

2	Why Better Business Communication Matters and How to Improve It
4	ACC News
5	New York Federal Court Allows Foreign Litigants to Obtain Documents Located Outside U.S.
6	Help Us Help You
7	The NLRB's End of Year Activity Reversed Obama-Era Decisions and Administrative Rules

8	Member Spotlight
9	Welcome New Members!
9	Upcoming Event
10	Past Events
12	Executive Director Note
12	Chapter Leaders

FOCUS

President's Letter

Jessica DeBianchi Rivera

ACC South Florida 2020: Clarity in Purpose

Dear Members,

I trust the new decade is off to a beautiful start for all of you! Aside from that cold snap where iguanas were falling out of trees (!!!), my family and I enjoyed the wonderful January weather that makes Florida the envy of the nation. I especially savored the delights cooked up by our “culinary counselors” at our Jan. 28 ACC kickoff at The Real Food Academy, hosted by Platinum Sponsor **Bilzin Sumberg**.

ACC's Board of Directors entered 2020 with a renewed energy and commitment to an organization-wide theme: *Clarity in Purpose*.

The theme is in part inspired by *The Four Agreements*, a book that has meaningfully influenced my personal and professional life. In it, author Don Miguel Ruiz states that people need only keep four promises to themselves and others to realize outward success and inner peace:

- **Be impeccable with your word.** Speak wisely, with intent, and with positive purpose.
- **Don't take things personally.** There are only three types of “business”: yours, others', and the universe's. Manage yours. Everything else—including others' actions and reactions to how you manage your business—has nothing to do with you.

- **Make no assumptions.** Always seek to *clarify*. Don't conclude. Ask questions to sidestep misunderstandings, drive knowledge, and build perspective.
- **Always do your best.** Your “best” may change from day to day—or even moment to moment. If your intent to *do your best* never wavers, your growth will progress with purpose.

These now serve as guideposts as the board serves this ACC chapter in 2020. In fact, we recently embraced these tenets at our first board meeting of the year (graciously hosted by **Fisher Phillips**), and as we reviewed the feedback you provided in our recent year-end survey.

Thanks to your thoughtful insights, we commit to:

- **Host more events in Palm Beach County:** We've heard your request for more “beyond the Broward border” programming loud and clear. We'll hold a Palm Beach County Progressive dinner in May. We'll bring more educational and social programming to the county in 2020, too.
- **Continue our Coffee Talk CLE series:** 2019's educational “legal learning” series really resonated with members. We'll continue this valuable series throughout the year.
- **Establish a new Member Engagement committee:** As our chapter grows ever closer to the 600-member mark, it's more important

than ever to maximize the value of your membership. Our first Member Engagement Chair Matthew Cowan will conduct member outreach and more to ensure our programming and initiatives best align with member needs.

This year's lineup of events is shaping up to be very exciting, so make sure you've bookmarked <https://www.acc.com/chapters-networks/chapters/south-florida> to stay current on how you can get involved. Be sure to also follow us on [LinkedIn](#), [Facebook](#) and [Instagram](#)—and join the conversation at our ACC South Florida LinkedIn [group](#).

Thank you, and I look forward to serving you this year!



Jessica & family enjoying the “snow” in Scranton, PA

Why Better Business Communication Matters and How to Improve It

By Elizabeth A. Colombo

When asked in job interviews, “Are you a good communicator?” your gut reaction is, “Of course!” But, the truth is, we could all fine-tune our communication skills, whether you’re new to in-house or a chief legal officer. This month’s column will explain, using surprising statistics, why good business communication is important and how to improve your and your company’s communication.

By the numbers

While there are many causes of poor workplace communication, the lack of time spent on it doesn’t seem to be the problem. According to [Polly](#), “time spent on calls, emails and meetings has increased by 25 percent to 50 percent in the last two decades.” However, good communication is more than transmitting messages; they must be delivered impactfully.

Every day, [205.6 billion emails](#) are sent around the globe, but only one third of emails are actually opened. Additionally, although companies host an average of 61 meetings per month, 39 percent of people sleep through them, and [73 percent do other work during these meetings](#).

The same Polly article shows these unnecessary emails and long meetings can take a toll on a company, particularly with employee engagement:

“Employees who feel respected by their employers and are engaged at work are 87 percent less likely to leave their organization and seek new employment. Yet only 38 percent of employees say their company treats them with respect.”

Poor communication can lead to employees becoming frustrated that their time isn’t valued. But, when employees are purposefully engaged, it yields tangible results, according to [bluesource](#): “Productivity improves by up to 25 percent in organizations with connected employees.”

More than employee turnover, company finances are also drained by poor commu-

nication. According to a [Holmes report](#), the global PR leader found:

“[US\$37 billion is the] total estimated cost of employee misunderstanding (including actions or errors of omission by employees who have misunderstood or were misinformed about company policies, business processes, job function or a combination of the three) in ... corporations in the United States and United Kingdom.”

Some of these statistics may be a bit alarming, so how do we solve this wasteful problem? Below are recommendations on how to improve your and your organization’s communication skills.

