

Our Mission is to be the organization of choice for in-house lawyers in the greater Charlotte region for their educational, career development, networking, advocacy, pro bono, and community service needs.



Quarterly NEWSLETTER

3RD QUARTER, 2019

PRESIDENT'S MESSAGE

Hello, ACC Charlotte members! School is back in session, the air is getting cooler, and ACC fall events are gearing up! I hope you were able to attend some of our summer events. Highlights included our Women's Wellness event in June, which was a great day for our women to enjoy time together, hear a speaker's advice on balancing our lives, and participate in activities such as bracelet-making and mini massages. As a bonus, the featured presentation earned attendees an hour of Substance Abuse CLE credit for North Carolina. In addition, members enjoyed a sold-out Casino Night in August at a new venue, Extravaganza Depot. Our social committee procured incredible prizes that were raffled at the end of the night, including a wine refrigerator and restaurant gift cards. Members also donated nonperishable goods to Second Harvest Food Bank, and the Chapter presented donations to two worthy nonprofits: Charlotte Family Housing and Race Matters for Juvenile Justice. Don't worry if you missed these events, because we have some great additional events in store for the second half of 2019. Stay tuned to our Monday emails so that you don't miss out!



One of our goals as a Board is to offer programming and opportunities in geographically diverse areas within the city. Many members who participated in the member survey also showed an interest in networking with other ACC members in locations that are closer to home or work. As a result, we're launching networking happy hours and lunches in both north Charlotte and south Charlotte. There will be no formal program, but members will have an opportunity to spend time with other members who live or work close to them. If interest in these events remains high, expect to see more of them in 2020. The more time you invest in attending ACC events and networking with your fellow members, the more you will gain from your membership in ACC. So please watch for these opportunities, and participate in ones that are convenient for you!

In addition, please mark your calendars for the first Wednesday of each month for our Byron's lunches. These are our best-attended events, as they are centrally located and offer a great time for members to network, catch up with friends, meet our sponsors and get quality CLE programming. December's Byron's lunch is our annual chapter meeting, where we'll discuss chapter business, present our 2020 slate of Board members and officers for election, and give away some great prizes!

I look forward to seeing you all at our events throughout the year. If I or my fellow Board members haven't met you, we would love to talk with you at our events, so please introduce yourselves. We all wear ribbons on our nametags so that we can be easily identified. See you at the next event!

PLATINUM SPONSOR: Nelson Mullins

Nelson Mullins Riley & Scarborough LLP provides advice and counsel in litigation, corporate, securities, finance, IP, employment, government relations, regulatory, and other client needs. With over 100 diversified practice areas and over 800 attorneys and government relations professionals, Nelson Mullins provides creative solutions to legal and business problems while offering value-added service to clients. Many Nelson Mullins clients-including growth companies, expanding local businesses, and major international companies-retain the Firm to provide all their legal services. The Firm is large enough to ensure promptness of service, yet personal enough to maintain our established reputation for individual client attention.

Platinum Sponsor Feature Article

Poachers Beware: the Department of Justice's Recent Approach to No-Poaching Agreements

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Since the fall of 2016, when the Antitrust Division of the Department of Justice (DOJ) announced that from that point forward, it intended to proceed criminally against *naked* no-poach or no-hire agreements, the private sector has continued to navigate shaky ground.[\[i\]](#)

At its most basic level, a no-poach agreement involves an agreement with another company not to compete for each other's employees, such as by not soliciting or hiring them. No-poach agreements are *naked* if they are not reasonably necessary to any separate, legitimate business collaboration between the employers. Naked no-poach agreements are *per se* unlawful because they eliminate competition in the same incurable way as agreements to fix product prices. Naked no-poach agreements present issues because employees benefit from competitive labor markets. When companies agree not to hire or recruit one another's employees, they are agreeing not to compete for those employees' labor.

In recent months, the DOJ filed three amicus briefs in five pending civil actions in federal courts in North Carolina, Pennsylvania, and Washington challenging no-poach agreements, and on March 1, 2019, Deputy Assistant Attorney General Michael Murray delivered remarks relating to the agency's position on the issue.[\[ii\]](#) The amicus briefs and Mr. Murray's remarks provide some clarity relating to the agency's position on the legal standards governing no-poach agreements as follows:

First, no-poach agreements among employers that compete with each other for employees (even if their products or services do not compete) are still *per se* unlawful if *naked* and will be pursued criminally by the DOJ if the activity began or continued after October 2016.

