Knoxville Bar Association

THE CONSIGLIERE

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FROM THE CO-CHAIRS

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By: David Headrick, KCI Technologies, Inc.
Co-Chair of the KBA Corporate Counsel Section

Thank you for your interest in this most recent edition of The Consigliere by the Corporate Counsel Section. I am writing during quarantine in what is likely the most surreal time of our lives. Once the Coronavirus threat has passed, it is clear that an indelible mark will be left on our country, economy, culture, and workflows.

The legal issues arising from this will be significant. Novel issues are already taking shape, such as liability for continuing to work. For "essential" businesses, what duties do we owe our employees? Certainly, enhanced safety protocols must be put in place. However, what kind of liability could be created by these companies' decisions about who, when, and where to work? What will be the new standard for recklessness and negligence, when it comes to placing employees in a situation of greater risk of infection? CLE seminars on how to sue and defend these cases are already being advertised.

Fortunately, for now, my own company's legal issues have only involved contractual implications. We provide various engineering and surveying services with a large book of business with Federal, state, and local governments. Thus, we are "essential" and have been able to continue a significant amount of our operations. However, in places around the country, which are completely locked down, we are greatly inhibited and in some cases completely prevented from performing our work. So, managers come to me with contracts and ask what our rights and duties are, plus for advice on how to proceed.

Generally speaking, the pandemic has affected or will affect our projects in the following ways:

1. Postponed/delayed/cancelled procurements or awards
2. Suspensions or stoppages of work
3. Terminations for convenience
4. Terminations for default
5. Order to proceed with contracted work
6. Contract changes

Federal Statutes

The majority of my issues have been with Federal work, so I will start with the statutes from the Federal Acquisition Regulations (FAR) (i.e., CFR: Title 48. Federal Acquisition Regulations System). Straight out of the gates, FAR 1.602-2 gives Federal contracting officers a wide latitude of discretion to make decisions and act in the best interest of the government. The courts will not question these decisions. That being said, let us look at some of the other clauses that come in to play.

FAR 52.242-14 "Suspension of Work" allows the government to suspend, delay, or interrupt all or any part of any contracted work. This should not be a surprise. It must be a written order and must have a reasonable purpose. Suspensions can be as long as desired, as long as they are reasonable.

One interesting argument to make is for "constructive suspension." In this situation, the work has not been formally suspended, but the government has done something to prevent the work from being able to be performed. For example, refusing to allow employees to go into an office or onto a jobsite, or requiring safety protocols that prevent current performance of work. In these situations, it is advisable that the contractor give notice within thirty (30) days of constructive suspension and document the impacts well.

FAR 52.249-14 "Excusable Delays" plainly states that contractors are entitled to excusable delays, if a stop work order is issued under FAR 52.242-15. "Epidemic" and "quarantine restrictions" are enumerated in this provision. Note that there will be ongoing duties for the contractor to protect the work performed to date, e.g., vandalism, exposure.

Contractors are entitled to additional time under this statute, but not monetary damages. However, its certain that companies will be pursuing money for additional costs via some legal avenue, perhaps one to be created by the courts or legislatures in the near future. Remobilization, higher material prices, additional safety procedures and equipment, and expenses associated with telecommuting all seem rife for argument. Making these claims will most likely require proper notice to the Federal contracting officer and careful documentation.

FAR 52.249-2 "Termination for Convenience" gives the government the right to terminate a contract that references this clause at any time. In fact, it seems that the courts agree that this provision is of such importance in public procurements, that it is

incorporated by operation of law, even if not cited in Federal contracts. So, there is not much to do, but behave appropriately in light of the situation.

Once terminated for convenience, contractors must stop work, issue no further subcontractors or orders, terminate any subcontractors, and settle all outstanding liabilities with approval of contracting officer. The settlement will be resolved using Standard Form 14-36 et seq.

FAR 52.249-8-10 "Termination for Default" governs, when the contracting officer terminates the contract for default under contract. The legal implications here are fairly clear. However, I understand that they get overturned frequently, and so a challenge to this termination might be merited. If overturned, the termination will be considered "for convenience."

Contractual Provisions

If not directly addressed by statute, we must fall back on the terms of our contracts. Obviously, we will be looking to the remedy granting clauses like excusable delay and force majeure. These can get our companies out of contract schedule requirements, liquidated damages, and other punitive measures.

