sorry for bending your ear." I will just as surely smile and say back, "Hey, my title is general *counsel*. Counseling with people is what I live to do."

I have had co-workers come seek my advice in many areas, not just office business. I've been asked to help in rental disputes, credit card issues, and family law matters. I make a practice of staying *very* far away from family law matters, and my advice is almost always to try to refer the co-worker to a more qualified and specialized attorney than I. But, even when my advice is not helpful, those who come speak with me generally appear to feel better just because someone cared enough to listen to them.

The ACC is primarily for in-house counsel, but attorneys who work in law firms and spend time in court are often also called "counselor" by the judge. There has got to be something to that name, then, that entails a significant part of our jobs. However, I think it's easy to overlook that function and miss what I consider to be a core value and competency in our profession. I don't remember getting any focused classes in how to counsel people in law school, but more and more I find that the hallmarks of a good counselor, in the general sense of the word, help me in my in-house position.

For example, when I do get the aforementioned coworkers in my office, I've observed that what they really want is a willing listener. They're usually seeking advice, sure, and I offer that counsel when they're done speaking, but only *after* they're finished talking. You can often just see in people's eyes that they want to unburden themselves of some issue or statement, and when they are done the relief is almost palpable. Their relief is certainly not due to anything I've done other than to be that

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sounding board or that safe place to talk, and that is something that successful counselors in other fields have learned to practice.

I've spent a little time interacting with counselors in other professions than my own in my life, and those I have respected the most also ask a lot of good questions in addition to listening well. Those questions are best asked when they are not obtrusive, but gently placed in the way of the narrative in order to tease out necessary details. This is not something I'm very good at, by the way, but I'm working on making my questions pertinent and just leading enough to get the information I need to give sound advice. It's a skill that takes much practice — to be able to ask a question in just the right way and tone in order to solicit the most enlightening response. My wife will tell you I'm terrible at it, and she's probably more than right. But, asking the right question is far better (and less damaging to your relationship with your spouse) than plowing ahead and pontificating on an issue that you don't fully understand. That's dangerous in law, too.

We have learned, because it *is* part of our training, that there are multiple sides and facets to most situations, and if we don't see those sides, we can get sidetracked or fail to prepare for contingencies. Your co-workers will usually only present their side of the story, so in order to prepare your answers, you'll need to have an understanding of what the full circumstances were in addition to seeing if there might have been a motivation for others' involvement. Good questions can help pull those out.

I recognize we are busy in our jobs and lives, and that it can be intrusive to have a co-worker come in and discuss personal legal issues when you're on a deadline or deep in thought. Make sure that you do set some boundaries, such as a time limit before the conversation begins, especially if your co-worker is known to be verbose or has taken advantage of your charity or your time before. While I believe it is important to have an open door policy, I do understand and encourage firm limits if you have been burned before. These are of course just general principles I'm talking about here, not absolutes you have to follow. I have not encountered many people who abuse that line, and for the most part people are very respectful, but having some of these suggestions in mind may help in future situations. I always make sure to remind myself that should I not want to get involved in an employee's personal issue (which is almost always a bad idea). Instead, I recommend that the best course is to refer to an outside attorney if I know a good one, or state unequivocally but kindly that I cannot assist.

Since this is a compliance column it should be mentioned, although I hope it's already obvious, that should the employee be speaking about work and you start to hear something that sets off alarm bells, an *Upjohn* warning (a notice reminding the employee that you are the employer's attorney, and not the employee's personal attorney; derived from *Upjohn Co. v. U.S.*, 449 U.S. 383 (1981)) will assuredly be necessary. In addition, the division between being the attorney for the company and acting in a legal function for an employee in a personal matter can complicate issues in a hurry if you're not careful.