Second, no-poaching agreements are not always unenforceable. An ancillary no-poach agreements should not violate the antitrust laws if they are reasonable in scope and duration and are reasonably necessary to further the interests of the legitimate collaboration, i.e. the rule of reason. For instance, mergers or acquisitions, contracts with consultants, and settlements of legal disputes may constitute a legitimate business transaction.

Third, up until March 2019, the emerging issue regarding no-poach agreements was the effect that the DOJ's position on such agreements would have on franchise agreements. However, it is now clear that no-poach agreements among entities that do not compete for employees and are vertically related in their industry, such as most franchisors and franchisees, will also be analyzed under the rule of reason. Note, however, that a franchisor and its franchisees can form a horizontal relationship. For example, if a franchisor owns and operates its own stores, then any no-poach

agreement between these entities may presumptively be analyzed as a *per se* restraint. Thus, with regard to franchise agreements, the DOJ advocates for a "heavy burden" on a franchisor to show that a no-poach provision satisfies the ancillary restraint doctrine.

Fourth, state and federal antitrust laws may differ. In other words, a court applying state law could find that no-poach provisions in franchise agreements are *per se* unlawful despite their validity and enforceability under the Sherman Act.

Although the three amicus briefs and Mr. Murray's remarks have provided some clarity, there is no doubt that there is still much to be explained regarding no-poach agreements and how the federal, state, and private enforcers should approach such agreements. Even so, it is clear that entering into or continuing to engage in a *naked* no-poach presents significant risk of criminal penalties and civil treble damages under federal law. Taking steps to understand naked no-poach agreements, ancillary agreements and the rule of reason will certainly aid in avoiding such penalties. In all cases, entities considering entering into no-poach agreements must weigh the risks and must be prepared to justify the necessity of these restraints on competition.

<https://www.justice.gov/atr/division-operations/division-update-spring-2018/antitrust-division-continues-investigate-and-prosecute-no-poach-and-wage-fixing-agreements> (last updated on April 10, 2018)

<https://www.justice.gov/opa/speech/file/1142111/download>

MEET OUR NEW ASSISTANT EXECUTIVE DIRECTOR: Kathleen Smits

Kathleen Smits has joined our Chapter's leadership team as our new Assistant Executive Director. Kathleen has over 10 years of experience in marketing and communications. She will play a large role in our events, website, social media and provide overall assistance to our Director, Jane Nohr in management of the chapter. She looks forward to collaborating with both Jane and Misty Gutman to bring interesting CLE topics and creative events to our members. She kicked off her time with us the first week of June with a Byron's Chapter Meeting as well as the Women's Wellness event which was an excellent way to introduce her to many of our members and get a feel for how we run our programming.



Kathleen is a graduate of the University of South Carolina in Columbia, SC. Her marketing background includes the past five years with Pappas Properties, a local commercial real estate firm noted for the development of major projects in Charlotte such as the Metropolitan, Sharon Square, Birkdale Village and Berewick.

Kathleen is a wife and mother to two young children (plus a golden retriever). She is a Charlotte native and hopes to live here forever. She loves traveling to the beach, rooting for the Carolina Panthers and the Carolina Gamecocks and especially loves hosting events for her friends!

Please be sure to introduce yourself if you haven't had a chance to meet her! She is looking forward to meeting all of our members!

MEMBERSHIP NEWS: Welcome New Members!

**Welcome New ACC Charlotte Members!
(June 2019 - August 2019)**

Andrew Acker, Corporate Counsel of Passport Labs, Inc.

Sara Ash, Corporate Counsel of Lowe's Companies, Inc.

Patrick Barry, General Counsel of Curvature, Inc.