Be transparent

To show that companies care about their employees, they must be transparent. I’m sure we’ve all worked in a company where everything felt like a secret that only management knew. That type of culture breeds discontent.

Of course, management cannot divulge everything happening in a company, but they should strive to be as open as possible. That way, employees feel like they belong and are part of the organization’s overall plan.

As in-house counsel, we have a duty to ensure confidentiality. However, that doesn’t mean that we can’t support senior management’s efforts to be transparent if it won’t harm the company.

We can also be transparent in our day-to-day work. For example, I’ve collaborated with fantastic contracts managers and analysts. Over time, I learned that I could trust them and, thus, I was candid with them about unneeded redlines in a negotiation.

That transparency signaled to the contracts analysts that I trusted them, which expedited the negotiation process and ultimately strengthened my company’s relationships with our clients and vendors.

Listen actively

Active listening is an overlooked communication tool. During a busy work cycle, it is easy to multitask while someone is talking to you. However, if we are not truly listening to someone to understand their message, we do them, our company, and ourselves a disservice.

For example, if you’re reviewing a contract and someone stops by your office with a question, you have many choices. Let’s take three of those options:

1. You can half listen to the person while half keeping an eye on your phone and computer and continuing to review the contract.
2. You can stop everything you’re doing, turn to the person, and have a productive conversation with them.
3. If you are in the middle of something that needs to get done, you can arrange to meet with the person at another time when you can give your full attention.

If you pick the second or third option, you’ll learn more from the person speaking to you and, likely, can better address what they’re discussing with you. If you pick the first option, you may be forced to have the same conversation again because you missed key elements of it the first time or you may have to redo work if you misunderstand the ask and start to work on it.

A wonderful active listening tool is to check for understanding. For example, let’s say you explain a complex concept to a colleague. It may help to ask, “Does that make sense?” This way, your colleague has a chance to say, “No,” and tell you where there is a misunderstanding. Likewise, if a colleague is explaining something to you, repeat the basics of it back to them. This ensures that you’re not misunderstanding their message.

Because our attention often meanders and because we are often only hearing our colleagues, not truly listening, we spend a lot of time clearing up miscommunications, backtracking, and fixing mistakes.

continued on page 3

Imagine an organization with people who all employ active listening. You wouldn't have to repeat yourself as much as you do now. There would be fewer misunderstandings. Meetings and phone calls would be more productive. Employee morale would be higher.

Communicate effectively at all levels

The need for better communication is not limited to young or entry level employees. No matter your title, you can improve business communication. In fact, "senior leadership" ranked second on Kincentric: A Spencer Stuart Company (formerly, Aon)'s list of top engagement opportunities. The aforementioned Holmes Report also confirmed this:

"Companies that have leaders who are highly effective communicators had 47 percent higher total returns to shareholders over the last five years compared with firms that have leaders who are the least effective communicators."

To facilitate conversations between employee leaders and their team, consider using digital communication channels in the workplace, such as Slack, Jabber, or Microsoft Teams.

As in-house counsel, if you have the clout to influence change, encouraging senior management to be effective communicators would serve your organization well. If you don't have that social capital, improve your communication style and hope others take your lead.

Use a variety of communication methods

Using different communication styles can help spread a message faster. I spoke with a director of corporate communications recently who described her tactic when communicating a change in a company practice. The organization was telling employees to dial six instead of nine when calling an external phone number.

Her department's strategy included posting table tents and signs throughout the building, emailing the update, and distributing business card size reminders. This is bril-

liant. Employees are busy. As the statistics show, they aren't even reading all of their emails or paying attention in meetings.

Sharing a message through various avenues will increase the odds that the staff sees the message. Employees are bound to see physical reminders, and if they don't, their colleagues may tell them. Thus, word-of-mouth may help spread your message even further.

Know your audience and message

When communicating with someone you work with regularly, know your audience. Meaning, if you know someone reads his email religiously, email him. If you know another colleague communicates best via the phone, call her.

Always share information in compliance with your company's privacy and data security policies and encourage others to do the same. If the information is sensitive or confidential, be mindful and share it (or don't) accordingly. Everyone in a company should be careful about sensitive information and we, as in-house counsel, have a unique opportunity to be leaders in responsible guarding of sensitive data.

Value inter-generational communication

Working with people of all ages benefits the company, as it adds diverse thought to the office. However, different generations (or different people, regardless of age) may view communication differently. The following statistics from the previously mentioned bluesource article paint a picture of the challenges workplaces face with different communication preferences:

- Around a quarter of employees think email is a major productivity killer.
- 78 percent of people who text wish they could have a text conversation with a business.
- 81 percent of millennials think "state of the art technology" is paramount to an ideal working environment over perks or amenities.
- 44 percent of employees want wider adoption of internal communication tools.

- 49 percent of millennials support social tools for workplace collaboration.
- 74 percent of all online adults prefer email as their main method of commercial communication.

If you aren't in a leadership role, it may be hard to effect a companywide change. However, on an individual level, you can know your audience and communicate accordingly.