A plain language reading often divulges our rights and remedies, but less so for force majeure clauses. They are often included in contracts, because they came from the exemplar that the lawyer used for the last contract, with little expectation that they would ever be invoked. Prior to the pandemic, some courts interpret them strictly and only applicable for the enumerated circumstances. Not surprisingly, pandemics are not always listed as an Act of God. It remains to be seen, if that will be the case going forward with the COVID-19 pandemic. Failing that, do we revisit the lower-probability common law doctrines of "impractability" or "frustration of purpose"?

The courts will also likely have to dig deeper into each particular case. To what extent did the pandemic affect performance under the contract? To what extent is performance excused? Is it excused entirely, just delayed, or will underperformance be acceptable?

Regardless, prompt legal review is in order. I recently reviewed a contract with punitive liquidated damages. It was covered by a force majeure provision, but notice was only effective by written snail mail letter within a short period of time from actual impact.

Conclusion

In short, desperate times call for desperate measures. An effective legal action plan should be put in place:

• Prompt situational assessment and contract review

- Decide if notice must be given
- Marshall clear and convincing evidence of the practical, legal, and financial impacts
- Keep evidence of good faith in mitigating the circumstances
- Include stronger excusable delay and force majeure provisions in future contracts

Good luck! I hope to see you from six feet away very soon.

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CORONAVIRUS CONCERNS FOR EMPLOYERS

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By: J. Chadwick Hatmaker
Woolf, McClane, Bright, Allen & Carpenter, PLLC

Coronavirus concerns are international. Universities are cancelling in-person classes. Professional and collegiate sporting events are being cancelled. Travel bans are in place. In New York state, the National Guard was deployed in an effort to create a "containment zone" in New Rochelle. But what can employers do when faced with issues created by the Coronavirus?

The EEOC weighed in on this issue and provided some helpful guidance on how employers can manage Coronavirus concerns and still comply with the ADA. I have summarized the EEOC's answers to 3 key questions below.

In an effort to protect their workforce, how much information may an employer request from an employee who calls in sick?

The EEOC stated that ADA-covered employers may ask the employees if they are experiencing flu-like symptoms, such as fever or chills and a cough or sore throat. This information must be maintained by the employer in a confidential medical record in compliance with the ADA. Furthermore, the EEOC stated that these inquiries are not disability related if Coronavirus is like the seasonal flu. And, if the Coronavirus becomes more severe, the inquiries, even if disability-related, are justified by a reasonable belief based on objective evidence that the severe form of Coronavirus poses a direct threat to the health and safety of other employees.

Does the ADA allow employers to require employees to stay home if they have Coronavirus symptoms?

Yes. Employees who become ill at work with flu-like symptoms should leave work and advising them to do so is not a disability-related action. And, sending them home would be permitted if the illness were more severe, as the individual would pose a direct threat to the health and safety of others.

While not addressed by the EEOC, sending an employee who has a severe case of Coronavirus home may be required under OSHA's "General Duty Clause", which requires employers to furnish a "place of employment … free from recognized hazards that are causing or likely to cause the death or serious physical harm to … employees." The EEOC also confirmed that the ADA allows employers to require a doctor's note certifying the employee's fitness for duty when returning to work. Again, this is not a disability-related inquiry, and if the illness is severe, the inquiry would still be justified to avoid a direct threat.

The EEOC's Guidance does not address whether an employee who is sent home must be paid, because that is not one of the laws the EEOC enforces. That answer depends on

whether any work is performed and whether the employee is non-exempt or exempt under the FLSA.

Hourly employees are only paid for hours worked, so if an employee will be working from home he or she must be paid for the actual time worked. If the hourly employee will not be working from home, he or she gets no pay while out of work. An employer can allow the employee to use accrued PTO or sick leave. Salaried, exempt employees must be paid their normal weekly salary if the employee performs any work that week.

The Coronavirus is definitely cause for concern. Employers who act responsibly and in accordance with the EEOC and other guidance, don't have to add employment law concerns to the list.

Families First Coronavirus Response Act

EMERGENCY FMLA AND PAID SICK LEAVE – WHAT EMPLOYERS NEED TO KNOW

By: J. Chadwick Hatmaker
Woolf, McClane, Bright, Allen & Carpenter, PLLC

On March 18th President Trump signed the Families First Coronavirus Response Act. This new law requires certain employers to provide emergency limited paid and unpaid leave under the FMLA and emergency paid sick leave in certain limited circumstances. Some of the highlights are discussed below.

Beginning and End Date: Both the expanded FMLA and the emergency paid sick leave provisions take effect on April 2, 2020 and expire on December 31, 2020.