Jessie Basner, Associate General Counsel of Ingersoll-Rand Company

Bernard Botchway, Counsel of Bank of America Merchant Services

Andrea Burgess, Counsel of Brighthouse Financial

Ayanna Chance, Associate General Counsel of Ingersoll-Rand Company

Daniell Chunni, Counsel of Wells Fargo Law Department
Betsy Cochrane, Director of Barings
Nora Dahlman, General Counsel of Sunlight Financial
Jamal Dawkins, Counsel of Charter Communications, Inc.
Valentyna DeCristo, Assistant General Counsel of LendingTree, LLC
Annette Ebright, Senior Director and Counsel of AXA Equitable
Douglas Edwards, Executive VP and Interim General Counsel of Wells Fargo Law Department
Thomas Evans, Senior Vice President, Commercial Counsel of XPO Logistic, Inc.
Patricia Haas, Assistant General Counsel of Family Dollar Stores, Inc.
Elaine Hogan, Counsel of Family Dollar Stores, Inc.
Andrea Impicciche, Counsel of Compass Group USA, Inc.
Frasier Ives, Counsel of Bank of America Corporation
Lavanashell Johnson, Senior Associate Counsel of Allstate Insurance Company
Stephen Kabalka, Counsel, Legal Operations of XPO Logistic, Inc.
Andrew Kane, Counsel of Lowe's Companies, Inc.
Monica Karrenbauer, Assistant General Counsel of Family Dollar Stores, Inc.
Troy Kleckley, Counsel of Albemarle Corporation
David Lamothe, Managing Counsel of Wells Fargo Law Department
Jasmine Marchant, Counsel of Wells Fargo Law Department
Sarah Marshik, Legal Counsel of Albemarle Corporation
Leandra Murray, Counsel of Wells Fargo Bank, N.A.
Brandon Neal, Deputy Chief Legal Officer of Novant Health, Inc.
Jason Penninger, Associate General Counsel of Nutramax Laboratories, Inc.
Stephanie Penninger, Senior Director, Transportation Counsel of XPO Logistic, Inc.
Dulce Plaza, Legal Counsel of SERC Reliability Corporation
Monica Puri, General Counsel of Global Supply Chain of JLL
Samuel Reaves, VP, Construction and Capital Projects Counsel of Albemarle Corporation
Thomas Roberts, General Counsel of Synergistic Bio Sensors
Thomas Ryan, Counsel of Brighthouse Financial
Paxon Sinsangkeo, Associate General Counsel of Elevate Textiles
Mesha Sloss, Associate Counsel of Huber Engineered Woods LLC
Holly Stevens, Senior Counsel of Wells Fargo
Mary Topfer, Counsel of Family Dollar Stores, Inc.
Me'Chel Tyson, Counsel of Wells Fargo Legal Department
Pamela Woodside, Counsel of Family Dollar Stores, Inc.

CHARLOTTE COMMUNITY SPOTLIGHT

ADVANCED MANAGEMENT PROGRAM FOR LEGAL EXECUTIVES

Registration for the third cohort of the award-winning Advanced Management Program for Legal Executives began last week, and the program is almost full. There is still time to register for the program, which begins on Thursday, September 26, 2019.

The Program will help provide strategic, business and financial training to corporate lawyers, focusing on the topics of Finance and Accounting, Leadership, and Ethics and Strategic Marketing. The Sessions will be held at UNC Charlotte Center City, and will be taught by talented Belk College of Business Faculty.

Cost: \$800

Registration Code: *ExEdforACC03 (including the asterisk).

Register [HERE](#) - **REGISTRATION CLOSSES SEPTEMBER 13, 2019**

For more information: [AMP Website](#)

RECENT CHAPTER EVENTS

Viva Las Charlotte! Ninth Annual Casino Night Fundraiser

Nothing but extravagance at the Extravaganza Depot Banquet Hall! Our sold-out Casino Night Fundraiser on August 24, 2019 was a huge success, with over 200 members in attendance. In lieu of admission, members brought canned donations for the Second Harvest Food Bank, with an anticipated total donation of over 1,000 pounds of food.

This impressive event originated when Tim Nohr, ACC Charlotte President in 2011, attended several Casino Night events at past ACC Annual Meetings. Tim wanted to add a large-scale social event to our Charlotte chapter in the summer, as the Annual Gala had always been in January at that time. He envisioned a fun and relaxed (yet energy-charged) evening of interaction for our members, significant others, and sponsors, and recognition of select local charities in our community. So, our first Casino Night kicked off in August 2011 at the Duke Mansion and it was a fabulous event.

The tradition continues and we celebrated our 9th year and the event remains a very popular one, filling up quickly with an extensive waiting list. Our Social Committee has been instrumental in asking for donations of prizes each year and our Community Outreach Committee helps to identify charities to recognize as well as oversee the donation of non-perishable food for Second Harvest Food Bank.

Upon arrival, members were given \$50,000 in mock money to play thrilling casino games, like Blackjack, Poker, and Craps, to then be used towards raffle tickets for incredible prizes, including restaurant gift certificates, a Belk gift card, theater tickets to see Aladdin, wine tastings and classes, Hornets tickets, Axe Throwing, a Light Factory photography class, a framed 1940s photo by George Gilbert from New York Photo League, Tesla 2-day drive trial, 3 month YMCA membership, gift basket, can coolers, and even a Frigidaire wine cooler from Electrolux!

