

- 2.... Top 5 Legal Tech Trends to Watch in 2019
- 4.... ACC News
- 5.... 2019 ACC Luncheon Dates
- 6.... Chapter Board of Directors
- 7.... Upcoming Events
- 8.... Marijuana in the Texas Workplace
- 9.... Welcome New Members!
- 10.. Chapter Leadership

FOCUS

President's Message

Zandra Pulis, Deputy General Counsel CPS Energy



Welcome to 2019! This new year is off to a fantastic start- a new slate of smart ACC programming, a fresh venue for our luncheons, new

opportunities to become more involved in ACC committees and activities, and another 12 months to demonstrate the great value ACC brings to the San Antonio legal community, as well as the community at large.

Since the new year began, I had occasion to learn some surprising statistics about the level of pro bono services available to San Antonians.

For instance, did you know that Volunteer Legal Services of Central Texas (Volunteer Lawyers) has a paid staff of nine and an \$800,000 budget to serve a population of 1.3 million people. Compare that to the Community Justice Program (CJP) which has a paid staff of two people and a \$140,000 budget to serve nearly two million people. And San Antonio's poverty rate exceeds the statewide rate by almost 3 percent.

Thankfully, the San Antonio Bar Association has recognized that it is time for a change and it is moving forward with an exciting plan to grow the CJP. Among its priorities is to create a new board of

directors, separate and distinct from the San Antonio Bar Association Board. This is an amicable split that will allow the new CJP board to focus on broadening the services available to the economically vulnerable in our community. Moreover, they recognize that as Military City USA there is tremendous opportunity to develop and provide pro bono services to veterans.

Amber and I recently visited with CJP representatives to learn how ACC can help. While we are still brainstorming, some ideas for support and partnership are emerging. One simple thing that ACC can do is provide access to our amazing members, perhaps host an event at which CJP reps can fill us in on their plans so that each of you can think about how you fit in. Maybe it's actually volunteering to perform pro bono services or maybe it's facilitating a connection between your company's corporate responsibility folks. And look out for more news to come about this exciting initiative. Corporate participation is central to the models used in Austin, Dallas and Houston to provide pro bono legal services and I'm confident that our Chapter members will step up to aid our CJP with its vision!

In closing, I'd like to thank you for allowing me to serve as Chapter President. I encourage each one of you to take advantage of the myriad of programming and activity our chapter has to offer. Let's make 2019 fabulous – ACC style!

The Community Justice Program (CJP) is asking for our feedback to help enhance CJP and San Antonio's pro bono services.



Please take a moment to complete the following very brief survey: <https://freeonlinesurveys.com/s/0l1ZkmC5>.

All survey participants will be entered into a drawing to win a \$100 gift card, generously donated by [Kim Tindall & Associates](#).

Top 5 Legal Tech Trends to Watch in 2019

By K Royal, TrustArc.

Technology rules the world, and the legal world is no exception — from commodified personal data to artificial intelligence (AI) to security. So, what are the hottest legal tech trends we will see in 2019? To answer this question, we must review the growth of technology over the past few years.

I searched for an article written within the past 10 years, and found a 2011 piece from the [American Bar Association](#) entitled, “What’s Hot and What’s Not in the Legal Profession.” Privacy was not listed, much less cybersecurity. Yet, these have been driving forces in technology, particularly legal technology, for years now.

As technology has advanced, privacy and related fields (e.g., security, data protection, cybersecurity) have become the fastest growing areas of law. Here’s [how they have evolved](#) and what we might expect in 2019.

I. Security and fraud prevention

Protecting data, in any form, requires security measures. Additionally, there is an increased focus on cybersecurity. The number of breaches has been steadily increasing, including ransomware, malware, and corporate espionage.

Among the largest security risks in recent years was the [alleged infiltration of US companies](#) by Chinese hackers who installed microchips to server motherboards sold to many US companies. Whether the microchips actually did exist or not is not the main point; the crux was how the potentially impacted companies and the various government agencies responded. This incident also highlighted the heavy reliance US technological supply chains have on products from a handful of countries, including China.

With the [Internet of Things \(IoT\)](#) so prevalent, the supply-chain concern may have a huge impact on the security of devices, including infected personal devices connecting to work environments. This is aside from [employees stealing data](#), such as the [50 terabytes found](#) in the home



of former US National Security Agency employee, Harold Martin.

