

American Corporate Counsel Association (ACCA)
November, 2002
In-House Counsel's Role in Ensuring Corporate Responsibility

In light of recent highly-publicized cases of corporate wrongdoing, this policy reaffirms our unequivocal allegiance to the highest standards of legal, professional, and ethical behavior of in-house lawyers serving organizational clients. By adopting this policy statement, we underscore our belief that:

1. Every lawyer serving the organizational client, whether practicing in-house or in an outside firm, must conform to the rules regulating the profession. These rules, however, are only the baseline. We must do more to instill trust and confidence in our abilities and judgment, and better serve our clients, legal system and society.
2. When a situation calls into question a need to assess what our professional duties are, it is crucial to remember (and help corporate executives and other employees understand) that the in-house attorney's client is the entity, and not any one employee or group of executives. An in-house attorney addressing corporate wrongdoing should seek to resolve the issue internally, including redressing the issue up the chain of command of management. If those steps do not result in appropriate action to resolve an issue of material impact on the entity, the attorney must take the matter to the board or an appropriate sub-group of the board. Unless required to do so by law, counsel must not violate the attorney-client and related privileges by reporting the matter to outside/third parties.
3. Corporate clients tell us that they look to their in-house counsel not only as a compliance resource, but as an ethical resource as well. In-house lawyers are uniquely situated to encourage good corporate behavior. ACCA is committed to support in-house counsel in fulfilling that role by promoting practical resources that help corporate counsel act as ethical compasses for their clients, as well as developing and sharing best practices in legal and governance leadership that will be a model for both the profession and our clients.

Sometimes it is not clear whether certain corporate actions are improper or unethical (especially when they are not illegal) without the benefit of 20/20 hindsight. We support the adoption and enforcement of professional rules that provide clear guidance on how to help lawyers help clients stay on the right side of the law, but it would be inappropriate to adopt rules that supersede the legal and reasonable business judgments of clients.

4. Fundamental to the corporate client/lawyer relationship are the attorney-client and related privileges, which promote the open and honest flow of communication between clients who seek guidance in their endeavors and lawyers who can provide ethical and legal direction to that effort. Without the attorney-client and related privileges, legal counsel will no longer be fully trusted as advisers on sensitive matters, and may well be marginalized or shut out of key decisions. As a result, corporate clients will be deprived of a crucial resource in meeting the legal compliance and corporate responsibility expectations of shareholders and the public.