

ACC MEDIA TALKING POINTS AND MESSAGING





**ACC Media Talking Points and Messaging Guide**

### INTRODUCTION

We developed this Association of Corporate Counsel (ACC) Media Talking Points and Messaging Guide to assist ACC leaders with a practical and readily useable guide to address media inquiries. This Messaging Guide includes ACC-­approved talking points to ensure a consistent message focused on ACC, advocacy efforts, chapters and networks, resources, and signature programs.

In addition, this Messaging Guide will help ACC leaders achieve three public relations objectives:

1. To promote an understanding and recognition of the work and contributions of in-house counsel, the importance of networking, and the concept of legal education as a valuable resource.
2. To enhance the image of in‐house counsel as valued corporate professionals and to highlight the role of the profession in today’s legal and business communities.
3. To enhance the prestige of ACC and its members.

When fielding questions from reporters, ACC members, and/or business and legal industry colleagues, please refer to this ACC Media Talking Points and Messaging Guide. Should you receive a question you are unable to address, please contact media@acc.com.

# ASSOCIATION OF CORPORATE COUNSEL

## Overview & General Facts

The Association of Corporate Counsel (ACC) is a global legal association that promotes the common professional and business interests of in-house counsel who work for corporations, associations, and other organizations through information, education, networking, and advocacy. *By in‐house counsel, for in-house counsel.®*

* ACC, the voice of the in‐house bar, has more than **45,000 members** in over 8**5 countries**, employed by more than **10,000 organizations**.
* ACC promotes the **common interests** of its members, contributes to their **continuing education**, **provides a voice on issues of global importance**, and **provides resources** (e.g. forms & policies, checklists, articles and surveys) to help save time, money, and effort.
* **ACC Chapters**: ACC includes more than [60 chapters](https://www.acc.com/chapters-networks/chapters) worldwide, including in Asia, Australia, Europe, and North and South America. ACC has members on six out of the seven continents and in 85 countries. ACC chapters offer a unique opportunity for members to connect with in‐house counsel in their local areas, sharpen their skills with educational programs, stay abreast of local, national, and international advocacy issues and hone their leadership abilities through involvement in their local chapters.
* **ACC Networks:** ACC sponsors 20 [networks](https://www.acc.com/chapters-networks/networks), each focusing on substantive legal practice areas or types of practice.
* ***ACC Docket***: Award-winning journal, written *by in‐house counsel, for in-house counsel*, with more than 45,000 readers worldwide.
* **Advocacy**: ACC is dedicated to protecting the interests of corporate in-­‐house counsel around the world and supporting in-­‐house counsel on key issues at every

level. Key advocacy issues include: **Seat at the Table,** **Privilege Protection; Right to Practice; Internal Compliance/Reporting Systems; and Gatekeeping/Liability**.

* **ACC Value Challenge**: The ACC Value Challenge is an initiative to reconnect the value and the cost of legal services. The ACC Value Challenge develops methodologies and metrics that corporate counsel can use to assess the strengths and weaknesses of law firms; creates tools for in-house counsel and firms to share, and enhances awareness and communicates success stories in achieving value and alignment.
* **ACC Foundation:** The ACC Foundation is a 501(c)(3) non-profit organization, which supports the efforts of the Association of Corporate Counsel. The ACC Foundation serves the needs of the in-house bar through the dissemination of research and surveys, leadership and professional development opportunities, and support of diversity and pro-­‐bono initiatives. Information on upcoming programs and how to contribute is available at: [*www.acc-foundation.com.*](http://www.acc-foundation.com/)

### ACC Leadership:

* + **President & CEO:** Veta T. Richardson
	+ **2018-2019 Chair, Board of Directors:** Simon Fish, Executive Vice President & General Counsel, BMO Financial Group

## ACC PROFESSIONAL DEVELOPMENT AND EDUCATIONAL PROGRAMS

ACC is the leading provider of education and training programs specifically designed and developed for in-­‐house counsel. Each year, ACC produces numerous opportunities for in-­‐house counsel to fulfill their CLE or CPD requirements, network and hear from industry service providers. Through its continuing legal education events, both in-­‐ person and virtual, ACC endeavors to have members learn, interact and grow their skills in order to advance in their careers as corporate counsel.