This level of technological manipulation has made fraud easier to commit. Companies are taking steps to prevent and identify fraud, especially with artificial intelligence (AI) capabilities, yet fraud will continue to grow.

Many companies worry that the General Data Protection Regulation (GDPR) will impact their fraud prevention efforts due to its granting the individuals’ control over their personal data, such as access, rectification, and erasure. Preventing fraud is likely a valid reason to deny such rights, but companies must consider its programs, the information obtained and retained, and prepare defenses for its activities.

Many regulations now require protection for personal data, but often do not specify the security controls. The ones that do, such as the US Health Insurance Portability and Accountability Act of 1996 (along with its subsequent amendments, HIPAA), may be outdated (but there is a [current Request for Information](#) issued by the US Department of Health and Human Services addressing areas for HIPAA to be updated).

Instead, the standard generally requires reasonable security relative to the size of the company, its resources, the level and amount of sensitivity of the personal data, and the industry norms. This is a target in motion that will ebb and flow with the issuance of regulatory guidance, court decisions, publicized breaches, and technology growth.

Technological advances breed opportunities, for both good and bad actors.

2. Data governance

Often, people confuse data governance with data protection. Data governance is a much larger field, although a good data protection program includes good data governance and vice versa. Data governance is a programmatic concept that focuses on personal data from its inception to destruction — cradle to grave. Therefore, it comprises availability, usability, integrity, consistency, accountability (auditability), and security.

In many cases, companies developed data governance programs in specific data environments or for specific regulations, such as HIPAA, the US Sarbanes-Oxley Act, or various physician payment reporting requirements. Data governance is particularly challenging in an environment that has historically relied on paper documents, but a solid data governance program will help reduce document proliferation, both physically and electronically.

However, given the importance and vulnerability of corporate confidential data (the “crown jewels”) along with far-reaching personal data laws, like the GDPR and the California Consumer Privacy Act, companies should adopt a full-scale data governance program. We are seeing this happen specifically with the GDPR, where companies are creating data inventories and records of data processing activity.

continued on page 3

continued from page 2

Data inventory, though tedious, is a fundamental element of data governance. How can companies protect what they don't know they have? Once there is a data inventory, companies should launch programs, such as data protection impact assessments, privacy impact assessments, vendor classifications and oversight, and retention and destruction policies and schedules.

Companies should invest in technology for these purposes, such as dynamic, user-friendly data inventory systems like the [TrustArc](#) Data Flow Manager, which links to DPIAs and vendor assessment tools. Other technology options include [Truyo](#), which offers robust solutions for automating data subject access requests and [Exego](#), which provides intelligent, automated analysis of unstructured data. A manual program in spreadsheets and paper only works for small companies with minimal data and vendors.

Certainly, a data governance program should come with someone to lead it. Whether the company needs a privacy officer, security officer, data governance officer, or information security officer, a [data protection officer \(DPO\)](#) is a determination the company needs to make.

Likely, it is a combination of roles that is required. The individuals chosen as DPOs must keep both privacy and security in mind. Multiple individuals may have the expertise, in whole or in part, to become or to assist the DPOs. Remember that the DPO is a role required under GDPR if a company meets certain thresholds.

If a company appoints a DPO voluntarily, even without meeting the thresholds, then the DPO and the company are held to the same standards as if a DPO were required. So be careful what title is used. But more importantly, be clear on the scope and responsibilities of the position.

Regardless of the role, the position must carry both authority and accountability within the data governance program. Accountability without authority to make decisions, maintain a budget, and execute the duties of the position makes it a position in name only — an empty suit — and is useless in building an effective data governance program.

3. Automation

Technology is both the goal and the tool to achieve it. Automation currently plays a key role in machine learning (or AI), marketing statistics, fraud detection and prevention, targeted behavioral ads, and much more. We will see this trend continue to grow.

We have seen automation in place to handle risk assessments for personal data, risk-based business acceptance, consumer and client self-service portals, contract lifecycles, and work process templates. By using automation, companies can easily scale up their efficiencies, serve more clients (internally and externally), and create outputs and metrics to determine the best use of resources.