As part of the legal team, you can also help draft communication policies. For example, a bring your own device (BYOD) policy covers and can solve some communication concerns. You can also offer risk management advice to senior management.

Overall, with different communication options in the workplace, be respectful of each other's preferences, and clearly explain why you prefer a certain method of communication.

Keep up with technology and 2020 work styles

With ever-evolving technology, sometimes it seems hard for our communication methods to keep up. For example, a [Gallup study](#) shows that 43 percent of US employees work remotely some of the time.

For remote employee programs to be effective, it's important that the organization creates a policy that supports the remote worker, and that the remote worker remains connected through phone calls, video conferencing, and emails. When handled effectively, remote workers can be just as connected as onsite workers.

As in-house counsel, we should be wary of telecommuting employees complying with company data policies. To avoid this problem, partner with senior management and IT to ensure that you're addressing where and how data is stored and shared.

Another issue is the employee's ability to "unplug." This constant connectedness can be a blessing and a curse: It's a blessing to be able to work from wherever, but it's a curse to constantly feel pressure to perform.

continued from page 3

Gone are the days of going home and being unreachable by work. Thus, it's important to make sure wage and hour laws are being adhered to and that employees are maintaining a healthy work-life balance.

Mind your delivery

Picture yourself going to a restaurant. Your server tells you that they are out of a dish that you were looking forward to eating. If your server flippantly says, "We're out of that," it may irritate you. However, if your server says, "I'm sorry, but we ran out of that. I'd love to get you something else that you would enjoy," it makes a world of difference. The message is the same, but the tone may alter how it's perceived.

It helps to think about who you are talking to. If you have a prior relationship with someone, you may know them well enough to tailor your message to them. If I know I'm talking to someone who can be a bit sensitive, I may deliver my message accordingly. If I know I am talking to a colleague who learns best visually about contracting with complex entities, maybe I'll sketch it out.

If I don't know the person I am talking to well, I strive to be clear in my message and see how they respond to it and understand it. This is one of the many benefits of active listening skills.

Parting words

The topic of how to better communicate could take up whole books, but the bottom-line message is to constantly work on being a better communicator because it saves you and your company time, headaches, and, often, money.

Author:

Elizabeth A. Colombo is a former corporate counsel with Konica Minolta Business Solutions U.S.A., Inc. She has experience working cross-functionally with the relevant business teams and stakeholders to draft, review, and negotiate commercial transactions of moderate to high complexity from the bid phase through contract execution.

ACC News

ACC Xchange: Rates Increase After March 18

Xchange 2020 (April 19-21, Chicago, IL) offers **advanced, practical, interactive, member-driven** education for in-house counsel and legal operations professionals that you won't find at any other conference. By uniting complementary professions to exchange ideas and best practices, this program creates a powerful and unique environment that offers a fresh take on how to deliver your in-house legal services more efficiently and effectively. [Register today at acc.com/xchange](https://acc.com/xchange).

In-house Counsel Certified (ICC) Designation

The [ACC In-house Counsel Certification Program](https://acc.com/icc), helps in-house counsel become proficient in the essential skills identified as critical to an in-house legal career. The program includes live instruction, hands-on experience, and a final assessment. Those who successfully complete the program will earn the elite ICC credential. Your law department and your employer will benefit from having a lawyer that returns with global best practices in providing effective and efficient legal counsel. Attend one of these upcoming programs:

- **Dubai, UAE**, March 2-5
- **Melbourne, Australia**, August 10-14

ACC 2020 Global General Counsel Summit

Join CLOs from multinational companies to discuss Championing Trust in Business at the [ACC 2020 Global General Counsel Summit](https://acc.com/gcs) in Zurich this June. Open exclusively to the highest-ranking legal officer of an organization, the 2020 Summit offers you an opportunity to collaborate, share, and network with your peers in an exclusive, highly interactive setting. [Register now at acc.com/GCSummit](https://acc.com/GCSummit).

2020 ACC Annual Meeting: Early Bird Rates End March 25

Lock in at the lowest available rates for the 2020 ACC Annual Meeting, taking place October 13-16 in Philadelphia, PA. Earn up to a year's worth of CLEs, get the essential knowledge and insights you need to navigate today's increasingly complex business environment, and make meaningful connections with your in-house peers from around the globe. No other event delivers such a wealth of education and networking opportunities for corporate counsel all in one place at one time. Group discounts are available. Check out the full program schedule at acc.com/annualmeeting.

New to In-house? Are you prepared?

The ACC Corporate Counsel University® (June 24-26, Denver, CO), combines prac-

tical fundamentals with career building opportunities, which will help you excel in your in-house role. Come to this unrivaled event to gain valuable insights from experienced in-house counsel, earn CLE/CPD credits (including ethics credits) and build relationships and expand your network of peers. [Register at acc.com/ccu](https://acc.com/ccu).

Drive Success with Business Education for In-house Counsel

To become a trusted advisor for business executives, it's imperative for in-house counsel to understand the business operations of your company. Attend business education courses offered by ACC and the Boston University Questrom School of Business to learn critical business disciplines and earn valuable CLE credits:

- **Mini MBA for In-house Counsel**, March 31-April 2, May 5-7 (Log Angeles), June 1-3, September 22-24, and November 17-19

Learn more and register at acc.com/BU.