### Updated information about ACC’s Educational programs is available online at:

#### [www.acc.com/education.](http://www.acc.com/education)

ACC offers a variety of learning opportunities, such as:

* **ACC Annual Meeting**: The largest gathering of in-­‐house counsel in the world.

The 2018 Annual Meeting welcomed approximately 4,000 in-house counsel and legal professionals from over 40 countries including Brazil, Australia, Canada, Italy, China, Israel, France, Germany, the United Kingdom, and the United Arab Emirates.

The 2019 ACC Annual Meeting, October 27-30 in Phoenix, AZ

With over 100 CLE/CPD sessions featuring timely and relevant topics including contract negotiations, law department management, risk management and litigation.

Other ACC educational programs include:

* **Business Education for In-house Counsel** (business programs in partnership with Boston University);
* **ACC Corporate Counsel University®** (for lawyers who are new to in‐house);
* **Executive Leadership Institute** (executive education master class for the next generation of chief legal officers);
* **Legal Services Management** (workshops on value-­‐fee based structures) and

**Law Department Leadership** training;

* **ACC Europe Annual Conference**
* **ACC Xchange** (mid-level and senior in-house counsel, plus legal operations professionals, with topical focus on contracts, law department management, and other subjects depending on the year)
* **ACC General Counsel Summit** (high-level gathering exclusively for chief legal officers of global multinationals);
* **ACC Chapter** CLE/CPD programs; and

### ACC Webcasts

**ACC RESEARCH AND BENCHMARKING**

The Association of Corporate Counsel regularly conducts industry surveys to provide ACC members and the business and legal communities with benchmarks for top corporate legal issues.

ACC surveys ensure ACC members have the information and tools necessary to enhance their skills and knowledge.

Survey topics include: law department trends; demographic information about law department budgets; staffing and compensation; and outside counsel management.

ACC often taps into its membership for data, either as a whole or from select groups, such as chief legal officers (CLOs) and general counsel (GC).

The most recent ACC CLO Survey is free to download for ACC members.

### Updated information regarding ACC Surveys is available online at:

#### [www.acc.com/surveys.](http://www.acc.com/surveys)

**ACC VALUE CHALLENGE**

**Talking Points**

1. **WHAT IS THE PURPOSE OF THE ACC VALUE CHALLENGE? WHY THIS INITIATIVE AND WHY NOW?**
* The ACC Value Challenge launched September 2008 with the purpose of reconnecting value and costs for legal services.
* ACC believes (and our members and the firms we’ve been speaking to confirm) that many traditional law firm business models and many of the approaches to lawyer training and cost management are not aligned with what corporate clients want and need: value driven, high-quality legal services that deliver solutions for a reasonable cost and develop lawyers as counselors, advocates and professional partners.
* Both in-house and outside counsel do not feel that they are managing their clients’ legal spend to their clients’ satisfaction, and they want someone to help them address these problems institutionally – not on a one-off basis.

### WHAT IS THE OVERALL THEME OF THE INITIATIVE?

* ACC’s overall goal is to reconnect value and costs for legal services.
* ACC is focused on promoting dialog and action among corporate counsel, law firms and others interested in driving an alignment and focus on value.
* ACC has also developed methodologies and metrics that corporate counsel can use to assess the strengths and weaknesses of law firms, as well as tools that law firms and departments can use to better drive value into legal services provided to clients.
* Each year, ACC announces Value Champions – law departments and law department/law firm or law department/legal service provider collaborations – that make huge accomplishments to save time and money and to achieve better results.

**LEGAL PROFESSIONAL PRIVILEGE (LPP) IN THE EUROPEAN UNION**

Working with ACC Europe, ACC participated at every stage of the *Akzo* proceedings before the European Court of Justice. Since the 2010 decision, ACC engaged in a multifaceted effort to educate and engage stakeholders in Europe as to the importance of privilege to corporate clients in all facets of their relationships with lawyers.