AI can help manage large volumes of information quickly and be programmed to deliver necessary information, such as contracts. For example, with some software, such as the Exego platform mentioned above, you can check breach notification timeframes or limitations of liability clauses across 3,000 contracts within seconds.

Templates are one of the easiest ways to enter the automation workstream for in-house counsel. Most of us have standard agreements already, but what about automating flexible agreements that can easily suggest or adjust approved clauses, complete terminology changes, and attach the right geographical or product requirements to all necessary documents?

The software would also help the legal team to identify what clauses are consistently problematic across the client base. Once in place, those pesky conditional requirements could be automatically triggered to ensure vendor A got its audit report submitted or vendor B moved to a lower cost for a higher-quantity purchase.

Another area for automation focuses on individual rights to data. Automation can be used to handle intake requests, show the requestor what is available, and process requests according to a set of parameters. One could carry this further and have product teams input certain information, such as personal data elements (e.g., name, location, tax identification numbers) and geographies, and then generate a privacy notice.

An interesting aspect of automation is legal project management. This software is starting to be used more commonly in law firms, but there is no reason that it would not also help streamline the workday of in-house counsel. This particularly helps if counsel have project-type work with multiple actions by counsel to complete, such as implementing policies across multiple jurisdictions, mergers and acquisitions, and product development lifecycles. Given the increasing amount of work we are seeing in-house, tools to assist in organizing our workstreams could be useful.

The last example in this segment is online or phone helper bots. Your company may consider using these tools, and in-house counsel need to understand the technology (see the “Tech and data fluency” section below) for the benefit of the external clients, to prepare notices, and to comprehend any potential liability. But perhaps these technologies could also benefit in-house counsel in their duties.

4. Mobility

Mobile workforces and devices are certainly not new, but we are seeing the concept of mobility increase and impact even more areas of our professional and personal lives. Cloud services are ubiquitous, and the growing expectation is that one truly can work anywhere at any time with access to shared drives and real-time collaboration online available on any computing device.

Phones can now store up to a terabyte of data. In context, a terabyte is [roughly the equivalent](#) to 40 Blu-ray movies. This poses an increased security risk that in-house counsel can't ignore.

We see the complexity of the risk encompassing a company's mobile device management, data loss prevention, remote access, outsourced cloud services, audit trails, disaster recovery, back-up, data retention, and data and device destruction.

But let's take the hypothetical further by adding driverless cars, smart homes, and trackers (like mobile employee badges for easy access to satellite offices, hotel entry keys, and keyless cars). Will mobile devices

continued on page 4

continued from page 3

sync with one's environment to facilitate a merger of work and life? Imagine leaving work with some tasks to do, perhaps a contract negotiation.

Enter your driverless car, where you take a call and the contract displays on an inside wall, muting traffic noises, and reflecting changes captured orally, noting who suggested what and who agreed. Dinner choices pop up on a side screen, so you can choose your meal to be delivered 30 minutes after arriving home, given current traffic conditions.

Once home, the dog's kennel unlocks, your call switches to the house phone, automatically muting on your side to give you time to get settled. The contract shifts to the screen of each room you walk into for seamless viewing. Your evening beverage dispenses, while the home temperature changes to "at home" settings. Meanwhile, your significant other is alerted that you have arrived home, dinner has been ordered, and you are scheduled to be on a call for another 20 minutes.

We enter a mobility ecosystem with a new infrastructure, perhaps built on existing technology and incrementally moving us from one state to another. Alternatively, the new infrastructure may change drastically, thanks to technologies that disrupt our

industries, as the mobile phone has done. We may not see the full-scale mobile ecosystem arrive in 2019, but the scenario above is imagined with, and based on, current, known technology.

5. Tech and data fluency

It's imperative to be fluent with technology and data and our devices must be fluent with each other — except where it should be prohibited. Common prohibitions would be set by the corporate data classification, where the most sensitive data— draft product development, strategic plans, and sensitive personal data — would be restricted to identified devices and not shared. Not being in tune with tech will jeopardize any efforts to protect proprietary code.

No longer can we afford to humor the attorneys who refuse to accommodate technology. Adoption lags if culture doesn't drive innovation. As in-house counsel, we do not drive innovation. Instead, we are typically pushed, pulled, or dragged along while the company innovates and we try to get the proper agreements and notices in place before calamity strikes.

