



**Wednesday, October 21**  
**9:00 am–10:30 am**

## **109 In-house Ethical Dilemmas Revisited: What Would You Do Now?**

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## Faculty Biographies

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### **Brian Martin**

Brian M. Martin is senior vice president, general counsel and corporate secretary of KLA-Tencor Corporation in Milpitas, CA.

Prior to joining KLA-Tencor, Mr. Martin served in senior legal positions at Sun Microsystems, Inc. Prior to his career at Sun, Mr. Martin was in private practice where he had extensive experience in antitrust and intellectual property litigation.

Mr. Martin is an adjunct professor of law at Buffalo Law School where he teaches a class he developed on the ethical issues faced by in-house counsel. Mr. Martin also authors a monthly ethics column for *InsideCounsel* magazine .

Mr. Martin earned his bachelor's from University of Rochester and his JD from the State University of New York at Buffalo Law School.

### **James Merklinger**

James A. Merklinger is the deputy general counsel and acting vice president, legal resources for the Association of Corporate Counsel (ACC) in Washington, DC. His responsibilities include providing legal counsel to the organization, managing the development of legal information and other resources from the association's library in response to members' in-house practice questions, providing materials for ACC education programs, and supporting ACC advocacy initiatives.

Prior to joining the ACC staff, Mr. Merklinger served as in-house counsel for DIAD Inc. in Reston, VA. While at DIAD, he provided counsel in a variety of substantive areas, including commercial law, software licensing, disability law, and issues affecting entrepreneurial development.

He currently serves as pro bono counsel to Capital University of Integrative Medicine, is on the board of directors of the Greater Washington Area Tourette Syndrome Association, and does pro bono work for the Whitman Walker Clinic and DC Counsel for the Elderly.

Mr. Merklinger received a BA from Wofford College and is a graduate of the University of South Carolina School of Law.

## **Nan Stout**

Nan Stout is vice president of business ethics of Staples, Inc., the world's largest office products company serving businesses and consumers in 27 countries throughout North and South America, Europe, Asia and Australia. Ms. Stout assumed this role in 2004, when she established the company's first global ethics and compliance program. She joined Staples in 1994 and was vice president, assistant general counsel with a focus on employment law until 2004.

Before joining Staples, Ms. Stout was an associate at the Palmer & Dodge law firm.

Mr. Stout received a BA from Middlebury College and a JD from the Boston College Law School.

# **ETHICAL ISSUES FOR CORPORATE COUNSEL**

Problem Discussion Material/Analysis

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To Catch A Thief

## **TO CATCH A THIEF Problem 6 on DVD**

(suggested presentation time: 45 minutes)

### **Quick Description**

Member Issue: Lawyers are not trained investigators and yet are often charged with the most difficult and sensitive investigations, including uncovering facts that are not readily evident or easily discoverable. What tactics may lawyers employ? What tactics may those whom lawyers task with investigations employ? What balance will be struck between the company's need to get complete information not readily available in a conveniently labeled file drawer quickly, and the company's reputational concerns if the methodology employed to uncover facts, even if legal, is less than savory?

Ethical themes include: When investigating a potential fraud or some kind of alleged employee thievery, what are the bounds of what you can and cannot do to investigate the issue? Are you responsible for the tactics of an outside investigator?

If others are participating in your investigation, can they investigate in any manner that is considered allowed/ legal, even if it would not be appropriate for a lawyer to do under the professional rules?

What are your duties to inform others of potential fraud and when and how do you appropriately and responsibly navigate them?

Relevant professional responsibilities and rules: Rule 1.2 Scope of Representation and Allocation of Authority between Client and Lawyer, Rule 4.1 Truthfulness in Statements to Others, Rule 5.3 Responsibilities Regarding NonLawyer Assistants, Rule 8.4 Misconduct.

## **DISCUSSION**

### **I. Bringing in an Outside Investigative Firm**

The CEO's statement that he would like the investigation to be done "by someone a step away from us," so that they "can do what it takes as soon as possible" suggests that: (1) he may be condoning illegal or unethical conduct by the outside investigator and (2) he believes that having it done by the investigator will insulate Electro from any liability or responsibility. If this is the case, you should make clear that any investigators will be serving as agents of the company, and that its acts will be imputed to Electro. Anything the company is prohibited from doing is also prohibited to investigators working on Electro's behalf.

