



Wednesday, October 30

11:00 AM - 12:30 PM

1001: Your First Year In-House

Alejandra Almonte

Division General Counsel, N. America & Latin America
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Susan Dauber

Attorney
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Debora Jones

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General Counsel
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Faculty Biographies

Session 1001

Alejandra Almonte

Division General Counsel, North American & Latin America
gategroup Airline Solutions

Susan Dauber

Susan Dauber is the general counsel of Ogg Trading, a NYC-based firm which develops and provides sophisticated trading solutions for institutional foreign exchange clients. Ms. Dauber has a full-range of responsibilities at the firm, including vendor and customer contracts, investments, intellectual property and employment matters.

Prior to joining Ogg Trading, Ms. Dauber served as general counsel at innovative technology companies Lava Trading and The Receivables Exchange, as well as deputy general counsel - legal & compliance at Instinet, an institutional broker, and director at Citigroup. Ms. Dauber was also a litigator at Cravath, Swaine & Moore, and Paul Weiss before going in-house.

Ms. Dauber served as a director for the Passaic Valley Water Commission. Ms. Dauber is an active member of Autism Speaks.

Ms. Dauber received a BA from the University of Pennsylvania and is a graduate of the New York University School of Law.


Debora Jones

Counsel
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Lydia Tallent

General Counsel
SC Solutions, Inc.


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Your First Year In-House

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Lydia Tallent
Susan Dauber
Debora Motyka Jones


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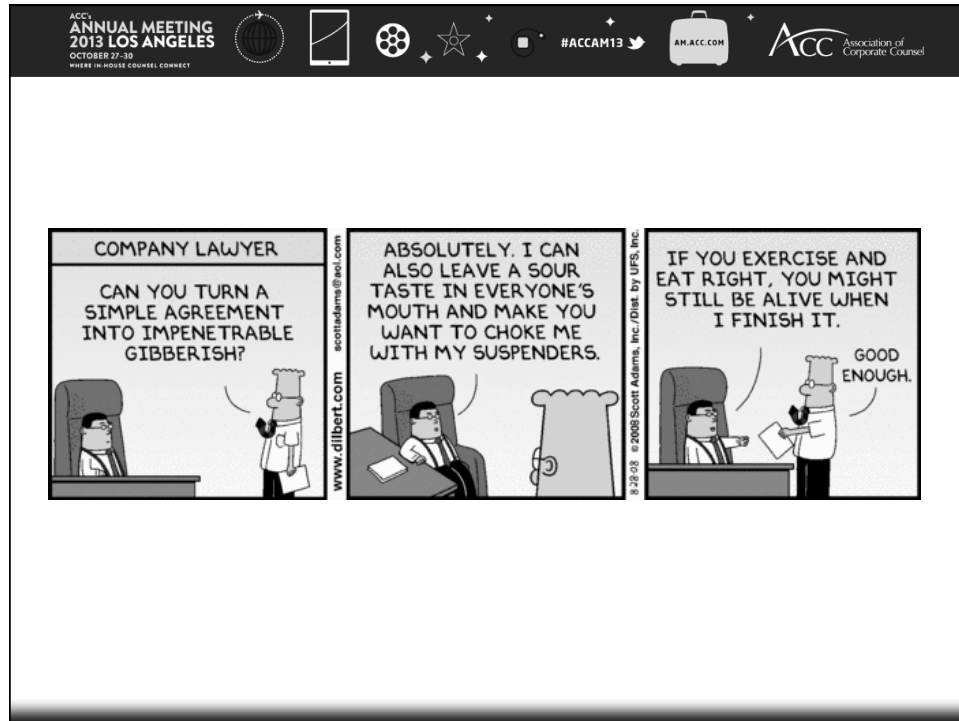


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Identifying Key Business Partners and Building Relationships



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How do you identify key business partners?

- Your goal is to facilitate the core business
 - Identify what drives your business? Sales? Finance? Marketing?
 - Identify how your business is organized.
- Identify key stakeholders in each primary business function
 - Understand different between decision-makers and influencers in each department

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How do I get to know the stakeholders?

- Schedule “interviews” with them
- Focus on understanding their needs
 - Ask a lot of questions including about their past experience with legal
 - Do NOT limit your questions to “legal issues”
 - Ask about what goals/metrics their department is responsible for

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How do I maintain that relationship?

- Collaboration
 - What can you collaborate on (aka cross-selling)?
 - Trainings; contracts; intellectual property; employee relations
- Customer Service
 - How can legal help them meet their goals?

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How do I maintain that relationship?

- Do
 - Have regular meetings with key stakeholders
 - Finance can be your best friend
 - Develop a plan for cross-selling
 - Ask for frequent feedback
- Do Not
 - Present people with legal issues with no solution
 - Forget to communicate/follow up/cheerlead
 - Get drawn into personal legal matters

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Know the Business

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**Coming together is a beginning.
Keeping together is progress.
Working together is success.**

- Henry Ford

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What does it mean to “know the business”?

- Put simply, understand what your company does -- at its *core*.
 - The ins-and-outs of the operation;
 - Business plans and growth strategy;
 - Financial drivers; and,
 - Industry trends and market dynamics.
- Get behind the numbers (yes, I said *numbers!*)

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How do you learn the business?

- Identify key business people *at all levels* of the organization;
- Set up regular meetings with key functional leads;
- Get a seat at the table early and often;
- Make your CFO your best friend;
- Read industry news;
- Read your annual report;
- Spend time “in the field”;
- Spend time with customers;
- Ask questions – yes, even the “dumb” ones;
- Let the business challenge your advice;
- Don’t say “no”, ask “why”; and,
- LISTEN.

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Why should a lawyer care about business?

Successful in-house counsel are not mere *advisors* to the business they are **thought partners** of the business.

That means:

- Being **facilitators** of business objectives
- Serving as **strategic advisors** to overcome legal and business challenges
- Mitigating risk to **maximize value** of business transactions and decisions
- The only way to effectively achieve these goals is to **KNOW THE BUSINESS**.




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Building Relationships with Outside Counsel



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How do I work with outside counsel?

- Your goal is to leverage outside counsel effectively and manage spend
- Understand your (your team's) competencies
 - What should be outsourced versus insourced
- Understand the landscape
 - Who is outside counsel and why do those relationships exist
 - What's your organization's legal spend tolerance

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How do I work with outside counsel?

- Come up with a plan for OC selection and management
 - Socialize internally and share with outside counsel
 - Understand that change may be difficult because built up trust
- Know what additional resources you can leverage from OC
 - What will they give you for “free”
 - Does centralizing work get you a lot more

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How do I work with outside counsel?

- Do
 - Outline your expectations with outside counsel
 - Communicate often
 - Evangelize their value
- Do Not
 - Assume that current practices with outside counsel are the best, or the best ones for you:
 - Do not assume someone else has looked at billing
 - Do not assume your predecessor wanted the same level of interaction with outside counsel




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Take Advantage of Your Resources



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How do I develop resources?

- Your goal is to develop your resources internally and externally
- Join associations with value to you
 - do they have resources for in-house counsel?
 - State Bars, Local Bars, other associations (ACC)
- Reach out to your network of colleagues
 - They can provide you with information and feedback

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How do I develop resources?

- Take a close look at what resources or tools your company already has in place internally
 - Evaluate the tools are already in-house. Will these work for you? Can you discontinue some?
 - Internal tools used in other divisions may often have some value to legal, and the up-front costs have already been paid.

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What's available through ACC?

- ACC
<http://www.acc.com/legalresources/index.cfm>
 - Egroups: ask a question or seek a form, and you will likely get multiple answers
 - In-depth information: QuickCounsel and InfoPAKs
 - Quick articles and tips: Docket and Top Ten
 - Forms and Checklists: Gathered together on ACC's site from egroups and other resources
 - Education: Webcasts, QuickHits, Annual Meeting

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What's available outside of ACC?

- State and Local Bars, other associations
 - Information geared to your local area
 - Chamber of Commerce (California)
 - Local networking

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How do I build a network?

- Reach out to your colleagues from law school and past firms.
 - They may be your next outside counsel, or can provide you with guidance on areas where you don't have training.
- Work to build a new network of in-house colleagues as well.
 - Network at local ACC or other legal events in your area.
 - Build a new knowledge base for questions for in-house counsel.

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How do I use what's in place?

- Work to preserve the current internal knowledge
 - Who did your job previously? Were other departments also a part of the process?
 - As part of getting to know the business, also determine who has information you need to maintain or gather
- Discover internal tools that may be available to you
 - Data Management systems, checklists, etc

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How do I take advantage of my resources?


- **Do:**
 - Ask for what you need to do the best job possible.
 - Be cost-sensitive (unless your company has written you a blank check).
 - Preserve internal knowledge.
- **Don't:**
 - Be shy in reaching out to your networks for help.
 - Wait too long to get the resources you need.
 - Hesitate to build relationships to help you accomplish your objectives.

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Go Back to the Basics

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**There is one word in America
that says it all, and that one
word is, 'You never know'.**

-Joaquin Andujar



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What about anti-discrimination and harassment training?

- Size Does Matter
- Location, Location, Location



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What about the employee handbook?

Say what you mean – mean what you say

- Changing regulations
- Disciplinary actions
- New technology
- Remote workforce



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What about privacy policies?

- *Where* are files stored (hard copies)?
- *Who* has access (hard copies and e-files)?
- *What* safeguards are in place?

Why:

- Personally Identifiable Information
- EU, Asia or the US



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What about my contracts?

- Where are they stored?
- How are they stored?
- Is there an index
 - Names
 - Termination Dates
- Authority to contract

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What about our website terms of use?



www.photoblog.com

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What about incentive pay?

- Does the company have commission-based employees, performance bonuses or other incentive-based pay?
- Are the incentive pay plans in writing?
- How are modifications implemented?
- What happens when an employee leaves?

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What about FLSA and other regulations?




"First rule—what happens in accounting stays in accounting."

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Questions?



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Additional Resources

- **InfoPAKs:**
 - New to In-House Practice
 - Establishing the In-House Law Department: A Guide for an Organization's First General Counsel



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Additional ACC Resources

- **InfoPAKs**
 - New to In-House Practice
 - Establishing the In-House Law Department: A Guide for an Organization's First General Counsel
 - Managing Value-Based Relationships with Outside Counsel
- **Top Tens**
 - Speaking the Language of Your Business Partners




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Additional ACC Resources

- **Resource Lists and Articles:**
 - Best Software and Web Resources List
 - Navigating the Complexities of C-Suite Relationships Resource List
 - Managing the Global Law Department Resource List
 - The CLO's Role in Corporate governance and compliance CLO Resource List
 - Starting from Scratch – A European Perspective on the Pioneer Lawyer



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Additional External Resources

- <http://www.legalnews.com/detroit/882455>
- http://www.mcca.com/_data/n_0001/resources/live/PinkBookFromLawyer.pdf
- <http://www.kornferrynstitute.com/sites/all/files//documents/briefings-magazine-download/The%20Legal%20Function%20Transformed-%20Best%20Practices%20of%20Today's%20General%20Counsel%20.pdf>
- <http://www.huronconsultinggroup.com/library/Law%20Department%20Cost%20Management.pdf>
- http://www.bakermckenzie.com/files/Publication/d0bf70b5-b3e2-4f4a-ba2d-597fc49c0323/Presentation/PublicationAttachment/06aaa78d-fe1c-478a-9ba4-5bb8d1845fe9/london_rmc_importance_rms_survey_2007.pdf
- <http://www.insidecounsel.com/2011/10/10/labor-the-3-cs-of-auditing-flsa-compliance?t=labor-employment&page=2>
- <https://lib.law.washington.edu/content/guides/Current>
- <http://www.ncsl.org/issues-research/telecom/state-laws-related-to-internet-privacy.aspx>
- <http://www.thehrspecialist.com/images/file/EmployeeHandbook.pdf>
- <http://www.hg.org/busemployment.html>
- <http://www.eeoc.gov/laws/practices/>
- <http://www.dol.gov/whd/flsa/>



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ACC'S CLO THINKTANK- FOLLOW-UP RESOURCE LIST
"THE CLO'S ROLE IN CORPORATE GOVERNANCE AND COMPLIANCE"

CONFLICTS MANAGEMENT-OUTSIDE LAW FIRMS

Conflicts of Interest- Understanding How Outside Counsel Assess Conflicts

<http://www.acca.com/protected/article/conflicts/outsideconflict.html>

Parrying the 'Thrust Upon' Conflicts That Result from Client Mergers: The Ethics Rules Catch Up with Corporate Reality

<http://www.acca.com/protected/pubs/docket/fm03/ethics1.php>

Conflicts of Interest Issues Involving Outside Counsel

<http://www.acca.com/protected/pubs/docket/nd01/conflict1.php>

Conflicts and Waivers 101: A Primer for In-House Counsel

<http://www.acca.com/protected/article/ethics/jarvis.html>

Conflicts Management Programs: What Companies and Law Firms are Doing

<http://www.acca.com/resource/v6298>

ACC's Conflicts and Waivers InfoPAKsm

<http://www.acca.com/infopaks/conflict.html>

LIABILITY FOR IN-HOUSE LAWYERS

Indemnification & Insurance Coverage for In-House Lawyers

http://www.acca.com/protected/article/insurance/lead_liability.pdf

(features practices implemented by eight companies sharing information without attribution)

Paradise Tarnished: Today's Sources of Liability Exposure for Corporate Counsel

<http://www.acca.com/resource/v4960>

SEC and Criminal Proceedings Against Inside Corporate Counsel

<http://www.acca.com/resource/index.php?key=6063>

Corporate Counsel Caught in the Crosshairs

<http://www.acca.com/protected/article/attyclient/crosshair.pdf>

Through the Looking Glass: Ten Lessons from In-House Counsel on Trial (ACC Docket)

<http://www.acca.com/resource/v4850>

Hidden Insurance Issues Behind Sarbanes-Oxley and Recent Governance Reform

<http://www.acca.com/protected/pubs/docket/apr05/ladder.pdf>

ACC Alliance Partner- Link to Chubb's Employed Lawyers Professional Liability Insurance Information

<http://www.acca.com/php/cms/index.php?id=225#chubb>

Canadian Law Society- Insurance Link to LawPro Insurance Information



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www.acc.com

http://www.lsuc.on.ca/media/sept2806_lawpro.pdf

PRIVILEGE PROTECTION

ACC Amicus in BCE Case- Protecting Privilege in Parent-Subsidiary Context

<http://www.acca.com/php/cms/index.php?id=84&fid=999>

ACC Privilege Public Policy Resource Home Page

<http://www.acca.com/php/cms/index.php?id=84>

“Wither” Attorney-Client Privilege Article

<http://www.acca.com/protected/pubs/docket/sept05/wither.pdf>

ACC Policies and Comments/Testimony on Attorney-Client Privilege Issues:

<http://www.acca.com/public/article/attyclient/debate.pdf>

<http://www.acca.com/public/comments/attyclient/privilege.pdf>

<http://www.acca.com/public/accapolicy/corpresponspolicy.pdf>

<http://www.acca.com/public/accapolicy/attyclient.pdf>

Responsive Measures for Government Investigations

<http://www.acca.com/protected/policy/compliance/respond.pdf>

The New Federal Sentencing Guidelines for Organizations: Great For Prosecutors, Tough on Organizations, Deadly for the Privilege

<http://www.acca.com/protected/article/attyclient/sentencing.pdf>

CORPORATE GOVERNANCE & COMPLIANCE

In-House Support for Corporate Governance

http://www.acca.com/protected/article/governance/lead_global.pdf

(features practices implemented by Alvarion Ltd.; Ballard Power Systems; General Motors Corporation; SAP AG; Sun Microsystems, Inc.; Westpac Banking Corporation; and Woolworths Limited)

Sarbox 307 Up-the-Ladder Reporting & Attorney Professional Conduct Programs

http://www.acca.com/protected/article/corpresp/lead_sarbox.pdf

(features practices of BellSouth Corporation; Duke Energy Corporation; Hasbro, Inc.; General Electric Company; General Motors Corporation; PepsiCo, Inc.; Starbucks Coffee Company; and Xerox Corporation. Also features law firm programs for: Alston & Bird LLP; Gibson, Dunn & Crutcher LLP; Palmer & Dodge LLP, Weil, Gotshal & Manges LLP; and Wilmer, Cutler & Pickering)

Supporting the CFO & Finance Function

http://www.acca.com/protected/article/governance/lead_cfo.pdf

(features practices of: IKON Office Solutions, Inc.; National Treasury Management Agency (NTMA); Teachers Insurance and Annuity Association-College Retirement Equities Fund (TIAA-CREF); TOTAL S.A.; Yamanouchi Pharmaceutical Co., Ltd.; and A \$40 Billion Financial Institution)

Corporate Compliance InfoPAK

<http://www.acca.com/infopaks/compliance.html>



THE FIRST IN-HOUSE COUNSEL
ON THE GROUND

A EUROPEAN PERSPECTIVE ON THE PIONEER LAWYER

STARTING

FROM

SCRATCH

BY AXEL VIAENE

IT IS YOUR FIRST DAY AT YOUR NEW JOB

and you're all fired up and ready to go. If you are lucky, a fully equipped office awaits you. If you are really lucky, an email account was opened up at the time you signed your employment contract and people have been happily sending you emails ever since. If you are less lucky, you will still need to wait for a laptop and find a desk somewhere. You bump into the sales director, whom you vaguely remember from the interviews. He welcomes you and jokingly inquires whether you will be worth the money the business is paying you for your good services.

This article provides helpful tips to lawyers who take up positions as the first in-house counsel for businesses in Europe. These lawyers will face all the same challenges a fully staffed legal department faces on a daily basis. Gone are the days when a corporate counsel was expected to merely be a cost-effective legal advisor. Today's economy requires us to be legal advisors, business experts, psychologists, strategists, educators, cultural translators and, above all, great communicators. This certainly holds true for the "pioneer lawyer."

Some of us had the privilege of serving as the first in-house counsel for a business. Others stepped into a previously established role and had the opportunity to expand it. Both career paths have benefits and drawbacks. Being there first offers you a unique opportunity to actively shape the legal function in a business. It will also require you to take it up a notch. Some of the practices and tools you put in place may survive you for many years. This also applies to client expectations. If you are filling an already established role, be aware of whom you will be succeeding when considering a job offer.

None of us work in isolation. When we take up a previously established legal role, we stand on the shoulders of our colleagues who served in that role before us. When we start in a newly created legal role, we set the stage for our colleagues who will succeed us. Although we tend to work for a number of different companies during our in-house careers, we should realize that we are lifelong members of the broader in-house legal community. There we can find virtually all the answers to our questions. This is where the Association of Corporate Counsel (ACC) comes in. ACC provides a platform for sharing answers and best practices. That is what ACC is all about, by in-house counsel for in-house counsel.

AND NOW, IT IS TIME TO START FROM SCRATCH.

Workplace

You will surely have a number of lofty aspirations for your new job, but one of your first priorities will be to secure a workplace that is “workable” for you. This does not necessarily need to be a lavish office, to the extent that those still exist. You will need to concentrate on your work and speak to your clients in confidence, particularly during those crucial first few quarters; assess the risks and define a strategy to address them. Find a refuge where you can create tools and develop training for your clients.

Every company has a different vision on office facilities, depending on the company’s products, history, culture and, obviously but not exclusively, finances. Some companies believe in cubicles. A number of companies encourage working from home. You will need to identify how your clients are planning to house you, preferably during the interview process, and determine whether their proposed solution works for you. If you are accustomed to a corner office on a high floor of the global headquarters with a fine — and allegedly authentic — Chinese vase to adorn your mahogany desk, and you are moving to an all-cubicle sales environment, you will have some adjusting to do. The type of office facility will impact your productivity. No single size fits all. People should be allowed flexibility in function of their personal work requirements, and in-house counsel are no exception to that rule. Sadly, few organizations are willing or able to facilitate your personal preferences.

In order to be effective, you will need to understand office dynamics. If you are nicely tucked away between the fire escape and the vending machines, you are less likely to understand what is going on. Observing who talks to whom and for how long can help you strategically direct your advice. Contrary to common belief, a smaller staff is not necessarily better. The smaller the staff, the easier it will be to stay on top of the office dynamics — but, conflicts tend to get magnified. Remoteness of the location will add to that challenge. You will really need to “get along.” A larger staff can, but does not necessarily, lengthen communication lines but can also help in diluting tension.

Driving Client Behavior: Routine and Composure

Whether we work in-house or for a law firm, we are all very much in the service industry. This does not mean (while it may seem unbelievable to many of us) that we should be the hapless victims of our clients, jumping to their every whim. In almost all environments, you can do yourself and your clients a favor by driving and channeling client behav-



AXEL VIAENE currently serves as legal director, corporate counsel at the Starbucks Europe, Middle East and Asia office and roasting plant in Amsterdam, the Netherlands. He was the first in-house lawyer hired by Starbucks in Europe. Before that, he served as Benelux legal director for Dell and was the first in-house lawyer to be based full-time at Dell’s Benelux HQ in Amsterdam. He started his career as international associate attorney at the Atlanta global headquarters of The Coca-Cola Company. He holds a law degree from the University of Leuven in Belgium and an LL.M. from the University of Chicago. He is a member of the New York Bar and currently serves as the president of the European Chapter of ACC. Viaene can be contacted at aviaene@starbucks.com.

ior. If clients know that you will respond to their email within 24 hours, they will stop calling you unless it is really important. If you provide weekly updates and effective training, they may even stop emailing you altogether. You should also try and help your management team manage internal communication flow, for instance, by proposing email and phone protocols. Although this may appear to go beyond the call of duty as corporate counsel, your clients will appreciate this contribution to the efficiency of their (and your) business.

An important factor to consider in driving and channeling client behavior is the benefit of having a routine. We keep hearing that the only constant is change. Be that as it may, people crave certainty and predictability and like to see that reflected in their corporate counsel. Your routine can consist of meeting regularly with the heads of every function. Also, keep to a routine when you arrive at and leave the office. The clients will observe you throughout the day. They will carefully watch whom you talk to and how you react to situations. As one of my former clients mentioned to me prophetically, “Like it or not, you are on stage 24/7.” This becomes even more relevant in times of crisis when “the lawyer” is often perceived as a measure of the state of the business and management’s resolve in tackling the crisis. You can be a big help to your CEO and your clients by keeping your composure in times of crisis.

One of the best presentations I have seen was given by the head of a major manufacturing plant with several thousand employees. He was presenting to a room of in-house lawyers on the challenges of running a high-performance manufacturing facility with supply challenges and production deadlines. He started his presentation by comparing his operation to a swan. Although the swan is gliding majestically through the water, it may be paddling like crazy below the surface. Providing legal counsel to a dynamic business often feels the same.

Taking Stock

You secured your workplace and started, slowly but surely, driving client behavior. You also start to understand the office dynamics. You can now start to take stock of the risks, legal needs of the business, available organizational knowledge (if any), clients, culture and outside counsel.