In ***Akzo Nobel Chemicals Ltd., et al. v. Commission***, the European Court of Justice reaffirmed existing competition law precedent that refused to afford privilege to lawyers not recognized by the European Commission, including in-house lawyers and, perhaps, by extension, non-EU outside counsel. This decision contrasted with the practices of some member states and other non-EU jurisdictions that afford clients broader rights of confidentiality and privileged communication with their lawyer of choice. Thus, the decision placed many European clients at a disadvantage relative to multinational competitors, who were not similarly constrained.

Discouraging the use of in-house counsel made little sense as a matter of economics or practical compliance. In-house lawyers are in a far better position than outside counsel to ensure that the company complies with all laws and engages in responsible and ethical decision-making. Furthermore, and multinational companies need multinational advice, provided often by coordination with non-EU counsel from other jurisdictions.

* **Educate**. Using multiple forms of media and outreach, ACC explained the importance of expanding the attorney-client privilege to in-house counsel and provided practical advice for companies considering how the holding in *Akzo* affected their work plans.
* **Change**. ACC worked with stakeholders and other affected constituencies to search for ways to encourage the Commission to modify its enforcement approach, so that the privilege was protected without harming effective enforcement of the law.

To assure compliance with the law and ethical conduct, corporate clients need to consult with lawyers -­ candidly and with trust in the confidentiality of their communications. For sophisticated clients, pressing concerns about compliance and management of legal risks mandates hiring in-house lawyers who can advise continuously, on a broad range of related matters, and with greater institutional understanding of business concerns than most outside firms can provide.

Failure to apply LPP to in-house lawyers and non-EU-admitted outside counsel undermines the broader public policies underlying LPP in two ways:

* First, it frustrates legal compliance by discouraging companies from day-to-day consultation and coordination with their in-house team when it is most important to do so. Clients may forego legal advice on the most complex and significant matters because of the cost and inconvenience of constant communication with outside counsel.
* Second, it is inconsistent with companies’ fundamental rights of defense to deprive them of the right to obtain effective legal advice on a confidential basis from the lawyer of their choice. In-house counsel provide professional and admirable legal services to their clients – they are not a “lesser” choice. Quite the contrary.

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**ADVOCACY**

**Corporate Compliance & Legal Ethics Issues**

Rules that regulate professional responsibility in a state, province, or jurisdiction are not likely to provide much practical guidance on issues that concern in-house counsel, as they were written with outside law firm practice in mind. ACC leads the way towards ethical in-house guidelines, not only in providing a better understanding of how to navigate in-house counsel’s role as a regulated professional, but also as an advocate for rules that better reflect the needs and practical concerns of in-house lawyers.

**ADVOCACY**

**Attorney-Client Privilege & Work Product Protection**

* Attacks on the attorney-client privilege, erosion of work-product protections, and demands for waiver by prosecutors, regulators, auditors, and third-party plaintiffs are increasing in frequency and scope.
* ACC fights for the protection of the attorney-client privilege and work product protection, and fiercely upholds in-house counsel’s clients’ rights to confidentiality.
* Unfortunately, executives and directors who would like to consult with corporate counsel about the most sensitive issues are confused about whether the corporate attorney-client privilege will apply to their conversations.
* Lawyers investigating allegations of wrongdoing are worried about how their honest attempts to unearth and correct serious problems may be used against the company’s interests in the future.
* Attacks on the attorney-client privilege and work product protection are varied, but here are *some* examples:
	+ **FAS 5, also known as ASC 450**. Here, the FASB proposed that public companies more fully disclose their internal, confidential, analyses regarding the possible costs of particular pieces of litigation. After receiving strong pushback from ACC and many of its members, the FASB backed down.
	+ **Tax accrual workpapers**. The Internal Revenue Service has sought the tax accrual work papers, which contain confidential analyses of the legal permissibility of uncertain tax positions. ACC has pushed back in a number of cases, including *Textron v. United States* and *Wells Fargo v. United States.*
	+ **Protection for legal advice.** For many years, Pennsylvania protected communications *from* a client to a lawyer, but not those from a lawyer *to* the client, unless client confidences would be disclosed. Relying quite heavily on

a brief filed by ACC, the Pennsylvania Supreme Court reversed that rule and adopted the majority rule which protects communications to *and* from a client.