In addition, relevant to your status as company counsel, ABA Model Rule 5.3 says that any lawyer with managerial or direct supervisory authority over a nonlawyer must make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the professional obligations of the lawyer. In this case, relevant obligations would include the duty to be truthful with third parties under Rule 4.1; the obligation under rule 4.4 not to use methods of obtaining

evidence that violate the rights of third parties; the responsibility to avoid conduct involving dishonesty, fraud, deceit or misrepresentation under Rule 8.4(c); and the duty to avoid committing a criminal act that reflects adversely on the lawyer's fitness to practice law under Rule 8.4(b).

In general, as ACC has recommended, a company should engage outside investigators only if: (1) the outside investigation provides added value that the company cannot obtain on its own or (2) specific company policies require that the investigation be conducted externally. The belief that retaining an outside investigator will limit the company's responsibility or liability for what the investigator does is mistaken, and should not form a basis for choosing to bring in someone from outside the company to do the work.

## **2. Informing the Board**

Rule 1.13 provides that counsel for an organization represents the entity acting through its duly authorized constituents. Comment 3 to the rule says that when constituents of an organization make decisions for it, the lawyer must accept those decisions "even if their utility or prudence is doubtful," and that "[d]ecisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's province."

The CEO's decision whether not to inform the Board at this point is generally within his business judgment. He may prefer to gather more information in order to determine if there is in fact a problem of which the Board should be aware. At this point, the company has received one phone call from an anonymous former employee of Devco, which suggests at least some preliminary skepticism about whether the accusation is true.

At the same time, it might be prudent at least to let the Chair of the Board know that an investigation will be underway. In addition to alerting the Chair of the possibility of the theft of intellectual property, there will be serious and wide-ranging investigative activities undertaken on behalf of the company. In addition, if any aspect of the investigation becomes controversial, the Board may be more likely to stand behind the CEO's decision if it doesn't feel that it has been blind-sided by learning about it after the fact. You might point out these considerations to the CEO and suggest that it would be prudent at least to notify the Chair of what will be going on.

## **3. Monitoring Employee Email on Work Computers**

Employers generally are able to monitor and gain access to information contained on employees' computers in the workplace. They are deemed to have a legitimate basis for doing so by virtue of their desire to ensure that employees comply with company policy concerning the use of computers and involvement in electronic communications while at work.

The Electric Communications Privacy Act of 1986 (ECPA) provides individuals with some protections from interception or use of their electronic communications, but contains exceptions that limit its application to the employees at work. One exception applies when a company provides the computers on which the employees have electronic information and

communications. Another operates when a party provides consent to the monitoring of communications. Employee use of an email system after being informed that the company monitors their email can constitute such consent.

#### **4. Posing as Information Technology Contractors** ***Company Letter Confirming Status as Information Technology Contractors***

Both the representations of the investigators and the letter by the company would constitute pretexting, the effort to obtain information under false pretenses. Such conduct generally is prohibited under Rule 4.1, which says that a lawyer shall not knowingly make a statement of material fact to a third person. A lawyer supervising the investigators and the submission of the letter would violate Rule 5.3 because of nonlawyers' violation of Rule 4.1.

Not all pretexting, however, will necessarily violate Rule 4.1. Courts have been most likely to find pretexting a violation of law and ethics rules when it has been used to trick third parties into making damaging statements or admissions. See, e.g., *Midwest Motor Sports v. Arctic Cat Sales, Inc.*, 347 F.3d 693 (8<sup>th</sup> Cir. 2003); *Allen v. International Truck and Engine*, 2006 U.S. LEXIS 63720 (S.D. Ind. 2006).