Are you prepared to comply with new state privacy laws?

Rapidly growing data privacy regulations from California to New York make you accountable for all third-party service providers that access, process, or store your company's personal data. Visit www.acc.com/VRS for more information.

New York Federal Court Allows Foreign Litigants to Obtain Documents Located Outside U.S.

By Kenneth Duvall, Bilzin Sumberg Baena Price & Axelrod LLP

Most practitioners in the area of international law know



about 28 U.S.C. § 1782. This statute has long allowed litigants in foreign tribunals to use United States courts to compel persons “residing or found” in the court’s territory to provide discovery. Given that foreign tribunals typically permit less discovery than United States courts, § 1782 can be an important tool for foreign litigants in gathering evidence.

United States courts have been split as to whether § 1782 can be used to compel discovery of documents located outside of the United States. In 2004, the Seventh Circuit (based in Chicago) found that § 1782 cannot be used to obtain foreign documents. But in 2016, the Eleventh Circuit (based in Atlanta) disagreed, finding that § 1782 can be used to obtain foreign documents. Litigants based in Florida and other parts of the southeastern United States have grown accustomed over the past few years to the extra-territorial reach of § 1782.

Now, practitioners in New York, Connecticut, and Vermont will also become used to a wide-ranging § 1782. Last month, the Second Circuit aligned itself with the Eleventh Circuit, finding that § 1782 can be used to obtain foreign documents. In *In re del Valle Ruiz*, the Second Circuit resolved disagreement among trial courts in New York to hold that an applicant under § 1782 can reach documents that the respondent possesses, has custody of, or controls anywhere in the world.

But the long reach of § 1782 does not matter if the applicant cannot convince the district court to exercise jurisdiction over the respondent in the first place. The Second Circuit ruled on this issue as well, holding that a respondent must comply with § 1782 only if it is subject to personal jurisdiction, whether general or specific personal jurisdiction.

It is easy for a corporation to know whether it

will be subject to general personal jurisdiction in a given federal district court. If the corporation is headquartered in that court’s territory, and/or if the corporation is incorporated in that territory, then that corporation is subject to general jurisdiction there. Corporations based in international hubs like New York (Second Circuit) or Miami (Eleventh Circuit) now know that they will be subject to § 1782 demands for world-wide documents. (The rules for other types of entities, such as LLCs, will vary, and are beyond the scope of this article.)

Future § 1782 litigation will likely focus on the contours of specific jurisdiction. Litigants in the United States know that an analysis of specific jurisdiction is very fact-intensive and sometimes difficult to predict. The same will be true under § 1782.

The Second Circuit did provide some guidance for practitioners on this jurisdictional question. First, the respondent’s contacts with the forum do not have to relate to the underlying, foreign litigation; instead, the contacts need only relate to the discovery sought under § 1782.

Second, the Second Circuit held that the respondent’s forum contacts must have some causal relationship to the discovery sought. The Second Circuit provides two possibilities here. If the contacts are the “primary or proximate reason that the evidence sought is available at all,” then jurisdiction is established. Alternatively, if the contacts are not the “primary or proximate” cause, but the petitioner can show (1) that the evidence would not be available “but for” the conducts and (2) that the contacts are relatively significant, then jurisdiction is established.

Future § 1782 litigation will also focus on the typical issues familiar to litigants

seeking (and resisting) discovery in the United States, including objections to the relevance, breadth, burden, and proportionality of the discovery. Like specific jurisdiction, discovery objections are very fact-intensive and the outcomes are not always easy to predict.

In sum, the issue of whether § 1782 applies abroad is now settled in three Circuits, and the trend is clearly in favor of interpreting § 1782 as extraterritorial. But the threshold issue of whether a company is subject to § 1782 in a forum besides its “home,” as well as discovery-specific objections, will have to be litigated case-by-case going forward.



Author:

Kenneth Duvall is a litigator practicing in Miami at Bilzin Sumberg Baena Price & Axelrod LLP. Ken’s practice primarily focuses on business litigation, financial, insurance, and construction matters. Ken also has experience in product liability, white collar, securities, class action, intellectual property, employment, consumer, and appellate matters.

JOB OPPORTUNITIES

If you would like to be included on a distribution list for South Florida in-house employment opportunities, please e-mail Christina Kim at southflexec@accglobal.com. E-mails will be sent out on a periodic basis based on availability. Distribution list is only for ACC South Florida members.