The workplace is now multigenerational, but the differences between generations are the differences between being digital natives and digital immigrants. Our always-on culture spills over into a

profession that was always measured by time and methodical practices. Some of us, at any age, adapt well. Others need intensive training. Adapting will soon no longer be enough; we must be fluent.

In a [Legaltech News article](#), Mark Cohen, CEO of LegalMosaic was quoted:

"Law is now about collaboration of human resources as well as humans and machines. Many still regard tech as a necessary evil rather than a means to the end of providing customer-centric delivery."

Whether serving internal clients or external ones, counsel must be fluent in technology and data practices. Understanding these is as critical as understanding the client's business, product, or service.

Take advantage of available resources (e.g., online communities or peer-sourcing challenges), and use technology to keep your client informed. We have passed the age of periodic updates — we are "always on." We should accommodate in real time.

Author: K Royal is a technology columnist for ACCDocket.com, and director at TrustArc. [@heartofprivacy](#)

ACC News

ACC Xchange: The Mid-Year Meeting for Advancing Legal Executives

This reimagined conference (April 28-30, Minneapolis, MN) combines ACC's Mid-Year Meeting and Legal Operations Conference into one powerful event, delivering the trailblazing programs, content, training, and networking you need all in one place, at one time. Register today for cutting-edge mix of advanced-level education at www.acc.com/xchange.

Are you prepared to comply with new state privacy laws?

Rapidly growing data privacy regulations from California to New York make you

accountable for all third-party service providers that access, process, or store your company's personal data. [Download the case study](#) on Plaza Home Mortgage and the ACC Vendor Risk Service. Visit www.acc.com/VRS for more information.

2019 ACC Europe Conference: Early Rates End 22 March

Join your in-house colleagues from across Europe in Edinburgh 12-14 May for the [ACC Europe Annual Conference](#). This year's theme is *Being a Change Agent in Disruptive Times* and will have three dynamic programme tracks that will give you the opportunity to broaden the skills necessary to succeed in today's legal

environment. Early bird rates end 22 March. Register today at www.acceurope2019.com

2019 ACC Annual Meeting: Registration Now Open

Exceptional in-house lawyers make attending the ACC Annual Meeting a priority. Mark your calendars for October 27-30 in Phoenix, AZ for the 2019 world's largest event on in-house counsel. [Learn more](#).

Global General Counsel Summit: London Calling

Are you driving the discussion on corporate sustainability? Positive financial performance, regulatory pressure, material risk, and shareholder expectations are some

continued on page 5

continued from page 4

of the reasons why you should be. Join the critical conversation on “Driving Corporate Sustainability—the Expanding Role of the GC” with your fellow CLOs from around the world, May 22-24, in London, UK. [RSVP today.](#)

New to In-house? Are you prepared?

The ACC Corporate Counsel University® (June 26-28, Minneapolis, MN), combines practical fundamentals with career building opportunities, which will help you excel in your in-house role. Come to this unrivaled event to gain valuable insights

from experienced in-house counsel, earn CLE/CPD credits (including ethics credits) and build relationships and expand your network of peers. Register at ccu.acc.com.

Drive Success with Business Education for In-house Counsel

To become a trusted advisor for business executives, it's imperative for in-house counsel to understand the business operations of your company. Attend business education courses offered by ACC and the Boston University Questrom School of Business to learn critical business disciplines and earn valuable CLE credits:

- Mini MBA for In-house Counsel, April 8-10, May 7-9 (Los Angeles location), June 3-5, September 9-11, and November 4-6
- Finance and Accounting for In-house Counsel, September 23-25
- Project Management for in-house Law Department, November 13-14

Learn more and register at www.acc.com/businessedu.