What Employers Are Covered? Both provisions apply to all employers with fewer than 500 employees, including public agencies. Both allow employers of an employee who is a healthcare provider or an emergency responder to elect to exclude the employee from these two provisions. Both also allow subsequent Department of Labor regulations to exempt small businesses with fewer than 50 employees if applying these provisions would jeopardize the viability of the business.

Who Is Eligible? Under the FMLA provision both full and part-time employees who have been on the employer's payroll for 30 days are eligible. But the paid sick leave provision applies to all employees, regardless of length of service.

What reason qualifies for the FMLA expansion? This is limited to an employee who cannot work or telework due to the need to care for the employee's minor son or daughter if the minor child's school or place of childcare has been closed, or the childcare provider is unavailable due to a "public health emergency" with respect to COVID-19 declared by a federal, state or local authority. Basically, it is "caregiver leave".

Is any of this expanded FMLA leave paid? Yes. The first 10 days (two weeks) are unpaid, but an employee can substitute accrued paid leave, including the new emergency paid sick leave. The remaining leave (a maximum of 10 weeks, as the total available is still 12 weeks) is paid at 2/3 of the employee's regular rate, for the number of hours the employee would be otherwise scheduled to work. This pay is capped at $200 a day and $10,000 total.

Is expanded FMLA leave job protected? Yes, the employee must be restored to the same or equivalent position. However, there is an exception for employers with less than 25 employees, if the employee's position no longer exists due to operational changes related to the public health emergency, such as a reduction in force or restructuring because of a downturn in business.

What qualifies for emergency paid sick leave? The inability to work or telework due to any of the following:

1. The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19;
2. The employee has been advised by a health-care provider to self-quarantine because of COVID-19;
3. The employee is experiencing symptoms of (you guessed it) COVID-19 and is seeking a medical diagnosis;
4. The employee is caring for an individual (NOT limited to a family member) subject to a quarantine or isolation order, or advised to quarantine or isolation;
5. The employee is caring for a son or daughter whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 precautions; or
6. The employee is experiencing any other substantially similar conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and the Secretary of Labor (a catch-all!)

How much emergency paid sick leave is required? 80 hours maximum, but available immediately, so no accrual requirement. Paid at the regular rate of pay for reasons 1-3 above (employee is sick), with a maximum of $511 a day and $5,110 in total. For reasons 4-6 above (caregiver reasons) it is paid at 2/3 the regular rate of pay, with a maximum of $200 a day and $2,000 in total.

Can I require employees to use paid leave under an existing policy before using this new emergency paid leave? No. The emergency paid leave is supplemental.

Does the unused emergency sick leave carryover? No, the unused leave does not carry over to the next year. It also does not have to be paid upon termination under this law, but your state law might require it to be paid, so check that before you make a final decision. Under current Tennessee law, so long as you state in the policy that it will not be paid upon termination you do not have to pay it.

Do I get a tax break? Potentially under both the expanded FMLA and the emergency sick leave provisions. Talk with a tax lawyer, or your accountant.

Of course, you cannot retaliate against an employee for exercising his or her rights under these new laws. You will also have to post a Notice detailing these laws, and the Department of Labor is in the process of drafting that Notice.

There are a lot of issues and open questions with these sweeping changes. Hopefully, this guidance will help you navigate these uncharted waters.

IN-HOUSE KPIs

TEN THINGS: TEN KPIs ALL IN-HOUSE LEGAL DEPARTMENTS SHOULD TRACK[1]

By: Sterling Miller, Hilgers Graben PLLC

I have been struggling to write this post about KPIs. It's taken way longer than it should have – with several starts and stops. First, should it be KPI or KPIs? Just like the debate over RBI and RBIs in baseball, passions run hot on this point. I think "KPIs" sounds better so I'm going with that. Second – and slightly more important than the KPI/KPIs controversy – KPIs don't work particularly well for in-house legal departments. Actually, I had this eureka moment a long time ago when I was first asked as General Counsel to provide "SMART"[1] objectives for the legal department for an upcoming calendar year. I literally had no clue what they (HR) were talking about. And when I asked them for some examples, it was clear they had no clue either – at least when it came to developing SMART objectives for the legal department. For other parts of the business, SMART objectives seemed obvious and worked great. For legal, not so much. But, I (and my team) eventually figured it out and designed goals that were a little squishy – "SMART-ish" – but to which no one objected. You can see some examples of this in an older post titled "Setting Goals for the Legal Department."