If you haven't had an opportunity to attend Casino Night, add it to your must-attend for 2020. It is a game changer!

BIG thank you to our event sponsors: [HaystackID](#), [Onit](#), and [The Partners Group | Legalpeople!](#)



L to R: Tim Stutheit, Alex Hirsch (Fox Rothschild), Alexander Jaber, Mary Gamble (m_PAC USA), Taryn Mecia (Harris Teeter) and Eric Lee (Collins Aerospace) celebrate a win at the Blackjack table!



Over 200 guests joined us to honor two wonderful charities, win great prizes and enjoy delicious food and drink!



During the event, 1,045 lbs of non-perishable food items were collected for donation to Second Harvest Food Bank.



Chris Egner (Continental Tire), Mark Egner, Steve Liccione (Continental Tire) and Carolyn Curry enjoyed the event.



L to R: Dan & Kirsten Dodd, Justin & Kiara Harlow and Porter & Jen McManus of The Partners Group show off their "funny money" which allowed them the chance to enter to win 20+ prize options!



L to R: Taryn Mecia (Harris Teeter / ACC Charlotte President), Pedro Perez (Executive Director, Charlotte Family Housing), Antoinette Walters (Bank of America Merchant Services / ACC Charlotte Social Chair) and Derrik Anderson (Executive Director, Race Matters for Juvenile Justice)

July Chapter Meeting:
Cybersecurity for Corporate Counsel CLE



On July 10, 2019, we had over 100 members attend our CLE event sponsored by Womble Bond Dickinson held at Byron's South End. DOJ cybercrime prosecutor, Allen O'Rourke, discussed the basic concepts of internet technology and cybersecurity so that our attorneys without previous training in computer science could understand and communicate effectively about legal issues related to cyber attacks. The members also took away key lessons and practical takeaways to navigate the evolving landscape of the fast growing cybersecurity law and what to expect in the future.

Thank you to our generous sponsor, [Womble Bond Dickinson \(US\)](#) for providing this valuable topic to our members.

M&A Fundamentals & Trends CLE held at Dressler's



On July 23, 2019 Winstead PC presented our members with a valuable CLE providing the tools and knowledge to walk through the key components of the M&A process and highlight at each stage the important considerations and deal points for buyers and sellers. The CLE was well received along with enjoying a fabulous lunch at Dressler's Metropolitan.

Thank you to our generous sponsor, [Winstead PC](#), for a great event.

New Member Lunch held at Dressler's



On August 2, 2019 we hosted a new member lunch at Dressler's Metropolitan. It was a wonderful opportunity for new members to connect with each other!

Thank you to [Fox Rothschild](#) for sponsoring this special welcome event.

August Chapter Meeting: Supreme Court Cases Impacting Corporate America CLE



On August 7, 2019, over 100 members attended a three (3) person panel discussion regarding the recent United States Supreme Court issuing a number of important decisions that will have a significant impact on the way company's conduct their business. The panel discussed the implications of these decisions, including South Dakota v. Wayfair, a recent case in which the Court overturned Quill and National Bellas Hess by granting states more power to collect sales taxes from retailers regardless of a company's physical presence with the state and further discussed the current trends of the Court and how they are impacting the manner in which corporate entities do business.

A big thank you to our generous sponsor, [Nelson Mullins](#), for this panel discussion.

September Chapter Meeting: Negotiating Cloud Services Agreements CLE



On September 4, 2019, Moore & Van Allen presented a CLE focused on the key elements of cloud application (SaaS) and cloud infrastructure (IaaS) agreements. In addition to discussing provisions that are common across cloud agreements (e.g., data security, indemnification, limitation of liability, service updates), the presentation addressed the typical concerns of cloud providers as well as key issues that cloud customers should focus on in negotiating their cloud service agreements. The presentation also addressed certain regulatory concerns that frequently occur with cloud arrangements (e.g., GDPR, CCPA, HIPAA, the Cloud Act, outsourcing regulations, etc.).

Thank you to [Moore & Van Allen](#) for this very interesting topic and presentation.

Did you miss an event? Past presentation materials are available on the ACC Charlotte home page to members only. Please log in as a member at this [LINK](#).

View Our Upcoming Events

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