2019 ACC Board of Directors



President
Zandra Pulis
CPS Energy
Deputy General Counsel
Phone: (210) 353-2351
zlpulis@cpsenergy.com



Assistant Treasurer
Kelly Curl
Kcurl@live.com



Vice President
Monica Lerma
iHeartMedia
Senior Corporate Counsel, Employer
Phone: (210) 832-3503
Monica.lerma@iHeartMedia.com



President Elect
Rodé Moore
Zachry Group
Business Group Counsel
Phone: (210) 588-6003
moorera@zachrygroup.com



Vice President
Mike Dillinger
NuStar Energy
Senior Counsel
Phone: (210) 918-2091
Mike.Dillinger@NuStarenergy.com



Vice President
Christina Markell-Balleza
South Texas Money Management
General Counsel
(210) 245-2685
cballeza@stmmltd.com



Secretary
Javier Aranda
USAA
Attorney
(210) 887-4343
javier.aranda@usaa.com



Vice President
Kay Mary Harrell
aspending@swbell.net



Vice President
Courtney McKendrick Green
Jordan Foster Construction
General Counsel
Phone: (210) 375-1260
cmckendrick@jordanfosterconstruction.com



Treasurer
Scott Shreder
USAA
Executive Director, Attorney
Phone: (210) 498-5690
scott.shreder@usaa.com



Vice President
Jessica Lerma
VP Legal Affairs & General Counsel
Grunt Style
jessicalerma@hotmail.com



Immediate Past President
Brenna Nava
RackSpace Hosting
Corporate Counsel
Phone: (210) 312-9316
brenna.nava@rackspace.com

Don't Miss!

We are excited to announce that in 2019 our monthly luncheons will take place at **The Quarry Golf Course!**



444 East Basse Road, San Antonio, 78209

The cost to attend the luncheons is \$15.00 for members and \$25.00 for non-member guests. (In-house counsel and sponsoring firm only, please.) Check out our Chapter web page at www.acc.com/chapters/sanant/ for our current calendar of events and registration information.

No other professional organization in San Antonio offers better CLE programs at a more affordable price that is specifically geared to meeting the needs and issues of in-house counsel.

2019 ACC Luncheon Dates

March 6

March Luncheon
Reps & Warranties Insurance,
sponsored by Dykema

April 12

April Luncheon
(Luncheon in connection with our
annual golf tournament)- Fraud
Investigations, sponsored by BKD
CPAs & Advisors

May 8

May Luncheon

June 12

June Luncheon
Sustainable Compliance with
Privacy & Data Security Regulations,
sponsored by Jordan Lawrence

July 10

July Luncheon

August 14

August Luncheon
Supreme Court Update, Sponsored
by Kilpatrick Townsend

September 11

September Luncheon

October 9

October Luncheon
Labor & Employment Topic,
sponsored by Ogletree Deakins

December 11

December Luncheon

*For more information, or to register for
any of these events, contact Amber Clark
at southcentraltx@accglobal.com*

January Luncheon

What keeps
general
counsel up
at night



More Upcoming Events:

The Dos and Don'ts of Preparing Executives to Testify

What got your clients to the C-Suite can hurt them on the stand. Learn how to help clients overcome overconfidence, anger, and old school bad advice. We'll discuss teaching executives to answer just the question and to know when to just be quiet.



Association of Corporate Counsel's Oil and Gas Section

Wednesday February 20th
11:30am-12:00pm - Registration
12:00-1:30pm - Program/O&A


Topgolf San Antonio
5539 N. Loop 1604 West
San Antonio, TX 78249

RSVP: lbernardy@azalaw.com


Presented by

Todd Mensing Kelsi Stayart White



Association of Corporate Counsel
SOUTH-CENTRAL TEXAS



AHMAD ZAVITSANOS
ANAIRAKOS
ALAVI
MENSING

AZA

Tough Name. Tougher Opponent.
azalaw.com

Texas CLE accreditation for this program is currently pending.

Please Join Us... **Saturday, May 4th, 2019**

South/Central TX ACC's 11th Annual Family Night with the Missions/ Sponsor Appreciation Event

6:00pm (Gates Open), 7:05pm (Game Start) Wolff Stadium FIESTA DECK
5757 Hwy 90 West, San Antonio, Texas 78229

Bring the Whole Family!
Food and Beverages Provided.