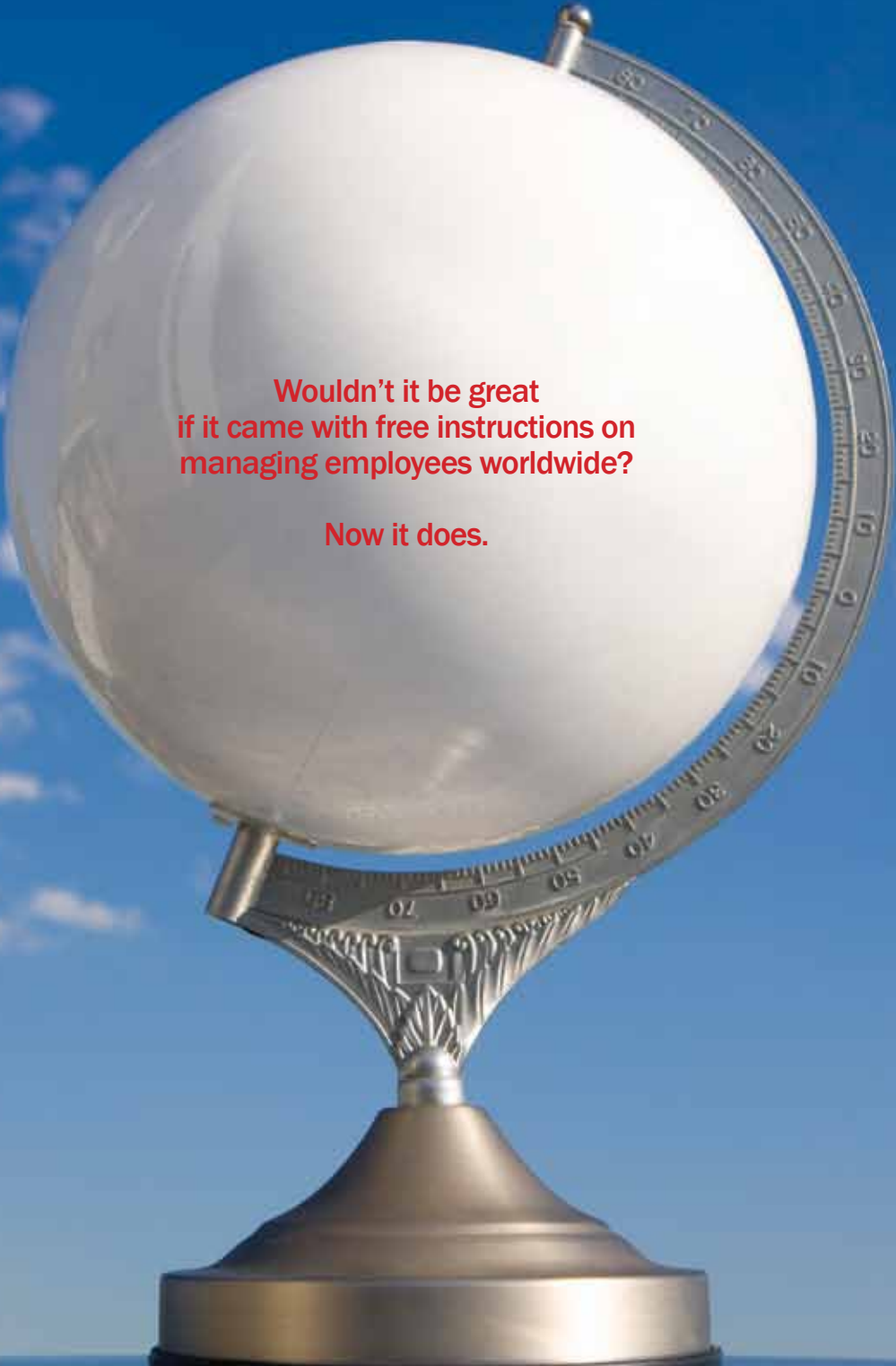
Identifying Risks and Defining Strategy

You need to identify the risks that loom over your friendly clients. You also need to define a strategy in order to cover

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those risks and call out to your clients what you require to implement your strategy. Risks may vary, depending on your business' product offering, competitive landscape and development stage. A company that manufactures and sells medical equipment to hospitals faces a different set of risks from a company that roasts and sells coffee to individual consumers. A business operating in America faces different risks from a business operating in Europe. A business in set-up mode will face a different set of risks from a business that is maturing or a one that is contracting.

Don't wait until your first day at work to start your risk analysis. Start as soon as you hear about an interesting job opportunity and prepare for the interviews. Identifying risk and defining strategy are tasks that are never quite finished. You will constantly need to calibrate, particularly when you support a dynamic business that expands into new territory or launches new business channels or products. In addition to identifying the risks and drawing up your strategy, you need to assess the legal needs of your business.

Assessing the Legal Needs of the Business

An organization needs different advice depending on the growth stage of the business. Your task is to tailor your advice in this respect to make it effective. Your clients will let you know very clearly if your advice is not tailored to their business needs. A start-up business that sells standardized

An organization needs different advice depending on the growth stage of the business. Your task is to tailor your advice in this respect to make it effective.

hardware to consumers or small businesses requires a different type of sales agreement than a mature business that sells complicated IT solutions, including a service component, to multinationals. If you provide your clients with an agreement that is too lengthy and deals with aspects that are not part of the transaction, you run the risk that they will view the agreement as cumbersome and proceed without it. If you provide your clients with an agreement that is oversimplified, you run the risk of not addressing the key risks in the transaction.

Some businesses have a number of divisions at varying stages of development. It is a worthwhile exercise for legal counsel of the more developed division to advise, or help his colleague in advising, the developing division. Legal counsel will need to be aware of the different needs of the divisions. It will not be possible to simply "copy and paste" the tools that are used successfully by the more mature division. We will discuss the need to translate and localize tools later in



this article. This shows the necessity for corporate counsel to look for the knowledge that is available in the organization.

Knowledge

What knowledge is available in your organization? In its early days, an organization tends to be highly dependent on individual subject matter experts. If the organization fails to capture the knowledge of these experts in independent, preferably electronic, resources and processes, the “unexpected” departure of those subject matter experts can plunge the organization into a knowledge crisis. As organizations grow and go through a succession of knowledge crises, the drive to create lasting resources and processes increases.

You can make a contribution as in-house counsel to the organization’s drive to preserve internal knowledge. Do not hesitate to emphasize the need for independent resources and processes to your clients. You should also try to create these in your area. These can take the form of an online matter management database, agreement template library or legal intranet site. You can implement a sign-off process for important agreements to ensure that they have been reviewed and approved by all relevant functions before they appear on the CEO’s desk for final signature. ACC is a true treasure trove of helpful ideas and forms in this respect. You can find a lot of very helpful information in the *ACC Docket*, *ACC Newsstand*, online database and InfoPAKs,SM to name just a few resources.

Clients

As a performer knows his audience and a salesman knows his customers, you need to know your in-house clients. Who are they? Where did they work before? How do they like to communicate — via email, phone or face-to-face conversation? Above all, do they like lawyers? You can typically categorize your clients into three profiles:

- Category A: the client who embraces you wholeheartedly and approaches you with questions from the outset;
- Category B: the client who avoids you, either by being openly hostile or giving “all is well, no need to get involved” signals; and
- Category C: the client who is neutral.

Our natural tendency is to cater to the needs of A clients. They have many questions for you and appreciate your feedback, which makes it a joy to work with them. B clients have very few or no questions for you and appreciate you staying away from their business. Your focus should not be directed by the client profile, but by the risks you identified and the strategy you defined to address those risks. You are lucky if the major business risks are in areas governed by A clients or C clients. If you identify some major business risks with B clients, you will need to make a diplomatic but determined effort to get to know these clients better, insert yourself in their area and find out what is going on. It is a challenge to prevent your risk assessment from being clouded by the

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client profile, particularly when you are new to an organization. If you identify a risk, it is your job to investigate, irrespective of the energy it will require.

Culture

Lawyers often underestimate the importance of respecting the culture of an organization. Corporations are often viewed as interchangeable collectives with similar legal challenges that can be addressed with similar solutions and styles. Although certain mechanics are absolutely identical, there are “anecdotal” features that set one organization apart from the other. The stronger the organization, the stronger the culture. Your ability to internalize and advise in respect of the cultural specificities of your business will help determine your success in that business.

The culture of an organization can manifest itself in many forms. It can consist of making sure to put “thank you” at the end of the every email. It may require you to thank someone by email for sending you a routine document while copying a dozen people. If your organization has a meeting culture, you will have to factor that into your planning. If your organization has an email culture, you will have to factor that into your communication style.

The organizational culture can also reflect itself in dress. Your life will become really interesting when organizations throw off their suits and adopt a casual culture. Depending on the organization, a casual culture can actually be more burdensome on your clothing budget than a suit culture. Trying to grasp the many subtleties of your organization’s culture is challenging but also constitutes an endless source of entertainment.

Outside Counsel

You may encounter a number of situations when you take up the role of a company’s first in-house counsel. The business may have never solicited any legal advice, or it previously used outside counsel, possibly an acquaintance of the CEO. Although the business may be very happy with that outside counsel, he or she is not necessarily the right outside counsel for that organization. Cost, speed and quality of advice are the obvious determining factors in the selection and management of outside counsel. As a pioneer lawyer in an organization, you must keep an eye on outside counsel’s ability to keep up with the growth of your organization. Will outside counsel be able to follow you as the organization enters the international playing field? Are they ready to help you if your clients decide to launch a new business channel or product?

An optimal legal service model consists of a healthy symbiosis between in-house counsel and outside counsel. As I keep telling our outside counsel, outside lawyers are an integrated part of in-house counsel’s success. Effective outside counsel will actively “shadow” the business and in-house counsel’s position within that business. If outside counsel fails in-house

Clients are more interested in law than you would ever imagine, provided you deliver your message well.

counsel, the legal value chain breaks down and everybody loses: the client, in-house counsel and outside counsel. Outside lawyers can help flag an important development — business or legal — that will impact the business. Conversely, outside counsel can seriously undermine you if they provide you with incorrect advice or fail to meet the previously agreed upon budget. Try to explain to your CFO at the end of the quarter that you are going over budget because your outside counsel is not keeping his promises. The conclusion your client is likely to draw is that you are an ineffective manager and maybe even an ineffective legal advisor. Outside counsel can make you look really good or really bad in the boardroom.

A second opinion from outside counsel is always valuable and sometimes even required. In essence, though, you have truly established yourself as an “imbedded” in-house counsel of your business when the CEO acts on your advice without requesting a second opinion from outside counsel or requiring a written memo from you. It may be worthwhile to set up a meeting with outside counsel if the CEO requests it. This allows the CEO to ask questions directly to outside counsel on a particular issue. If outside counsel says exactly the same thing you did a few weeks ago, your star will rise; and presenting the bill for that meeting to the CEO will prove of great educational value.

Tools

Once you have taken stock, you will need to develop tools. These tools can be as simple as a confidentiality and non-disclosure agreement. If it is user-friendly and readily accessible, it can be used by a time-pressured client who is on his way to an important meeting with a consultant. If you desperately rummage around your numerous emails and documents every time you receive a request for a confidentiality agreement, you will soon be exhausted. What I have found to work well is a legal intranet site, which contains agreement templates that can be filled out with commercial data by clients, but cannot otherwise be altered. You can also post a legal “frequently asked questions” section. Do not hesitate to write articles in the company newsletter to sensitize your clients on important legal issues. Clients are more interested in law than you would ever imagine, provided you deliver your message well.

The challenge will be to tailor your tools to the factors we mentioned earlier in the article, i.e., risks, business needs, knowledge, clients and culture. If your business is

part of bigger global organization, chances are there will already be legal resources available at the US or Europe, the Middle East and Africa headquarters. We will discuss the challenge of mobilizing these resources later in the article. A final word of caution: make sure you have your tools operational before you decide to raise the profile of legal within the organization. You do not want to be caught by surprise when the client requests start pouring in and you have no resources or processes to follow up on these requests.

“Mother ship to lawyer, mother ship to lawyer, come in lawyer.”

At times you will feel like you are floating in outer space with no “mother ship” in sight. When you are one of the first overseas lawyers of an established US brand, chances are there will be an expert legal team at the global or EMEA office. Your team back in the United States or EMEA can be a resource lifeline. As many organizations require you to report functionally into that United States or EMEA team, you will also need to keep the mother ship well informed of your workload and challenges. A good information stream will avoid “what are you doing to our brand over there?” inquiries. Fortunately, this challenge does not only apply to you but also to your clients.

Mobilizing your company’s US legal resources is easier said than done. These resources, including templates, processes and policies, are tailored to US law and to the development stage of the US business. You will have to do a fair amount of “translating” or “localizing” to make these resources locally relevant. Translation is not limited to transposing documents in the local languages. That is the easy part. The real challenge will be to tailor these documents to the development stage of your developing business unit, modify them to comply with local law and revise them to make sure that they can be used by your local client base.

The door will need to swing both ways in order to make this successful. You, as the local in-house resource, will need to try and provide a fair amount of education on cultural and legal differences to your colleagues overseas. The US legal departments of global organizations consist of highly trained legal professionals. Many of your US legal colleagues, however, do not speak any foreign languages and have never worked or lived outside the United States. This is not an insurmountable obstacle for an effective exchange provided the mindset is right on both sides.

If the mindset in the United States is that the laws and business practices there are optimal and your job consists of merely cloning the US model overseas, the exchange

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stops. If the mindset in Europe is that everything is bespoke in Europe and the US tools cannot possibly be made locally relevant, the exchange stops too. Openness to change increases as the organization's dependence on foreign business profits grows. You should also challenge yourself, as a European lawyer, to try and optimize existing business and legal practices on the basis of the company's established best practices from the United States. US litigation strategy and commercial forms can do wonders to professionalize your European supply chain organization, when effectively translated and localized. High-performance US organizations *can* operate successfully in even the most protectionist employment law regimes in Western Europe.

"I do not have time to train clients, I am busy enough as it is..."

We often hear: "I do not have time to provide training to my clients, I still have more than three hundred unanswered emails in my inbox." But training is not a luxury; it's a necessity. The truth is that a lot may be going on because your clients have not been trained and are making the same mistakes and asking the same questions all over. Some of your clients also belong to the "I email, therefore, I am" school of thought.

When was the last time you *really* looked at your inbox? Several years ago, I started investing time in analyzing my inbox. For the benefit of the less technologically endowed members of our in-house legal community, this refers to email, a wonderful and relatively recent invention enabling mankind, for the first time in recorded history, to overcome distance and communicate effectively. I found that a lot of the emails I received were repetitive and, for instance, asked for a copy of the latest agreement template. Quite obviously, this is an easy question to answer, however, it does not add a lot of value. Processing such emails will limit the time you can spend on more valuable issues.

I decided to put the most frequent agreement templates on a legal intranet site. This proved insufficient as I kept receiving emails asking for templates. I decided to train my clients on the use of the website. Another technique that I used to direct client traffic to my legal website was to add a link to the relevant document on my website in my reply email to them, rather than attaching the document. The above techniques not only decreased the quantity, but also increased the quality of emails I received. It allowed me to direct my attention to issues that were worth spending time

on. I continue to analyze my inbox regularly. Refuse to be a victim of your inbox, manage its contents through training and consistently directing clients to online tools.

"I do not have time for my own development, I am too busy training my clients..."

As if you do not have already enough to do, you also have to think about your own development. Organizations in general are committed to the development of people who are considered their most important asset. This is indeed very true but what happens in practice? If you are fortunate to be employed by an organization with a development program and development tools, you also have to ask yourself whether these tools are tailored to your needs to develop as legal counsel. When you have a mother or sister organization in other jurisdictions, you will have the opportunity to extrapolate the lessons learned by the other business units and apply

it to your organization, both from a legal and a commercial perspective.

Your need to develop depends on the dynamism of the organization you are supporting. If your business is relatively static, by choice or necessity, you will have a relatively straightforward job in keeping up. It can also be the case that you

start working for a dynamic coffee company with stores in the high street. A few years later you find yourself supporting the "same" organization, only now tripled in size and expanded into supermarkets, railway stations and airports, in addition to offering new products.

This is also an area where outside counsel can truly shine. Outside counsel often limits itself to reactive follow-up to client requests. However, one of the many value adds outside counsel offers is that they have a portfolio of clients in different stages of development. Your outside lawyers should have seen this before and, if they are on the money, should warn you of the challenges ahead and hand you the tools.

Finally, you can do a really radical thing and pick up the phone and call your fellow in-house counsel. This is one of the many services the ACC provides to the in-house legal community, giving you access to a network of 25,000 in-house legal professionals all over the world.

"Why are you here? We were doing so well without you..."

Many years ago I commiserated with a lawyer who had also just started in-house. He said he did not like it very much as he was sole legal counsel and indicated, much to

High-performance US organizations *can* operate successfully in even the most protectionist employment law regimes in Western Europe.

ACC Extras on... Creating a Law Department

ACC Docket

- *New to In-house — Four Pearls of Wisdom that Will Help You Shine (April 2009)*. The author provides firsthand advice on how to cope with the transition to working as an in-house attorney. www.acc.com/docket/ntih/wisdom_apr09
- *Going Global: The Evolving Role of the In-house Lawyer Outside the United States (Feb. 2008)*. Read how this European in-house lawyer views the changing role of in-house counsel, both abroad and in the United States. www.acc.com/docket/evol_inhouse_feb08
- *Global Positioning: Mapping Out an International Legal Career (July 2006)*. International borders have been coming down for some time, providing even more opportunities for international work. Find out if you can take the risks involved in redefining your career to serve internationally. www.acc.com/docket/globalposition_jul06
- *250 Things (and Counting) That I'm Glad I Knew — or Wish I'd Known — During My First Year as General Counsel (Dec. 2001)*. A list of "things" US corporate counsel were glad they knew or wish they had known when they first started. www.acc.com/docket/250things_dec01

Program Materials

- *Orientation to In-house Practice (May 2009)*. An overview of the requirements of in-house counsel that includes brief biographies of the orientation's faculty, a guide to the role of in-house counsel, a review of the *Reebok Rules*, a guide to risk analysis and management and tips for managing stress. www.acc.com/orient_inhouse_may09
- *Starting Off on the Right Foot as New In-house Counsel (Oct. 2008)*. This experienced panel discusses establishing good relationships with your internal clients, outside counsel and top executives, and also provides pointers on how to cope with reduced staff. www.acc.com/rightfoot_newih_Oct08
- *Managing the Transition to In-house Counsel (Dec. 2007)*. Canadian CCU 2007: Whether you're brand new to in-house practice or have spent a few years in-house, your career depends upon some basic skills. Learn how to provide the legal support your client needs, including how to set priorities, communicate legal concepts and understand the legal issues relevant to all businesses. www.acc.com/inhouse_transit_dec07
- *The Role, Function and Culture of International In-house Counsel (Dec. 2005)*. What makes one international in-house counsel more successful than another? How can you be sure that you are making the best of the resources

at your disposal? Your corporate counsel peers share strategies and tools you can employ to achieve greater professional satisfaction and effectiveness. www.acc.com/role_intihcounsel_dec05

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- *A Company's First General Counsel (June 2006)*. Created to assist a lawyer when starting a legal department. Update includes data from the 2003 *Altman Weil Compensation Survey and Management Survey*. www.acc.com/infopaks/firstgc_jun06

Quick Reference

- *Top Ten Things to Consider When You're the First In-house Counsel (June 2009)*. Moving from private practice or an in-house position to a new in-house position is challenging, especially when you're the first and only in-house counsel. These tips help you navigate the challenges. www.acc.com/quickref/10firstthings_jun09

From ACC Advocacy

- *How to Assess Your Outside Counsel Partnering*. To be an effective general counsel can be as easy as knowing the value of the services you're paying for. This sample self-assessment form provides a starting point for such an analysis. www.acc.com/advocacy/valuechallenge/toolkit/upload/how-to-assess-your-outside-counsel-partnering.pdf
- *How to Identify Legal Risks in Business Process*. Law departments must identify risk sooner if they're to help their companies protect their bottom line. If your risk management plans need fine tuning, this article will help. www.acc.com/advocacy/valuechallenge/toolkit/upload/identify-legal-risks-in-business-processes.pdf
- *How to Link Technology Acquisition to the CLO's Vision*. Technology provides a way to increase productivity and stay connected on a global basis. The right legal software purchase can be an asset to your law department or slow work productivity. www.acc.com/advocacy/valuechallenge/toolkit/upload/how-to-link-technology-acquisition-to-the-clos-vision.pdf

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my surprise, that he barely had enough work. It is simply not possible to have insufficient work if you are a sole legal counsel supporting an organization with a few hundred clients. As the business swirls around you, it touches on numerous legal issues and exposes itself to many risks. It is your mission as legal counsel to get a handle on these risks.

When I joined an organization many years ago as their first dedicated legal resource, I was asked the question point-blank by one of my in-house clients why I was there, as the organization had seen tremendous growth (allegedly) without much legal guidance. After overcoming the emotional whiplash of my warm welcome, I indicated that they had merely been lucky. Soon thereafter, a “slight” advertising error, whereby a product was priced at half its actual price resulting in a tsunami of orders by clever consumers, stirred up an animated boardroom discussion. Rather than pointing fingers, marketing, customer care and legal pulled together to get a handle on this crisis. I secured a junior law firm associate specialized in advertising law from one of our trusted law firms for a week and we got to work. A few weeks and several hundred customer letters later, a potential six figure shortfall was reduced to half a dozen small law suits which were all settled for a small amount. A tailored training program for the marketing team was quickly put in place thereafter and the incident was never repeated. Pray for a small crisis, it can do wonders for your acceptance within an organization.

Organizations seem in permanent restructuring mode these days. So if all of the above challenges are not enough, be prepared to see the management team turn over a few times while you're with an organization. You will need to factor that into your training plans, provided you believe in training. A management change will present a challenge, but also an opportunity for your position in the company. Your priority will be to get your foot in the door with the new CEO as soon as he or she joins. You are a valuable asset to him or her.

I firmly believe that a lawyer should be there from the get-go, when the foundations of the factory are still being poured and the start-up team is in temporary office space. A start-up team normally consists of the finance, business development and marketing functions. The argument is mostly made that the business cannot yet afford a legal counsel at the early stages. It is unfortunate that it regularly requires a number of expensive business mistakes or unfavorable long-term contacts to make the business case for that first lawyer.

What is the End Game?

I tried to describe the many hats a corporate counsel is expected to wear these days: business expert, psychologist, strategist, educator, cultural translator and, above all, great communicator. Considering the state of the economy and the accelerating drive for more efficiency,

I expect the expectations of in-house lawyers to increase even further. You cannot be firing on all cylinders every day. The fact is that you are better some days than others. If you can move forward in one of your roles, whether you educate a client on an important issue or succeed in negotiating a favorable fee with outside counsel, you can call it a day. There are of course days when everything seems to go wrong and the perfect storm descends on you. A deal is nearing a crucial stage, your CEO just announced her departure and a new sales director just advised you to stay out of his business. Rather than zooming around like superman all the time, you will find that quiet and dogged persistence will get you there.

Finally, you can do a really radical thing and pick up the phone and call your fellow in-house counsel.

Optional as it may seem these days, you also need a life. Particularly those pioneer lawyers run the risk of making a sizable emotional investment that they will not necessarily be able to capitalize on. The recommendation I would like to give to hardworking corporate counsel is to find an “out,” a hobby or pastime that will allow you to — at least psychologically — get out of your role of corporate counsel. Starting up somewhere can be all consuming. It can be so consuming that you lose track of the other important things in life.

When your career goes well, your job rapidly becomes who you are. When you face a downturn, your job becomes more something you do. There is absolutely no shame in saying “no,” provided there is a valid “because.” Giving too much to your clients, intellectually and emotionally, can leave you so drained that you are no good to anyone anymore — yourself, your loved ones or your clients.

As you may have gleaned from this article, I personally find tremendous support in ACC who, through its board and fantastic team of country representatives, give you tools and offer you forums for sharing best practices. After all, nobody works in isolation.

