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Statement of Susan Hackett
Senior Vice President and General Counsel of the Association of Corporate Counsel (ACC)
Concerning ABA House Report 109, February 2009

To the Members of the American Bar Association House of Delegates:

The Association of Corporate Counsel (“ACC”) is the voice of the in-house bar, representing over 25,500 members in more than 80 countries: ACC members are employed by over 10,000 private sector organizations.

ACC monitors and comments on developments in ethical regulation that impact our members’ and their clients’ representational rights and expectations. Because all of our members work with outside counsel, we pay close attention to the navigation of conflict issues, especially since the tensions of balancing the interests of lawyers and clients pose ever-increasing challenges to both, in a world populated by sophisticated firms and multinational clients. Both firms and clients operate in an economic environment that results in mergers, acquisitions, and other reorganizations that can make it difficult to sort out who worked for which firm or client on any given day; in addition, an increasing mobility of the legal workforce results in many lawyers holding several legal jobs with different employers or firms over the course of their careers. Because we believe that new rules are needed to guide lawyers along the difficult path of resolving conflict concerns when moving from one position to the next, ACC endorses ABA House Report 109, amending the ABA Model Rules of Professional Conduct to allow for screening of a lawyer changing law firms (thus avoiding imputed disqualification of the firm to which the lawyer moves).

ACC wishes to ensure that clients’ rights are preserved; this requires lawyers to respect the need to avoid conflicts. And it is for that very reason that we endorse this rule. It is a reality of practice that lawyers will change firms. It is also a reality that modern practice creates an ever-increasing certainty that lawyers from one firm will carry a backpack of potential conflicts into a new firm to which they wish to move. Rather than suggest that such moves can be prohibited wholesale; rather than create unreasonable burdens on those who wish to change jobs; and rather than create a regulatory environment that – through its lack of guidance or unclear guidance – abandons lawyers and firms to a professional no-man’s land where the incentive is to simply bury or ignore conflicts they cannot resolve, ACC prefers to establish a rule that balances the interests of the lawyer who moves and the client who deserves the profession’s and the firm’s protection. ABA House Report 109 offers a rule that provides that balance, is carefully tailored to address the needs of both lawyers and clients, and is appropriately limited in its scope to create a reasonable accommodation for a carefully defined problem.

There are differing opinions about the appropriateness of permitting screening when lawyers change firms; while these questions are appropriately debated, answers are not easily found. And the problems faced by both lawyers and clients won’t go away if we simply ignore them or further delay consideration and passage of regulation we know we must move to adopt. ACC believes that if the ABA Model Rules are to protect client rights, help guide lawyers toward ethically balanced and reasonable practices, and guide the bars toward best practices that can create a common understanding of how these difficult issues can be navigated, then a new model rule that reflects the realities of modern practice while respecting our traditional obligations to clients is crucial.

Thank you for considering our views.