



Association of Corporate Counsel  
Southern California Chapter (ACCA-SoCal)

March 28, 2005

*Via USPS and Facsimile (916) 319-2167*

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Assemblyman Tom Harman  
State Capital, Room 5158  
1303 Tenth Street  
Sacramento, CA 95814

Re: Assembly Bill 1133 (Harman)

Dear Assemblyman Harman:

The Association of Corporate Counsel (“ACC”) and Southern California Chapter of the Association of Corporate Counsel (“ACCA - SoCal”) are pleased to express their strong support for Assembly Bill 1133 (Harman).

The Association of Corporate Counsel (“ACC”) is a national and international organization of in-house attorneys serving the professional needs of attorneys who practice the legal departments of corporations and other private sector organizations worldwide. The association promotes the common interests of its members, contributes to their continuing education, and encourages advancements in standards of corporate legal practice. Since its founding in 1982, the association has grown to more than 17,000 members in 51 countries who represent 7,500 organizations.

ACCA – SoCal is one of the largest and most active chapters of ACC. ACCA – SoCal has over 1000 active members. ACCA – SoCal provides continuing education programs, offers targeted information that addresses the needs of in-house counsel, and advocates issues affecting in-house counsel’s ability to practice law.

Understanding what our members need to successfully and properly represent their clients, ACC and ACCA-SoCal believe that AB 1133 is critical to protecting the attorney-client privilege, which has for over 400 years been a hallmark of our legal system. Protection of confidential communications between attorney and client is fundamental to the public policy of ensuring the right of every person to freely and fully confer and confide in counsel of their choice, in order that attorneys may provide, and clients may obtain, informed and competent legal advice. For in-house counsel, especially in light of the recent “Enron” type cases and the passage of Sarbanes-Oxley, the need for the complete candor of disclosures from management to in-house counsel is of paramount importance not only to directors and shareholders, but also the public at large.

Protection of confidential communications is important not only to the rights of attorneys and their clients, but also to the ability of physicians, psychotherapists, domestic violence and sexual assault counselors, and members of the clergy to consult freely and frankly with their patients, clients and the members of their congregations.

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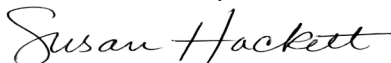
Frank discussion in such confidential relationships is crucial to achieving the socially beneficial purposes of those relationships. For example, open communication between doctors, psychotherapists and their patients is necessary for effective treatment, benefiting both the patient and society as a whole.

The protection for such confidential communications is lost when a significant part of the communication is disclosed to a person outside the protected relationship. The majority of California courts have interpreted the law to mean that only an intentional disclosure results in the loss of protection; inadvertent disclosure will not destroy the privilege. However, ambiguities in the language of Evidence Code § 912 leave open the possibility that protection may be lost through inadvertent disclosure of confidential communications. Indeed, at least one decision (depublished by the California Supreme Court) erroneously held that that contrary to the rule for all other attorneys, an in-house attorney who is providing legal services, but is also a corporate officer, can inadvertently waive the attorney-client privilege.

Potential loss of confidentiality through inadvertent disclosure has become an increasing problem as accidental disclosures become more common through the use of electronic communication such as voicemail and e-mail. For example, a person could easily click the wrong button and accidentally send an e-mail to the wrong recipient. For in-house counsel, this eroding of the attorney-client privilege for inadvertent disclosures will only serve to stifle otherwise appropriate communications that are critical in assuring that the in-house counsel is providing proper legal advice and ultimately, accurate public disclosures.

Assembly Bill 1133 was drafted by the California Law Revision Commission to amend the law to eliminate the possibility of anomalous judicial decisions and to make it clear that only an *intentional disclosure* results in loss of protection for a privileged communication. This would promote frank discussion allowing the protected relationships to serve their socially valuable functions, protect the privacy rights of California citizens, and conserve judicial and private resources by preventing litigation over whether the protection of confidential communications has been lost through inadvertent disclosure. It would further facilitate enforcement of the ethical duties of doctors, lawyers (both in-house and outside counsel), and other professionals to maintain the confidentiality of private information, benefiting the public as a whole. We support Assembly Bill 1133.

Very truly yours,  
Association of Corporate Counsel (ACC)



Susan Hackett  
Senior Vice President and General Counsel

Association of Corporate Counsel – Southern California Chapter (“ACCA SoCal”)



Vincent M. Gonzales  
President

Joseph J. Craciun  
Advocacy Committee Chairperson

cc: Members of the Assembly Judiciary Committee (via facsimile)