

ACC Advocacy Activities 2016

About ACC Advocacy

As the only international bar association comprised solely of in-house attorneys, ACC provides a unique and important perspective on public policy issues. ACC's advocacy activities focus on issues that directly affect the practice of law by its members in their capacity as in-house attorneys. This may include issues affecting the professional role and status of in-house attorneys, attorney-client privilege, practice and licensing matters, and personal liability of in-house counsel. Additionally, it may include substantive legal issues where a unique in-house perspective exists, such as the interplay between internal compliance and government enforcement efforts, or discovery issues in civil litigation.

ACC Advocacy in 2016

First Quarter

- Challenging the National Labor Relations Board's decision to undermine the confidentiality of internal investigations, ACC and its Employment and Labor Law Committee filed an *amicus* brief in January before the D.C. Circuit Court of Appeals. We expect a decision by mid-summer.
- Joined by its Washington Chapter, ACC filed an *amicus* brief in January before the Washington Court of Appeals, arguing that in-house compensation negotiations with a client-employer do not implicate the Washington Rules of Professional Conduct. The court ultimately decided in favor of ACC's position.
- ACC and members of its Health Law Committee conducted a conference call in February with the Office of National Coordinator for Health Information Technology (ONC), continuing a dialogue surrounding the interoperability of electronic health records.
- ACC and ACC Europe submitted a letter in March to Swiss Council President Christa Markwalder in support of her initiative in the Swiss legislature to extend the legal professional privilege to in-house counsel in Switzerland.
- In March, working with Corporate Pro Bono, ACC and its Wisconsin Chapter, as well as 24 general counsel and 44 attorneys in Wisconsin, signed a letter

urging the Wisconsin Supreme Court to amend Supreme Court Rule Chapter 10.03 to expand opportunities for in-house counsel to provide pro bono legal services. The amendment was approved.

- In conjunction with the Chamber of Commerce of the United States, ACC filed an *amicus* brief in the Court of Appeals of the State of New York in March, arguing that the applicability of common-interest privilege between corporations, affiliated companies, and their counsel does not depend on the anticipation of litigation. In June, the Court of Appeals ruled against this position.
- ACC, along with its Compliance & Ethics Committee, Financial Services Committee, New York chapters, as well as 74 general counsel and compliance officers, filed a comment letter with the New York Department of Financial Services, objecting to a proposal to hold chief compliance officers of regulated institutions criminally liable on the basis of an annual certification requirement. In issuing its final rule, the agency did adopt modifications along the lines of ACC's suggestions.

Second Quarter

- Joined by the European Company Lawyers Association, ACC sent a letter in April to the Court of Justice of the European Union (CJEU), requesting that the Court consider amending its rules to allow in-house counsel who are able to practice before national courts to also practice before the CJEU.
- During the ACC Mid-Year Meeting in New York, the inaugural ACC Advocacy Award was presented to Randy Milch, former executive vice president and general counsel, Verizon; and the ACC Australia Legal Profession Uniform Law Sub-committee for their commitment and service to the in-house counsel community through advocacy.
- In April, ACC's Health Law Committee held the second ACC Health Regulatory Summit in Washington, DC. The Summit provided members of the committee the opportunity to speak with key government representatives on a variety of healthcare topics.
- Also in April, Members of ACC's Employment & Labor Committee met with two commissioners from the Equal Employment Opportunity Commission to discuss a variety of employment law issues.
- In May, members of ACC Europe and ACC Advocacy staff attended a policy roundtable hosted by the UK Law Society to discuss several issues relevant to in-house counsel in the United Kingdom.

Third Quarter

- ACC submitted a letter in July to the Hungarian Ministry of Justice supporting local efforts there to establish in-house counsel as a regulated profession.
- In July, at the request of the United States Patent Trademark Office (USPTO), ACC and its IP Committee selected a representative to attend the Midterm Meeting of TM5, a gathering of the five largest trademark offices in the world, held in Beijing in July. The same representative attended the Annual Meeting of TM5 in October.
- ACC submitted a letter in August to the D.C. Court of Appeals, responding to proposed amendments to D.C. App. Rule 49, urging the D.C. Court of Appeals to consider lifting restrictions on the ability of in-house counsel to provide pro bono services.
- In September, ACC and its California chapters sent a letter in response to proposed amendments to the Rules of Professional Conduct of the State Bar of California supporting the Bar's continued practice of limiting the enforceability of broad advanced conflict waivers.

Fourth Quarter

- Javier Ramirez, ACC Europe Advocacy Chair, met with representatives of the European Commission to discuss the issue of *procuradores* in the Spanish legal system. He shared the perspective of in-house counsel that *procuradores* needlessly increase legal costs associated with litigation.
- In November, ACC and its Compliance & Ethics Committee submitted a letter in response to a consultation paper requesting public input on corporate anti-bribery laws from the Organization for Economic Co-operation and Development (OECD) Working Group on Bribery.
- On November 17, ACC Advocacy held a CLO roundtable in New York City with state attorneys general (AGs). In attendance were Attorney General George Jepsen, Connecticut (President of National Association of Attorneys General); Attorney General Leslie Rutledge, Arkansas; Attorney General Mark Herring, Virginia; and Attorney General Scott Pruitt, Oklahoma.
- In November, ACC reached out to various European national bar associations regarding Directive 2014/104/EU on antitrust damages actions and the potential ambiguity of how legal professional privilege would apply to in-house counsel under the directive.

- ACC filed an amicus brief on December 2, in *Sheppard, Mullin, Richter & Hampton LLP v. J-M Manufacturing Co., Inc.*, arguing that an open-ended advance conflict waiver the law firm insisted upon was invalid, as it did not comply with state requirements for disclosure and informed consent.
- ACC urged its Swiss members to voice their support for legislation extending legal professional privilege to in-house counsel via a December email message.
- In December, ACC wrote a letter to the United States Patent and Trademark Office in support of the Patent Trial and Appeals Board's proposal to issue a rule confirming the application of the attorney-client privilege between clients and authorized patent agents, both foreign and domestic.

Other Advocacy Highlights

The list above does not fully capture the various advocacy activities of ACC chapters and committees. In supporting the effort to change Wisconsin's in-house pro bono rule (a years-long effort), many Wisconsin chapter leaders and members attending the hearing and the state supreme court and offered testimony. Leaders from the Real Estate Committee and Financial Services Committee organized several events throughout the country for in-house counsel to meet with regional federal enforcement representatives. The Iowa chapter got involved in efforts to support the state's judiciary in its budget request.

Have an Advocacy issue you think ACC should get involved in? Interested in organizing a meeting with a government regulator? Contact ACC's Advocacy staff:

Mary Blatch
Director of Advocacy and Public Policy
m.blatch@acc.com
(202) 677-4775

J.D. White
Associate Director of Advocacy and Public Policy (Judicial Matters)
white@acc.com
(202) 349-1500

Stephanie Johnson
Manager, Advocacy and Public Policy (Regulatory and Legislative Matters)
s.johnson@acc.com
(202) 293-4103 ext. 341