In short, supporting a business as the first in-house counsel is a fairly light assignment. You merely need to drive, identify, define, assess, scope, know, learn, adapt, manage, justify, motivate, create, connect, train, translate, localize, beg, steal, borrow and, above all, persevere, persevere, persevere. 🚩

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Organizational Effectiveness: The New Imperative for Developing a World-Class Legal Department

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July 2011

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This InfoPAKSM examines the concept of organizational effectiveness and how corporate counsel can use its principles to effectively develop an international, “world-class” legal department. The InfoPAK focuses primarily on “soft” organizational development issues, including those relating to development of a shared vision and organizational culture for the legal department, and development of the people who make up the department. The InfoPAK begins with a discussion of the important foundational step of aligning the legal department’s priorities with the organization’s business strategy and developing a corresponding shared vision for the department. Discussions of successful management of client relationships and internal departmental issues including leadership issues and team management follow. Because change is the one constant in today’s legal department, the InfoPAK also discusses change management and creating a “one team” culture. Finally, it discusses metrics and measurement tools for managing organizational development.

The information in this InfoPAK should not be construed as legal advice or legal opinion on specific facts, and should not be considered representative of the views of Huron Consulting Group, or of ACC or any of its lawyers, unless so stated. Further, this InfoPAK is not intended as a definitive statement on the subject. Rather, this is intended to serve as a tool for readers, providing practical information to the in-house practitioner.

This material was compiled by **Huron Legal**, the 2011 Sponsor of the ACC Law Department Management Committee. For more information about Huron Legal, please visit its website at www.huronconsultinggroup.com/legal or see the “About the Authors” section of this document.

ACC wishes to thank the members of the Law Department Management Committee for their contributions to the development of this InfoPAK.

Contents

I.	Introduction	6
II.	The Foundations of Organizational Effectiveness.....	6
	A. Aligning Priorities to Support Corporate Strategy.....	6
	B. Creating a Shared Vision.....	8
III.	Managing Client Relationships	10
	A. Relationship Building.....	10
	B. Client Care Plans.....	11
	1. Client Care Plan.....	11
	2. Client Team	11
	3. Client Meetings	12
	4. Cross-Selling Strategy.....	12
	5. Client Feedback	12
IV.	Legal Department Leadership Issues	13
	A. Skills and Competencies.....	13
	B. Self-Management	15
	1. Prioritization.....	15
	2. Goal Setting	16
	3. Time Management	17
V.	Intradepartmental Communication.....	17
	A. Team Dynamics.....	18
	1. Cultural Differences.....	18
	2. Personality Differences	19
	3. Changing Work Environment.....	20
	B. Delegation	20
	1. Identifying the Task.....	20

- 2. Matching and Briefing.....21
 - 3. Managing the Delegate21
 - C. Influencing Behaviors.....22
- VI. Rewards and Motivation 23**
 - A. Employee Engagement.....24
 - B. Feedback and Motivation25
 - C. Coaching26
 - D. Career Development.....27
- VII. Change Management 28**
 - A. Types of Change29
 - B. Leading Change29
- VIII. Achieving a “One Team” Culture 31**
 - A. Location Issues32
 - 1. Global Hubs32
 - 2. Overseas Offices32
 - B. Cultural and Logistical Issues33
 - 1. Time Zones.....33
 - 2. Culture.....33
 - 3. Language33
 - C. Onboarding34
- IX. Tools for Managing Organizational Effectiveness – Metrics and Measurement 34**
- X. Conclusion 36**
- XI. About the Authors 37**
 - A. About Huron Legal.....37
 - B. About the Authors.....37
- XII. Sample Forms/Documents 39**
 - A. Goal Setting/Time Management Matrix.....39
 - B. Delegation Checklist.....41
 - C. Employee Motivation and Feedback Matrix/Tracking Tool42

D.	Coaching vs. Mentoring Roles/Responsibilities.....	43
E.	Sample Feedback Survey	44
F.	Sample Form to Gather 360-Degree Feedback for On-the-Job Application of Learning.....	45
G.	Sample Department Scorecard	47
XIII.	Additional Resources.....	48
A.	ACC Resources	48
B.	Other Resources	49
XIV.	Endnotes.....	50

I. Introduction

Companies are expanding globally at a rapid rate, and their legal departments must keep up with this expansion. At the same time, legal departments face ongoing pressures to control costs and operate effectively while maximizing the department's value to the company. Growth presents additional challenges to the organizational effectiveness of a legal department, and international expansion adds a level of complexity to these challenges.

In order to achieve organizational effectiveness that will withstand the challenges of growth, the legal department must align many facets of its organization and operations. True organizational effectiveness incorporates both so-called "hard" aspects (e.g., developing a department strategy, optimizing the organization structure, and establishing sourcing strategies) and "soft" aspects (e.g., establishing shared values, fostering key behaviors throughout the department, developing leadership skills, leading change, and focusing on employee development). While it is important to address both the "hard" and "soft" aspects of organizational development, legal departments that get the "soft" aspects of organizational development right will be better positioned to grow efficiently and minimize the people-related challenges that typically accompany corporate expansion and growth.

This InfoPAK begins with a brief discussion in Section II of the important foundational steps of aligning the legal department's priorities with the organization's business strategy and developing a corresponding shared vision for the department. Section III discusses successful management of client relationships. The succeeding sections turn to internal departmental issues, focusing first on leadership issues (Section IV) and then addressing team management issues including intradepartmental communication (Section V) and employee reward and motivation (Section VI). Because change is the one constant in today's legal department, Sections VII and VIII discuss change management and creating a "one team" culture. Finally, Section IX discusses some tools for managing organizational development. At the end of the InfoPAK, we offer a few helpful forms and checklists.

II. The Foundations of Organizational Effectiveness

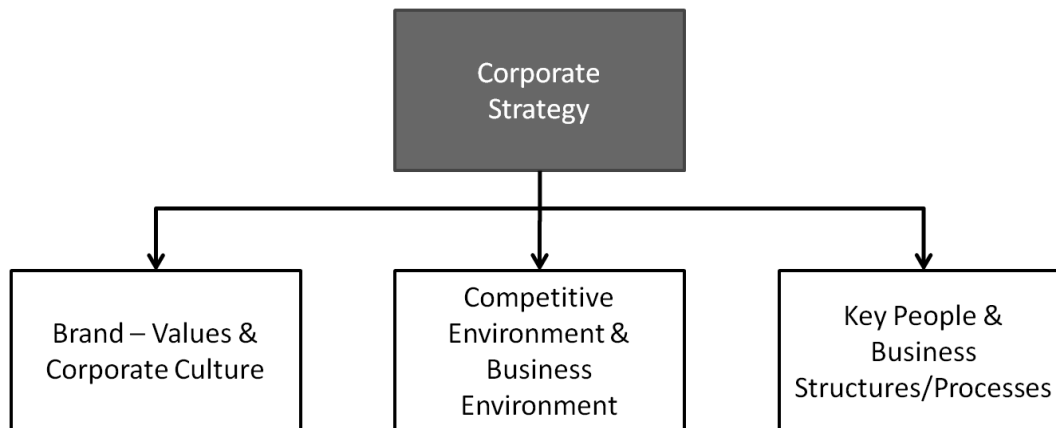
The cornerstone of developing a world-class legal department is ensuring that the legal department's priorities, values, and key behaviors are aligned with and support the corporate strategy. That alignment provides the perspective that guides all aspects of the department's organizational development—both the "hard" and "soft" aspects—and paves the way for a cohesive, holistic approach. Alignment of departmental priorities with corporate strategy also gives clarity to the process of developing a shared departmental vision.

A. Aligning Priorities to Support Corporate Strategy

Support of the company's businesses is the reason for the legal department's existence. It is therefore fundamental that members of the legal department, and especially its leaders, have strong understandings of the corporate strategy and business priorities. The legal department and

its leaders must have a grasp of the organization's values and corporate culture, its competitive environment and business environment, and its key people and the business structure and processes, all of which are vital elements of the organization's "brand." This understanding allows the legal department to evaluate the work it does to make sure it is rendering the necessary services and to prioritize those services in alignment with the corporate strategy.

What Do You Know About Your Client?



Legal department services typically include business support and business protection functions. Business support functions include services such as:

- Advising on business structures;
- Advising on best practices for transactions and relationships with third parties, and on relationships with employees, owners/shareholders, and stakeholders;
- Serving as a negotiator on behalf of the company, sometimes with commercial responsibilities;
- Managing projects and people; and
- Leading the development of the provision of legal services.

Business protection functions include services such as:

- Educating business-side personnel to ensure that they are aware of, and have the tools to comply with, relevant laws and regulations, such as those relating to disclosure of interests and insider trading or those related to international transactions such as the FCPA or UK Bribery Act;
- Serving as the "conscience" of the company, ensuring that the company conducts its business ethically;

- Record-keeping, such as maintaining corporate records as part of the corporate secretary function, compliance reporting, etc.;
- Guiding corporate governance; and
- Managing risk.

Legal activities that typically provide the highest level of support to the strategic plan include strategic activities and support, corporate governance, and risk management. For more information on aligning priorities and legal department strategic planning, please see the ACC InfoPAKs *Strategic Planning: Why a Plan Is Needed and How to Develop One* (September 2009) and *Law Department Strategy: Balancing Immediate Cost Savings with Sustainable Results* (September 2009).¹

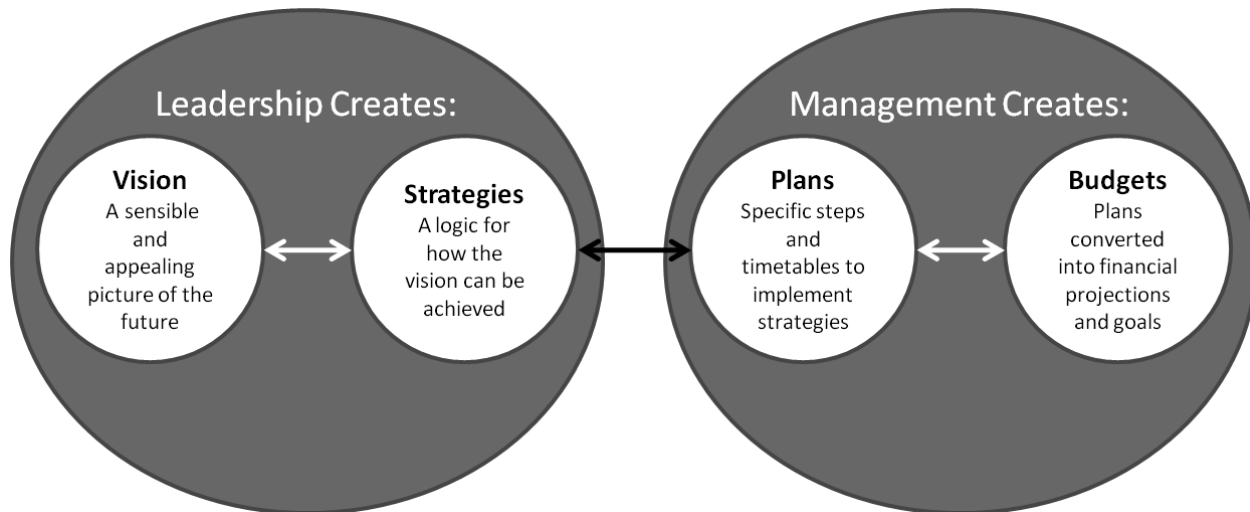
With a clear understanding of the legal functions which are aligned to business strategy, the legal department can focus on the best way to provide those essential services, i.e., the “hard” aspects of organizational development, such as developing a department strategy, optimizing the organizational structure, establishing sourcing strategies, and managing outside counsel. For more information regarding those issues, please see the InfoPAKs referenced above, as well as the InfoPAK *Global Law Department* (June 2010) and ACC Primer, *Using a Structured Process to Allocate Work: Optimizing Available Resources to Efficiently Provide Legal Services* (November 2010).²

B. Creating a Shared Vision

With a clear understanding of corporate strategy and how it relates to the legal department, the department leadership can begin to develop a shared vision. A lucid vision brings clarity to the team and its actions. It defines the department’s general direction and sheds light on any necessary change and the reasons for that change. According to the work of organizational change expert John Kotter, a productive vision is:

- **Imaginable** – Conveying a “picture” of what the future will look like;
- **Desirable** – Appealing to the long-term interests of department employees and other stakeholders;
- **Feasible** – Comprising realistic, attainable goals;
- **Focused** – Sufficiently clear to provide guidance in decision-making;
- **Flexible** – General enough to allow individual initiative and to adapt to changing conditions; and
- **Communicable** – Easy to communicate and successfully explicable in five minutes or less.³

The departmental vision should align with the legal department's strategy, providing the big picture that guides future action. The illustration below demonstrates that relationship between the vision and strategies that leadership creates and the execution of those strategies, which will be performed by other members of the department.



Source: John Kotter, *Leading Change* 71 (Harvard Business Press 1996).

Producing the vision requires foresight and imagination, supported by team input. To establish a new departmental vision or evaluate the clarity and relevance of an existing vision, consideration should be given to how the legal department leaders and team members, clients, and outside counsel firms would describe the legal department today. That present impression should then be compared to how the department would like to be described in three to five years. Team input is very valuable, as department leaders examine the path from existing perceptions to the aspirational target. From the starting point of this comparison between present and future images, the legal department can build a vision statement and associated goals. Factors that may impact the vision include the changing global economy, changes in the overall practice of law, advances in technology, the vision and growth plans of the business, and more. It is important to “think big” when developing the vision. When there is team input during the formation stages and effective communication of the final vision to the entire team, it becomes a shared vision that is part of the department ethos.

For example, one legal department with which the authors worked developed such a clear vision that it was able to articulate it in a simple line drawing, which it then replicated on mouse pads, wall posters etc., throughout the department. At first glance the drawing looked childish, but it was in fact incredibly powerful. It communicated the vision – to develop a world-class legal department – and how the department was going to realize that vision with remarkable clarity and precision. Other departments we have worked with spell out the key elements of their vision on pocket cards. We have also seen the vision articulated using a variety of schematics and other visuals. By contrast, other departments claim to have visions, but no one seems to know what they are and oftentimes they must refer to documents to remind themselves what their visions are.

A clear, shared vision has many benefits. With a clear vision, questions will be resolved about where the department is going or whether change is necessary. The vision will motivate people to take action that contributes to realizing the vision because they understand the desired outcome. A clear, shared vision also helps to coordinate the actions of different people in a fast and efficient way, since they will all be working toward the same, mutual goal. Finally, the vision will simplify decision-making about new or existing initiatives and about many more detailed issues, simply by triggering the threshold question of whether the proposed course of action is consistent with the vision.⁴

III. Managing Client Relationships

The legal department's most fundamental relationships are with its internal, business-side clients – those who perform the business operations that are supported by the legal department. Once clarity exists regarding the business strategy and, accordingly, regarding the priority of services provided by the legal department, the department must focus on keeping clients satisfied with those services. World-class legal departments ensure client satisfaction by managing client relationships in manners that encourage trust and open communication. Successful client relationship management includes both “soft” relationship management (establishing and maintaining individual relationships with business-side clients) and formal management (developing and following a plan for client care).

A. Relationship Building

Forging individual relationships with clients is crucial because it establishes an atmosphere of trust in which an optimal environment to deliver real value can thrive. In other words, by building close working relationships with clients, counsel is demonstrating that he or she cares about them and is mindful of their concerns, often proactively anticipating their needs and being a wise advisor. This in turn leads clients to trust the judgment and integrity of counsel such that counsel will begin to be the go-to advisor on a range of matters, resulting in better understanding and communication. These client relationships are critical at all levels of the legal department, from the top down. For example, the department leadership should have a good relationship with the company leadership and the general counsel should get to know the CEO and develop good relationships with the board, communicating with board members regularly and effectively. Moreover, if possible, every director should have a “client manager” – a senior member of the legal department who serves as the point person for communications with that director in the period between board meetings.

There are two schools of thought as to whether the general counsel should actually be a member of the board. One approach is that the general counsel is part of the senior business leadership team and that it is, therefore, essential that he or she has a seat at the board and is part of the business's decision-making process at the highest level. The contrary view is that the general counsel has a special role as “conscience of the company” and therefore needs to have some distance from the board so as to enable him to give objective and independent advice. In this case, it is essential that the general counsel have a place “at” the board even if he or she is not “on” the board. Whichever view is taken, the general counsel, and therefore the entire legal department, needs to be an

integral part of and contributor to board discussions and board meetings.

Similarly, attorneys at other levels in the legal department should develop relationships with their business-side clients. Opportunities to develop these relationships may include:

- Formal or informal gatherings allowing lawyers to meet and get to know people on the business side;
- Seminars and training sessions;
- Inter-departmental secondments;
- Publications, targeted to clients, containing useful information on topics such as relevant legislation or cases; and
- Regular meetings.

B. Client Care Plans

The most successful client relationships are based not only on individual connections, but also on structured client care plans and procedures. There are five basic steps to success:

1. Completing a client care plan;
2. Establishing a viable client team;
3. Developing a “cross-selling” plan;
4. Holding regular client meetings; and
5. Receiving regular feedback from the client.

I. Client Care Plan

A client care plan describes how a particular client group should be cared for. It should lay out parameters for responding to the client’s needs, and may include, for example, details of a communication strategy (e.g., answering emails within a certain time period), precedents regarding timeframes for completing certain types of work, or agreements regarding legal department attendance at certain client business meetings. After completing a client care plan, it is helpful for the legal department to report on its progress to both the team and the client. The client care plan can be used in appraisals and for setting objectives for the team members, thus ensuring that team members take it seriously.

2. Client Team

It is helpful if a specific legal department team is assigned to each client for whom work is routinely done. Established client teams clarify roles and responsibilities for dealing with specific clients. Choosing the right people for the right clients on the basis of skill set and rapport will make the team more effective, as will choosing the right assistants, who can be the keys to good

communication since they are often the points of first contact in both directions.

3. Client Meetings

It is very important to hold regular team meetings. Ideally, the department should meet once a month to discuss the needs of the client. These meetings should be non-negotiable in terms of required attendance, since issues such as miscommunication, duplication of effort, or incorrect assumptions about deadlines or who is performing a task inevitably occur when someone is out of the loop. Although the meetings will sometimes be very short, they are always important. While not required, it is good practice for the client to attend some or all of these meetings.

4. Cross-Selling Strategy

The more the client relies on the legal department for essential services, the stronger the relationship becomes and, as a corollary, the better the service the department can provide because of its understanding of the broader picture. Where appropriate, the legal department can “cross-sell” its services to client groups to further cement the relationship. For example, members of the legal department team providing labor and employment services to a client division might identify a potential need for intellectual property services. Opportunities for cross-selling can be identified through the client care program and discussed among the department leadership to formulate a plan for how to present the proposed additional services to the client. A firmly-scheduled meeting with the client, no matter how far in the future, will ensure that the cross-selling idea does not lose impetus. Legal departments that have successful client service delivery and related key performance indicators as part of the performance review process will encourage cross-selling and experience stronger client relationships.

5. Client Feedback

While some clients may occasionally provide informal feedback, relying exclusively on such feedback can be a very inconsistent and unreliable way of evaluating how the relationship is working. Formal client interviews are important tools in managing the client relationship. Legal department leadership should hold regular feedback meetings with clients at least once a year. If desired, written client satisfaction surveys may be used to supplement the in-person meetings or obtain feedback between meetings.

Lawyers will make their clients happy if they perform quality, timely research, effectively follow up on issues, listen to the clients, and recognize that every member of the team counts. By ensuring that the client relies on the legal department for a diverse array of services and acting as trusted business advisor to the client, the in-house lawyer will solidify the relationship for the future, making life easier for both sides.



InfoPAKSM

New to In-house Practice

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July 2012

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This InfoPAKSM provides guidance for attorneys new to the in-house practice. The InfoPAK addresses the scope of work new in-house counsel can expect, compliance issues, the legal and non-legal duties imposed on in-house counsel, and liabilities one may incur as in-house counsel. With helpful tips and additional resources on adapting to your new role as in-house counsel, this InfoPAK provides a thorough review of the responsibilities new corporate counsel will face.

The information in this InfoPAK should not be construed as legal advice or legal opinion on specific facts, and should not be considered representative of the views of Womble Carlyle Sandridge & Rice, LLP or of ACC or any of their lawyers, unless so stated. Further, this InfoPAK is not intended as a definitive statement on the subject. Rather, it is intended to serve as a tool for readers, providing practical information to the in-house practitioner.

This material was compiled by **Womble Carlyle Sandridge & Rice, LLP**. For more information on Womble Carlyle Sandridge & Rice, LLP, visit their web site at www.wcsr.com.

Contents

I.	Introduction.....	5
II.	Scope of Work.....	5
	A. Size of Legal Department: In This Case, Smaller is Bigger (That is, in Terms of Responsibilities)	5
	1. Legal Duties of In-house Counsel	6
	2. Business Role of In-house Counsel	7
	3. Model Rules of Professional Conduct.....	8
	4. Privilege: Imperiled by Dual Roles?.....	8
	5. Confidentiality	9
	B. Outside Counsel: Not an Excuse to Bail.....	9
	C. Fifteen Things Every New In-house Lawyer Should Know.....	12
	1. Learn the Business.....	12
	2. Partner With Your Clients Early	12
	3. Just Saying No Will Not Work	12
	4. Know the Internal Operating Rules and Regulations (Policies and Procedures) Governing Your Organization	12
	5. Have a Sense of Urgency	13
	6. Write for Your Audience.....	13
	7. A Corollary: Put the Hay Where the Horses Can Reach It.....	13
	8. Demonstrate Your Value Every Day	13
	9. Communication is Key	13
	10. Be Wary of Lawyer Shopping.....	14
	11. Manage Outside Counsel Relationships and Costs Carefully.....	14
	12. Never Provide Bad News without Options and a Strategy and Stay Calm in the Face of Problems	14
	13. Own Your Responsibilities and Provide Training to Prevent Problems.....	14
	14. Internal Reports	14
	15. Develop Rapport and Learn from Colleagues	15
III.	Risk Management	15
	A. How to Conduct a Risk Assessment	16
	B. In-house Counsel, In-house Prosecutor?	17

	I.	Sarbanes-Oxley Compliance	17
IV.		Corporate Governance Duties	19
	A.	Federal Law	19
	B.	Industry Regulations	19
	C.	Codes of Conduct and Compliance Policies	20
	D.	Document Retention/Data Protection Program	21
	E.	Contract Oversight and Compliance	22
	F.	“Whistleblower” Policy	23
	G.	Privacy Laws	25
		I.	HIPAA
		2.	Gramm-Leach-Bliley Act.....
	H.	Setting Reserves	25
	I.	Protecting Your Trade Secrets and Trademarks through Intellectual Property and IT System Security and Protection.....	26
	J.	Corporate Social Responsibility Programs	27
	K.	Media Scrutiny	28
	L.	SEC Enforcement Actions.....	28
	M.	Grand Jury Investigations	29
	N.	Internal Investigations	29
V.		Work Environment	30
	A.	Work-Life of an In-house Counsel.....	30
VI.		Client Contact	31
VII.		Liability	31
VIII.		Conclusion	33
IX.		Additional Resources	35
	A.	ACC Docket Articles	35
	B.	ACC InfoPAKs.....	36
	C.	Program Material	36
	D.	Other Resources	36
X.		Endnotes.....	38

I. Introduction

While many think that working as in-house counsel is a vacation compared to dealing with the challenges of law-firm life and government practice, in reality, the same principal challenge, i.e., the demand for excellent legal advice tailored to the needs of the client, arises in firm, government, and in-house practice alike. With few exceptions, corporate counsel are talented, motivated, and highly qualified lawyers, whose contribution to the corporation cannot be understated. Therefore, knowing what to expect when you enter the world of in-house practice, as well as having the necessary tools, will enable you to assume your role with confidence to become a valued asset to the organization for which you work.