Then it got harder. The next ask was that the legal department create and provide "KPIs" (key performance indicators). KPIs are metrics that you track to determine if you are on target with some goal or benchmark. Besides once again having no clue what to measure (or how to measure it), it was now infinitely harder because the request came from the CFO and CEO. Unlike dealing with my friends in HR, this meant it would be very hard to "fudge it," i.e., I had to actually come up with KPIs that mattered and worked. Damn. Like SMART objectives, we eventually figure it out and came up with KPIs that measured several different facets of the legal department. Still, it was – and remains – an unsatisfactory experience for many in-house lawyers. Primarily because while looking at numbers and charts on pretty dashboards might be fun for some, there is usually little context conveyed or captured by a KPI. Without

[1] TEN THINGS: TEN KPIs ALL IN-HOUSE LEGAL DEPARTMENTS SHOULD TRACK originally published July 23, 2019, is published with the permission of Sterling Miller, the author, available at https://sterlingmiller2014.wordpress.com/2019/07/23/ten-things-ten-kpis-all-in-house-legal-departments-should-track/

context, you miss a lot of important nuance about the value of an in-house legal department. KPIs, for example, rarely capture how departments "think" and "react" to prioritize on the fly suddenly urgent matters, what work gets pushed aside (or extra legal costs incurred) because the CEO or a particular business unit now has a new No. 1 priority. How to distinguish between one in-house lawyer who may be stuck on one complex mega-deal or case, and others are working dozens of smaller, but important, matters. Or how to reveal what risks, litigation, bad deals, costs, and other pain are avoided because the legal department was involved. In other words, KPIs basically suck at measuring intangibles and a big part of what in-house lawyers do every day – and where they add the most value – often comes in the form of these intangibles.

Okay. Breathing deep and calming down. Obviously, I've always been a little passionate about this whole KPI/SMART objectives thing. That said, I recognized pretty fast that bitching about it or refusing to do it were not options. At least if I wanted to stay in the General Counsel chair. Moreover, I needed to be honest with myself that there was some real value from KPIs, even if it was just to assure the C-Suite that I was operating the department like any other part of the business. And, if we could figure it out, I intuitively knew that KPIs could help buttress the narrative I wanted to tell about the legal department by showing numerically where the legal team was adding value to the company. Lastly, it was clear that KPIs could show me where there were potential problems that need watching or fixing. And that's all valuable information regardless of how it comes about. So, I resigned myself – as all in-house lawyers likely must – that legal department KPIs are here to stay. So, let's talk KPIs.

The biggest mistake most legal departments make, in my opinion, is trying to track too many KPIs. If you have more than ten, you're in trouble and in danger of over-analyzing things. The process should work like this:

- First, figure out what you want to measure and why it's important.

- Second, determine what information you have that can allow you to make the measurement. Ideally, you'll have data from previous years (or third-party sources) to compare/benchmark to and, if not, your best insights maybe a few years down the road once you've accumulated or obtained that type of data. See, for example, my post on data analytics for legal departments.

- Third, create a format that allows you to present the KPIs – and your progress against them – in the most straightforward manner possible but with a little flair (a dashboard is, despite my earlier comment, an excellent idea here).

- Finally, think hard about what you want to share outside of the legal department. There is no rule that you have to share everything – or anything. Certainly, if someone in a position to ask wants you to create or share a KPI, then you must do it. But, you may also want to use some

KPIs to measure things that you aren't ready to share but about which you do want data and insight. Keep those KPIs close to the vest until you're ready – if ever – to share them.

With all this in mind, this edition of "Ten Things" will set out the ten KPIs I think all legal departments should track. I will keep them high-level and may set out a sub-KPI or two to show how you can create or tweak KPIs to measure whatever you feel is most important to track. But, these ten KPIs are an excellent start:

1. **Contract quantity.** Pretty simple measure: how many contracts has the legal department completed over the measurement period? It can be just a gross number, or – better – vs. some goal set earlier in the year, e.g., 500 contracts per quarter. I like this measure because my belief has always been that one of the highest and best uses of the legal department is completing contracts as contracts are the grease on the skids of the company's business. If you want to get more granular, you can break out the number of contracts by type, such as commercial, NDA, vendor, complex, simple, by value, or whatever different types of contracts your department works on.

