**ACC Advocacy 2018 Filings**

* In late January, ACC, working with its India Corporate Counsel Forum and Compliance & Ethics Committee, submitted comments in response to the White Paper of the Committee of Experts on a Data Protection Framework for India. The committee was convened by the Government of India to study issues relating to data protection and make suggestions on principles to be considered for data protection laws in India. In its response, ACC focused on those data protection issues that affect in-house practice broadly, including recommendations to develop clear standards to regulate cross-border transfers of data that are easy to comply with and present minimal disruption to business and avoid policies that could disincentivize corporate compliance with new privacy requirements.
* On February 6, 2018, ACC joined a group of 11 organizations and individuals in a petition to the Northern District Court in California addressing the Court’s requirements for admission. The group argued that the requirement of membership in the California Bar is overly burdensome and unnecessary for competent practice in federal court and calls for amendments to Local Rule 11.1(b) which would make eligible for admission an attorney that is “an active member in good standing of the bar of any State, Territory, or the District of Columbia.” The other parties to the petition were Public Citizen Litigation Group, American Civil Liberties Union, Cato Institute, Center for Constitutional Litigation, Competitive Enterprise Institute’s Center for Class Action Fairness, Consumers for a Responsive Legal System, Earthjustice, Natural Resources Defense Council, Pacific Legal Foundation, and Public Justice, along with attorneys Robert S. Peck and John Vail.
* In March, ACC submitted comments to the United Kingdom Financial Reporting Council (FRC) on revisions to the UK Corporate Governance Code and Guidance on Board Effectiveness, urging the FRC to incorporate a recommendation on the role of the legal function in influencing corporate culture. In its comments, ACC applauded the FRC’s direction to boards and organizations on improving corporate culture but further advocated that the general counsel’s seat at the executive leadership table is similarly critical. The reporting structure of the general counsel position is an important indicator of the influence of the law department, and ACC argued that the FRC should encourage organizations to include the general counsel as part of the executive management team.
* In April, ACC worked with the Pro Bono Institute and the Corporate Advisory Committee of the National Legal Aid and Defenders Association to organize a letter from general counsel supporting funding for Legal Services Corporation. The letter gathered 235 general counsel signatories.
* ACC filed public comments and participated in a May 31st roundtable organized by the Department of Justice Antitrust Division on the topic of anticompetitive regulations. At the roundtable, ACC noted the anticompetitive effects of the regulations governing the legal profession – specifically restrictions on multijurisdictional practice and non-lawyer ownership of firms, and also shared member experiences with anticompetitive regulations in other industries.
* In early June, ACC and its Europe chapter responded to a public consultation on proposed changes to the Swiss Code of Civil Procedure. In its letter, ACC supported a provision that would grant legal professional privilege (LPP) to in-house counsel with respect to civil matters in Switzerland by limiting the duty of in-house counsel to cooperate in evidentiary proceedings. Allowing LPP for in-house attorneys will remove burdens Swiss businesses face when engaging in international litigation and provide a more level playing field with businesses in jurisdictions where LPP is respected for in-house counsel.
* In June, ACC filed an amicus brief in *In Re Silver Wheaton Corp. Securities Litigation* in the U.S. District Court for the Central District of California. ACC asked the court to reverse a magistrate judge’s ruling that U.S. law applied when determining attorney-client privilege over legal opinions issued by Canadian lawyers and accountants retained by Silver Wheaton Corp., a Canadian company, and disclosed to auditors in reliance upon Canadian privilege law. Under US law, this disclosure vitiated privilege. Silver Wheaton is the subject of a class action securities suit and the magistrate had ruled that U.S. law should apply because Silver Wheaton is registered on a U.S. stock exchange.
* In July, ACC and its National Capital Region chapter submitted comments to the D.C. Court of Appeals on proposals from the Committee on Unauthorized Practice of Law and the D.C. Access to Justice Commission to amend Rule 49(c)(9), relating to pro bono practice by out-of-state-licensed in-house counsel. ACC formerly submitted comments on Rule 49 in 2015 and 2016. In its letter, ACC again asked the court to remove the requirement that in-house counsel licensed outside D.C. be affiliated with a non-profit legal service provider and be supervised by an active member of the D.C. bar.
* Also in July, ACC filed an amicus brief in the New Jersey Appellate Division in Sampson v. 3M Company, on the application of the crime-fraud exception to the attorney-client privilege. ACC took no position on the merits of the underlying privilege claim but contended that the crime-fraud exception must be meticulously applied to ensure that privileged communications are not improperly disclosed.