II. Scope of Work

Although experience as a specialized or private legal practitioner is valuable, it does not necessarily prepare you for a position in-house, as the responsibilities of in-house counsel and private practitioners are very different. For one thing, in-house counsel has only one client—the corporation. Thus, traditional law firm concerns, such as business development and avoidance of client conflicts, are practically nonexistent issues for in-house counsel. In contrast to the private practitioner, in-house counsel are often able to get to know their clients within the corporation in depth. Once developed, a strong working relationship between in-house counsel and the corporate client(s) allows the in-house lawyer to develop a sense of business strategy, so that counsel may provide not only legal help, but also business advice, to the client. Nevertheless, a lawyer who is asked to provide both business and legal advice must ensure that the client is aware of which side of the business/legal line counsel is operating on since certain privileges, such as attorney-client confidentiality, attach to legal advice but not to business advice.

Perhaps the biggest difference between working for a firm or the government and working for a corporation is that the scope of an average in-house counsel's responsibilities is much broader than that of the outside attorney, with the possible exception of large organizations, whose law departments tend to house specialists in a particular area.

A. Size of Legal Department: In This Case, Smaller is Bigger (That is, in Terms of Responsibilities)

In general, in-house counsel in legal departments consisting of less than 10 lawyers must regularly address a wide range of issues. In contrast, lawyers in large in-house legal departments are usually assigned to work in a single practice area within a designated practice group, much like they would be in a large law firm.¹ Nevertheless, where in a large or small in-house legal department, the in-house position will require a lawyer who is comfortable with multi-tasking and who is secure in a dynamic legal environment with exposure to a wide variety of legal challenges.²

In addition, the types of work that in-house counsel perform depend upon a number of factors, such as the size of the company, the industry in which it operates, and the states or countries where it operates. For example, a manufacturing company may have different needs and

expectations for its in-house counsel than does a service company. Similarly, large companies may place more demands on their in-house counsel than do small companies. Likewise, a publishing company may send its extensive intellectual property work to outside counsel, while a clothing manufacturer may have its limited amount of intellectual property work completed in-house.

The role of the in-house lawyer will also depend to some extent upon the way the legal department is viewed by the company-client. Be aware that within some corporations, the legal department is generally viewed in a negative light. There are myriad reasons for this, but the primary reason is that, in contrast to a law firm, the office of general counsel is a cost center, rather than a revenue center. It can be psychologically daunting to make the switch from generating revenue for a firm by billing hours, etc., to becoming cost-aware and sensitive to the perception of in-house counsel as liabilities on a profit and loss statement. Try to find out if the business units view in-house counsel as being in the business of sales prevention. Clearly, a focus on sales prevention is not ideal, because it suggests a corporate culture of working around the legal department, as opposed to working with the legal department. In such cases, the role of the in-house lawyer tends to be more reactive and can involve a great deal of fixing problems, rather than a role that is proactive, i.e., preventing problems before they occur.

Overwhelmingly, the majority of in-house counsel report that the major difference between working for a corporation and working for a firm or the government is that the responsibilities of in-house counsel are dual in nature. In general, serving as in-house counsel entails more than just performing isolated, case-specific legal tasks; rather, in making decisions, in-house counsel must think in terms of the big picture.³ The in-house role frequently requires performing both business and management duties. Also, your in-house clients may think locally, i.e., they may try to solve problems in ways that best serve their particular departments. While you, as in-house counsel, must assist them in these endeavors, you must also help to ensure that their local solutions do not have adverse consequences for the entire corporation. Remember that your true client is the entire business and its stakeholders. This concept can take some getting used to for counsel who were previously accustomed to a government or a law firm atmosphere. For instance, Sprint Nextel employee Ray Rothermel recalls that when he joined Sprint Nextel's legal department, the notion that he was responsible for evaluating the business ramifications of any legal decisions for the company was completely foreign to him. Now, he says, it is almost second nature.

I. Legal Duties of In-house Counsel

The legal duties of in-house counsel can encompass a broad range of legal topics, including contracts, intellectual property, labor/employment, litigation, tax, antitrust, corporate/securities, ERISA/benefits, ethics, real estate, privacy matters, and possibly others. Frequently, in-house counsel play significant roles in the areas of transaction support, insurance, pre-litigation settlement, and litigation management. Depending on the nature of the business and the depth of the legal issues involved, large in-house law departments can have specialists in virtually every legal discipline, some of whom may have industry-specific expertise. In contrast to large legal departments, counsel in small legal departments or sole practitioners must be willing and able to recognize when they do not have the skills to provide advice on particular matters and, in such circumstances, must recommend that the corporation obtain advice from outside counsel. That said, the state of the economy today requires that in-house legal departments, as cost centers, do more with less. With the prudent leveraging of third-party resources (such as those provided by the ACC directly and ACC Alliance partners), in-house counsel are better able to manage the potential trade-offs between cost and required specialization.

2. Business Role of In-house Counsel

The legal department of the 21st century has increasingly aligned its management structure and goals to match the strategic objective of the corporation. The result has been a more seamless integration of lawyers with the business team.⁴ A corporation will often expect a new, junior-level in-house counsel to consider the business impact of a legal decision. For many attorneys who come from law firms to corporate legal departments, this represents a major shift in their approach to practicing law. They must move from providing “pure” legal advice to providing counsel that encompasses the legal elements of, tradeoffs involved in, and risks involved in particular business decisions. The most successful in-house lawyers make the transition from “pure lawyer” to business partner.⁵ In fact, what makes in-house counsel so valuable to an organization is the in-house lawyer’s ability to render advice with both legal and corporate objectives in mind. This dual-function is also what makes the role of in-house counsel, at times, a precarious but challenging journey. Patrick Murphy of GE explains:

“[When you serve as] in-house counsel, the burden and responsibility for anticipating adverse results and doing everything legally [possible] to prevent damage to the company is squarely on your shoulders. A bad result can be not just career threatening to the individual managing the case, but [can also] profoundly impact business operations if not anticipated by the business due to faulty legal advice. Had legal advice been made in a timely manner, the business could have made accommodations to prepare for the adverse event.”

The two-sided nature of responsibility for in-house counsel is very different from the seemingly one-dimensional responsibilities of a lawyer at a law-firm or a government agency. To a large extent, the structure of government entities or law-firms is such that duties, including those of an attorney, remain relatively compartmentalized, and thus, the lawyer’s role remains within the boundaries of “pure” legal interpretation and advice. For in-house counsel, that compartmentalization simply is not the case. Many in-house counsel act as both a senior-level manager and as legal advisor, with a large percentage of in-house counsel at least having another “business function” in addition to their legal duties, ranging from heading a business unit within the organization to serving as the Chief Compliance Officer or the director of human resources.

To serve the corporation well, it is imperative that in-house counsel learn the business. Upon joining the corporation, an in-house counsel should familiarize him- or herself as early as possible with all aspects of the company. In particular, the in-house counsel must become intimately familiar with the key drivers of the company’s business and the legal and regulatory environment(s) in which those key drivers operate: Revenue recognition in a sales-focused company, for example. In-house counsel needs to acquire the knowledge base to determine matters, such as which departments must be involved in a particular decision or if a client representative is exceeding its authority. Throughout, an in-house counsel is expected to guide the corporation in ensuring that proper corporate judgment is exercised. In addition to understanding at a very granular level the business and corporate structure of the company, counsel must also demonstrate adeptness with the “softer” side of the equation. To this extent, understanding the clients’ personalities and preferences is critical to providing effective and trusted advice.

An in-house counsel must remember that their client is the corporation and its stakeholders, and not the executive in charge of a particular matter.

3. Model Rules of Professional Conduct

As the roles of in-house counsel have changed over the past decades from handling primarily routine legal matters to providing full-scale legal services, including becoming involved in major business decisions, in-house counsel have to understand how the rules of ethics apply to non-legal business advice for corporate clients. Under the ABA Model Rules of Professional Conduct, Rule 8.4, a lawyer is prohibited from engaging in behavior which reflects moral turpitude or fraud, even if he is not acting in a professional capacity.⁶

Most of the Model Rules only apply to professional conduct, i.e., performance of services that are essential to an attorney-client relationship; so what happens if an in-house counsel performs business functions in addition to providing legal services? In regards to this scenario, Model Rule 5.7 states that “[a] lawyer shall be subject to the Rules of Professional Conduct with respect to the provisions of law-related services ... if the law-related services are provided by the lawyer in circumstances that are not distinct from the lawyer’s provision of legal services to clients”⁷ “Law-related services” are defined as “services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a non-lawyer.”⁸ Some examples of law-related services are described in Comment 9 to Model Rule 5.7, and include: “providing title insurance, financial planning, accounting, trust services, real estate counseling, legislative lobbying, economic analysis, social work, psychological counseling, tax preparation, and patent, medical or environmental consulting.”⁹ Accordingly, for an in-house counsel to show that his behavior is not covered by the Rules of Professional Conduct, he has to show that: (1) he does not provide any legal services to the client; or (2) if he provides some legal services to the corporate client, the conduct is not “law-related” service as defined above; or (3) even if the services are law related, under the special circumstances, the services are distinct from the lawyer’s provision of legal services to the client.¹⁰

4. Privilege: Imperiled by Dual Roles?

Related Resources

ACC Advocacy: [Privilege](#)

ACC InfoPak: [Attorney-Client Privilege](#)

ACC InfoPak: [Conflicts and Waivers in U.S. Practice](#)

Does the attorney-client privilege apply to communications between in-house counsel and the corporate client, if in-house counsel acts in a business capacity as opposed to a purely legal capacity? This is a question that is raised more and more frequently in corporate environments, particularly as in-house counsel’s role expands to include corporate functions. Most people agree that corporations should not use the office of in-house counsel as a citadel, i.e., “a place where public, business, or technical information may be placed to defeat discovery and thereby ensure confidentiality,”¹¹ and most courts are not receptive to

what are seen as transparent attempts to circumvent the discovery rules through this application of the attorney-client privilege.

Defining attorney-client privilege can be very complicated, as opinions over what constitutes privileged information differ greatly. Moreover, in recent years, prosecutors and plaintiffs' lawyers have attempted to erode the privilege.

Consequently, in-house counsel should be familiar with the types of circumstances in which the privilege does not apply or where it may be lost depending on the actions of those involved. A junior in-house counsel who encounters privilege issues should seek guidance either from a more senior counsel within the corporation or from outside counsel.

There are practical steps in-house counsel can take to protect the attorney-client privilege. Some of these are: (1) using legal titles, such as general counsel, legal officer, esquire, or attorney-at-law; (2) establishing and implementing procedures for separating legal files from corporate files; (3) limiting the number of people receiving legal information within a corporation on a "need-to-know" basis; (4) ensuring that the people who have access to the privileged documents are closely related to the particular matter; and (5) labeling information that is to be closely held as "confidential." That said, do not routinely stamp "confidential" on documents; rather, be judicious in marking only those documents that are truly confidential in nature as confidential.¹²

5. Confidentiality

Lawyers have a duty of confidentiality to all of their clients according to Model Rule 1.6.20 However, the practical application of that rule varies rather extensively from state to state. Accordingly, in-house counsel should be familiar with the exact standard under the applicable law.

In general, in-house counsel must keep confidential all information relating to the representation of the client, except for disclosures that are expressly permitted by the rules of professional conduct. In recent times, an increasingly important question is whether ethical duties arise when an in-house counsel learns that the corporate client is engaged in material wrongdoing.

In 2004, the ABA revised Model Rule 1.6 in response to the spate of corporate scandals that led to the Sarbanes-Oxley Act. The revised Model Rule 1.6 permits disclosure of otherwise confidential information in two circumstances: (1) To permit a crime or fraud; and (2) to prevent, mitigate, or rectify injury from a crime or fraud. While the Rules distinguish between mandatory conduct and permissive/optional conduct, the exact definition of permissive conduct also varies from state to state.¹³

B. Outside Counsel: Not an Excuse to Bail

In many cases, in-house counsel must rely on outside counsel to resolve legal matters that may require expertise in an area that the in-house department lacks. When outside counsel is retained, in-house counsel is responsible for coordinating with and counseling company employees, as well as providing direction to external counsel on how to staff and approach the particular matter at hand.¹⁴ It is advisable to request a project plan and a written budget and before commencement of the work. The project plan is a good tool for defining objectives and agreeing upon project scope and providing a valuable foundation for creating the budget. This pre-work budget will be in addition to a standing retainer arrangement, which should be in writing. Both the project plan and budget can be refined, with mutual consent, as the project proceeds.

Particularly in this economic climate, an in-house counsel is expected to think seriously about a particular matter before seeking advice from external counsel. Sometimes, there is a real need for outside help because the issues require expertise beyond that possessed by anyone in the

department or because the in-house counsel are too busy to resolve the matter internally within the given timeframe. An in-house counsel is expected to justify the legal costs and should be in a position to answer to the corporation's chief financial officer at any time. To deal with costs that fall outside the ordinary course of business and are difficult to determine in advance, the law firm should provide estimates for each phase of a matter. In-house counsel should obtain the approval of the corporation's chief financial officer or other appropriate person prior to incurring outside legal expenses.

In addition, in-house counsel should know what policies or guidelines are in place within the corporation regarding his or her authority to retain outside counsel. For instance, there may be restrictions as to what type of work is given to which outside law firm and as to which outside lawyers are the first point of contact. There may also be restrictions as to who within the legal department is permitted to contact outside counsel, and under what circumstances. If you, as in-house counsel, encounter resistance within the corporation and feel strongly about the need to retain outside counsel, consider informing the company that sometimes, a one-hour, \$400 phone call with outside counsel can provide a different, and strategically useful, perspective to approaching the problem. For example, outside counsel can sometimes save the corporation significant amounts of money by advancing a better course of action than the one the corporation would have otherwise elected. Most important, as in-house counsel, you should recognize that you cannot and should not handle every matter yourself. The corporation wants in-house counsel to be cost-effective, but it is not rational to staff for every possible legal situation and/or for peak demand situations, so use of outside counsel can be perfectly appropriate. Additionally, there are fee arrangements, such as flat fee or retainer models, that provide for reasonable on-going counseling from outside counsel without incurring hourly charges.

In deciding whether to hire an outside law firm, the company's in-house counsel should determine whether the company would benefit from a relationship with an outside firm in light of the cost associated with such a relationship. When making this decision, in-house counsel should take the following into consideration:

- "The decision to retain outside counsel, as opposed to handling the matter in-house, is driven by three main factors: geography, the need for specialized expertise, and a lack of inside resources."¹⁵
- "Geography refers to the need to obtain local counsel when the location of the legal matter is at some distance from the corporate law department and is most often an important factor with respect to litigation."¹⁶
- "The need for outside counsel provision of specialized legal expertise is an obvious situation for most in-house counsel. But the attempt to mesh specialized outside counsel with available in-house counsel knowledge can be a management challenge. This is especially so when an outside firm is providing only part of the legal advice for a transaction or when several outside firms are providing advice concerning the transaction. In such instances, the expertise of in-house counsel in identifying legal issues and coordinating their resolution is particularly necessary."¹⁷
- "Finally, in-house counsel sometimes require outside counsel if, due to the press of time and other matters, staff resources are simply unavailable even where geography and specialized knowledge are not an issue."¹⁸

In addition, when considering whether to hire outside counsel, in-house counsel should ask the following key questions:

- How much work is needs to be done that is beyond internal capacity?
- What is the cost of providing legal services internally, and is that cost competitive with outside firms?
- What benefits does the company's law department bring to the organization by handling the work internally?
- Are there particular services or areas of law that are so specialized that they would be better handled by outside counsel?
- Does the company's law department have or want to develop the necessary skill sets to efficiently handle specific areas of work?
- Is the work core to the company's strategy? (if so, developing internal expertise is desirable)

Related Resources:

ACC Docket: [A Primer on Retaining and Relating to Outside Counsel](#)

ACC InfoPAK: [Managing Value-Based Relationships with Outside Counsel](#)

ACC Primer: [ACC Value –Based Fee Primer](#)

Some in-house counsel view the use of outside counsel as an exercise of "toss the file over the wall" approach.¹⁹ Needless to say, we urge you not to adopt this attitude. Even in those instances where the company retains outside counsel, in-house counsel must be sophisticated in ensuring that the corporation is obtaining quality and cost-effective advice and accountable for managing the outside resources to ensure that the corporations objectives are met in a cost-effective manner.

An in-house counsel in a larger and a smaller corporation can reasonably be expected to develop areas of expertise as a member of the legal department. For example, the general counsel for a Baltimore investment firm stated that his firm tends to outsource for non-routine matters such as litigation,

but keeps tasks relating to registration statements and mutual funds in-house, as in-house counsel are more experienced in such matters.²⁰ Still other in-house counsel report that it is common for their departments to hire external counsel for matters such as patents and trademarks because developing an in-house expertise on those issues is neither wise nor feasible.²¹ The Baltimore Corporation, as well as others, maintains a pool of outside counsel from which it can draw when the need arises, especially for very complicated matters or issues involving large amounts of money.

A lagging economy and a fundamental shift in the legal profession towards better alignment of client and outside counsel objectives have given in-house counsel leverage to effectively reduce the number of law firms within their provider network and to obtain value-based fee structures that share risks and rewards. That leverage has resulted in in-house leaders expecting more predictable outside legal costs, if not reduced spending, and better legal outcomes.

Most junior in-house counsel are not responsible for selecting outside counsel. The corporation will, however, expect junior in-house counsel to manage and periodically assess relationships with outside counsel. In-house counsel who are responsible for retaining outside counsel should be guided by the question: "Why am I hiring this team of lawyers?" The only acceptable answer is that

this team can provide the best timely advice at the best price. Do not hire your former law firm, a relative's law firm, or your friend's dad's law firm because you like them. That's a sure recipe for a bad result and a bad career move.

C. Fifteen Things Every New In-house Lawyer Should Know²²

I. Learn the Business

First and foremost, you must learn the business. You must know why each department of the company exists and when each department should be involved in a contract, due diligence or a deal. If you don't think in company-wide terms, you will not effectively serve the needs of the company, which is your ultimate client. Some of your clients might be charged with "thinking locally" and solving a parochial problem, but it is your job to make sure that the overall interests of the company are protected. Frequently ask questions from the beginning, and identify the best people to seek advice from. Determine early on the names and roles of the various individuals of the company and try to get to know them. Learn as much as you can about accounting and financial concepts, as well as key terminology, to help better understand what is driving business decisions.

2. Partner With Your Clients Early

As in-house counsel, your goal is to enable your client to achieve better results. For instance, if you are working on contracts, make sure your clients know how to "bake" an idea so that it is ready to be documented and ready for a negotiation. You do not want to waste your time drafting a document in a situation where the parties never reached a business agreement. Also, teach your clients the key terms that your company utilizes on a daily basis. Get involved early in processes leading up to contract formation because the earlier you get involved, the better transactions can be structured and the greater the likelihood that they can be concluded in a timely fashion. For example, early involvement can help avoid situations in which a client is locked in discussion with another party for an extended period of time, during which no essential terms besides price are discussed, and after which the client goes to in-house counsel to have the contract drafted. In such situations, in-house counsel are often forced to draft contracts in short timeframes and without having established essential terms; hence, it is incumbent on in-house counsel to get a seat at the negotiating table early.

3. Just Saying No Will Not Work

Think creatively and practically about how to get the deal or matter done in a way that protects the business. Simply saying "no" and placing the onus on the business people to generate different alternatives is not enough; as a stakeholder in the business, you need to try to think of good solutions and alternatives.

4. Know the Internal Operating Rules and Regulations (Policies and Procedures) Governing Your Organization

In-house lawyers are expected to give legal advice that is in accordance with company policies and procedures and to provide advice on compliance with those policies and procedures. This means

that you must be a role model of integrity, exhibiting behavior that reflects your company's values and doesn't violate the rules.

5. Have a Sense of Urgency

Going in-house has great rewards, but putting your work ethic on "cruise-control" is certainly not one of them. Some lawyers think that the in-house demands on them will not be and cannot be what they were at a law firm. Although you may not have to work grueling hours or kill your weekend plans with an assignment that comes down late on a Friday afternoon, but that does not mean your work flow will not be constant or even overwhelming, or that you can take your time in finishing your work. In-house clients have their own timetables and you must partner with them in their mission to get things done and be organized and good at prioritizing. At the same time, do not shoot from the hip in an effort to be fast – it is important to give useful, reasoned, well-formulated advice.

6. Write for Your Audience

Executives have little time and patience for long legal memorandums. When producing written work, get to the point, be succinct and summarize your findings and recommendations. Know your audience. Write for the benefit of your audience or pick up the phone (or stop by) if that would be a better way to communicate, especially for sensitive matters.

7. A Corollary: Put the Hay Where the Horses Can Reach It

Remember that your clients are typically not lawyers, so provide them with practical advice that they can understand. Taking time to explain the rationale of your decisions to clients can go a long way to fostering a sense of cooperation and a team atmosphere, and to avoiding creating a "legal versus business" mentality.

8. Demonstrate Your Value Every Day

You are no longer the revenue-generating center of the enterprise; rather, you are considered part of the overhead. Therefore, you need to demonstrate your strategic value every day. Constantly think about how you can do your job more efficiently, more quickly, and less expensively than anyone else could. Maintaining a service-oriented attitude and striving to meet the goal of adding value to your organization will go a long way toward your in-house success.

9. Communication is Key

You have to keep your clients informed as to status and find out their expectations from the outset. Do not set incorrect expectations – develop planning and project management skills and learn how to accurately express likely outcomes and timeframes, as well as key steps and items. It is much better to under-promise and over-deliver. For example, it may be the case that you are juggling 60 different matters at once, instead of, say, 3 really big matters, 5 medium-sizes matters and 12 small ones. In this case, if you feel overwhelmed and do not think you can get everything done, discuss this with your supervisor. You are in more of a team environment than you were in a law firm, so communicate with your boss and clients and be a good listener too.

10. Be Wary of Lawyer Shopping

You might be faced with a situation in which a businessperson comes to you with a question that falls outside the scope of your responsibility. Although all service areas of companies aim to please, and you always want to be helpful, it's important to be aware of whether the person is coming to you for a "yes" where the lawyer who has "day-to-day" responsibility for the subject matter has put up a red light. If you are curious as to why someone is breaking protocol by coming to you, discuss this with your supervisor.

11. Manage Outside Counsel Relationships and Costs Carefully

You are held accountable for what you know, do not know and should know about the work outside counsel is performing and for directing them. Therefore, when dealing with outside counsel, demand that they provide an assessment as to fees and costs for significant new and ongoing projects, negotiate to obtain the best rates from them, and demand frequent budget updates from them. In addition, think about how many widgets your company would have to sell to pay for any unnecessary legal fees and be as efficient as possible. Be aware of when, if ever, outside counsel is permitted to contact and deal with your company officials directly. Learn your department's outside counsel engagement requirements and follow them. Learn generally which outside lawyers are considered "best" in your areas of responsibility in case you need to engage outside counsel quickly for a matter. Obtain feedback from persons in your company who are exposed to outside counsel. If they dislike outside counsel, it will have an impact on you.

12. Never Provide Bad News without Options and a Strategy and Stay Calm in the Face of Problems

Anyone can deliver bad news. You must demonstrate how well you are able to develop options and a strategy for dealing with problems. Problems pop up in corporations daily and your business colleagues will make mistakes. Stay calm and work with your colleagues in a team effort to bring problems to the surface and solve them.

13. Own Your Responsibilities and Provide Training to Prevent Problems

As you develop the ability to be more of a generalist and handle new types of legal matters, continue to maintain awareness of your areas of responsibility and keep a handle on recent regulations and trends in your areas of responsibility. To this extent, get on distribution lists to receive law firm newsletters covering matters in your areas of responsibility to stay apprised of legal developments. Staying updated will enable you to practice preventative law and provide training for the benefit of your company and your clients.

14. Internal Reports

All in-house attorneys hate the internal deadlines, reports, and updates with which they inevitably have to deal. However, timely compliance with internal deadlines, reports and updates can make or damage a career. Ask for feedback on how you are doing and what your goals and outcomes should be.