RSVP to southcentraltx@accglobal.com



Association of Corporate Counsel
SOUTH-CENTRAL TEXAS

Save the Date!
Friday, April 12th

ACC's 7th Annual Charity Golf Tournament & Social

Quarry Golf Club
11:00 Registration & CLE Lunch
1:30pm Tee Time
5:30pm Happy Hour
Foursome- \$600
Hole Sponsor- \$1,000

April 12, 2019



Association of Corporate Counsel
SOUTH-CENTRAL TEXAS

southcentraltx@accglobal.com

WOMEN'S INTERESTS & NETWORKING



MOTIVATION & MOXIE

THURSDAY FEB 28 · 2019

High Street Wine Co. at The Pearl
302 Pearl Parkway, Suite 104

BEHIND EVERY SUCCESS, THERE IS A STORY.
Please join us for an evening to celebrate several of San Antonio's most successful female entrepreneurs! These amazing women will share their wisdom, mistakes and the highs & lows of success.

Cocktails: 5:30pm - 6pm
Celebration & Speakers: 6pm - 7pm

RSVP: Kelli.Cubeta@CubetaLaw.com




ILLEGALLY BLONDE

OCTOBER 23 AT 3
OCTOBER 24 AT 7

CHARLINE MCCOMBS EMPIRE THEATRE
TICKETS ON SALE IN JUNE AT
ETHICSFOLLIES.COM

"OH MY GOD YOU GUYS! SAVE THE DATE!"



ACC Running Club- "Team Accelerate" News

The ACC Running Club is in the process of planning some great runs for this year. If you would like to be included on the running club's email list and receive notices of events, please contact one of our Team ACCelerate club chairs, Javier Aranda at Javier.aranda@usaa.com or Adam Aldrete at aaldrete@cpsenergy.com.



ACColades

Have you received a promotion lately? Changed jobs? Do you know of someone who is new to in-house or who deserves a little recognition for a job well done? Please email us at southcentraltx@accglobal.com with your "ACColades" tips.

Marijuana in the Texas Workplace

Ramon D. Bissmeyer and Elizabeth A. Voss



While marijuana remains illegal under federal law, the majority of states have legalized marijuana for medical and/or recreational use in recent years. Thirty-three states and the District of Columbia have enacted comprehensive medical marijuana programs, thirteen states have enacted programs allowing the use of low-THC, high cannabidiol products for medical reasons in limited



situations and ten states and the District of Columbia have legalized recreational use of small amounts of marijuana.¹ With the rise in legislation allowing the use of marijuana to varying extents, employers nationwide are facing challenges in updating their workplace drug policies. Fortunately, for companies with employees in Texas, the current state of the law does not require significant changes in employment policies. However, employers must be informed about the state of the law to answer questions from employees and supervisors as they arise.

Is Marijuana legal in Texas?

Except under very limited circumstances, no. The Compassionate Use Act permits the limited use and distribution of marijuana in Texas.² TEX. HEALTH & SAFETY CODE ANN. § 487.001, *et seq.* The use and distribution under the Compassionate Use Act is authorized only in the following circumstances:

- A qualified physician, defined as a Texas-licensed physician who

1. “dedicates a significant portion of clinical practice to the evaluation and treatment of epilepsy;” (TEX. OCC. CODE ANN. § 169.002(b)(2));
2. is certified by specified Boards in epilepsy, neurophysiology or neurology (*Id.* at § 169.002(b)(3)); and
3. registers as a low-THC Cannabis Prescriber, (*Id.* at § 169.004), may develop a detailed patient treatment plan involving the prescription of low-THC cannabis (*Id.* at § 169.005), provided a second qualified physician agrees that the use of low-THC cannabis is appropriate (*Id.* at § 169.009(3)(C).

- A qualified physician may prescribe only “low-THC cannabis,” which contains “not more than 0.5 by weight of tetrahydrocannabinols” and “not less than 10 percent by weight of cannabidiol” (*Id.* at § 169.001(3)).
- Low-THC cannabis may only be prescribed to a qualified patient, one who
 1. is a permanent resident of Texas; and
 2. has been diagnosed by a qualified physician as having “intractable epilepsy,” “a seizure disorder in which the patient’s seizures have been treated by two or more appropriately chosen and maximally titrated antiepileptic drugs that have failed to control the seizures.” *Id.* at §§ 169.003, 169.001.

Use under the Compassionate Use Act is extremely narrow; as of December 2018, only 574 patients have been issued prescriptions under the Act.³ Accordingly, the number of employees in Texas who are using low-THC cannabis legally under the Compassionate Use Act is very small. More importantly, the Compassionate Use Act does not contain any employment protection for qualified patients that would restrict an employer’s ability to discipline or terminate an employee who tests positive for marijuana.