* ACC Advocacy constantly reviews cases to determine whether it should intervene to defend the concerns of in-house counsel and their corporate clients.

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# ADVOCACY

## Multijurisdictional Practice & Other Legal Ethics Issues

* The principal ethics issue of concern to in-house counsel has been the uncertainty surrounding multijurisdictional practice.
* ACC has long been an advocate for rules that authorize in-house lawyers to advocate for their employer-clients in jurisdictions in which they are not formally admitted, so long as they are members in good standing in another bar.
* In-house counsel increasingly work for companies whose operations stretch not only across state lines, but across national ones as well.
* Unfortunately, current ethics rules are not uniform in how they treat in-house counsel who move or work in many jurisdictions.
* In addition, some ethics rules continue to treat lawyers who work for multiple, unrelated, clients the same way as they treat those who work only for their employer.
* For the past decade, ACC has advocated for American Bar Association (ABA) Model Rule 5.5, a rule it persuaded the ABA to adopt. Many jurisdictions have adopted at least variants of the rule.
* Some US states, like Georgia, have adopted Model Rule 5.5 without any changes. This has allowed in-house lawyers within their jurisdiction to practice for their employer while maintaining their non-Georgia bar membership.
* Other states, like New York, have adopted in-house counsel registration rules, which require the in-house counsel to register with the state bar and pay a membership fee.
* **ACC is working on the following fronts going forward**:
	+ Urging states that have not yet adopted rules, or have adopted problematic rules, to adopt a rule similar to Model Rule 5.5
	+ Urging states to make room within their rules for in-house pro bono practice.
	+ Searching for ways to reconcile differing global rules.
* **ACC also plays a role in the rulemaking process on other ethics issues** to ensure that the special role of in-house counsel is acknowledged and given a prominent place at the table. For instance, as the ABA Ethics 20/20 Commission considers changes to the rules as they apply to sophisticated clients, ACC will offer its views.

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**ADVOCACY**

**Gatekeeper Liability**

* The traditional role of the lawyer was quite straightforward: represent your client zealously within the bounds of the professional code of ethics.
* In recent years, however, the cry of: “Where were the lawyers?” in response to almost any major corporate debacle has placed a target on the back of in-house counsel.
* In-house counsel must now navigate the difficult path of balancing their various roles as zealous advocate, judicious and confidential counselor, compliance and business conduct leader, and ethical gatekeeper responsible for enterprise risk management.
* **The Securities and Exchange Commission has taken the lead in targeting in-house counsel.** Relying on Sarbanes-Oxley and its own regulations, the SEC has argued that in-house counsel have an independent obligation to protect investors. Some have failed to do so.
* Because the SEC regulates all public companies in the US (and some private ones as well), their actions loom large in the minds of in-house counsel. However, other agencies and departments of government, such as the Justice Department, have singled out in-house counsel for liability for corporate failures.
* While this trend has been growing for years, a number of very **recent cases highlight the urgency** of meeting this challenge head on:

*SEC v. Urban*: SEC targeted a GC for failing to properly “supervise” a broker from another division, even though he had none of the indicia of a traditional supervisor. An administrative law judge ALJ rejected SEC’s reasoning and the case is on appeal.

*United States v. Stevens*: DOJ prosecuted an in-house counsel for alleged discovery misconduct. Not only did this case generate very negative headlines for the government, the district court acquitted the in-house counsel.

*Friedman v. Sebelius*: The Department of Health and Human Services (HHS) barred the GC from working within the health care industry, because as a responsible corporate officer, he “should have” stopped his company from engaging in fraud. The government made no allegation of wrongdoing on the part of the GC. Case remains pending before DC Circuit.

* **ACC Advocacy continues to urge the government to focus on the individuals who commit the bad acts, rather than searching for gatekeeping scapegoats in the in- house counsel bar**. Simply put, if in-house counsel personally committed misconduct, they should be held accountable. But ACC will insist that in-house counsel should not be punished for the misdeeds of their clients.

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