15. Develop Rapport and Learn from Colleagues

Unless you are a sole practitioner, you are now part of an in-house team that needs to work collaboratively to get the best results without reinventing the wheel. Do not overlook the resources and institutional knowledge that more senior lawyers can provide. Determine how others before you became successful. Ask to shadow other lawyers or to be involved with various activities or matters in your department to learn more. Treat colleagues as you would like to be treated. Finally, do not be afraid to deal with people personally, even if they are more senior, and to maintain your sense of humor and personality.

III. Risk Management

Straightforward, reactive legal work for a corporate client may take up a good portion of your day as in-house counsel, but you will be increasingly charged with duties of a more proactive nature. Commentators have characterized these more proactive tasks as “risk management.” Whether or not you have dual titles as in-house counsel and compliance officer, current industry expectations are that in-house counsel will play the lead role in assessing the legal risks that the corporation faces.

The expansion of the role of in-house counsel to include risk management means that in-house counsel are no longer able to sit back and wait for problems to arise. Rather, they must actively seek to identify areas in which their corporations may be exposing themselves to legal risks and then work to mitigate the risks. In this respect, the role of an in-house counsel differs dramatically from that of an associate at a firm, where work is generally reactive, i.e., entailing initiation of claims by clients or a response to claims against clients. In contrast to a junior in-house counsel, a junior associate will rarely have management responsibilities or be required to assess the business aspects of a legal issue because generally, their tasks are carefully defined and generally restricted to one limited area of expertise.

Corporations are required to perform risk analysis in situations where a law specifically requires it or where a law impliedly requires it. However, there are situations where risk analysis is preformed simply because good business practice asks for it. Also, Chapter 8 of the U.S. Federal Sentencing Guidelines and the Federal Acquisition Regulation requires corporations to periodically assess the risk of criminal conduct and take appropriate steps to improve the corporate compliance and ethics program to mitigate those risks.

The assumption of risk management responsibilities is essential if an in-house counsel is to function effectively as legal advisor and provide the greatest value to a corporate client. Patrick Murphy, Senior Counsel, Litigation and Legal Policy for General Electric, affirms this notion: “In-house lawyers must be far more proactive in compliance and preventive law than outside counterparts who are largely brought in to simply clean up a mess.” Mr. Murphy, who has served as counsel at King & Spalding, counsel to the Senate Judiciary Committee, Assistant General Counsel to the FBI, and Judge Advocate for the U.S. Marines, also advises that: “Someone coming in-house who simply expects to wait for cases to come through the door is never going to thrive. You must become proactive and constantly look to identify areas where a company may be overlooking potential legal exposure.” Mr. Murphy’s outlook is not only a product of his own exceptionally stringent work ethic, but is also an accurate reflection of what corporate employers

increasingly expect of in-house counsel, and a fair estimate of how corporations will ultimately gauge their counsel's performance.

A. How to Conduct a Risk Assessment

There are many ways to approach the risk assessment process, but the core result is the quantification and prioritization of the risks that face the company. Enterprise Risk Management or "ERM" is the term used to describe the quantification of risks across the entire organization and encompasses operational risks, security risks, and competitive risks among others. "Legal risk management" or "compliance risk management" is used to describe the process by which counsel inventories and prioritizes the legal risks that face the organization. The ERM process may or may not include in-house counsel, however the legal compliance risk assessment process depends on in-house counsel.

The risk assessment process should begin with the direction and buy-in of the CEO and the Board of Directors. Then, a team of key functional stakeholders should be formed, including for example: Human Resources, Information Technology, Finance/Accounting, and operational leads. Team members will most often know what areas of law keep them up at night and can help in determining the probability and impact of non-compliance with laws that govern their operations.

Once the team assembles the list of legal areas that touch the organization, the team then assigns a value to the probability and impact of each of the risk areas on the organization. There are several different scales that can be used, "Red, Yellow, Green," "3-High, 2-Medium, 1-Low," up to five point scales such as "Extreme, Substantial, Neutral, Low, None." In determining probability, the team should consider the organization's own history with non-compliance (former claims/lawsuits), recent trends or developments in the substantive legal area (e.g., bribery or data privacy), the industry trend of non-compliance (e.g., wage and hour class actions in retail), recent enforcement agency announcements on enforcement focus (e.g., DOJ on bribery, DOL on wage and hour/OSHA), operational changes that may increase risk (e.g., taking business internationally may increase Foreign Corrupt Practices Act), among other subjective and objective relevant factors. In the end, what matters is that a clear picture of risk emerges from combining the probability and impact of legal non-compliance in each legal area.

The resulting risk picture should be used as a roadmap for the assignment of organizational resources to mitigate risks. Chapter 8 of the U.S. Federal Sentencing Guidelines sets forth the infrastructure required for effective compliance and ethics programs and should be used to create a structure for mitigating at least the highest risks. For the highest risks, there should be clear lines of authority describing who is responsible for overseeing compliance (i.e., Human Resources for employment law compliance, Safety for OSHA compliance). Policies and procedures must then be examined to see if they will be effective in communicating the organization's standards in each substantive legal area. This includes a solid corporate code of conduct. Training and education will need to be conducted to ensure that the workforce can make compliant, ethical, and intelligent choices in day-to-day operations. The highest risk areas must also be monitored and audited to ensure that if criminal or non-compliant conduct were to occur, the organization would catch it.

B. In-house Counsel, In-house Prosecutor?

In-house counsel must strive to walk a fine line between serving as “trusted advisor” and being viewed as an “in-house prosecutor.”²³ The key is for counsel to ensure that the corporate culture views the role of in-house counsel as an ever-vigilant guard who is constantly on the lookout for trouble that might harm the corporation, but who will not hesitate to call anyone on the carpet if that person or his conduct threatens to expose the corporation to potential criminal or civil liability.

Wearing two hats as both counsel and compliance officer poses its own challenges, not the least of which is the gray area of attorney-client privilege that arises when the counsel is advising or acting in the role of compliance officer. ACC has several resources that address how to handle the competing roles of counsel and compliance officer.²⁴

I. Sarbanes-Oxley Compliance

If your company is subject to the Sarbanes-Oxley Act and the Securities and Exchange Commission’s rules, one of the most significant tasks for in-house counsel is the drafting and implementation of policies that ensure compliance with the dictates of those laws. These rules do more than impose duties on board members, CEO’s and accountants – they also require lawyers to report to their clients any evidence of a material violation of securities law or a breach of fiduciary duty. In effect, the rules affect the relationship between in-house counsel and the corporate client by placing the lawyer in the dichotomous roles of internal policeman and zealous advocate for the company.

As a threshold matter, drafting a compliance policy to comply with the SEC’s attorney reporting rules requires that counsel know who is covered by those rules. In general, the rules apply to any attorney appearing and practicing before the SEC in the representation of an issuer.²⁵ The SEC’s Standards of Conduct at 17 C.F.R. 205.1, et seq., define an attorney to whom the rules apply as one who engages in the following activities:²⁶

- Transacting business with the SEC, including communications in any form.
- Representing a company in an SEC administrative proceeding or in connection with any SEC investigation, inquiry, information request, or subpoena.
- Providing advice with respect to the federal securities laws regarding any document that the attorney has notice will be filed with, or submitted to, or incorporated into any document that will be filed with or submitted to the SEC.
- Advising the company as to whether information or a statement is required to be filed with or submitted to the SEC or incorporated into a document that is filed with or submitted to the SEC.
- Conducting an investigation on behalf of the company pursuant to the Standards of Conduct.
- Supervising and directing an attorney who is appearing and practicing before the SEC in the representation of an issuer.²⁷

a) Who?

According to the Standards of Conduct 205.3(a), which is intended to clarify who your client is and explain your obligations to that client, an attorney appearing and practicing before the SEC in the representation of an issuer owes his or her professional and ethical duties to the issuer as an organization. That the attorney may work with and advise the issuer's officers, directors, or employees in the course of representing the issuer does not make such individuals the attorney's client.²⁸

So now that you know who the attorney is and who the client is, what are you supposed to do about it? As the rules require, simply follow the ethical steps, set forth in the rules, to keeping the company honest. This means that if you are an attorney, to whom the rules apply, and you become aware of "evidence of a material violation" by the company or any of its officers, directors, employees or agents, then you must report the evidence to others as specified in the rules.

b) What?

What is evidence of a material violation? The rules define the concept as follows: "Credible evidence, based upon which it would be unreasonable, under the circumstances, for a prudent and competent attorney not to conclude that it is reasonably likely that a material violation has occurred, is ongoing, or is about to occur." In turn, a material violation is reasonably likely, if it is "more than a mere possibility, but it need not be 'more likely than not'."²⁹ Perhaps in recognition of the fact that this clarification is not terribly helpful, the Commission offers the following two criteria to evaluate whether a material violation has occurred or is about to occur

- Is it unreasonable under the circumstances for the attorney to conclude that it is not reasonably likely that there is an occurring material violation? In applying this criterion, an attorney can resolve factual issues by identifying those reasonable credibility judgments and drawing those reasonable judgments that tend to indicate that it is not reasonably likely that a violation occurred, is ongoing, or is about to occur.
- Is it unreasonable under the circumstances for the attorney to conclude that the occurring violation is not material? Although a competent and prudent attorney could conclude that the indicated violation is material, another could conclude that the indicated violation is not.³⁰

c) Where?

Okay, so you are an attorney who has evidence of a material violation by the company or a director, officer, employee or agent of the company. Where do you take your information? Generally, the answer is "up."

This entails reporting to one of the following people in order to satisfy your reporting obligation:

- A supervising attorney, if you have one.
- The company's Chief Legal Officer ("CLO");
- The company's CLO and Chief Executive Office ("CEO")
- The Qualified Legal Compliance Committee ("QLCC"), if your company has one; or

- The Board.

Once you have notified the higher-ups of the issue, your duties are hardly over. The rules provide that if the report is made to the CLO or CEO, this officer must arrange for an inquiry (perhaps by the QLCC) unless he believes that no such violation actually occurred. The CEO or CLO must then advise the reporting attorney (regardless of whether it is a subordinate attorney or the subordinate attorney's supervisor) of what action has been taken.

Once you are advised of what action has been taken, you face your own decision. If you receive "an appropriate and timely response," then you do not have to take any further action. However, if you have not received an appropriate response within a reasonable time, then you have an obligation to voice your dissatisfaction to the CEO or CLO, and then notify others in the company of the situation. This process is known as "reporting up," and requires you, as the reporting attorney, to bring the matter to the attention of the audit committee, the board of directors or another committee of the board consisting of directors who are not employed, directly or indirectly, by the company.

It is only at this point that your work is done. Although the SEC had initially proposed a "noisy withdrawal" requirement for reporting attorneys who did not receive an appropriate and timely response, that requirement was not included in the final rules.

IV. Corporate Governance Duties

Counsel must also make certain that the corporation develops and implements policies and procedures that ensure compliance with various other laws and regulations. These laws and regulations are discussed in the following subsections.

A. Federal Law

There are a myriad of laws with which your corporation must comply on an everyday basis, and it is often your duty to identify these laws, draft policies or review existing policies to ensure their compliance with these laws, and enforce adherence to these policies. Ensuring that your corporation does not run afoul of antitrust laws or the Foreign Corrupt Practices Act³¹ requires that you pay close attention to the operations of the company's divisions. Similarly, you are likely to be charged with ensuring that internal corporate policies are legally sound, including those involving human resource issues such as maternity leave, employee recruitment, interviewing, hiring and firing, the Americans with Disabilities Act,³² and Executive Compensation,³³ among others.

B. Industry Regulations

In-house counsel must ensure that the company is complying with applicable regulations. For example, Frank Fernandez, General Counsel of Home Depot, saw potential for trouble when he took over three years ago.³⁴ His concerns about whether the home product installers were properly insured and licensed, and the degree of familiarity store construction managers' had with

local building laws, led him to institute a company-wide compliance program to protect the company from lawsuits. Like Mr. Fernandez, you can add value to a corporation if you adopt a proactive, assertive approach to compliance programs.³⁵

Meanwhile, some companies require that management be involved in the formulation of a plan that in-house counsel are primarily responsible for creating and enforcing. For example, The Scotts Company implemented a unique, company-wide compliance program in 2001 that was “homegrown,” i.e., devised by a coordinated group comprised of twenty company senior executives and the seven-member legal department. By using managers to develop a risk assessment tool, the corporation identified problems relating to price-fixing, insider trading and other antitrust matters, and rolled out a program to address these and other forms of potentially unethical and illegal conduct. Observers believe that this “culture of compliance” will go a long way to avoiding an antitrust case or a government investigation that could have arisen if the corporation was not diligent about policing itself.³⁶

C. Codes of Conduct and Compliance Policies

Recent amendments to Chapter 8 of the U.S. Federal Sentencing Guidelines focus on deterring criminal misconduct by implementing structural safeguards to prevent and detect criminal conduct within an organization. Specifically, U.S.S.G. § 8B2.1(b) requires organizations to exercise due diligence to “promote an organization culture that encourages ethical conduct and a commitment to compliance with the law.” Though the Sentencing Guidelines do not mention the “Code of Ethics” or “Code of Conduct” specifically, it is widely understood as a best practice to meet the requirement of establishing “standards and procedures.” The Sentencing Guidelines are not the only place counsel will find requirements for corporate governance infrastructure such as a Code of Conduct. The Federal Acquisition Regulation now mandates compliance and ethics programs, robust internal controls, and specifically requires a code of conduct be established and published to every employee working on a federal contract.

The Code of Ethics or Code of Conduct is the foundational document for any compliance program. It sets and delivers the tone from the top of the organization on conducting business in an ethical manner. It is important that the code of conduct have a cover letter from the CEO or President and that it include the corporate values. The best and most effective codes are ones that include a rules-based approach—stating specific laws and how they apply—and a values-based approach—setting forth the values of the organization and encouraging employees to aspire to those values. For example, ABC Corp. may indicate that one of its values is respect. In ABC’s code, the following rules-based risk areas can be addressed under the value respect: harassment and discrimination, fair pay, bribery and improper payments/gratuities, military and other forms of leave, worker safety, etc.

It is also critical that the substantive areas of law covered in the code be drawn from a solid risk assessment, described in Section III, above, on risk management. If worker safety is not a primary concern in an office-based company, it does not make much sense to devote space to that risk in the corporate code of conduct. Nor would it make sense for a manufacturing company to devote much space to consumer data privacy in its code. The code should address the highest risk areas for each company. To some extent, there will be some topical overlap within industries, but the code should be customized to the risks that an individual company faces. Only then will the code be an effective foundational document for that company’s compliance program.

Though counsel are often asked to draft the code of conduct, it should not look, feel, or read like a legal document. Corporate marketing or communications teams can be helpful in creating a user-friendly and inviting code by including corporate branding, photos, and other visuals that help the code to resonate with the workforce. Typically, the code should be written at about the eighth-grade level so that it is easy to use. The ultimate goal of the code is to assist employees in making legally compliant decisions and taking compliant actions in the course of their day-to-day operational duties. Therefore, a good code should also contain comprehension aids such as “FAQs,” Q&As, or real-world examples to highlight how rules take effect in the operations of the business.

When drafting or revising your code of conduct or any compliance policy, be sure to have input from all relevant stakeholders, including those who may be located in different departments and geographic areas. For example, someone in the Auditing Department could provide valuable input regarding how to draft the code in a manner that makes monitoring compliance with the code possible. Moreover, if you include information on reporting in your code, such as publishing the number for an ethics hotline, potentially you may run afoul of European privacy regulations depending on how it is set up to function. A compliance team may be helpful in identifying and resolving these issues prior to the finalization of the code of conduct or any other compliance policy.

After the code of conduct or compliance policy has been finalized, market it! Make it widely available, provide training for it, enforce it consistently, and update it on a regular basis. Simply

Related Resources

ACC Compliance Portal:
[Code of Conduct](#)

ACC Top Ten: [Ten Most Important Decisions to Make When Drafting a Code of Conduct](#)

ACC Docket: [Five Fundamentals for Taking Compliance Management Seriously](#)

writing a policy and putting it on the shelf will not help compliance, and it probably would not satisfy the Sentencing Guidelines. The Department of Justice has indicated that “paper tiger” programs will not be sufficient under the Sentencing Guidelines.³⁷

As part of a larger compliance and ethics program, it is advisable to have your organization’s board of directors sign off on the Code of Conduct or other ethics policies, and to require your company’s chief compliance officer have direct access to the board or audit committee. The recent amendments to the Sentencing Guidelines³⁸ look favorably upon such arrangements.

D. Document Retention/Data Protection Program³⁹

All companies produce vast amounts of documents every single day, most of which have no use to the company after they have been prepared, used, and executed. Companies should implement policies that enable them to retain documents they have a need to protect, organize documents for efficient retrieval and easy accessibility for various purposes, and discard documents that are obsolete or no longer necessary for the proper functioning of the company. Knowing how to establish such a policy, or, alternatively, knowing how to gauge the effectiveness and thoroughness of such a policy already in place at your corporation, is essential.

In light of this, it is important for in-house counsel to be aware of various federal regulations that govern document retention. For example, the Securities and Exchange Commission has issued a regulation,⁴⁰ pursuant to §802 of the Sarbanes-Oxley Act, requiring firms that perform audits on public companies to preserve all records relevant to the audit, including electronic records created, sent or received in connection with the audit for seven years after the audit is completed. Similarly, the Internal Revenue Service has mandated that companies retain accounting records and other financial data to support their tax filings. The Environmental Protection Agency also has rules on retaining environmental records and reports, whether in paper or electronic format. Likewise, the Occupational Safety and Health Administration has set standards for retaining data about employees, as has the Equal Employment Opportunity Commission (“EEOC”).

Executives from all levels agree that record retention and management policies are probably the one part of corporate governance that is uniformly neglected.

In order to defend a company against potential liability, it’s critical that a company implement an efficient document retention policy. Accordingly, a company should follow the four steps below when establishing a retention plan:

- Have a comprehensive understanding of its electronic infrastructure and its records that exist;
- Determine all applicable statutory or other legal requirements regarding preservation of documents;
- Develop simple and clear policies, procedures, and retention schedules; and
- Apply the program systematically and non-selectively in the normal course of business.⁴¹

To develop the best retention plan possible, a company must first become familiar with its documents and its electronic infrastructure. A company should establish categories for the different substantive types of documents used, such as documents pertaining to intellectual property, letters establishing credit, or contracts.⁴² Next, a company must evaluate the statutory and/or regulatory requirements that apply to each type of document used. These retention rules typically vary from one year to permanent retention, based upon the contents of the document. A company must then develop retention cycles for these documents in compliance with the regulations. Finally, the company should incorporate the retention program into the normal course of business.

In addition, you should be very aware of legal issues that may arise when you or individuals in your corporation request data or information about individuals (e.g., about employees of subsidiaries or customers) from foreign countries. This includes information gleaned from third-party databases.

For example, there are specific rules regulating privacy and the transfer of data and information from various foreign countries to the United States (e.g., the European Union’s Privacy rules). Thus, innocent but ill-informed requests can land a corporation in very serious trouble.⁴³

E. Contract Oversight and Compliance

An effective contract oversight and compliance program can streamline the creation and

maintenance of business relationships and free up attorneys from constantly redrafting the same sorts of provisions for different customers, vendors, and partners.

While parties should appropriately be focusing on the benefits and purposes of a contract, be sure not to overlook the provisions regarding remedies and the potential “break up” of the contractual relationship. Hence, when drafting a contract, it is critical to clearly address the material issues in reasonable detail, but brevity is also important to the client. While ambiguity should generally be avoided, the fewer physical pages a contract has, the more acceptable it will likely be to your client. Also, because excessive legalese can frustrate clients, writing a contract with clear, plain terms is the best way to minimize, and efficiently resolve, future disputes. Consider using examples, tables and charts, rather than long, complicated language to illustrate a particular point. Consider explaining in clear, non-legalese terms why certain provisions are included in the contract, or why they are drafted in a particular way.⁴⁴

Additionally, quality control and consistency is important. Consider implementing form templates where applicable and institutionalizing contracting controls and procedures. Consider having outside counsel periodically review your templates and alter them to reflect recent case law developments.

It is important to know that contracts that you might have carefully drafted can be radically altered by subsequently executed electronic agreements. It can happen without you or other legal counsel even knowing about it until it is too late. For example, some contracts can be modified by subsequently executed electronic agreements. This can be partially resolved by adding provisions to contracts that expressly forbid “click wrap” to modify agreements. However, the best prescription is vigilance, e.g., alerting employees that the click of a mouse can be as binding as a signature on a page.

Focus on high value and high risk agreements, rather than letting yourself become involved with every corporate transaction. Route lower value or lower risk contracts to non-attorneys and consider creating an automated tool for your company’s business people to generate contracts based on information they input. In addition to building a collection of standardized language for contracts, set up a schedule for regularly re-assessing them to make sure that they continue to reflect industry standards and your company’s current business practices.⁴⁵

F. “Whistleblower” Policy

Retaliating against an employee for legitimate whistleblowing, including firing him for poor performance as a pretext to “ditching a squeaky wheel,” has long been prohibited under a variety of laws, including Section 215(a)(3) of the Fair Labor Standards Act (“FLSA”), Title VII of the Civil Rights Act of 1964 (“Title VII”), the False Claims Act, and various federal safety and environmental statutes. More recently, the introduction of two new federal laws, the Sarbanes-Oxley Act of 2002 and the Dodd-Frank Act of 2010, has granted additional rights to certain whistleblowers.

Section 806(a) of Sarbanes-Oxley⁴⁶ contains provisions protecting (although not rewarding), under certain circumstances, whistleblowers reporting violations of securities laws and specified federal anti-fraud criminal statutes. Under this section, publicly-traded companies and their subsidiaries may not retaliate against such reporting. Although retaliation claims under Section 806(a) must be initially filed with the Secretary of Labor, Section 806(a) also allows plaintiffs to ultimately sue in federal court. Like claimants filing with the EEOC under Title VII, claimants filing under Section

806(a) can initiate private civil litigation and seek various remedies, such as reinstatement and back pay, if the agency fails to investigate and resolve the complaint in a timely manner. Unlike other federal statutory provisions that protect employees, Section 806(a) makes individual officers, employees, agents, and contractors of publicly-traded companies or their subsidiaries personally liable for unlawful retaliation.

In addition, Section 1107(a) of Sarbanes-Oxley⁴⁷ makes it a federal felony to retaliate against someone for providing information regarding a federal crime to a law enforcement officer. Accordingly, depending on the circumstances, if you or one of your company's executives or managers knowingly, with the intent to retaliate, approves the termination of an employee who has blown the whistle on some form of alleged corporate misconduct, you and/or your colleagues may be personally sued and held liable for the termination and may face criminal penalties. It is therefore critical to understand exactly what conduct Sarbanes-Oxley protects.

Moreover, Section 922 of Dodd-Frank Act contains landmark provisions to reward and/or protect whistleblowers under certain circumstances. Pursuant to Section 922, individuals (with the exception of "ineligible persons" such as law enforcement agents) who provide "original information" regarding violation of the securities laws that leads to the assessment of monetary sanctions over \$1 million pursuant to SEC actions under the securities laws are entitled to receive between 10 percent and 30 percent of sanction amounts. This entitlement also includes percentages of fines resulting from sanctions awarded in "related actions." Section 922 also grants whistleblowers protection – enforced by heavy sanctions, including double back pay – against various forms of retaliation by their employers for, among other things, having provided information to the SEC. Section 1057 of Dodd-Frank grants similar protections under certain circumstances to employees of companies in the consumer finance sector who provide information regarding violation of consumer financial protection laws.