You can find updates, event information and more at:



[accsouthflorida](https://www.facebook.com/accsouthflorida)



[@accsouthflorida](https://www.instagram.com/accsouthflorida)



[ACC South Florida Chapter](https://www.linkedin.com/company/accsouthflorida)



Help Us Help You

By Mihai M. Vrasmasu, Shook, Hardy & Bacon

Negotiating and sticking to a realistic budget is something that a lot of us have to do. Yet this is often easier said than done. During my career, I've worked as both outside and in-house counsel. This experience gave me a good understanding of the budgeting process and the challenges faced by lawyers on both sides of the house. It also gave me the dubious privilege of witnessing first-hand the disconnect between in-house and outside counsel when it comes to crafting a defense strategy that will satisfy the company's financial needs. In my experience, that disconnect—coupled with a healthy dose of miscommunication—oftentimes leads to budget overruns and unnecessary friction between outside counsel, in-house counsel, and the business. So in the spirit of making everyone's jobs easier, here are five things that you can do to help outside counsel help you:

1. Filet mignon or tacos? When ordering from your favorite restaurant, you wouldn't just ask for beef. Instead, depending on your appetite and budget, you would specify what type of beef suits your fancy. Like restaurants, law firms offer a plethora of services. For instance, your matter can be assigned to the all-star partner team with over 100 years combined experience and a 25-person support staff, who will take a scorched-earth approach to defending your case. Of course, the price tag for such service will likely raise a few eyebrows in your accounting department. Another option may be a team comprised of a random partner who is "looking for work" and an eager first-year associate, who will do the bare minimum to keep your defense afloat. Obviously, different cases call for different services. If you're defending against a "bet the company" lawsuit, opting for the filet mignon is likely the smart move. But if you need to staff a run-of-the-mill slip and fall case, tacos may be the right choice.

SHOOK
HARDY & BACON

Just as when visiting your favorite restaurant, it's important to know how much you are willing to spend, and to have a

realistic expectation of the service that amount will buy. Problems arise when a company wants to pay taco prices for filet mignon service just because another firm once performed some loosely similar work at a rock-bottom price. When asked by you to do so, some firms will invariably promise the impossible. But when the budget is nearly exhausted before the first deposition is taken, the ever-uncomfortable "we need to revise the budget" conversations will start. To avoid this, get a solid understanding from the business of the case's importance and determine the service level needed. Then clearly articulate to outside counsel the level of service you expect. And make sure they understand upfront that there will be no budget increases absent extraordinary circumstances.

2. Any landmines? When negotiating a budget, it's critically important to give outside counsel an accurate appreciation of any potential issues that may spring up as the case progresses. For example, does your company have a spotty records collection, storage and retrieval system? How likely is it that while strolling through a remote warehouse, someone will stumble upon a box of highly relevant records that should have been produced to the other side months ago? Do any former employees who may be called to testify as witnesses have a rocky history with the company? Did any of them leave under less than ideal circumstances? Believe it or not, my colleagues and I have faced situations like these before. And such issues oftentimes lead to expensive sideshows that can derail a budget in the blink of an eye. So when preparing the budget, be honest with yourself and your outside counsel. If there is a reasonable possibility that issues like these can

arise, make sure that they're accounted for in your budget.

3. Your goals and incentives. Your outside counsel's primary goal should be to resolve the matter as quickly and inexpensively as possible. But usually there is a tradeoff between resolution time and settlement price. Cases can be resolved quicker but at a higher price tag, or vice-versa. A number of factors—like bonus structures, regulatory reporting requirements, accounting deadlines, and the existence of other similar cases—can weigh heavily in the cost- versus-time analysis. So in order to ensure your satisfaction with the final outcome, tell your outside counsel as early as possible whether your primary goal is resolution speed or cost. This preference can have a profound impact on outside counsel's strategic decisions and, if implemented soon enough in the litigation process, shape the outcome in a way that most closely resembles your expectations.

4. Your business preferences. Will you be happy if outside counsel bills less than what was budgeted? Some outside counsel think so. But that isn't always true. Indeed, while some businesses are happy to spend less than expected, others dislike needlessly reserving funds that could have been used for something more productive. When negotiating a budget, advise outside counsel of any business preferences that may be counter-intuitive. Such knowledge will help your outside counsel shape the budget in a way that will prevent future bumps in the road.

5. Communicate. Most outside counsel understand that you're very busy. And many try to not to bother you, even when they should. But a lack of communication between in-house and outside counsel can oftentimes lead to trouble. Even after you've taken the time to negotiate the perfect budget, it makes sense to schedule a short periodic call with outside counsel to discuss where things stand. If any unexpected issues that can derail your budget loom on

continued on page 7

continued from page 6

the horizon, it's better to identify them before any work is done. Early warning can give you the opportunity to control expenditures by adjusting strategy. And if overspending cannot be avoided, early and frequent communication can give you the precious time needed to notify the business before the bills start piling up. So encourage outside counsel to speak freely and frequently with you about the status of your budget.



Author:

Mihai M. Vrasmasu is a partner of Shook's Pharmaceutical and Medical Device Litigation, Mass Tort, Product Liability, Litigation practice groups. Mihai has extensive experience defending Fortune 100 pharmaceutical and medical device manufacturers from case inception through resolution and appeal. In 2017, Mihai was seconded to

Bayer, where he spent nearly a year working as in-house counsel. While at Bayer, he gained valuable perspective regarding the unique challenges faced by multinational companies involved in complex product liability litigation. Mihai also provides litigation risk assessments and other consulting services to surgical robot manufacturers. Since 2015, he has written about emerging legal trends and developments in clinical robotics in the Clinical Robotics Law Journal.