By contrast, authorities have been willing to uphold pretexting when it is used to obtain objective information in the absence of any questioning or other methods intended to elicit statements. In particular, courts have found pretexting acceptable when a company uses individuals posing as customers to determine if competitors are infringing the company's intellectual property. See, e.g., *Apple Corps Ltd. v. International Collectors Society*, 15 F.Supp.2d 456 (D.N.J. 1998); *Gidatex v. Campaniello Imports, Ltd.*, 82 F.Supp.2d 119 (S.D.N.Y. 1999). Furthermore, the New York County Lawyers' Association Committee on Professional Ethics has opined that non-government attorneys may ethically supervise non-attorney investigators engaged in pretexting if the investigation is of a violation of civil rights or intellectual property rights, "and the lawyer believes in good faith that such violation is taking place or will take place imminently" and the evidence is not reasonably available through other lawful means. Opinion 737, May 23, 2007. See also State Bar of Arizona Formal Opinion 99-11 (September 1999)(lawyer does not violate ethical rules when directing investigator to make misrepresentations solely about identity or purpose when misrepresentations are made only to gather facts before possibly filing a lawsuit).

At first blush, the facts in this case would seem to fit within the type of situation in which pretexting is permissible. The investigators will not be attempting to induce employees to make any damaging statements, and will be misrepresenting their identity and purpose only to obtain objective information that establishes a violation of Electro's property rights.

The information they will be attempting to obtain, however, includes the employees' personal email. This is electronic information that is likely to be protected under the ECPA and not included in any of its exceptions. In addition, the company could be liable for the tort of "intrusion on seclusion." Restatement of Torts (Second) §652B provides: "one who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person."



In this case, an employee who operates a personal email account separate from the company email system probably will be deemed to have a reasonable expectation of privacy with respect to access to that account. The company might still argue that it is engaged in a legitimate effort to obtain evidence of the violation of intellectual property rights, but cases in which those efforts have been upheld involve information that is publicly available.

## **5. Provision of Employee Social Security Information and Dates of Birth**

The main concern about the provision of this information is the potential that transferring the information about the company's German employees will violate European Union Directive 95/46/EC restricting the transfer of personal data. The Directive imposes limitations on the transfer of data, both inside and outside the European Union, that can be used to identify a person. Any Social Security numbers of employees working in Germany would fall into this category.

Electro will not be able to transfer this information without assurance of certain protections. Because it has employees in Europe, the company already should have taken steps to ensure that it has in place procedures that provide this assurance. This may occur through participation in the United States Department of Commerce Safe Harbor Program, the adoption of language approved by the European Commission in contracts with the recipients of personal data outside the European Union, or through the adoption of Binding Corporate Rules applicable to all transfers of data outside the European Union. Whatever the source, counsel must ensure that the company follow the prescribed procedures in connection with providing the Social Security numbers and birthdates of employees working in Germany.

## **6. Reliance on Investigator Assurances**

You should not take any assurances at face value. At a minimum, you should ask to see all legal opinions relating to the techniques that will be used in the investigation. If you have any concerns about the quality of the opinions or of the lawyers making them, you should ask the legal department, or possibly an outside law firm familiar with this subject, to conduct an independent analysis. This will need to be done quickly, of course, but failing to do it could subject the company to considerable risk.

An example of such risk is the reliance on legal opinions offered by the investigative company in the Hewlett-Packard matter. The investigator assured HP that an outside lawyer had determined the legality of the pretexting used to obtain Board of Director members' telephone records. HP relied on this assurance, but the opinion had been provided by a lawyer who shared the same address and phone number as the investigative company. Reliance on the opinion under these circumstances was questionable.

Beyond gaining some assurance about the legality of the techniques that the investigators will use, the company should make clear that it expects the investigators to comply strictly with

the law. A provision to this effect in the contract between Electro and the investigative company also would be useful.

## **7. Obtaining Information About Devco**

You need first to determine if going through Devco's trash is legal under relevant law. In some jurisdictions, trash is treated as abandoned property, while in others it may remain a company's property if it sits on a site owned by the company.

Even if it is, however, doing so could bring Electro negative publicity. In 2001, Proctor & Gamble hired an outside company to gain information on Unilever's plans for its United States hair care business over the next three years. The investigators rummaged through dumpsters on Unilver's property in search of relevant documents. When this practice came to light, P&G received harsh criticism. The company apologized and stated that, while the technique did not violate any law, P&G had violated its own business policies.

The public reaction in this case could differ, because Electro has some reason to suspect that Devco may be engaging in theft of its intellectual property. The search of the trash would be for evidence of such wrongdoing, rather than simply an attempt to gain a competitive edge. The company needs to think hard, however, about whether eventual public disclosure of this investigative technique would seriously harm Electro's reputation.