Can an employer discipline an employee in Texas who tests positive for marijuana and claims the result was caused by off-duty conduct in a state where that conduct is legal?

The increase in the number of states permitting recreational use of marijuana poses a challenge for employers – what to do when an employee claims that a drug test is positive for marijuana because of the employee’s off-duty use in a state where such use is legal. For employers, it is difficult, if not impossible, to refute such employee claims, as standard drug tests do not indicate exactly when an individual has used marijuana or measure an employee’s current impairment.⁴ Texas is not one of the states that restricts the ability of employers to discipline or terminate employees for off-duty drug use, whether or not such use is legal. As a result, the exact timing or circumstances of an employee’s use of marijuana do not impact an employer’s ability to discipline or terminate that employee.

¹Nat’l Conference of State Legislatures, State Medical Marijuana Laws, Jan. 23, 2019, available at <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>; Nat’l Conference of State Legislatures, Marijuana Overview, Dec. 14, 2018, available at <http://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx>.

²The Compassionate Use Act also amended portions of the Texas Controlled Substances Act to exempt qualified patients and the directors, managers and employees of dispensing organizations from criminal prosecution for possession and distribution so long as those individuals comply with the Compassionate Use Act and the relevant portions of the Texas Occupations Code. TEX. HEALTH & SAFETY CODE ANN. § 481.111.

³Allie Morris, Fewer than 600 patients get medical cannabis under restrictive Texas law, SAN ANTONIO EXPRESS-NEWS, Dec. 1, 2018, available at https://www.expressnews.com/news/politics/texas_legislature/article/Fewer-than-600-patients-get-medical-cannabis-13435670.php.

⁴See Rae Ellen Bichell, Scientists Still Seek a Reliable DUI Test for Marijuana, NPR, July 30, 2017, available at <https://www.npr.org/sections/health-shots/2017/07/30/523004450/scientists-still-seek-a-reliable-dui-test-for-marijuana>.

continued on page 9

While it is not binding precedent, employers should be aware of a recent decision by an Administrative Law Judge (“ALJ”) that could provide a view of what is to come, in light of changing opinions regarding permitted use of marijuana. In *Texas Education Agency, Educator Leadership and Quality Division v. Maryam Roland*, the ALJ considered the proposed two-year suspension of Roland’s teacher certificate after Roland tested positive for marijuana.⁵ Roland admitted that she had used marijuana during her winter break vacation in Colorado (where it was legal) but denied using marijuana once she returned to Texas, and her drug test results (reflecting a negative result for a short-term test and a positive result for a long-term test) were consistent with her claims. *Id.* at *19. The ALJ found that Roland was not “unworthy to instruct because she legally consumed marijuana in Colorado,” reasoning that a teacher would not be “unworthy to instruct in Texas because she legally gambled in Nevada.” *Id.* at *21. This decision and the ALJ’s reasoning may be cited by employees contesting discipline or termination, though there is no indication that such arguments would find traction in Texas courts in the near future.

Are employers required to accommodate Texas employees using low-THC cannabis to treat a disability?

No. As stated above, the Compassionate Use Act does not require employers to accommodate qualified patients. Further, while the Americans with Disabilities Act (“ADA”) prohibits discrimination against people with disabilities and

requires employers to provide reasonable accommodations for such individuals, any individual who currently uses illegal drugs is excluded from the definition of qualified individual with a disability and is not entitled to protections under the ADA. 42 U.S.C. § 12114(a). Although the use of low-THC cannabis under the Compassionate Use Act is permitted by Texas law, marijuana remains illegal under the federal Controlled Substances Act. 21 U.S.C. §§ 801-904. As a result, employers are not required to accommodate marijuana use. See *James v. City of Costa Mesa*, 700 F.3d 394, 397 (9th Cir. 2012). Texas law largely mirrors the ADA in this respect. TEX. LAB. CODE ANN. § 21.120. Further, as of the date of this article, a nationwide survey of case law has not identified any holding that an employee’s use of medical marijuana is protected by the ADA or that permitting employees to use marijuana on the worksite or during work hours is required as a reasonable accommodation. Accordingly, while employers must accommodate their employees’ underlying medical conditions, there is no requirement that the marijuana use of Texas employees must be accommodated at this time.