The NLRB's End of Year Activity Reversed Obama-Era Decisions and Administrative Rules

By David Gobeo and Matthew Luttinger, FordHarrison LLP



While political appointments to the National Labor Relations Board (the "Board") can take months or years to complete, the consequences of these appointments lead to a pendulum of shifting precedent, which can lead to unpredictability for businesses. Companies should expect that some of these reversals and returns to prior precedent may once again be reversed in the future.

Post-expiration cancellation of dues checkoff

A "due checkoff" provision in a collective bargaining agreement ("CBA") provides that the employer agrees to deduct union dues from the pay of employees who have voluntarily signed on for deductions, regardless of whether the employee is a union member, until the employee revokes such authorization as specified in the agreement.

In *Valley Hospital Medical Center, Inc.*, 368 NLRB No. 139 (2019), the National Labor Relations Board overruled *Lincoln Lutheran of Racine*, 362 NLRB 1655 (2015) to re-establish the rule under *Bethlehem Steel*, 136 NLRB 1500 (1962) that contract provisions for dues checkoff expire when a CBA expires.

Takeaway

This decision goes to the balance of power. The Board stated that an employer

is free upon contract expiration to use dues checkoff as an economic weapon in bargaining without

interference from the Board. The return to the longstanding precedent likely will result in more successor agreements being reached without expiration.

Greater confidentiality for workplace investigations

Previously, the Board held that employers could require confidentiality during workplace investigations only where they demonstrated that confidentiality was necessary to preserve the integrity of the investigation. See *Banner Estrella Med. Ctr.*, 362 NLRB 1108 (2015).

In *Apogee Retail LLC d/b/a Unique Thrift Store*, 368 NLRB No. 144 (2019), the Board overruled *Banner Estrella Medical Center* and found that, upon the application under *The Boeing Co.*, 365 NLRB No. 154 (2017), written rules that require employees to maintain confidentiality and prohibit unauthorized discussion concerning workplace investigations into illegal or unethical conduct during the investigation did not violate the National Labor Relations Act (the "NLRA").

Takeaway

This decision relieves some of the pressure that employers face when handling highly sensitive investigations, such as allegations of sexual harassment or substance abuse which merit confidentiality.

Restrictions on the use of employer-owned IT for non-work purposes

In *Caesars Entertainment d/b/a Rio All-suites Hotel and Casino*, 368 NLRB No. 143 (2019), the NLRB overruled *Purple Communications*, 316 NLRB 1050 (2014), holding that employees have no statutory right to use employer equipment, including IT resources for the purposes of communicating information that is protected under Section 7 of the NLRA. Such information includes information typically communicated as part of a union organizing drive. However, the Board continued to recognize an exception in cases where an employer's email system furnished the only reasonable means for employees to communicate with each other. Further, the Board held that employers cannot target communication of information protected under Section 7 for harsher treatment than non-protected, non-work-related communications. For example, if an employer permits the non-work-related use of its email system for numerous communications regarding weekend plans, but discharges an employee for sending one union-related email, this may constitute a violation of the NLRA.

Takeaway

The practical effect of this decision is that employers who implement and enforce a neutral policy limiting non-work-related use of email and other information

continued on page 8

technology systems may limit employees' use of such systems without automatically running afoul of the NLRA, as long as the policy does not exclusively prohibit union-related solicitations.

Reasonable limitations on union insignia and badges

In *Wal-Mart Stores, Inc.*, 368 NLRB 146 (2019) the Board evaluated two dress code policies that limited, but did not prohibit, employees from wearing union insignia at work. The Board applied its test from the *The Boeing Co.*, 365 NLRB No. 154 (2017) to analyze an employer's logos or graphics policy and ruled that an employer's facially-neutral dress code requiring logos worn by personnel on the sales floor to be small and non-distracting was lawful, but unlawful as applied to employees who did not work on the sales floor. The Board explained that limitations on the display of union insignia short of outright prohibitions will vary in the extent to which they serve legitimate employer interests and interfere with employers' NLRA rights.

Takeaway

On its face, this decision makes it easier for employers to restrict the type and manner of union buttons and insignia employees can wear when interacting with clients and customers.

Post-arbitral deferral

In *United Parcel Service, Inc.*, 369 NLRB No. 1 (2019), the Board returned to its traditional standard for post-arbitral deferral in deciding whether to defer an arbitrator's prior resolution of a grievance concerning an employee's claim of unfair labor practices that has been alleged to violate the NLRA. Under the restored standard, the Board will defer to the arbitrator's decision where: (a) the arbitral proceedings appear to have been fair and regular; (2) all parties have agreed to be bound; (3) the arbitrator considered the unfair labor practice issue; and (4) the arbitrator's decision is not clearly repugnant to the NLRA.

Takeaway

This decision will help level the playing field and allow employers to rely on collectively bargained arbitration agreements rather than being forced to defend the same claim multiple times.