In light of all these regulations, your task as in-house counsel is to impress upon your company the critical importance of establishing an effective internal compliance program, including the observance of the rights of whistleblowers. You should carefully draft or revise your company's code of conduct to reflect both the culture of the company and the standards of conduct expected by the company. Effective codes reinforce the core corporate and legal values and address, at the very least, the following:

- The company's expectation that the company and its employees comply with the letter of and spirit of the law;
- Importance of ethical business practices even when no law applies;
- Expectation of open communication within the company about ethical issues;
- Specific delineation of conduct prohibited by the company; and
- Specific delineation of conduct required by the company.

Moreover, there are ways in which you can assist in protecting yourself and the company, which include the following:

- Revising managers' and supervisors' job descriptions to reflect their duties and responsibilities with regard to corporate compliance;

- Establishing uniform response and investigation procedures for complaints from whistleblowers or any other source;
- Training and educating employees regarding corporate compliance; and
- Impressing upon your company the importance of properly documenting discipline and terminations and the prohibition against illegal retaliation.

G. Privacy Laws

A recent wave of high-profile data security breaches has made privacy a very hot topic. These incidents have caused widespread public concern over identity theft and increased scrutiny of companies' privacy practices.⁴⁸ Taking this background into account, it is important for in-house counsel to review the following:⁴⁹

- Your company's electronic data security measures (in order to verify their adequacy);
- Physical security (because data theft often results from a breach of physical security and is often performed from within the company);
- Your company's compliance with applicable privacy laws, which, if current and comprehensive, may help the company to avoid liability if it experiences a security breach; and
- A plan for how to handle a security breach.

I. HIPAA

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires certain health care businesses to maintain reasonable and appropriate administrative, technical and physical safeguards to ensure the integrity, confidentiality and availability of health care information and to protect against reasonably anticipated threats or hazards to the security or integrity of the disclosure. The regulations implementing HIPAA specifically require entities covered by HIPAA to conduct assessments of potential risks and vulnerabilities and implement security measures to sufficiently reduce risks and vulnerabilities.

2. Gramm-Leach-Bliley Act

The Financial Modernization Act of 1999, also known as the "Gramm-Leach-Bliley Act" includes provisions to protect consumers' personal financial information held by financial institutions. There are three principal parts to the privacy requirements: The Financial Privacy Rule, the Safeguards Rule, and pretexting provisions.⁵⁰ The Act aims to inform consumers about the financial practice of financial institutions so that they can make informed choices about which institutions they choose to deal with. It also gives consumers the option to control how financial institutions use their financial and personal information.

H. Setting Reserves

Responsibility for setting a reserve to accurately reflect the liabilities of the corporation does not lie

solely with the financial group of the corporation. In-house counsel must ensure that the appropriate standards (GAAP) are being used and that their corporations are not failing to accrue a loss-contingency based on a potential or actual lawsuit.

I. Protecting Your Trade Secrets and Trademarks through Intellectual Property and IT System Security and Protection

Although IP law may not be your area of expertise, a working knowledge of these areas may be expected of you once you assume the role of in-house counsel. While the concept of intellectual property is extremely broad and can cover patents, trademarks, copyrights, data security and numerous other intangible property interests, the following discussion will focus on trade secrets and trademark protection. Trade secrets, for example, are the lifeblood of your corporation, with some even analogizing them to the crown jewels, but an inattentive in-house counsel or a lackadaisical corporate philosophy can allow this capital to walk right out the door. Protection of your company's trade secrets can be bolstered by strategic contract drafting in employee/vendor agreements and drafting company policies. In engaging in this strategic drafting, in-house counsel should consider the following questions:

- Is your company protected by adequate confidentiality agreements with employees and vendors?
- Do you have policies setting out when, where, and how employees are required to protect information that amounts to a trade secret?
- Are your internet and physical plant secure from theft of those secrets or inadvertent transfers of such valuable information to a competitor?
- If not, you could become the victim of corporate espionage.

At the bare minimum, heed the following three rules for protecting trade secret information:⁵¹

- **Lock It Up** – Use reasonable precautions to maintain secrecy, such a multi-level passwords for your systems, firewalls, intranets, file size restrictions on e-mailable documents, and encryption.
- **Label It** – Make judicious use of confidentiality legends.
- **Prevent Loose Lips from Sinking the Corporate Ship** – Be judicious in selecting those to whom you give confidential information and be aware of your sources

Related Resources

ACC InfoPak: [How to Support Intellectual Property-Based Innovation Within Your Company](#)

ACC QuickCounsel: [Copyright Protection in the Digital Age](#)

ACC QuickCounsel: [Trademark Protection in the Digital Age](#)

for receipt of this information. Be sure that your agreements with employees and vendors contain the necessary provisions to protect your company.

As in-house counsel, you must be vigilant in protecting the secrecy and associated value of trade secrets. Two conditions must exist for information to qualify as a trade secret. First, the information must derive value from not being generally known (i.e., it must actually be a secret). Second, reasonable efforts must be made to preserve the secrecy of that information.⁵² Protecting a trade secret's status is particularly challenging because the internet can spread information easily, and once the information is in

cyberspace, it is unlikely to remain a trade secret.⁵³ Evaluate your company's policies and practices with regard to trade secrets to determine whether they can be better protected. Focus particularly on those trade secrets that are stored or transferred to third parties in electronic format, especially if they can be accessed via the internet. Trade secrets should be shared with third parties only through carefully drafted nondisclosure agreements ("NDAs"). If you learn that your trade secrets have been compromised, you should immediately try and enjoin any further dissemination of these secrets; otherwise, their value as trade secrets will be reduced to nil.

In addition, it is advantageous for you to understand how IP ownership rights work where your company is doing business. In the United States, if this IP is created in the course of an employee's work for the company, it may belong to the company (and your employment agreements should contain assignment provisions that make this clear and unassailable). In contrast, in some European countries, employees may have a right to share in the sales revenue generated by the IP they develop. You should understand the rules in each jurisdiction your company does business and determine if you can or should "contract around" the default rules for IP ownership in that location.

In addition to protecting your trade secrets and asserting company ownership of the IP employees generate while on the clock, you should also be vigilant about protecting your company's trademarks and stopping infringement on the web and otherwise. Perform IP audits to identify any intellectual property that needs protection. Be sure your trademarks are registered with the United States Patent and Trademark Office if possible and that the use of your Marks by third parties is policed and stopped if possible and economically feasible.

Further, if your corporation has a website, you should also be aware of "trademark poachers," i.e., those who engage in search-term bidding. Search engine companies have made it possible for the person or corporation willing to pay the most money for a particular search term to earn the spot at the top of the list of search results. This bidding process turns out to be a problem if the search term is a component of your trademark. For example, a search of a particular term related to the company's product lines can yield results displaying the website of a competitor at the top of the result list if the competitor has bid the highest price for the searches. Consequently, it is incumbent upon you to understand whether your trademark is being infringed in this process, and to prevent such infringement, if at all possible.⁵⁴

J. Corporate Social Responsibility Programs

If working for the government, counsel can feel assured that they are engaging in a public service through their practice of law at a government agency. Law firms also offer opportunities for young lawyers to reach beyond the four walls of their offices, providing pro bono cases in which associates can become involved while gaining valuable experience.

Corporations also have a way of reaching out to the community: this is called "Corporate Social Responsibility" ("CSR"). For example, Gloria Santona of McDonald's Corporation participates in the upkeep of local Ronald McDonald Houses for seriously ill children. In addition, Ms. Santona and other lawyers at McDonald's provide legal services to the poor, operate a legal advice hotline, and reach out to local disadvantaged children.⁵⁵ Similarly, Paula Boggs of Starbucks is of a similar bent, helping Seattle's poor navigate the maze of its local housing court. In addition to encouraging all members of the in-house staff to pitch in, Ms. Boggs has initiated a pro bono effort that

recognizes community service as an essential attribute of any legal practice.⁵⁶

If your corporation has a CSR program, make the effort to become involved. You will find that successful in-house counsel are involved in CSR-based activities in one form or another.⁵⁷

K. Media Scrutiny

You may not be the communications officer for the corporation, but when legal issues arise within the context of public forums, you should be prepared for directors to expect you to determine what, if any, potential liabilities the corporation is facing in order to formulate a public relations game plan. Saying too much or, alternatively, not saying enough, can lead to additional and more complicated problems than you began with. Public opinion matters in the business world, as it can affect consumer perceptions and investor confidence, and your company's statements directly shape public perception.⁵⁸

While it is routine for government agencies and law firms to have press offices or managing partners to handle these events, this may not be the case in a smaller legal department. If your corporation does not have a Public Relations Department, the corporation may look to you for guidance on dealing with the media. Although it is unlikely that this enormous burden will rest squarely on your junior shoulders, the responsibility may be vested in your legal department.

In light of this, members of the in-house counsel team must be prepared to present their case both to the public and a jury. Bad publicity may result in reductions in your corporation's profits and difficulties in recruiting and retaining high-quality employees. Therefore, corporate counsel must take a preventative approach in managing the presentation of sensitive matters to the press. The best ways to avoid becoming a media defendant are implementing policies and devising systems to dispel corporate concerns before there is a crisis.⁵⁹

If your corporation decides that you look best in front of the camera, you should consider whether your serving as spokesperson will jeopardize the attorney-client privilege. Some provisions of the Sarbanes-Oxley Act may impose an affirmative duty on you, as counsel, to disclose certain activities. In light of this, you should carefully determine whether that duty will impact your effectiveness in protecting your clients' interests. If it does, you could suggest hiring a public relations firm that would not face the same ethical dilemma you may face.

L. SEC Enforcement Actions

In-house counsel will likely be spearheading the corporation's response to SEC enforcement actions or criminal investigations that focus on the conduct of the corporation's or its officers' conduct. Both of these types of legal matters are, at the very least, distracting and, at the very worst, devastating to a corporation. At the very least, in-house counsel should do some crisis-response planning and implement policies for dealing with law enforcement officers, supervising the production of documents, and ensuring the preservation of evidence without incurring additional liability.⁶⁰ Because in-house counsel do not represent the individual officers, directors, or employees, they should ensure that if the SEC contacts an employee about possible violations of securities laws, the employee is afforded counsel.⁶¹ The provision of representation should not be viewed as a means of obstructing a given investigation, but rather as a step toward cooperating

with investigators while, simultaneously, informing the employee about his or her legal rights regarding questioning and the right to counsel. Whether the SEC is seeking documents or testimony, both of which will likely be sought in the case of an investigation, it's imperative that you spearhead a coordinated effort by the corporation.⁶²

Counsel must also take the lead after learning of a grand jury investigation by, in particular, acting to prevent inadvertent privilege waivers.⁶³ Often, in-house counsel will look to and work with outside counsel specialists in to address this.

M. Grand Jury Investigations

Sometimes, when the "big guns" arrive, it is the DOJ, rather than the SEC, knocking at the door. In such cases, you might be the first person to whom your corporation turns for advice on how to proceed. Although you will quickly obtain outside counsel to represent the corporation in such a case, there are important steps that you can take to ensure that neither you nor your corporation face obstruction of justice charges.

First, make sure that no relevant evidence is destroyed. Your corporation must suspend any document destruction program immediately and issue a "freeze letter" to all employees who are likely to be in possession of records in whatever form that would be relevant to subpoenas. Frank Quattrone might be in a different situation right now if he or his corporation had heeded this sage advice.

Next, identify employees who will likely be subpoenaed, inform them of the possibility that subpoenas for documents or live testimony might be issued to them, and advise them on what they should expect. Educate them on the nuts and bolts of the process and inform them of their rights, including the right to be interviewed in the presence of counsel for the corporation. Protect the interests of the corporation and do not suggest doing anything that could be viewed as obstructionist.⁶⁴

N. Internal Investigations

Often, in-house counsel will be tasked with conducting an internal investigation of corporate wrongdoing. These investigations may be conducted in response to internal complaints, i.e., those lodged by whistleblowers, or, alternatively, as a means of assessing the corporation's exposure and convincing the government not to pursue its own investigation. Regardless of whether you or outside counsel conduct the investigation, it should be done in a way that does not interfere with the attorney-client privilege and the work product doctrine. You should consider whether you are acting in a legal capacity in such a case or performing a business function. An in-house counsel assigned to investigate a claim of sexual harassment, for example, might wind up having to face a situation in which a court determines that his or her work was not privileged because it was not truly legal in nature.

V. Work Environment

There isn't such an animal as an "easy" career in the law. In-house counsel, lawyers at firms and government attorneys all face challenges unique to their particular occupations. When choosing an area in which to practice, attorneys should gauge their own strengths, and then consider the pluses and minuses of work in each field.

A. Work-Life of an In-house Counsel

The most noticeable difference between the work of in-house counsel and that of their law firm counterparts is the absence of billable hours in in-house work. In-house counsel who have worked for firms often express a sense of liberation at not having to track time in 7 ½ minute increments.

However, don't be fooled into thinking that in-house counsel work less than firm associates; the demands on an in-house attorney may be different, but they often are just as great. For example, in-house counsel may be required to fill a variety of roles. Huge corporations may have large enough legal departments to accommodate highly specialized attorneys, but at many companies, in-house attorneys are expected to be Jacks (and Jills) of all trades. This puts a tremendous amount of pressure on corporate counsel to maintain wide bases of knowledge and skills.

Corporate attorneys also must directly report to company executives, who rely on them for regular guidance. Every decision an in-house attorney makes must be reconciled with the overall business goals and interests of the company. While an outside attorney may feel a responsibility to serve his or her client, the inside attorney is far more accountable for the ultimate outcome of legal matters than is outside counsel. This high level of accountability can entail a tremendous level of responsibility and time commitment.

Moreover, in-house attorneys must be aware that they are members of teams, and must function within those teams. For example, if a company is trying to make a deal, it is not sufficient for the company's attorney to advise only on the legal requirements and challenges of that deal. Instead, he or she must find a way to help the company achieve the business goal of that deal while also making sure the company avoids any legal trouble. Thus, the in-house attorney is not just a lawyer, but also a member of a decision-making team. Interacting with other members of that team is just as important, and perhaps more important, than possessing mere legal acumen. The good news is that in-house attorneys, and even junior-level lawyers, have much more contact with their clients (who are, in this case, the top executives at their company) than do outside lawyers.

Many in-house law departments are putting a greater emphasis on work-life balance in order to reduce stress, retain quality attorneys and improve morale. Many studies conclude that companies that focus on providing their employees with a greater work-life balance enjoy higher productivity rates as a result of increased employee satisfaction.

Advancement for an in-house attorney can be a slow process. It may take months or even years to fully win the trust of members of the corporation outside of the legal department. Thus, for attorneys looking for a fast track to legal stardom, the in-house route probably isn't the right one to take. However, for those attorneys looking for a long-term career, life in a corporate setting can be a rewarding one.

VI. Client Contact

Many attorneys consider the ability to have close contact with clients essential to the effective representation of these clients' interests. If you share this view, then an in-house counsel position will deliver what you are looking for. In contrast, attorney positions at law firms and government agencies often fall short in this regard. Consider the following factors, which account for these differences in opportunities to establish personal relationships with clients:

- **Associates do not often interact with clients on a regular basis.** Associates at firms have minimal, if any, contact with their clients. Opportunities for "face time" are reserved for partners and senior associates, and in many cases, an associate's contributions go totally unnoticed and unappreciated by the client.
- **Government counsel are wrapped up in red tape.** For government attorneys, clients consist of the United States as a whole, an individual state, or a municipal entity. Governmental regulations and procedures preclude direct access to upper level managers, preventing some government counsel from being able to make final decisions on their clients' behalves.
- **In-house lawyers have "captive clients."** Even at the most junior level, an in-house counsel have the chance to engage in almost daily contact with the managers of their organization, affording them opportunities to see their respective "big pictures."

This familiarity encourages close working relationships between in-house counsel and clients. As a result, in-house counsel are involved in virtually every aspect of organization and when outside counsel is brought in, in-house counsel adopt the role of overseer.⁶⁵

One of the hardest things for new in-house attorneys to grasp is that the use of legal jargon is not appropriate for every audience. When communicating with clients, use business language rather than legalese. Remember to be concise and to-the-point; in other words, leave the Latin at home and explain legal issues in terms your client will understand. This principle is also true when dealing with colleagues who are not familiar with specific terms from your practice area. Do not assume that because someone is an attorney, he will understand your specialized lingo.⁶⁶

VII. Liability

The level of liability to which in-house counsel are exposed has increased in recent years. While government lawyers and associates at firms are held liable only for malpractice, obligations imposed on in-house counsel by Sarbanes-Oxley have exposed these attorneys to greater degrees of liability in several areas.

Sarbanes-Oxley and SEC Regulations impose obligations on counsel that could give rise to liability in the event of a failure to comply. These include:

- **Document Retention.** Section 802 of Sarbanes-Oxley added Section 1519 to Chapter 73 to Title 18 of the United States Code. Section 1519 makes it a crime to knowingly alter, destroy, mutilate conceal, cover up, falsify, or make a false entry

in any record, documents or tangible object with the intent to impede obstruct, or influence the investigation or proper administration of any department or agency of the United States or any case filed under title 11 (bankruptcy). Accordingly, counsel may wish to assist the company in implementing and administering document retention programs that comply with Sarbanes-Oxley, as well as other applicable laws and regulations, and otherwise take care to avoid violation of the document retention requirements of Sarbanes-Oxley.

- **Reporting-Up.** As detailed at “[III\(1\) Sarbanes-Oxley Compliance](#)” above, the reporting-up provisions of the SEC’s Standards of Professional Conduct (17 C.F.R. § 205.1 et seq.) require that an attorney practicing before the SEC report, among other things, certain evidence of material violations of securities laws and breaches of fiduciary duties. If the response is not appropriate in the view of the reporting attorney, the reporting attorney must bring the matter to the board of directors or a designated committee of outside directors. Violation of those rules subjects the attorney to the civil penalties and remedies available to the SECT for a violation of the federal securities laws, and to possible administrative disciplinary proceedings.
- **Improper Influence on Conduct of Audits.** Section 303 of Sarbanes-Oxley makes it unlawful for any officer or director of an issuer, or any other person acting under the direction thereof, to take any action to fraudulently influence, coerce, manipulate, or mislead any independent public or certified accountant engaged in the performance of an audit of that issuer for the purpose of rendering such financial statements materially misleading. Counsel to an issuer, as an officer or acting under the direction of an officer or director, should be aware of this prohibition and guide the company so that it and such counsel, conduct audit-related activities appropriately.
- **Retaliation against Whistleblowers.** As noted, Section 1107(a) of Sarbanes-Oxley makes it a crime to retaliate against certain whistleblowers. Counsel is not exempt from this provision.
- **General Prohibition on Defrauding Shareholders of Public Companies, and Enhanced Penalties.** Sarbanes-Oxley Section 807 amends Chapter 63 of Title 18 by adding a new Section 1348 that makes it a crime to defraud a person in connection with any security of a public company or to obtain money or to fraudulently obtain property or money in connection with any such security. Section 901, et seq. of Sarbanes-Oxley adds enhanced penalties for certain white-collar crimes. Counsel is not exempt.

Other related liability and compliance considerations:

- **Refrain from Breach of Fiduciary Duty.** In-house counsel who also serve in business capacities, i.e., vice president, general counsel, chief compliance officer, business ethics counsel, environmental compliance leader, or chief legal officer, also run the risk of being held liable for breach of fiduciary duty, rather than for ordinary malpractice.
- **Implementation of a Corporate Code of Conduct.** Compliance is not only a fad in corporate social circles; it is also the law. Amendments to the U.S. Sentencing Guidelines in § 8B2.1 created a guideline entitled “Effective Compliance and

Ethics Program. Not only is the establishment of an internal safeguard to prevent and detect criminal conduct within companies and organizations required, but it can also serve as a mitigating factor that can mitigate an organization's punishment in the event that it is convicted of a criminal offense.⁶⁷ The guidelines also require that one individual at a high level of the organization have day-to-day responsibility for overseeing compliance with the internal ethics program, and preclude a reduction in the base offense level for organizations that do not have such programs. Under U.S.S.G. § 8C2.5(f), there is a rebuttable presumption that organizations do not have an effective compliance and ethics program in place, and are thus not entitled to the three level reduction in culpability score, if high-level personnel of a small organization or a person with substantial authority of any other organization participated in, condoned, or was willfully ignorant of the criminal offense.

- **Director and Officer Liability.** As companies bring more work in-house, the exposure to legal malpractice claims expands. These malpractice claims typically arise not from the actions of the in-house counsel's client, but rather from the actions of third parties or statutory agents, like bankruptcy trustees or the FDIC, who take over after the client fails. Although in-house counsel who also hold the position of director or officer within the client company sometimes are protected by director and officer liability insurance, many policies exclude coverage for legal advice. This non-coverage exposes in-house counsel to the risk of facing personal liability for many of their acts. Alternatively, it may place their corporate employers in the position of having an uninsured duty of indemnity to a corporate agent. However, while insurance companies have traditionally declined to offer in-house counsel policies covering legal malpractice, a few companies have recently begun to offer such insurance coverage.

VIII. Conclusion

Selecting life as an in-house counsel is a wise option for many; however, it is not an escape route for all law-firm ills or the woes of government work. Life as an in-house counsel may demand fewer work-hours in some cases, and it may result in less handsome compensation; however, the opportunity to work as a trusted member of legal and business teams is truly priceless.

Knowing what awaits you before you make the jump will help you make the right choice, but more importantly, will allow you to be the most prepared, effective, and valuable in-house counsel. This InfoPAK has touched on many of the issues that you are likely to encounter as a junior in-house counsel so that you can hit the ground running.

IX. About the Authors

I. Firm Description

Womble Carlyle is a full-service business law firm with a focus on innovative solutions to client needs. The firm supports the Association of Corporate Counsel in the ACC Value Challenge, which seeks to better align legal services with the needs of corporate clients.

The firm serves clients nationally and globally with more than 550 attorneys in fourteen offices: Atlanta; Charleston, Columbia and Greenville, S.C.; Charlotte, Greensboro, Raleigh, Research Triangle Park, and Winston-Salem, N.C.; Silicon Valley, Calif., Washington, D.C.; Tysons Corner, Va.; Baltimore; and Wilmington, Del.

In the community, the firm is the first law firm to receive the Thurgood Marshall College Fund Corporate Leadership Award as well as the Employer Support of the Guard and Reserve Freedom Award.

X. Additional Resources

A. ACC Docket Articles

Deborah J. Edwards, Mark T. Calloway, and Brian D. Edwards, "What To Do When the Whistle Blows: Dos and Don'ts of Internal Investigations," *ACC Docket* 22, no. 5 (May 2004): 61-71, available at <http://www.acc.com/legalresources/resource.cfm?show=17030>.

Eric Esperne, "Risk Management and HIPAA Compliance for Corporate Counsel," *ACC Docket* 29, no. 5 (June 2011): 40-50, available at <http://www.acc.com/legalresources/resource.cfm?show=1284901>.

Lyudmila Davidova, "The Young Attorney's Guide to In-house Success," *ACC Docket* 24, no. 7 (July 2006): 58-65, available at <http://www.acc.com/legalresources/resource.cfm?show=14637>.

Phil Crowley, Al Peters, and Rees Morrison, "Triple Time: Three Hot Ideas for Improving In-house Law Departments," *ACC Docket* 24, no. 5 (May 2006): 24-45, available at <http://www.acc.com/legalresources/resource.cfm?show=14685>.

Susan Hackett, "Wither Attorney-Client Privilege?," *ACC Docket* 23, no. 8 (September 2005): 132-143, available at <http://www.acc.com/legalresources/resource.cfm?show=20831>.

Daniel J. Schwartz ET AL, "Five Technology Must-Knows," *ACC Docket* 23, no. 8 (Sept. 2005): 118-131, available at <http://www.acc.com/legalresources/resource.cfm?show=20838>.