This July brief followed a December 2017 amicus brief in the New Jersey Supreme Court, urging the Court to allow an interlocutory appeal of the trial court’s ruling that the documents were subject to the crime-fraud exception.

* ACC and its Mid-America chapter submitted comments to the Kansas State Supreme Court in July, supporting the amendment of Supreme Court Rule 712 to allow in-house counsel practicing on a restricted license to provide pro bono services. ACC encouraged the Kansas Supreme Court to further increase access to justice by removing restrictions in the proposed rule that would require in-house counsel to provide pro bono services through a court-approved non-profit legal services provider or law school clinic.
* In August, ACC and its four California chapters submitted comments to the State Bar of California Board of Trustees Programs Committee following notices received by ACC members from the state bar requiring them to use the title “Registered In-house Counsel” and no other, per Rule 9.46 and Rule 3.372(c). ACC argued that these notices do not represent the common understanding of the rules and use of such a title will cause confusion and interfere with smooth business operations. ACC additionally filed comments to the state bar regarding proposed changes to Rule 9.46 that affect the ability of registered in-house counsel to participate in pro-bono activities. ACC participated on an August 17th conference call with the committee on these topics.
* In September, ACC and its Europe chapter drafted a position paper in response to the European Commission’s proposal on whistleblower protection. The Commission’s proposal would require internal reporting of suspected wrongdoing before a whistleblower could report to public authorities or the press. In its paper, ACC agreed with the Commission’s tiered reporting approach to ensure whistleblower allegations are reviewed first internally, prior to being released to the authorities or the public. ACC also noted the importance of maintaining confidentiality protections as part of the directive. ACC will continue to monitor the proposal and proposed amendments.
* In October, together with the International Association of Defense Counsel, ACC filed an amicus brief in the Supreme Court of Texas, arguing against the creation of an exception to the attorney-client privilege for communications with employee experts. In *In Re: City of Dickerson v. Texas Windstorm Insurance Association* (TWIA), the trial court’s decision addressed the use of a TWIA employee as an expert witness and the city’s assertion that the use of an employee as an expert waives attorney-client privilege over communications with that employee. In its brief, ACC argued that although the court may compel work product related to expert witness

testimony under the Texas rules of civil procedure, it should not violate attorney-client privilege.

* On November 5th, together with the National Association of Manufacturers, ACC filed an amicus brief in *The Regents of the University of California et al. v. Affymetrix, Inc., et al* in the U.S. Court of Appeals for the Federal Circuit. The case involved the issue of whether both parties need to be represented by counsel in order for the common interest doctrine to apply. In the case, Affymetrix was working with a smaller company to develop some dyes, and an Affymetrix employee sent an email to the company’s in-house counsel, copying the principal of the other company. The trial court found that as the second company was not represented by counsel, this communication was not considered privileged under the common-interest doctrine. ACC asserted that the lower court’s opinion created uncertainty regarding whether the common-interest doctrine requires all parties to be represented by counsel and if left undisturbed, it would limit the ability of companies to participate in collaborative efforts.
* On November 6th, ACC hosted a discussion panel, “Whistleblowing and Compliance inside Corporations,” at the European Parliament in Brussels. The event focused on how whistleblower protections are of critical importance for the European justice system, the rule of law, and for improving, supporting and ensuring legal and regulatory compliance of companies. The panel also discussed the role in-house counsel play in upholding internal reporting processes and helping companies solve issues that have been reported. Member of the European Parliament Virginie Rozière, Rapporteur for the Commission Proposal “Protection of persons reporting on breaches of Union law,” delivered the keynote speech.
* On December 19, ACC and its Hong Kong chapter responded to proposed amendments to the Foreign Lawyers Registration Rules (“FLRR”) of the Hong Kong Law Society. These amendments aim to restrict foreign lawyers in Hong Kong to only practicing the law of the jurisdiction in which they are licensed and increase the ratio of Hong-Kong licensed lawyers to registered foreign lawyers in firms from 1:1 to 2:1. In its response, ACC argued these amendments would be detrimental to the Hong Kong legal market, and undermine the ability of ACC members to secure effective and efficient legal advice for their companies’ cross-border business needs.