Modifications to the 2014 "quickie" Election Rules

In December of 2019, the Board adopted a 733-page final rule that significantly changed the Board's longstanding union election procedures and eliminated many of the steps that employers had been relying on to protect their rights and the rights of employees who may not want to union.

The Board implemented significant changes to the expedited election rules adopted in 2014. These changes include clarifications to procedures prior to an election that better ensure the opportunity for litigation and resolution of unit scope and voter eligibility issues. The changes also permit parties additional time to comply with the various pre-election requirements.

Takeaway

The rule seemingly simplifies the election process for all parties and is seen as a win for employers.

Authors:



David Gobeo is the office managing partner for FordHarrison's West Palm Beach office. He focuses his practice on the representation of management in a broad range of employment matters including against claims of discrimination, harassment and wage and hour violations.



Matt Luttinger is an associate at FordHarrison's West Palm Beach office whose practice is focused on the representation of management in matters related to labor and employment law.



MEMBER SPOTLIGHT

Joanne Dautruche
Associate Counsel, ChenMed

- 1. How long have you been an ACC South Florida member?** I've been a member of ACC South Florida for almost 3 years.
- 2. Why did you join the ACC?** A fellow St. Thomas University Law alum, Joshua Foreman, spoke highly of ACC and encouraged me to get involved.
- 3. What's a typical day like for you at ChenMed?** A typical day for me at ChenMed includes partnering with our internal stakeholders when negotiating leases and various vendor agreements. I work closely with our Human Resources department to provide guidance on employment law matters such as ADA, FMLA and EEOC claims or developing risk mitigation protocols. I also counsel our physicians, executives and senior management on day-to-day legal questions or issues.
- 4. What do you enjoy most about being in-house?** What I enjoy most about being in-house is the breadth of legal areas I touch in a day. Accordingly, no two days are routine and I am constantly growing.
- 5. When you're not working, where would we find you?** When I am not in the office, I am chauffeuring my kids to their band, theatre, basketball and dance activities or cheering from the stands.
- 6. What's the last book you read?** The Happiness Advantage" by Shawn Achor. His concept of not delaying our happiness until we accomplish our list of goals is impactful.
- 7. Tell us something that might surprise us about you.** Something that might surprise people is that I wanted to be an actress. I minored in Theatre and acted in several plays before going into law.

Welcome New Members!

Melissa G. Beare

Associate General Counsel
Dycom Industries, Inc.

Ryan Chai

Corporate Counsel
The Ultimate Software Group, Inc.

Jennifer Dagdag Bork

Sales Contract Administrator
The Ultimate Software Group, Inc.

Dolly Davis

Chief Litigation Counsel
Florida Crystals Corporation

Elena de Blank Paylor

Deputy General Counsel
DUAL Commercial LLC

Dan Devine

Corporate Counsel
The Ultimate Software Group, Inc.

Rebecca Osorio Farmer

Associate General Counsel
Memorial Healthcare System

Jessica Fierman

Legal Director
BUPA Global Latin America

Jill Feluren

Sales Contract Administrator
The Ultimate Software Group, Inc.

Olivier Genicot

General Counsel
Thales

Kara Goldman

Corporate Counsel
The Ultimate Software Group, Inc.

Janice Griffin

General Counsel
Phil Smith Management Inc.

Matthew Grosswald

Legal Counsel
Apotex Corp.

Bethanie Haynes

Corporate Counsel
The Ultimate Software Group, Inc.

Beth P. Hecht

SVP & General Counsel
Xeris Pharmaceuticals

Mary Beth Koenig

Chief Legal Counsel
Lennar Corporation

Maria Luther

Director, Compliance - Product,
Prod. Research Strategy
The Ultimate Software Group, Inc.

Lauren O'Connor

Senior Director, Labor &
Employment Counsel
Southern Glazer's Wine & Spirits

Claudia Oliva

Director of Corporate Legal Affairs
Areas USA

Vanessa Penaranda

Executive Director of Corporate and
Legal Affairs
Areas USA

Steven M. Pincus

Litigation Counsel
Florida Crystals Corporation

Cheyenne Riker

General Counsel
Haven Behavioral Healthcare, LLC

Candace Rogers

Counsel
Humana Inc.

Colleen Rynne

Senior Compliance Advisor, Prd.
Research Strategy
The Ultimate Software Group, Inc.

Diana Sanchez

Attorney
Red Hat, Inc.

Maria Fernanda Tako

Director of Contracts
Administration
The Ultimate Software Group, Inc.

Courtney Walsh

Associate General Counsel
Lennar Corporation

Sponsors for 2020

PLATINUM

Bilzin Sumberg

GOLD

Fisher & Phillips LLP

FordHarrison LLP

Gunster

Little

Shook, Hardy and Bacon, LLP

SILVER

Akerman

Boies, Schiller & Flexner LLP

Bowman and Brooke LLP

Cozen O'Connor

Exterro

Jackson Lewis P.C.

