

Risk Management: Special Counsel Panel

Indianapolis Bar Association Special Counsel Panel

“The best law firm in the city”

*Rusty Denton
Former IBA Board Counsel
Partner, Bingham McHale LLP
10 W Market Street, Suite 2700
Indianapolis, IN 46204
Phone: 317-635-8900
Fax: 317-236-9907
Email:
rdenton@binghammchale.com*

I. The Indianapolis Bar Association

A. Overview

- Founded 125 years ago
- Serving the Indianapolis metropolitan area
- Historically about 3,300 members
- Substantial Changes
 - o Membership now exceeds 4,000
 - o New programs/services
 - o New relationships with 3rd parties

B. Governance/Management

- Board of Managers
 - o Elected Officers
 - o Executive Committee
 - o non-voting Board Counsel
- Section (substantive)
- Divisions (demographic)
- Use of Task Force model to study and recommend projects
- Full-time professional staff

C. Indianapolis Bar Foundation

- 501(c)(3) charitable entity
- Foundation arm of IBA
- Separate board and officers
- Co-staffed

II. IBA Board Counsel

A. Overview

- Established under By-Laws
- Appointed by President for 1-year term
- Non-voting board member

B. Traditional Role

- Trusted friend/advisor to President
- The parliamentarian
- Rarely called upon for legal advice

C. Evolving Role from Association's Changes

- Growth
- Programs/activities
- Competition

D. Consequences

- Little advance legal review

- Reactionary (more time-consuming and expensive)
- Greater burden on single lawyer/board counsel
- Increase in reliance on “outside” counsel
- Some program paralysis
- Additional worry

III. The Solution: Shoes for the Cobbler’s Children

A. Change in Leadership Philosophy

- Emphasis on risk management
- Desire for legal review of new programs/activities
- Need to address burden on counsel and expense

B. Creation of the Special Counsel Panel

- Panel of volunteers lawyers
- Picked from critical subject areas
- Serve under the direction of Counsel to the Board

C. Mission

- Short-term:
 - o Prepare an audit of legal rights and obligations
 - o Compile critical documents (i.e., contracts)
 - o Make recommendations for change
- Long-term mission: remain on call for review of new initiatives or problems in subject area

IV. Implementation

A. Preliminary Issues

- Leadership buy-in: need
- Organizational authority

B. Subject Areas

- Advertising
- Benefits
- Defamation (1st Amendment/media)
- Election Law/Political Action Committee
- Employment
- Insurance Coverage
- Intellectual Property
- Non-Profit (tax compliance)
- Other Transactions (gaming law, sponsorships, partnership, legal directory)
- Professional Responsibility & Judicial Ethics
- Real Estate

- Technology
- C. Recruiting
- Seek the best in the subject area
 - Always remember diversity
 - Use personal relationships to make 1st call
- D. Plan for Conflicts
- Scheduling: Have appointee arrange for back-up in firm
 - Have a back-up appointee if you expect relationship conflicts
 - Political diversity for election lawyers
- E. Organizing Meeting
- Manage expectations
 - Seek a 3-year appointment
 - Explain the mission fully (short and long term)
 - Explain role:
 - o Don't shrink because of audience
 - o You're the only "lawyer" in the room
 - Establish Firm Deadlines and Follow up
 - Bring critical documents
 - o Articles and By-Laws
 - o Insurance policies (D&O, professional liability, worker's compensation, employee benefits)
 - o Service and trademarks for registration
 - o Contracts
 - Sponsorships
 - Lease(s)
 - Computer hardware support
 - Web development
 - Web hosting
 - Event-related
 - o Pension plans
 - o Employment agreements
 - o Employee handbook and/or policies
 - o Advertising
- F. Long-term
- Advise new bar leaders of resource
 - Stay in touch with panel
 - o Welcoming letter from President
 - o Annual meeting
 - Show appreciation (letter)