"Corporate Chronicles: How To Do Records Management for Maximum Protection," *ACC Docket* 23, no. 6 (June 2005): 86-106, available at <http://www.acc.com/legalresources/resource.cfm?show=16984>.

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Danette Wineberg and Phillip H. Rudolph, "Corporate Social Responsibility: What Every In-House Counsel Should Know," *ACC Docket* 22, no. 5 (May 2004): 68-83, available at <http://www.acc.com/legalresources/resource.cfm?show=17033>.

Philip R. Strauss, "New to In-House: Love Labor Laws," *ACC Docket* 22, no. 3 (March 2004): 14, available at <http://www.acc.com/legalresources/resource.cfm?show=17043>.

Philip R. Strauss, "New to In-House: The Running Man," *ACC Docket* 22, no. 2 (February 2004): 10, available at <http://www.acc.com/legalresources/resource.cfm?show=17034>.

Teresa T. Kennedy, Eva M. Kripalani and Elinora S. Mantovani, "Achieving Balance: A Recipe for High-quality Work Life for In-house Counsel," *ACC Docket* 22, no. 2 (February 2004): 38-54, available at <http://www.acc.com/legalresources/resource.cfm?show=17059>.

Veta T. Richardson, "From Lawyer to Business Partner," *ACC Docket* 22, no. 2 (February

2004): 70-75, available at <http://www.acc.com/legalresources/resource.cfm?show=17055>.

Philip R. Strauss, "New to In-House: Kung Frugal," *ACC Docket* 22, no. 1 (January 2004): 12, available at <http://www.acc.com/legalresources/resource.cfm?show=17041>.

Diana Jimenez, "Performing a Privacy Risk Assessment," *ACC Docket* 27, no. 9 (Nov. 2009): 68-79, available at <http://www.acc.com/legalresources/resource.cfm?show=721374>.

Karen Redford, "Small Law—Lawyering In-house: So Many Roles, So Little Time..." *ACC Docket* 29, no. 1 (Jan. 2011): 18-20, available at <http://www.acc.com/legalresources/resource.cfm?show=1266922>.

Phillip R. Strauss, "The Facts of In-House Life: 80s Things I Wish I Had Known When I Went In-House," *ACC Docket* 23, no. 3 (March 2005): 22-42, available at <http://www.acc.com/legalresources/resource.cfm?show=20847>.

B. ACC InfoPAKs

"Framework for Conducting Effective Compliance and Ethics Risk Assessments," ACC InfoPAK (Aug. 2010), available at <http://www.acc.com/legalresources/resource.cfm?show=19642>.

"Managing Value-Based Relationships with Outside Counsel," ACC InfoPAK (Aug. 2011), available at <http://www.acc.com/legalresources/resource.cfm?show=19673>.

"Organizational Effectiveness: The New Imperative for Developing a World-Class Legal Department," ACC InfoPAK (July 2011), available at

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"Role of the General Counsel," ACC InfoPAK (Sept. 2009), available at <http://www.acc.com/legalresources/resource.cfm?show=700992>.

C. Program Material

Frederick L. Douglas, Richard D. Gorelick, Hillary B. Smith, and Laura Stein, "Welcome to Rookie Camp: 10 Things New In-House Lawyers Should Know," ACC 2004 Annual Meeting, available at <http://www.acc.com/legalresources/resource.cfm?show=20449>.

New to In-house Counsel Practice Resources, accessible at <http://www.acc.com/community/new-to-in-house.cfm>.

New to In-house Counsel Practice Group Home Page, accessible at <http://www.acc.com/committees/ntic/index.cfm>.

Corporate Counsel University, available at <http://www.acc.com/education/ccu/index.cfm>

D. Other Resources

"Top Ten Practical Suggestions for Managing Outside Counsel Spend," ACC Top Ten (Mar. 2011), available at <http://www.acc.com/legalresources/publications/topten/Outside-Counsel-Spend.cfm>.

Charles A. Volkert, "Legal Departments Expecting More from Outside Counsel," ACC Article (June 2010), available at <http://www.acc.com/legalresources/resource.cfm?show=951472>.

"Freescall Law Department Outside Counsel Guidelines," ACC Form & Policy (May 2011), available at

<http://www.acc.com/legalresources/resource.cfm?show=1287961>.

“2010 ACC/Serengeti Managing Outside Counsel Survey,” ACC/Serengeti Survey (Oct. 2010), *available at*

<http://www.acc.com/legalresources/resource.cfm?show=1249457>.

“The Role of In-House Counsel: Global Distinctions,” ACC QuickCounsel (Sept. 2010),

available at

<http://www.acc.com/legalresources/quickcounsel/troicgd.cfm>.

“Compliance Training and E-Learning Programs: Leading Practices in Designing, Implementing, and Supporting Risk Assessment and Communication Strategies,” ACC InfoPAK (Aug. 2010), *available at*

<http://www.acc.com/legalresources/resource.cfm?show=19710>.

XI. Endnotes

¹ The company Nextel, for example, has a legal department comprised of eighty lawyers, specializing in areas such as communications and government affairs. *See* www.nextel.com.

² *See* Janet Stidman Eveleth, "Life as Corporate Counsel," 37 MD. B.J. 16, 18-19 (Jan./Feb. 2004); Veta T. Richardson, "From Lawyer to Business Partner," *ACC Docket* 22, no. 2 (Feb. 2004): 70-75, available at <http://www.acc.com/legalresources/resource.cfm?show=17055>. Specialization within distinct practice areas varies from corporation to corporation. For example, Host Marriot in Bethesda, Maryland has a legal department comprised of nine in-house attorneys, most of whom specialize in particular areas. For instance, attorney Kevin Gallagher, who came to Host Marriot after working at a Washington, D.C. law firm as well as Enron and MCI, specializes in litigation, and to that end has extensive experience in managing outside counsel.

³ *See* Interview with Patrick Murphy, Senior Counsel of Litigation and Legal Policy, General Electric. *See also* Michael A. Lampert & Joseph M. Fairbanks, "Privilege Gets Hazy for Counsel Who Give Legal and Business Advice to Corporate Clients," 15 CORP. COUNS. 1 (Oct. 2000).

⁴ *See* Veta T. Richardson, "From Lawyer to Business Partner," *ACC Docket* 22, no. 2 (February 2004): 70-75, available at <http://www.acc.com/legalresources/resource.cfm?show=17055>.

⁵ *See Id.*

⁶ *See* MODEL RULES OF PROF'L CONDUCT R. 8.4 (hereinafter "MODEL RULES"); ABA Comm. on Prof'l Responsibility, Formal Op. 336 (1974).

⁷ MODEL RULES 5.7(b).

⁸ *Id.*

⁹ *Id.* at cmt. 9.

¹⁰ *See* John K. Villa, Corporate Counsel Guidelines §3.03 (2003 ed.).

¹¹ *See* Lee Applebaum, "A Matter of Privileges: In-House Attorney-Client and Work Product Claims Face Challenges," *The Legal Intelligencer* (Dec. 4, 2001), available at <http://www.law.com/jsp/pa/PubArticlePA.jsp?id=900005524224&slreturn=1>.

¹² *See* Chad R. Brown, "In-house Counsel Responsibilities in the Post-Enron Environment," *ACC Docket* 21, no. 5 (March 2003): 92-107, available at <http://www.acc.com/legalresources/resource.cfm?show=151576>; Michael A. Lampert & Joseph M. Fairbanks, "Privilege Gets Hazy for Counsel Who Give Legal and

Business Advice to Corporate Clients," 15 CORP. COUNS. 1 (Oct. 2000).

¹³ *See* "The Role of General Counsel," ACC InfoPAK (September 2009), available at <http://www.acc.com/legalresources/resource.cfm?show=700992>.

¹⁴ *See* Robert Haig, "The Role of In-house Counsel in Matters Entrusted to Outside Counsel: Partnering Versus 'Tossing the File Over the Wall,'" in "Successful Partnering Between Inside and Outside Counsel" §40:19 (West 2003).

¹⁵ *See* Catherine Fox and Robert Scott, "Building/Maintaining Relationships with Outside Counsel," ACC Europe 2006 Corporate Counsel University, Session 105 (quoting Richard E. Mulroy, "Issues of Outside Counsel Management," *ACCA Docket* (May/June 1995)), available at <http://www.acc.com/legalresources/resource.cfm?show=20196>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *See* Janet Stidman Eveleth, "Life as Corporate Counsel," 37 MD. B.J. at 20.

²¹ *See Id.*

²² Excerpted from Frederick L. Douglas ET AL, "Welcome to Rookie Camp: Ten Things a New In-house Lawyer Should Know (And a Few More, While We're At It)," ACC 2004 Annual Meeting, Session 510, available at www.acc.com/_cs_upload/vl/public/programmaterial/20449_1.pdf. This list was prepared and provided by Richard D. Gorelick, Vice President and General Counsel, Integra LifeSciences Corporation, Plainsboro, New Jersey.

²³ *See* Chad R. Brown, "In-house Counsel Responsibilities in the Post-Enron Environment," *ACC Docket* 21, no. 5 (March 2003): 92-107, available at <http://www.acc.com/legalresources/resource.cfm?show=151576>.

²⁴ "Compliance Officer and General Counsel: Benefits and Pitfalls of Combining Roles," ACC InfoPak (Sept. 2010), available at

<http://www.acc.com/legalresources/resource.cfm?show=995124>.

²⁵ Although the rules specifically apply to lawyers at public companies, private companies are looking at adopting similar guidelines. This move is attributed in large part to the emerging perspective among state legislatures, bars, and stakeholders that lawyers representing all companies, public and private, should be concerned about corporate responsibility. *See* “In-house Counsel Standards Under Sarbanes-Oxley,” ACC InfoPAK (Jan. 2006), *available at* <http://www.acc.com/legalresources/resource.cfm?show=19652>.

²⁶ *See* Standards of Conduct, 17 C.F.R. § 205.2 (a)(1), 205.3 (b)(5), and 205.4 (b)(1) (2012).

²⁷ *See* Broc Romanek and Kenneth Winer, “The New Sarbanes-Oxley Attorney Responsibility Standards,” *ACC Docket* 21, no. 5 (May 2003): 40-55, *available at* <http://www.acc.com/legalresources/resource.cfm?show=151468>.

²⁸ Model Rules of Professional Conduct R. 1.13(b) also defines the client of the in-house lawyer: “a lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.” The Model Rules are *available at* http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html.

²⁹ *See Id.* According to Model Rule 1.13(b), “[i]f a lawyer for an organization knows that an officer, an employee, or other person associated with the organization is engaged in action, intends to act, or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization or a violation of law that reasonably might be imputed to the organization and that is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization.” Notice that the standard for knowledge under the Model Rules is different than that under the SEC rules. Under the former, an attorney must “know” of wrongdoing, but under the SEC rules, an attorney must report such wrongdoing of which he or she “becomes aware.”

³⁰ *See Id.*

³¹ “The Foreign Corrupt Practices Act and Global Anti-Corruption Law,” ACC InfoPak (Dec. 2010), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1245470>.

³² “Practical Guide to Reasonable Accommodations under the ADA,” ACC Article (Oct. 2011), *available at*

<http://www.acc.com/legalresources/resource.cfm?show=1302707>.

³³ “Top Ten Questions and Answers on Executive Compensation Issues for 2011,” ACC Top Ten (Feb. 2011), *available at* <http://www.acc.com/legalresources/publications/topten/Executive-Compensation-2011.cfm>.

³⁴ *See* “Pathbreaking GC’s,” 11 CORP. COUNS. 3 (Mar. 2004).

³⁵ *See Id.*

³⁶ *See* Thom Weidlich, “Miracle Gro-ing Compliance,” 11 CORP. COUNS. 3, 74-75 (Mar. 2004).

³⁷ Memorandum from Larry D. Thompson, Deputy Attorney Gen. to Heads of Dep’t Components, U.S. Attorneys, Principles of Fed. Prosecution of Bus. Orgs. 8-9 (Jan. 20, 2003), *available at* http://www.usdoj.gov/dag/cftf/business_organizations.pdf. [hereinafter Thompson Memorandum]

³⁸ U.S.S.G. § 8C2.5(f)(3)(C)

³⁹ *See* “Records Retention,” ACC QuickCounsel (July 2010), *available at* <http://www.acc.com/legalresources/quickcounsel/rr.cfm>.

⁴⁰ Retention of Records Relevant to Audit and Review, 17 C.F.R. § 210.2-06 (2003), *available at* <http://www.sec.gov/rules/final/33-8180.htm>.

⁴¹ *See Id.*

⁴² Genuinely routine correspondence, such as cover letters and mere transmittals, are not substantive, and generally are not required to be retained absent a particular business need.

⁴³ *See* “Data Protection: Multi-Jurisdictional Guide,” ACC InfoPAK (Feb. 2012), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1301943>.

⁴⁴ *See* D. C. Toedt III ET AL, “GC Rules: Over 350 Things I Wish I’d Known My First Year as General Counsel,” *ACC Docket* 23, no. 5 (May 2005): 1-25, *available at* <http://www.acc.com/legalresources/resource.cfm?show=16997>.

⁴⁵ *See* Nancy Jessen and Bret Baccus, “Top Ten Innovations to Improve Enterprise-Wide Contract Management,” ACC Top Ten (Aug. 2010), *available at* <http://www.acc.com/legalresources/publications/topten/contract-management.cfm>.

⁴⁶ 18 U.S.C. § 1514A

⁴⁷ *Id.* at § 153(e)

⁴⁸ “Leading Practices in Privacy and Data Protection: What Companies Are Doing,” ACC LeadingPracticeProfile (Aug. 2010), *available at* <http://www.acc.com/legalresources/resource.cfm?show=16798>.

⁴⁹ See Daniel J. Schwartz ET AL, “Five Technology Must-Knows,” *ACC Docket* 23, no. 8 (Sept. 2005): 118-131, *available at* <http://www.acc.com/legalresources/resource.cfm?show=20838>.

⁵⁰ See Privacy Initiatives, *available at* www.ftc.gov/privacy/glbact/.

⁵¹ See D. C. Toedt III ET AL, “GC Rules: Over 350 Things I Wish I’d Known My First Year as General Counsel,” *ACC Docket* 23, no. 5 (May 2005): 1-25, *available at* <http://www.acc.com/legalresources/resource.cfm?show=16997>.

⁵² See Daniel J. Schwartz ET AL, “Five Technology Must-Knows,” *ACC Docket* 23, no. 8 (Sept. 2005): 118-131, *available at* <http://www.acc.com/legalresources/resource.cfm?show=20838>.

⁵³ See DVD Copy Control Ass’n Inc. v. Bunner, 10 Cal. Rptr. 3d 185 (Cal. Ct. App. 2004).

⁵⁴ For more on this topic, See Devon Klein and David Koch, “Search Terms for Sale: Internet Poachers and Trademark Bidding,” *ACC Docket* 22, no. 4 (April 2004): 24-41, *available at* <http://www.acc.com/legalresources/resource.cfm?show=17049>.

⁵⁵ See “Pathbreaking GC’s,” 11 CORP. COUNS. 3 (Mar. 2004), *available at* www.law.com.

⁵⁶ See Sue Reisinger, “Breaking Ground,” CORP. COUNS. (Mar. 2, 2004), *available at* <http://www.law.com/jsp/article.jsp?id=1076428389389>. See also Dannette Wineberg and Phillip H. Rudolph, “Corporate Social Responsibility: What Every In-house Counsel Should Know,” *ACC Docket* 22, no. 5 (May 2004), *available at* <http://www.acc.com/legalresources/resource.cfm?show=17033>.

⁵⁷ For a complete discussion of corporate pro bono programs for in-house counsel, See “Corporate Pro Bono,” ACC InfoPAK (Jan. 2007), *available at* <http://www.acc.com/legalresources/resource.cfm?show=19682>.

⁵⁸ See James Patton ET AL, “Responding to Media Inquiries in a Crisis: In-house Counsel as Spokesperson,” *ACC Docket* 22, no. 6 (July/August 2003): 40-56, *available at*

<http://www.acc.com/legalresources/resource.cfm?show=17085>.

⁵⁹ See *Id.*

⁶⁰ See Gregory H. Mathews ET AL, “SEC Enforcement Investigation: What You Need to Know,” *ACC Docket* 21, no. 12 (November/December 2003): 96-113, *available at* <http://www.acc.com/legalresources/resource.cfm?show=17066>.

⁶¹ See *Id.*

⁶² How do you get a general idea of whether or not the SEC will issue a Wells notice—the equivalent of a formal statement of an intent to initiate an enforcement action? See how you would answer these ten questions if you were in the SEC counsel’s shoes. “SEC Investigations: How Much Cooperation Is Enough?” Nixon Peabody LLP Securities Law Alert (Apr. 7, 2004), *available at* www.nixonpeabody.com/linked_media/publications?SLA04072004.pdf.

⁶³ See Jay A. Brozost and Lawrence S. Goldman, “Grand Jury Investigations: A Guide for In-house Counsel,” *ACC Docket* 21, no. 7 (July/August 2003): 58-72, *available at* <http://www.acc.com/legalresources/resource.cfm?show=17084>.

⁶⁴ See also “Attorney-Client Privilege,” ACC InfoPAK (Jan. 2006), *available at* <http://www.acc.com/legalresources/resource.cfm?show=19681>; “Responding to Government Investigations,” ACC InfoPAK (Aug. 2008), *available at* <http://www.acc.com/legalresources/resource.cfm?show=77637>.

⁶⁵ See Veta T. Richardson, “From Lawyer to Business Partner,” *ACC Docket* 22, no. 2. (February 2004): 70-75, *available at* <http://www.acc.com/legalresources/resource.cfm?show=17055>; Robert Haig, “The Role of In-house Counsel in Matters Entrusted to Outside Counsel: Partnering Versus ‘Tossing the File Over the Wall,’” in “Successful Partnering Between Inside and Outside Counsel” §40:19 (West 2003); Ronald F. Pol, “Get More Value From Outside Counsel: Show Them the Flipside,” *ACC Docket* 21, no. 4 (April 2003): 22-39, *available at* www.acca.com/protected/pubs/docket/am03/flipside_satis.php.

⁶⁶ See Lyudmila Davidova, “The Young Attorney’s Guide to In-house Success,” *ACC Docket* 24, no. 7 (July 2006): 58-65, *available at* <http://www.acc.com/legalresources/resource.cfm?show=14637>.

⁶⁷ U.S.S.G. § 8C2.5(g).



ACC's CLO THINKTANK- FOLLOW-UP RESOURCE LIST
"NAVIGATING THE COMPLEXITIES OF C-SUITE RELATIONSHIPS"

Below is a sampling of supplemental resource materials pertaining to the topics raised during this CLO ThinkTank and available for your further reference.

COMPLIANCE

Law Department's Role in Developing and Implementing Effective Compliance & Ethics Programs
(ACC Leading Practice Profile article)

<http://www.acca.com/resource/index.php?key=5909>

Ten Things Your Board Needs to Know About Effective Compliance & Ethics Programs

<http://acc.com/resource/v7657>

The Acid Test for Your Compliance Program (ACC Docket article)

<http://acc.com/resource/index.php?key=7110>

When Formal Channels aren't Enough: The Advantages of an Ombuds Program (ACC Docket article)

<http://acc.com/protected/pubs/docket/oct06/starr.pdf>

Best Practices for Building an Effective Corporate Compliance Program (ACC Annual Meeting Program Material)

<http://acc.com/resource/v6858>

Assessing Your Risk for Compliance (ACC Annual Meeting Program Material)

<http://acc.com/resource/v6938>

HUMAN RESOURCES; EMAILS

Monitoring Employee Emails- quick reference

<http://acc.com/resource/v7629>

AUDITOR ISSUES

Audit Response Letters (ACC Docket article)

<http://acc.com/resource/v7589>

Recent Developments in Auditor Independence (ACC Docket article)

<http://acc.com/resource/v6592>

Helping the Audit Committee Manage its Relationship with the Outside Auditor
(ACC Docket article)

<http://acc.com/resource/v4834>

Dealing with Accountants and Auditors (ACC Annual Meeting Program Materials)

<http://acc.com/resource/v6903>



Responding to Auditor Requests (ACC Docket article)

<http://acc.com/resource/v6903>

Audit Letter Responses in the Wake of Sarbanes-Oxley (ACC Docket article)

<http://acc.com/resource/v1282>

METRICS

Law Department Metrics (ACC Leading Practices Profile)

<http://www.acca.com/resource/v5899>

Adding Value and Moving Beyond the Cost Center Model (ACC Leading Practices Profile)

<http://www.acca.com/resource/v5900>

How to Measure the Effectiveness/Value of the Legal Department

<http://www.acca.com/resource/v6911>

Metrics Methodologies

<http://www.acca.com/resource/v5581>

Litigation Management: Using Metrics to Demonstrate Value

<http://www.acca.com/resource/v5585>

INVESTIGATIONS

Internal Investigations of Your Senior Executives (ACC Docket article)

<http://acc.com/protected/pubs/docket/oct06/hands-on.pdf>

What to do When the Whistle Blows- Dos and Don'ts of Internal Investigations (ACC Docket article)

<http://acc.com/resource/v4853>

Under the Magnifying Glass: Seven Steps to Living Through an SEC Investigation (ACC Docket article)

<http://acc.com/resource/v5715>

Internal Investigation Process Flowchart (ACC Annual Meeting Program Material)

<http://acc.com/resource/v5531>



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ACC'S CLO THINKTANK- FOLLOW-UP RESOURCE LIST "MANAGING THE GLOBAL LAW DEPARTMENT"

Below is a sampling of supplemental resource materials pertaining to the topics raised during this CLO ThinkTank and available for your further reference.

COMPLIANCE

Law Department's Role in Developing and Implementing Effective Compliance & Ethics Programs (ACC Leading Practice Profile article)

<http://www.acca.com/resource/index.php?key=5909>

Ten Things Your Board Needs to Know About Effective Compliance & Ethics Programs

<http://acc.com/resource/v7657>

The Acid Test for Your Compliance Program (ACC Docket article)

<http://acc.com/resource/index.php?key=7110>

When Formal Channels aren't Enough: The Advantages of an Ombuds Program (ACC Docket article)

<http://acc.com/protected/pubs/docket/oct06/starr.pdf>

Best Practices for Building an Effective Corporate Compliance Program (ACC Annual Meeting Program Material)

<http://acc.com/resource/v6858>

Assessing Your Risk for Compliance (ACC Annual Meeting Program Material)

<http://acc.com/resource/v6938>

USE OF NON-LAWYERS & STAFFING; OUTSOURCING

Leading Practices Article on Use of Non-lawyers (ACC Leading Practices Profile article)

<http://acc.com/resource/v5904>

Recruiting and Retaining In-House Staff

<http://www.acca.com/infopaks/recruit.html>

Role of the General Counsel

<http://www.acca.com/infopaks/gencounsel.html>

Strategic Outsourcing And Alternative Service Models (ACC Leading Practices Profile article)

<http://acc.com/resource/v5903>



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Top 10 Legal Issues in Technology, Ecommerce, and Information Management Outsourcing Agreements

<http://acc.com/resource/v4881>

The Brave New World of Global Outsourcing

<http://acc.com/resource/v4882>

Article: When Should you outsource Investigations

<http://acc.com/resource/v7530>

OUTSIDE COUNSEL MANAGEMENT

Benchmarking the Performance of Outside Counsel (ACC Docket 2006)

<http://acc.com/resource/v7174>

Top Ten Methods to Managing Outside Counsel (2006)

<http://acc.com/resource/v7740>

Alternative Billing InfoPAK

<http://www.acca.com/infopaks/billing.html>

Article: Electronic Billing Enters the Mainstream (Docket 2006)

<http://acc.com/resource/v7173>

Program Material on Building/Maintaining Relationships with Outside Counsel (Europe CCU 2006)

<http://acc.com/resource/v7451>

MERGERS & ACQUISITIONS

Mergers, Acquisitions & Integrating the Law Department After it Happens (ACC Program Material 2005)

<http://acc.com/resource/v5626>

Pre-Merger Notification Survey of Notification Requirements (2005)

<http://acc.com/resource/v6482>

Catching the China M& A Wave (ACC 2005 Docket article)

<http://acc.com/resource/v5828>

M&A with a Twist: a UK Deal with some US Feel (ACC 2005 Docket article)



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METRICS

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InfoPAKSM

Establishing the In-House Law Department: A Guide for an Organization's First General Counsel

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Updated July 2012

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The first general counsel of an organization has a very important and difficult task – they must create the position that will guide their company legally and advise them in their business, without precedent and typically, without established structures or guidance. Whether the attorney hired to create the organization's first in-house legal department has served as in-house counsel previously or not, creating the new in-house legal function can be both daunting and fraught with challenges. This InfoPAKSM seeks to guide the attorney through this process, addressing the range of topics he/she will encounter, from understanding company expectations to how to communicate with the new client to establishing budgets and processes. In addition, this InfoPAK includes firsthand experiences shared by five in-house counsel who served as their organizations' first GC, ranging in experience, industry/company size, and perspective.