2. **Contract quality.** This measure is more complex than No. 1 but it also tells you a lot more. For example, at one General Counsel stop, we instituted a contract scoring process where we developed (with the business) a set of acceptable risk-criteria for contracts. Our contracts were then scored based on how well they met certain criteria. The best contracts got an "A" and the worst a "D" (and low-scoring contracts had to go on a separate approval track). We then set a KPI around having one percent or less of the contracts completed by the legal department fall into the "C" or "D" category. I wrote about this process in a past post titled "Minimizing Risks in Commercial Contracts." You can also track things like how many times are the company's forms and templates used, how many times you use "customer paper," and by the level of "redlines" required to get to a deal, e.g., low-medium-high, with the understanding that the more effort spent on customer paper or deep redlines to the company's form contracts, for example, the lower the contract quality in general.

3. **Budget vs. actual spend.** This is a pretty core KPI as it shows where the legal department is in terms of spending goals, i.e., where actual spend is vs. budgeted spend. This should be tracked on two dimensions – year-to-date (overall YTD spend vs. over YTD budget) and for the most recent month, e.g., June actual spend vs. June budget or forecast. Ideally, you are also tracking by type of matter, e.g., litigation, contracts, corporate secretary, intellectual property, etc. Also of interest are the average hourly rate for outside law firms (especially if you have a goal to lower that number) and how the department is tracking against any other savings initiatives you have in place.

4. **Legal spend by business unit.** With many legal departments, this occurs automatically because all outside legal spend is charged back to the relevant business unit/staff group. Even if not, it's an important metric because it allows you (and likely the C-Suite) to see who are the big users of legal services and can prompt you to

investigate whether there is something driving higher spend by one group vs. another. The latter is easier if you are also tracking – within each unit's spend overall spending number – the type of matter. This is something you can easily do in Excel or Smartsheets (through what's called a stacked bar chart). Lastly, though I dislike the metric as often misleading, consider tracking legal spend as a percentage of the company's revenues. I dislike this metric because what drives legal spend at a particular company is subject to a wide variety of variables likely unique to how the business operates. But, this is a common metric and one the C-Suite is likely to ask about or, at a minimum, is familiar with. You can use this metric to help you manage down legal spend or, if you can find that right comparison/benchmark, show that the department is on target for legal spend (or how far off target you may be).

5. **IP development.** The company's intellectual property is often an afterthought. It shouldn't be. It's a valuable asset that can really matter if the company is, for example, ever put up for sale, for tax purposes, or as collateral for a re-financing. At a minimum, the legal department should be tracking the raw number of patents, copyrights, and trademarks applied for and/or granted during the year. There is also value in knowing the gross spend on and the average cost to obtain each category of IP. And, if you calibrate No. 4 above to track it, you'll know which business units drive the biggest IP legal spend. For example, marketing may drive a lot of trademark spending and this may be something ripe to discuss with them in terms of how to reduce the cost.

6. **Litigation management.** After drafting contracts, the second most important function of a legal department is managing (and preventing) litigation, possibly the biggest waste of time and money most companies face. Unfortunately, it's challenging to come up with one KPI to measure litigation management. What seems to work best are several metrics under the umbrella of litigation management. These are:

- Number of litigation matters over a certain amount, e.g., $100,000 USD, $50,000 USD, $500,000 USD. This lets you focus on reporting about the litigation that matters most. A sub-category to consider here is the number of "risky" litigation matters, i.e., cases where stakes are very high. These types of matters are usually of more interest to the C-Suite and board of directors than "run-of-the-mill" litigation.

- The average cost per litigation matter (tracked as both defendant and plaintiff).

    - Outside fees/costs.
    - Settlement/judgment (paid or received).
    - Fines (if you are including regulatory investigations under "litigation").

- Percentage of cases won/lost.

- Percentage of cases resolved before trial.

7. **Compliance management**. This assumes that the company's compliance function sits within the legal department, something still fairly typical today. Like litigation management, it's difficult to layout one KPI to track for this area. In my experience (and because the board of directors was always interested in compliance issues), we tracked, among some other things:

- Percentage of company employees who had completed mandatory compliance training.
- The number of compliance matters reported by channel, e.g., hotline, email, via other departments, like HR, and so forth.
- The number of compliance matters resolved/number of compliance matters open
- The average time to close a compliance matter.

8. **Strategic project(s).** Typically, there is at least one strategic project or initiative going on inside a legal department during any given year. It may be a big technology implementation, it might be a cost savings initiative, preparing a succession plan or "three-year" strategic plan, or whatever. Regardless of what it is, if it's important enough it's worth tracking the progress via a KPI. For example, I once had a KPI for tracking the implementation of a contract management tool where we tracked completion progress vs. plan. This KPI allowed us to quickly see if the project was on-track or off-track and, if the latter, ask why and determine what needed to be done to get it back on track.