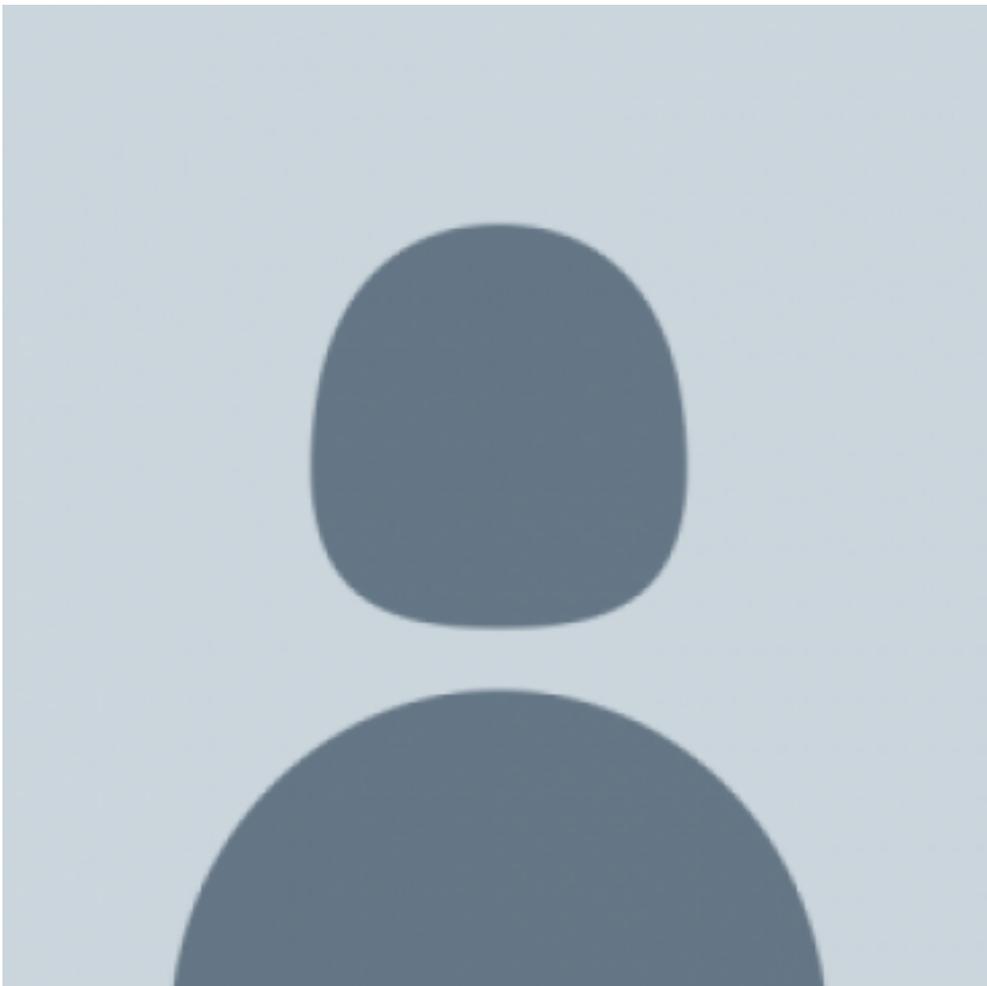
As much as I was willing to occasionally go to court or write a demand letter for a couple employees earlier in my career, I've wised up a bit and realized that there are a few issues with this: I've been concerned about how much work I did for that employee while arguably on the clock with my employer, and also realized that doing work for an employee could muddy the waters quickly if a corporate legal issue involving that employee were ever to mature. I always did such work on a pro bono basis, but my experience has led me to make that a very rare occurrence now. The listening ear, though, usually won't get you into trouble if you're careful, especially if you make that all-important referral if they do need personal legal assistance and remember your *Upjohn* warning if the

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legal issue is work-related.

I don't know exactly why it is that I enjoy this function of my job so much. I'm a severe introvert by nature, which is one of the reasons I was thrilled to get an in-house position right out of law school rather than spend time litigating in a law firm — courtrooms and judges are endlessly intimidating to me. As an introvert, I do care about and cultivate my personal relationships when I'm not seeking time alone to recharge. I genuinely care about people, and that helps me seek out the times when I can just be that needed safe resource to hear someone out. I like to feel like I'm making a real difference, and sometimes that is really hard to see in a corporate legal job. When a person leaves your office with a smile, that's instant gratification and feedback right there.

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