## **TO CATCH A THIEF**

### **ADDITIONAL RESOURCES**

#### **Ethics Rules**

ABA Model Rule 1.2(d): Scope of Representation and Allocation of Authority between Client and Lawyer

ABA Model Rule 4.1: Truthfulness in Statements to Others

ABA Model Rule 5.3: Responsibilities Regarding Nonlawyer Assistants

ABA Model Rule 8.4(c): Misconduct

#### **Ethics Opinions**

New York County Lawyers Association Committee on Professional Ethics, Formal Opinion No. 737: Non-Government Use of Investigator who Employs Dissemblance, May 23, 2007

State Bar of Arizona, Opinion 99-11: Misrepresentation; Investigators; Employees of Lawyers (September 1999)

#### **Restatements**

Restatement (Third) of the Law Governing Lawyers §11: A Lawyer's Duty of Supervision

Restatement (Third) of the Law Governing Lawyers §94(3): Advising and Assisting a Client – In General

#### **Cases**

*United States v. Ziegler*, 474 F.3d 1184 (9<sup>th</sup> Cir. 2007)

#### **Articles**

Sue Reisinger, *Saw No Evil*, Corporate Counsel (January 2007) available at <http://www.law.com/jsp/cc/PubArticleCC.jsp?id=1166090719337>

Jonathan Feld, Gil Soffer, & Jeffrey Jamison, *Lessons Counsel Can Learn from Hewlett-Packard's Pretexting Scandal*, [www.law.com](http://www.law.com), April 11, 2007

Kevin Fayle, *E-Discovery and the EU: European Data Privacy Regulations Every Litigator Should Know*, FindLaw (2007) available at <http://technology.findlaw.com/articles/00006/010884.html>

Ray V. Hartwell, III, *Compliance and Ethics in Investigations: Getting it Right*, The Antitrust Source (December 2006) available at <http://www.abanet.org/antitrust/at-source/06/12/Dec06-Hartwell12=19f.pdf>

Dean R. Dietrich, *Advising on Unlawful Investigations*, 79 Wisconsin Lawyer (December 2006)

Sarah D. Scalet, *Five Things Every CSO Needs to Know About the Chief Privacy Officer*, CSO Magazine (February 2005) available at [http://www.csoonline.com/article/220021/Five\\_Things\\_Every\\_CSO\\_Needs\\_to\\_Know\\_About\\_the\\_Chief\\_Privacy\\_Officer](http://www.csoonline.com/article/220021/Five_Things_Every_CSO_Needs_to_Know_About_the_Chief_Privacy_Officer)

Daintry Duffy, *Privacy's New Image*, CSO Magazine (August 2003), available at <http://www.csoonline.com/issue/20030801>

Julia M. Fromholz, *The European Union Data Privacy Directive*, 15 Berkeley Tech. L.J. 471, 472 (2000)

Dean William Harvey & Amy White, *The Impact of Computer Security Regulation on American Companies*, 8 Tex. Wesleyan L. Rev. 505 (2002)

Kamaal Zaidi, *Harmonizing U.S.-EU Online Privacy Law: Toward a U.S. Comprehensive Regime For the Protection of Personal Data*, 12 Mich.St. J. Int'l L. 169 (2003)

## **ACC Articles**

*Leading Practice Profiles Series: Leading Practices in the Use of External Investigators to Aid in Corporate Investigations* (January 2007)

James R. Beyer & E. Johan Lubbe, *Clash of the Titans*, ACC Docket (April 2006): 22-36

Tuck School of Business, Dartmouth College, *The Ethics of Competitive Intelligence* (2005)

Glenna Rodgers & Scott D. Marrs, *Trade Secrets and Corporate Espionage*, ACC Docket (April 2004): 60-78

Julie A. Bell, Timothy J. Mahota, Paula Barrett, & Charlotte Hennessey, *EU Data Protection: A Compliance Guide for U.S. Companies*, ACCA Docket (June 2002) available at <http://www.acc.com/protected/pubs/docket/jj02/eudata.php>