9. **Legal department engagement**. When it came to my team/staff, the only number I really cared about was their employee engagement score. This is something most companies measure at least annually (sometimes twice-per-year). Basically, it's a composite score based on the team's answers to dozens of questions. The higher the engagement score, the more satisfied people are with their jobs, the more willing they are to take on discretionary work, to tout the company, and so forth. It's also a great predictor of employee retention (or in terms of spotting problems that need attention). Finally, it's a good indicator of how you are doing as a manager. The good news is that there are many available benchmarks/targets to track against either in terms of the engagement scores of the national average, the company as a whole, the different business units and/or staff groups, or the legal department's prior year's score – making this a fairly simple KPI to implement and track.

10. **Customer satisfaction.** One of the most important things for a General Counsel to know is how satisfied is the business with the legal department. While anecdotal information is helpful, the best way to understand this is via a legal department customer satisfaction survey – which measures satisfaction across a number of specific items as well as generating an "overall" satisfaction number. The most straightforward KPI is an overall score. We had a target overall satisfaction number and a goal that 85% of the respondents would have the same – or higher – level

of satisfaction with the legal department versus the prior year. You could also ask those taking the survey to assign a letter grade to the department ("A" – "D") and shoot for a "B" or better, or whatever makes the most sense for your circumstances.

Bonus KPI

There is one other KPI to consider, though it's a bit controversial. At least it was for me. This KPI would track what people in the department are spending their time on, e.g., administrative tasks, email, meetings, research, "drive-by's," drafting, or whatever else you wanted to measure in terms of workflow. The reason it's controversial is that in-house lawyers generally hate anything to do with tracking their time. Perhaps the biggest reason lawyers come in-house is to escape the time-tracking part of law firm life. If you start asking people to track what they're doing, you're going to hear about it. I know I did. And even though I thought the information would be extremely valuable in helping determine utilization, efficiency, the nature of the work getting sent to the legal department (and the level of difficulty of the same), and other important insights, it simply wasn't worth the blow-back from my team to try to force something like this on them. Maybe other General Counsel have more guts than I did? That said, I did find ways to get some insights on this topic through the data in our matter management and budgeting tools, through my 1/1 meetings with my directs, and by occasionally asking the overall team to "guesstimate" their high-level utilization numbers. Not perfect, but it did get me part of the way there. So, I will leave it up to you to figure out if this is a KPI you want to try to track.

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While I do believe it's difficult to track the true value of the legal department via KPIs, there is value to extract from the process – even for small or single-person legal departments. And, as is probably clear, you can see there are dozens and dozens of things you could measure as a legal department KPI, either as subcategories of my ten or as separate KPIs I did not discuss. What you do measure depends on who is asking for it (if anyone) and why it's important. At the end of the day, you should have no more than ten (and less is better) KPIs that report out on metrics that are key to running the legal department, meeting specific goals, and protecting the company. This is a task tailor-made for a legal operations person or team. And, no matter what, be sure to find a [dynamic] way to present your KPIs. Sounds silly, but the right dashboard, PowerPoint design, or spreadsheet can make a huge difference in how you and the legal department are perceived – regardless of what the KPIs actually show. It could be worth bribing someone from marketing with a free lunch in exchange for some design help. For two great additional resources on legal department KPIs see "Acing the In-House Legal Department Performance Review" by Frank Cerrone and "Measuring Legal Department Metrics," by Stephen Mabey.

KBA COVID-19 Resources

Follow **http://www.knoxbar.org/COVID-19** for tools to help East TN Lawyers with business continuity, coping during the pandemic, updates from the courts and government agencies, and summaries of new laws. The KBA invites you to join in for the upcoming installments of our Take Care Tuesday series of meetings and webinars, most of which are taking place on Tuesdays. A notable exception to the Tuesday schedule will be another judicial Town Hall on Zoom, this one with Justice Sharon Lee of the Tennessee Supreme Court on Friday, May 1st, 2020 at 12 p.m.

If you have any stories, thoughts, life hacks, or insights from the past few weeks that you would like to share, please send them to the KBA for their **"Finding the Silver Lining"** social media campaign. The KBA would like members to find comfort in the strength of their colleagues, and these stories will show how COVID-19 has impacted our local legal community and how resilient lawyers have been through it all.

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Let us know your ideas and suggestions for THE CONSIGLIERE:

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- Submit an article for consideration.
- Give us your feedback on this newsletter.
- Tell us about CLE topics or networking events you would like the Section to sponsor.