Pending Legislation and Proposed Expansion of the Compassionate Use Act

The Texas Legislature is currently in session, and a number of bills proposing to expand the permitted use of marijuana have been filed. Of these, the bill identified as most likely to pass proposes to expand the Compassionate Use Act to allow for the use of marijuana to treat

additional medical conditions, including cancer, autism, Crohn’s disease and post-traumatic stress disorder. Tex. S.B. 90, 86th Leg., R.S. (2019). The bill would also remove the cap on the amount of THC in medical cannabis products sold under the Compassionate Use Act. *Id.* While this bill has been filed, as of January 24, 2019, no further action has been taken, and Governor Abbott indicated during a gubernatorial debate in October 2018 that he is not convinced that expansions of the Compassionate Use Act are appropriate based on abuses that he has seen in states where use is permitted.

While companies with employees in Texas are under no obligation to revise their policies at this time to accommodate use of low-THC cannabis or marijuana, this area of the law is rapidly changing and must be monitored. For those employers with employees in safety-sensitive positions, where there is a risk of injury to employees or others as a result of an impaired employees, employers should consider training for employees regarding the current policy and the fact that marijuana use, although, perhaps, legal at the time of use, is no defense to a positive test, discipline related to a positive test and/or the employer’s commitment to providing a safe work environment. In addition, because this area of the law currently varies widely from state to state, employers with employees in multiple jurisdictions should review their policies and practices frequently to ensure compliance with local laws.

⁵SOAH Docket No. 701-16-4719.EC, 2017 TX SOAH LEXIS 8, Jan. 10, 2017.

Welcome New Members!

Santiago Alaniz
Packers Sanitation
Services, Inc.

Kim Basil
Rackspace Hosting, Inc.

Brett Braden
Howard Energy Partners

Kristen Claburn
NuStar Energy, L.P.

Donald Craig
Zachry Group

Lisa Delsante
OCI Enterprises Inc.

Raymond Elliott
Liberty Oilfield Services

Weston May
TaskUs, Inc.

Betsy Moore
NuStar Energy L.P.

Venu Nair
UTSA

Chapter Leadership

President

Zandra Pulis

CPS Energy
210.353.4370
zlpulis@cpsenergy.com

President Elect

Rodé Moore

Zachry Group
210.588.6003
moorea@zachrygroup.com

Vice President - Programs Chair

Kelly Curll

kcurll@live.com

Secretary

Javier Aranda

USAA
210.887.4343

Immediate Past President

Brenna Nava

Rackspace Hosting, Inc.
210.312.9316
brenna.nava@rackspace.com

Chapter Administrator

Amber Clark

(830) 336-2049
southcentraltx@accglobal.com



ACC Association of
Corporate Counsel
— SOUTH/CENTRAL TEXAS —

1025 Connecticut Avenue, NW, Suite 200
Washington, DC 20036-5425

Is Your ACC Member Profile Up-To-Date?

You may edit/update your contact or personal information, etc. by logging into www.acc.com and selecting "My ACC." Then click on "My Contact or My Personal Info." Scroll to the bottom of your profile and click on "Edit My Info." It's that easy!

Job Openings?

Is your company looking to fill an in-house position? Do you know about a current in-house job opening? If so, please let us know so that we can advertise the position to our membership.

Send an email to our Chapter Executive Director at southcentraltx@accglobal.com.

Let Us Know...



- What CLE presentation topics interest you?
- How can we help you make the most out of your ACC membership?
- Would you like to serve on a committee?
- Are we meeting your needs?
- Do you know someone interested in joining?
- Do you have some Corporate Counsel related news you'd like to share?
- Do you know someone who would be interested in becoming a speaker and/or sponsor?
- Would you like to join or lead one of our shared interest groups (running, theatre, dinner, etc.)?

Email your comments to southcentraltx@accglobal.com.

ACC South/Central Texas!

Chapter Web Page: www.acc.com/chapters/sanant/

Ethics Follies Web Page: www.ethicsfollies.com

Look for us on Facebook and
https://twitter.com/#!/ACC_SCTX