*iBrief: Monitoring Employee E-Mail: Efficient Workplaces vs. Employee Privacy*, 2001 Duke L. & Tech. Rev. 26 (July 25, 2001)

## **ACC InfoPAKs<sup>SM</sup>**

*Email & the Internet InfoPAK<sup>SM</sup> (2007)*

*Data Protection: A Practical Guide to Personal Data Transfer Laws in Asia/Pacific Region, Canada, Europe and the U.S. InfoPAK<sup>SM</sup> (2006) available at*  
[http://www.acc.com/infopaks/data\\_protection.php](http://www.acc.com/infopaks/data_protection.php)

## **Miscellaneous**

American Bar Association, Section of Antitrust Law and the ABA Center for Continuing Legal Education, *Investigative Techniques: Legal, Ethical, and Other Limits (2007)*

U.S. Department of Commerce, Safe Harbor Overview regarding European Commission's Directive on Data Protection, *available at* <http://www.export.gov/safeharbor/SafeHarborInfo.htm>

United States General Accounting Office, Report to the Ranking Minority Member, Subcommittee on 21<sup>st</sup> Century Competitiveness, Committee on Education and the Workforce, House of Representatives, *Employee Privacy: Computer-Use Monitoring Practices and Policies of Selected Companies (September 2002)*

European Union Directive 95/46/EC On the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data, 24 October 1995, *available at:*  
[http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31995L0046&model=guichett](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31995L0046&model=guichett)



Globalaw

## **GLOBALAW Problem 8 on DVD**

(suggested presentation time: 60 minutes – this scene has multiple parts that can be watched independently or in a grouping for 60 minutes)

### **Quick Description**

Member Issue: Many companies include facilities and operations in multiple jurisdictions, which can create concerns for lawyers and their outside firms practicing across borders: concerns on conflicts of law and professional standards, bar regulation issues, unauthorized practice, privilege protection, retaining firms across country and regulatory lines, etc.

Ethical Themes include: When a problem arises that involved interests and parties in more than one jurisdiction, who should be the lead and why? Who should not? What concerns are there in having lawyers and non-lawyers engaged in resolving the matter.

When more than one jurisdiction regulates lawyers and the resolution of the matter, who's professional rules and standards apply and what is the potential ramification of the result?

Many non-US jurisdictions do not consider in-house counsel to be lawyers or to carry "regular" lawyer privileges accorded to outside counsel. This means that their governments likewise will not recognize in-house counsel's work as legally relevant or confidential/privileged: how do you reconcile multiple jurisdictional issues and navigate these concerns?

Relevant professional responsibilities and rules: Model Rules 5.5 and 8.5, plus the relevant rules and regulations of the non-US jurisdictions involved.

### **DISCUSSION**

**If there is an investigation at this point, who should conduct it?**

- A. Landry legal department**
- B. Global legal department**
- C. An outside French law firm**
- D. An outside US law firm**

A major concern in deciding who should conduct an investigation is whether Globalco and Landry will be able to preserve the attorney-client privilege with respect to the conclusions of the investigation and the interviews that are conducted in connection with it. France is one of a handful of European countries that do not recognize the privilege for communications between company officials and in-house counsel. France treats the statuses of lawyer and in-

house counsel as distinct, and does not provide the latter with the privileges that it does the former.

This suggests that the company should not rely on the Landry legal department to conduct the investigation. What about bringing in members of the Global legal department who are members of the bar in the United States to do so? Even though these lawyers are not governed by the French professional rules, it is still likely that their in-house status would lead French authorities to deny the privilege to these Globalco lawyers as well.

Furthermore, there is an additional potential problem in relying on Globalco in-house lawyers to conduct the investigation. If those lawyers are not members of the French bar, they may be regarded as engaging in the unauthorized provision of legal services in France. This is particularly the case if the investigation will involve advising on whether there has been any violation of French law. Using a United States law firm for the investigation may create the same problem.

Engaging a French law firm to conduct the investigation would preserve the attorney-client privilege, and also permit the company to rely on the services of lawyers who are bound by a professional obligation of secrecy. This obligation is absolute, admitting of no exceptions. Using a French firm also presumably would avoid any concerns about the provision of legal services by persons who are not members of the French bar.