Saul Ewing Arnstein & Lehr

Squire Patton Boggs

BRONZE

Alvarez & Diaz-Silveira LLP

Baker McKenzie

Bloomberg Law

Buchanan Ingersoll & Rooney PC

Carlton Fields

CSC

DLA Piper

Nelson Mullins

Robert Half Legal

Shutts & Bowen LLP

Miami-Dade Progressive Dinner

Shook, Hardy and Bacon, LLP

(Premier Sponsor)

Buchanan Ingersoll & Rooney PC

(Dinner Sponsor)

DLA Piper (Dessert Sponsor)

Palm Beach Progressive Dinner

Shutts & Bowen LLP (Premier Sponsor)

FordHarrison LLP (Dessert Sponsor)

Member Appreciation Event

Foley & Lardner

Holiday Party

Cozen O'Connor (Miami)

DLA Piper (Palm Beach)

General Counsel/CLO Dinner

Saul Ewing Arnstein & Lehr

Coffee Talk CLE Series

Baker McKenzie

Fisher & Phillips LLP

Rumberger, Kirk & Caldwell

White & Case LLP

Chief Legal Officer Roundtable

Nelson Mullins

Sports Outing & CLE Program

Buchanan Ingersoll & Rooney PC

We are monitoring the impact of COVID-19 (Coronavirus) in the South Florida area. The health and safety of our members, guests and sponsors is our top priority. "In accordance with the most recent CDC guidelines to avoid all gatherings of 50 people or more for the next eight (8 weeks), ACC South Florida has made the decision to postpone all ACC-related events and activities scheduled through May 15, 2020. We will continue to monitor the situation closely and will re-evaluate our calendar schedule as more information becomes available.

Past Events

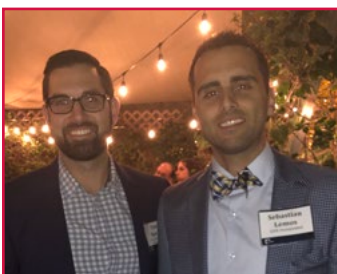
Community Service Event at the Dania Beach PATCH Garden

ACC South Florida teamed up with Hands on Broward for a day of gardening at Dania Beach PATCH. We are lucky to have an environmentally and economically sustainable urban farming system within our own community. Thank you to our members, sponsors, family and friends who attended!



Palm Beach Holiday Party Hosted by DLA Piper

DLA Piper and ACC South Florida celebrated the holidays at Seasons 52 in Palm Beach Gardens. Thank you to DLA Piper for hosting such a wonderful event.



Miami-Dade Holiday Party Hosted by Cozen O'Connor

ACC South Florida and Cozen O'Connor jingled and mingled all night at the Tuck Room in North Miami Beach. Thank you to Cozen O'Connor for hosting such delightful event.



Private Cooking Class Presented by Bilzin Sumberg

ACC South Florida members enjoyed a night of cooking, food and drinks at the Real Food Academy in Miami. We may have some Top Chefs in the making thanks to Bilzin Sumberg.



Chapter Leadership

President

Jessica Rivera

EVP, Global Sales & Corporate Affairs, MotionPoint Corporation

Immediate Past President/CLE Conference Chair

Carlos Cardelle

Managing Senior Counsel, ADP TotalSource, Inc.

Secretary

Amy Charley

Chief Administration & Legal Officer, Alteon Health

Treasurer

Warren Stamm

General Counsel, Niido

Sponsorship Co-Chair

Aline Drucker

General Counsel, Invicta Watch Group

Sponsorship Co-Chair

Eric Masson

Chief Legal Officer, Dental Whale

Communications Co-Chair

Simonne Lawrence

Deputy General Counsel and VP, Compliance, Envision Pharmaceutical Holdings

Communications Co-Chair

Joanne Dautruche

Associate Counsel, ChenMed

Community Outreach Chair

Sharaine Sibblies

Deputy General Counsel - Corporate Services, JM Family Enterprises, Inc.

Membership Co-Chair

Alan Kramer

Associate General Counsel, Deutsche Post DHL

Membership Co-Chair

Daniela Rost

General Counsel, Felman Trading Americas

Membership Engagement Chair

Matthew Cowan

Director, Assistant General Counsel, Office Depot

Board of Directors

Joshua Forman

General Counsel & Chief Compliance Officer, GlobeNet

Peter Levine

Associate General Counsel, WoundTech

Robert D'Amore

Senior Counsel, Attorneys Title Insurance Fund, Inc.

Executive Director

Christina Kim

Christina Kim
Executive Director

Executive Director Note

Dear Members,

From iguanas falling off trees to the Super Bowl, 2020 has already proven to be reckoned with! Here at ACC South Florida, we kicked off the year with a delicious and fun cooking class hosted by our Platinum sponsor, Bilzin Sumberg and we have many more exciting and new events planned coming up so keep an eye out for our invitations via e-mail, social media and website. If you have not been to an event yet, we encourage you to come out, network, make new friends and I promise you, everyone has fun as well!



Christina & family in Dominica for the holidays

Last but not least, thank you to our 2020 sponsors who are committed to providing our members with the best programming and experiences. We look forward to partnering with you throughout the year.

Christina Y. Kim

Executive Director, ACC South Florida