Notwithstanding the advantages of relying on a French law firm, the company may desire to keep the investigation within the company in order to minimize the chances that information will be disclosed to outsiders. It may also want to conduct a preliminary inquiry to determine if there is enough evidence of wrongdoing to warrant a more thorough investigation by outside counsel. If this is the case, in-house lawyers could engage in an investigation that concludes with an oral report to management.

**Which ethics rules do you think would govern the Davenport Paris office with respect to its representation of Bristol?**

- A. New York**
- B. Illinois**
- C. France**
- D. European Union**

A lawyer is governed by the ethics rules of the jurisdiction in which she is admitted to practice, regardless of where she is providing services. Thus, the lawyers in Davenport's Paris office normally will be governed by rules of the French bar. Those rules prohibit conflicts that arise only from representation of clients in the same matter. By contrast, Rule 1.7 of the ABA Model Rules of Professional Conduct prohibits a lawyer from undertaking representation adverse to a current client in any matter.



Model Rule 8.5, however, which has been adopted in most states, says that a lawyer not admitted to practice in a jurisdiction is subject to the disciplinary authority of that jurisdiction if she “provides or offers to provide any legal services” in that jurisdiction. In this case, the lawyers from Davenport’s Paris office attended a meeting in New York in connection with their work for Bristol on the sale of LeDoux to Globalco. This provides some possibility that the lawyers might be subject to United States ethics rules.

The problem, however, is that New York does not have a version of Rule 8.5. Thus, there is no basis for attempting to apply New York ethics rules to the French lawyers. Furthermore, as a practical matter it would be difficult to enforce such rules against these lawyers. The matter on which they are working is a transaction, which does not involve appearance before a tribunal that could disqualify them for a conflict of interest.

It’s worth noting that the CCBE, the European Union Code of Conduct for European Lawyers, applies only to lawyers involved in cross-border practice within the European Union. In addition, even if it did apply here, its conflicts provision relates only to the representation of two or more clients in the same matter.

**Should you change your policy on contact with represented persons to reflect the different rules in each country in which you do business? In each state in which you do business?**

ABA Model Rule 4.2 provides that a lawyer shall not communicate about the subject of a representation with a person she knows is represented by another lawyer in the matter, without the consent of that lawyer. Employees of an organization such as Barco generally are deemed to be represented by company counsel. Comment 7 to the Rule says that the Rule prohibits communication with any constituent of the organization who supervises, directs, or regularly consults with the organization’s lawyer regarding the matter, who has authority to obligate the organization with respect to the matter, or whose act or omission may be imputed to the organization for purposes of civil or criminal liability.

The United Kingdom Solicitors’ Code, however, is narrower than the ABA Model Rule. Rule 10.04 has roughly the same prohibition as is contained in Model Rule 4.2. Comment 21 to Rule 10.04, however, says that when the other party is an organization, a lawyer does not breach the Rule by contacting employees who are not responsible for the giving of instructions, since they are not regarded as the client” for purposes of the Rule.

States vary with respect to their regulation of contact with represented parties. Some track Model Rule 4.2, while others resemble Rule 10.04 of the UK Solicitors’ Code. The consequences for violating the Rule in addition to possible disciplinary action are that none of the information obtained in violation of it can be used by the party obtaining it, and, in some cases, disqualification of the offending lawyer.

Given both the variation in the rule among jurisdictions and the consequences for violating it, it may be wise to adopt at least a presumptive policy that company lawyers should

not contact employees of any organization with respect to any matter that relates to actual or potential litigation. That policy could be waived by the general counsel's office in circumstances in which obtaining information is especially important, the rule of a particular jurisdiction is clear, and contact occurs only by lawyers who are admitted to practice in that jurisdiction.

## GLOBALAW

### ADDITIONAL RESOURCES

#### **Ethics Rules**

ABA Model Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law

ABA Model Rule 8.5: Disciplinary Authority: Choice of Law

#### **Restatements**

Restatement (Third) of the Law Governing Lawyers §4: Unauthorized Practice by a Nonlawyer

Restatement (Third) of the Law Governing Lawyers §60: A Lawyer's Duty to Safeguard Confidential Client Information

Restatement (Third) of the Law Governing Lawyers §68: Attorney-Client Privilege

Restatement (Third) of the Law Governing Lawyers §73: The Privilege for an Organizational Client

#### **Articles**

Lisa J. Savitt & Felicia Leborgne Nowels, *Attorney-Client Privilege For In-House Counsel Is Not Absolute in Foreign Jurisdictions*, *Metropolitan Corporate Counsel* (October 2007), p. 18

Julia Chain, Jomati Consultants, *Maximizing Value in the Global Law Department* (August 2005) available at [http://jomati.com/NewFiles/ofcounsel\\_aug2005b.pdf](http://jomati.com/NewFiles/ofcounsel_aug2005b.pdf)

C. Mark Baker & Anibal M. Sabater, *Under-Privileged in the E.U.*, *Corporate Counsel* (April 2005)

James P. Quinn, *The Right to Practice Law in the European Union: An American Perspective*, 1 *Macquarie J. Bus. L.* 113 (2004)

Mary C. Szto, *Towards a Global Bar: A Look at China, Germany, England, and the United States*, 14 *Ind. Int'l & Comp. L. Rev.* 585 (2003-2004)

Wayne J. Carroll, *Innocents Abroad: Opportunities and Challenges for the International Legal Adviser*, 34 *Vand. J. Transnatl. L.* 1097 (2001)

Detlev F. Vagts, *Professional Responsibility in Transborder Practice: Conflict and Resolution*, 13 *Geo. J. Legal Ethics* 677 (2000)

Mary C. Daly, *The Cultural, Ethical, and Legal Challenges in Lawyering for a Global Organization: The Role of the General Counsel*, 46 Emory L.J. 1057 (1997)

## **ACC Articles**

Susan Hackett, *Into the Global Services Pool*, ACC Docket (June 2004): 23-36, available at <http://www.acc.com/vl/membersonly/ACCDocketArticle/loader.cfm?csModule=security/getfile&pageid=20803>

John Villa, *Resolving Multinational Ethical Issues: What Law Applies?* ACCA Docket (June 2002): pages 110-112

## **ACC InfoPAKs<sup>SM</sup>**

ACC, *Global Law Department InfoPAK<sup>SM</sup>* (August 2005), available at <http://www.acc.com/vl/membersonly/InfoPAK/loader.cfm?csModule=security/getfile&pageid=19662>

## **ACC Annual Meeting Program Materials**

Roy Birnbaum, Denise N. Jagger, Robert Johnson, Henry Pitney, & Marguerite Sells, 205: *Building a Better Global Law Department*, 2006 ACC Annual Meeting, available at <http://www.acc.com/vl/public/ProgramMaterial/loader.cfm?csModule=security/getfile&pageid=20149>

102: *Managing a Multinational Legal Department*, 2005 ACC Annual Meeting, available at <http://www.acc.com/resource/v7211>

J. Alberto Gonzalez-Pita, Juan Carlos Mencio, & Katherine E. Ward, 311: *Global Law Department Design & Service Models: What Companies Are Doing*, ACC 2004 Annual Meeting, available at <http://www.acc.com/vl/public/ProgramMaterial/loader.cfm?csModule=security/getfile&pageid=20430>

## **Other ACC Program Materials**

*Managing the Global Law Department*, ACC's CLO Think Tank Series 2006 (November 3, 2006), available at <http://www.acc.com/vl/membersonly/ProgramMaterial/loader.cfm?csModule=security/getfile&pageid=20056>

## **Miscellaneous**

CCBE, Code of Conduct for European Lawyers, available at <http://www.ccbe.org/index.php?id=2&L=0>

## ACC Extras

Supplemental resources available on [www.acc.com](http://www.acc.com)

Corporate Compliance.

InfoPak. August 2009

<http://www.acc.com/legalresources/resource.cfm?show=19684>

Ethics for In-House Counsel.

Program Materials. May 2009

<http://www.acc.com/legalresources/resource.cfm?show=358420>

Business Ethics: Red Pill or Blue for You?

ACC Docket. July 2009

<http://www.acc.com/legalresources/resource.cfm?show=423649>

Please note, these additional resources are provided by the Association of Corporate Counsel and not by the faculty of this session.