The information in this InfoPAK should not be construed as legal advice or legal opinion on specific facts, and should not be considered representative of the views of ACC or any of its lawyers, unless expressly stated. Further, this InfoPAK is not intended as a definitive statement on the subject, but is intended to serve as a tool for readers, providing practical information to the in-house practitioner.

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A special thanks to the following ACC members for their generous contributions in sharing their insights on the role of the first General Counsel:

Craig Long, General Counsel, Capital Financial Service Corporation
Maria Pasquale, Senior Vice President Legal & Chief Counsel, Celgene Corporation
Catherine Valentine, Vice President Legal & General Counsel, Logitech, Inc.
Nicolas Vanasse, Vice President, Chief Legal Officer and Corporate Secretary,
Aveos Fleet Performance, Inc.

Contents

I.	Introduction.....	6
II.	Understanding the Role of a First General Counsel.....	7
	A. Company Expectations.....	7
	1. General Expectations.....	7
	2. Understanding Company-Specific Expectations	10
	3. Managing Expectations	12
	B. What Can a First General Counsel Offer?	15
	1. Key Roles of In-House Counsel.....	15
	2. Quantifying Benefits and Demonstrating Law Department Value	17
	C. Law Firm Partner v. General Counsel: How Are They Different?.....	19
III.	Getting Started as the First General Counsel	21
	A. Codify Expectations	21
	B. Understand Company Culture	22
	C. Learn About Your Company's Business Operations.....	23
	1. Observe the Operations.....	24
	2. Talk to Managers and Department Heads.....	24
	3. Look Through Files	25
	4. Identify the Most Influential Company Executives.....	25
	5. Read Corporate Documents and Public Filings.....	25
	D. Learn About Your Company's Industry, Market, and Strategy.....	26
	1. Industry Knowledge	27
	2. Competitor Knowledge	28
	3. Company Strategy and Direction	29
	4. Business Unit Strategy and Direction	30
	E. Promulgate a Law Department Mission Statement	31
	F. Establish Reporting Relationships.....	32
	1. To Whom Does the General Counsel Report?	32
	2. Which Functions Report to the General Counsel?	34

G.	Creating Company Policies	35
H.	Suggested Timeline of Priorities for the First Year.....	36
IV.	Building Client Relationships	38
A.	Openly Communicate with Clients	38
B.	Market the Law Department	39
1.	Introducing and Explaining Law Department Processes.....	39
2.	Conveying a Law Department Culture	40
C.	Set the Right Law Department Standards.....	41
1.	Demonstrate a Willingness to Assume Risk	41
2.	Run an Approachable, Open-Door Department	41
3.	Set the Standard for Excellence	42
D.	Measure and Increase Client Satisfaction	42
1.	Surveying Client Satisfaction	42
2.	Increasing Client Satisfaction	42
V.	Identifying and Managing Responsibilities	43
A.	Overview of Typical Business and Legal Responsibilities	43
1.	Legal Responsibilities	43
2.	Business Responsibilities	44
B.	Prioritizing Work.....	44
1.	Needs Assessment	45
2.	Prioritization of Needs.....	46
C.	Budgeting	46
1.	Overcoming Preliminary Budgeting Challenges.....	46
2.	Developing a Budgeting Process	47
3.	Sticking to the Budget.....	53
VI.	Managing Outside Counsel.....	54
A.	Engaging Outside Counsel	54
1.	Assessing Whether a Matter should be Outsourced or Handled Internally.....	54
2.	Evaluating and Selecting Outside Counsel	56
B.	Supervising Outside Counsel	56

1.	Preparing Outside Counsel Guidelines	56
2.	Drafting An Outside Counsel Retention Agreement.....	57
3.	Implementing Strategies to Manage Outside Counsel	58
VII.	Developing the Law Department	59
A.	Staffing the New Law Department	59
1.	Hiring Attorneys	59
2.	Hiring Other Staff Members	64
3.	Recruiting and Retaining Employees	68
B.	Technology	70
VIII.	Ethics and Advocacy	70
A.	Combining Roles as a Business Advisor and a Legal Advocate.....	70
B.	Attorney-Client Privilege	71
C.	Multijurisdictional Practice.....	72
IX.	Sample Forms.....	73
A.	General Counsel Job Description	73
B.	Sample Mission Statement	74
C.	Client Satisfaction Survey.....	75
X.	About ACC	82
XI.	Additional Resources	83
XII.	Endnotes.....	87

I. Introduction

The desire to avoid the high cost of hiring outside counsel, always a powerful motivator for business, is being augmented in the current corporate environment by the recent economic crisis, the need to cut costs, and the increasing need to comply with regulation stemming from the corporate and financial scandals of the past decade. To combat this, larger companies are hiring more lawyers to build up in-house¹ legal departments to meet increasing business demands and avoid high outside counsel costs.

Increasingly, lawyers are being hired for their business management experience as much as for their legal knowledge. Attorneys are used to ensure that their employer is meeting the more stringent requirements of securities regulations like the Sarbanes-Oxley Act of 2002 and financial regulatory reform laws like the Dodd-Frank Act of 2010. "Executive committees realize the value of having a GC at the table and the value of being able to protect a company's interests early on," said Deborah Dorman-Rodriguez, senior vice president and chief legal officer of Health Care Service Corp.²

The first lawyer employed by a company often needs guidance in many areas, and this InfoPAKSM aims to provide that instruction. It is important to note that while in-house counsel will have wide and varied areas of focus depending upon their company, this InfoPAK is designed to offer broad advice for *any* corporate counsel serving as, or thinking of accepting a position as, a company's first in-house counsel/first general counsel. "New" corporate counsel may be given different titles, including "General Counsel" ("GC") or various executive titles.³ They may cater to the entire company or only to certain business segments, and may have different previous work experience. In fact, some are not only the first GC at the company, but this is also their first in-house position (i.e., previously employed at law firms or for the government), so this resource also offers some thoughts on the differences between private and corporate in-house practice.

The first general counsel hired by a company faces special challenges unlike those faced by the general counsel who joins a company laterally to fill a pre-existing position. The latter general counsel walks into an established structure, with a set of expectations and a history of legal representation. The former will need to grapple with and establish a set of cultural and operational issues their successor will not have to address.

This InfoPAK seeks to provide first general counsel with advice on how to make the most of their position and succeed at doing so. It also provides practical materials like sample documents, lists of issues to address, and checklists to help attorneys make the transition to working in-house.

II. Understanding the Role of a First General Counsel

A. Company Expectations

Before starting as a company's first general counsel, it is important to understand the company's expectations when it decided to hire an in-house attorney. This information will shape the GC's priorities, as well as the legal department's priorities (if there is a legal department) and enables a first general counsel to better meet its client's needs. Understanding company expectations requires ascertaining both the general traits that companies expect from in-house counsel and the company's more specific expectations for the role of its general counsel/the legal function. Both the general and specific expectations are explored more fully below.

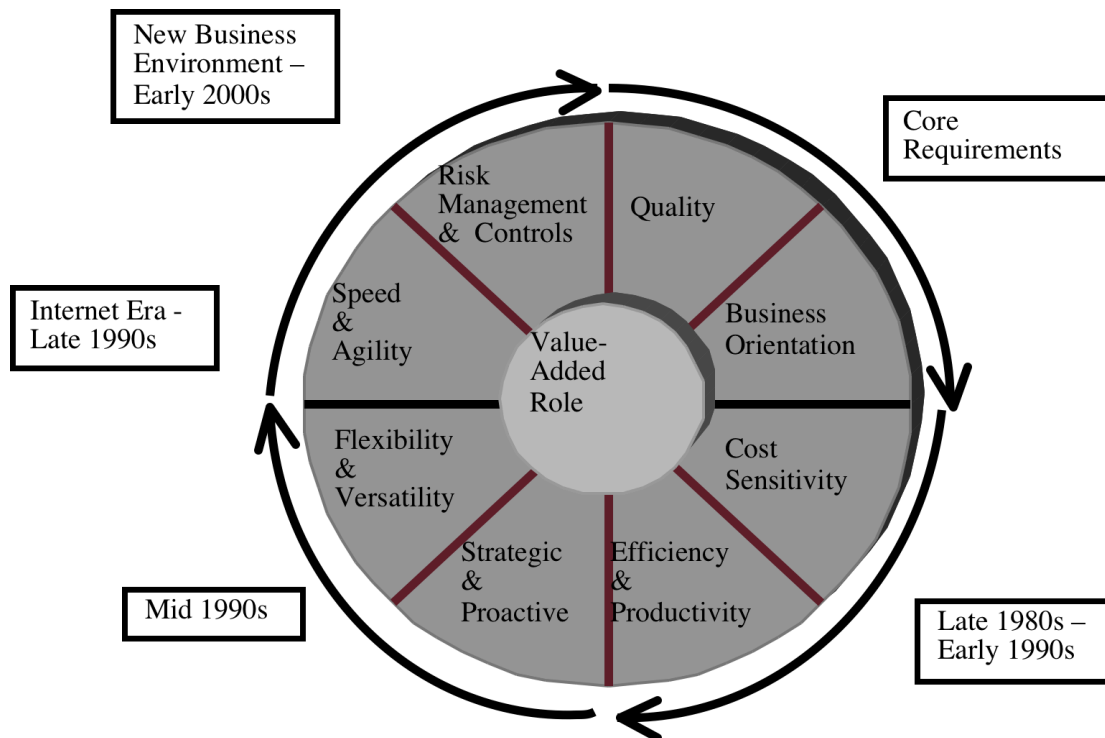
I. General Expectations

In general, companies expect in-house counsel to exhibit the following attributes, often considered to be critical success factors (each is described in detail below):

- Quality
- Business orientation
- Cost sensitivity
- Efficiency and productivity
- Ability to provide strategic and proactive advice
- Flexibility and versatility
- Speed and agility, and
- Risk management and controls.⁴

Diagram I below depicts these key success factors and how they have evolved in terms of importance over time.

Diagram I⁵



- **Quality:** The concept of “quality” encompasses many discrete skills and attributes, such as legal training, technical skills, professionalism, experience, judgment, client service, communication, and negotiation skills. Clients are typically not attorneys, and may therefore have difficulty evaluating the legal knowledge and skills of in-house counsel and may instead base their assessments on more measurable aspects of quality like responsiveness, timeliness, oral and written communication skills, personality, and ability to work as part of a management team.
- **Business Orientation:** Clients often expect in-house counsel to be familiar with and committed to the company’s business. Thus, in-house counsel are expected to possess greater business and management skills than outside counsel and integrate more fully with the company and its industry. This may require participation in client management team meetings, physical visits to client sites, and frequent communication

with key company executives. Section III(C) of this InfoPAK discusses in more detail how to learn about a client-company's business operations. In addition, GCs can supplement their overall business and management skills through relevant continuing education programs, such as ACC's Mini-MBA for In-House Counsel program.⁶

- **Cost Sensitivity:** In-house counsel are frequently expected to produce cost savings for the company and to manage overall inside and outside legal spending. To this end, a company may expect its first general counsel to develop benchmarking, case/matter management systems, and timekeeping tools to measure costs and communicate them to the client. ACC has a variety of resources discussing the use of tools to demonstrate cost sensitivity, including the InfoPAK "Managing Value-Based Relationships with Outside Counsel."⁷
- **Efficiency and Productivity:** Clients also expect in-house counsel to be proactive in initiating improvements and innovations as well as determining ways to streamline recurring work processes. For example, Craig Long, General Counsel at Capital Financial Services Corporation, initially built support among his clients by proactively proposing sample corporate policies in areas where he felt the company needed established procedures.⁸ Mr. Long's proposals were not always accepted, but he quickly acquired a reputation for being productive and proactive.⁹ Meeting company productivity expectations may also require efficient use of paralegals and non-legal staff, delegation of non-legal matters to other company departments, decreasing time spent on administrative tasks, avoiding redundancy, and making sure the legal department is open to adding new capabilities as needed. This InfoPAK provides greater detail on prioritizing work processes and utilizing other staff in Sections V(B) and VII(A), respectively.
- **Flexibility and Versatility:** Clients also expect in-house counsel to be able to adapt to new innovations, especially in the areas of communications and technology. A new general counsel should be ready to leverage technologies such as intranets, matter management systems, and mobile devices, for example smartphones, to promote efficiency and remain connected with clients.
- **Speed and Agility:** In part due to the recent technological advances mentioned above, clients increasingly expect fast response times from in-house counsel. Thus, a first general counsel should be prepared to utilize technology to streamline communication with clients and improve legal department work processes.
- **Ability to Provide Strategic and Proactive Advice:** Clients often further expect in-house counsel to take a proactive role in advising the company's strategic initiatives and future business plans. As such, it is important to have a well-defined understanding of the role and responsibilities of the legal department and how those responsibilities relate to the company's business operations and larger strategic plan. Sections III (D) & (E) below provide more detail on learning about company strategy and integrating the legal department's mission with that strategy.
- **Risk Management and Controls:** In light of increased regulatory scrutiny over the last decade, illustrated by the Sarbanes-Oxley and Dodd-Frank Acts, clients also expect their

general counsel to proactively manage risk and to act as the company's "conscience" or control function. In-house counsel are expected to identify a range of risks surrounding company activity. They should be able to provide details about the attendant risk's impact and consequences as well suggestions for alternative approaches. For example, an ACC member who is a senior vice president and general counsel at a company in the insurance industry (hereinafter "Mr. John Smith"¹⁰), said the company chose to hire in-house counsel largely because senior management felt it needed someone internally to manage risks.¹¹ As such, Mr. Smith was initially expected to identify and manage the company's risks by developing internal control policies.¹² This risk management expectation requires a general counsel to be aware of company obligations, especially regarding financial reporting, and to recognize and know how to address and report improper conduct.

It is important for a first general counsel to be prepared to meet these general expectations so they can immediately add value for their company.

2. Understanding Company-Specific Expectations

In addition to trying to meet the above general expectations, a first GC should ask the company the following questions to clarify company-specific expectations and lay the groundwork for establishing a successful legal department:

- **Does the Company Want a Leader, a Manager, or Both?** Leadership and management are different roles requiring different attributes and skills. An individual with leadership capabilities might provide a vision for the legal function. Leadership will ensure that the company focuses on the right priorities and often shows the rest of the organization the "bigger picture" while not being involved in the daily details. A manager, on the other hand, will ensure that things are done in the right way, the organization is structured properly, and the requisite systems and procedures are in place. Typically, the manager is focused on overseeing the process, which often involves a high level of detail and frequent communication with the staff involved. The GC may be expected to fill both of these roles, serving in some aspects as a leader and in some aspects as a manager. Balancing these different expectations can be difficult but with the proper preparation and organization it can be done.
- **Will the In-House Counsel's Primary Responsibilities Be Strategic or Transactional?** A transactional lawyer helps ensure that legal work will be performed properly and in a cost-effective manner. A good transactional lawyer, however, might not think or act strategically. If the company is growing, the legal function will need to develop a strategic plan to grow with it, which may require a lawyer who is more comfortable with a strategic role.
- **Does the Company Have an Immediate Legal Concern or Is It Focused on the Legal Function's General Development?** A new general counsel should ask his or her company if it expects to undertake any initiatives that will immediately require

significant legal services. This can help determine which legal tasks will be a priority up front and how much time a first general counsel will need to initially devote to urgent legal issues as opposed to actively developing the law department. For example, Nicolas Vanasse, the first general counsel at Aveos Fleet Performance, Inc., was hired when Aveos was in the process of being purchased by another company.¹³ As such, the company expected Mr. Vanasse to devote significant time to managing that transaction, which forced him to initially divert energy away from developing the company's law department.¹⁴

- **Will In-House Counsel Have an Upward Focus on Executive Management and the Board of Directors, a Focus on Managing the Legal Function, or Both?** Acting as the company's primary legal practitioner and chief advisor to the CEO and the Board of Directors may require a different set of skills and priorities than acting as the legal manager and architect of the in-house function. For this reason, it is important to clarify which of these roles the company wants its first general counsel to fill.
- **What are the Company's "Cultural" Expectations for the New In-House Counsel?** It is important for a new general counsel to be able to smoothly adjust to a new company's corporate culture. It is particularly important to determine what it takes to thrive, versus just do well, in the company. Considerations include such things as the company's actual primary hours of doing business (i.e., what are the hours most employees work rather than what hours are "technically" the company's operating hours), are employees expected to respond to work matters after hours, is working from home an accepted practice, is there a collegial environment, etc. Defining early on the type of person who is typically successful in the company's culture can help ensure a smooth transition. For a further discussion of this topic, see Section III.B, "Understand Company Culture."
- **What is the Company's Risk Tolerance?** All business entails risk, and it is important to determine how much risk the company typically assumes in its deals and how in-house counsel will be expected to manage that risk. As is discussed in greater detail in Section V(B) of this InfoPAK, a GC's grasp of how much risk a company is willing to absorb is critical to not only the GC's specific decisions involving risk for the company, but also to the GC's overall approach to decision-making on behalf of the client-company.
- **What Key Business Challenges is the Company Facing and What Type of Law Will In-House Counsel Focus On?** A first general counsel should learn about their company's current industries, as well as any possible future growth strategies of the company. Furthermore, the GC must know what special expertise these initiatives will require. For example, they should determine whether the company plans to go public, wants to maximizing intellectual property assets or increase shareholder value. In such cases, the GC will need to ensure that they are knowledgeable in corporate law (including IPOs) and be prepared for commonly occurring challenges in these areas.
- **How Much Independence Will In-House Counsel Have?** Many companies that are creating a law department for the first time do not know exactly what to expect nor understand every role that a new general counsel can fill. The company often has very vague ideas of the in-house counsel's function or may expect the new in-house counsel

to be proactive in defining his or her own role. Thus, a new general counsel should determine how much independence they will have in defining their own role and responsibilities, and can also take a proactive role in managing the client's expectations, as discussed in the next Section below.

3. Managing Expectations

When a company makes the decision to hire its first in-house counsel, the company is typically eagerly awaiting to see what the in-house counsel can deliver. However, this anticipation is also commonly fraught with challenges for the new in-house attorney, as the GC must be prepared to manage client expectations. A new general counsel often faces misperceptions about their role and/or encounters unrealistic expectations. This Section of the InfoPAK discusses some of the more common client misperceptions of in-house counsel and provides guidelines for GCs on how to manage expectations and help correct these misperceptions.

a. Common Client Misperceptions

Corporate clients who have not previously had in-house legal counsel may have limited experience working with attorneys and may not initially understand a general counsel's role. This lack of familiarity may cause a first general counsel to face a variety of client misperceptions. The following is a list of some of the most common misperceptions that an in-house attorney may encounter as the first general counsel for her company:

- Company employees may not understand who qualifies as the general counsel's corporate client (e.g., even though in-house counsel only represents the company itself, senior management, directors, and staff members may believe that a general counsel can and/or should also give them personal legal advice).¹⁵
- Clients may assume that in-house counsel should only be consulted regarding strictly legal matters, and might initially exclude a general counsel from anything they perceive as a business decision.¹⁶
- Clients may perceive the legal department as a bottleneck that creates unnecessary hurdles for business operations, which may foster a reluctance to consult in-house counsel.¹⁷
- Clients may expect that all attorneys embody the caustic and abrasive stereotype often associated with litigators on television, and thus, may initially avoid interacting with in-house counsel or take a hostile approach towards the GC.¹⁸
- Clients may believe that a general counsel will know all areas of the law with equal proficiency and if the GC does not, the client thinks the GC is deficient and/or lacking in his/her experience or education.¹⁹
- Related to the client misconception that the GC represents the employees individually/ personally (rather than only representing the company), clients may misunderstand the

concept of attorney-client privilege and think that every conversation between them and in-house counsel is protected.²⁰

b. Addressing Misperceptions and Harmonizing Expectations

The common misperceptions listed above can lead clients either to expect a first general counsel to perform tasks that are outside the scope of their duties, or to avoid consulting the law department. Both of these reactions undermine the effectiveness of in-house counsel, and thus it is imperative for a company's first general counsel to work from day one to manage client expectations.

The following is a list of tips on how a first general counsel can address and correct client misperceptions and help harmonize expectations:

- "Communicate, communicate, communicate," said Mr. Smith.²¹ He suggested being very transparent and taking time to talk to clients to set up their expectations, even if that initially requires taking time away from addressing current issues.²² "Setting up those expectations and teaching your clients how to be clients is worth your effort," he said.²³
- As soon as possible, work with company management to define expectations for the general counsel and establish procedures for how those expectations may change over time.²⁴
- Explain to clients the limitations on a general counsel's role (e.g., explain who qualifies as the corporate clients through presentations at staff meetings or training materials).²⁵

Practice Highlight

Craig Long, General Counsel at Capital Financial Services Corporation, faced an example of a client's unrealistic expectations shortly after becoming the company's first general counsel. Early on, he was asked to help a board member with a personal legal issue related to a private real estate project. The company expected that Mr. Long would be able to provide advice, but he had to refuse and refer them to his state's Rules of Professional Conduct, which said he could not provide legal advice to individuals privately and that he had to represent only the company itself. Mr. Long said he was careful to be very tactful in explaining these limitations on his role and had to educate the company on the rules. He suggested that a company's first general counsel work to define the scope of their duties up-front to avoid scenarios like the one he faced.²⁶

- Foster client ideas rather than quashing them, to encourage clients to continue consulting the legal department.
- Establish an "open-door" policy, so clients are not hesitant to consult the law department and to dispel any stereotypes about attorney attitudes.²⁷
- Demonstrate interest in the business side of the organization to encourage clients to include the general counsel during business discussions before legal issues arise.²⁸
- Market and publicize legal department services (e.g., contract review or compliance training) to clients and explain how these services help the company. These efforts can be supplemented by developing written company policies that make it clear when clients should consult the law department.²⁹ For a full discussion of marketing the law department, see Section IV(B), below.
- Avoid appearing too risk averse, so you can be more engaged with the business, and make it clear that the legal department is attempting to help the company rather than creating hurdles to business operations.³⁰
- Educate clients on common legal issues involved in common practices such as contract review, attorney-client privilege, and document retention so they understand the basis behind law department policies.³¹

Practice Highlight

Nicolas Vanasse, Vice President, Chief Legal Officer and Corporate Secretary at Aveos Fleet Performance Inc., said that he tries to train business people in his company on basic contract issues so they understand the reality of the problem and why the legal department advises them a certain way. For example, he has made a point to explain to clients why contracts need things like indemnification caps (i.e., to avoid bankrupting the company).³²

Following the steps above will help a first general counsel manage their clients' expectations and will build greater confidence in the law department as a whole.

B. What Can a First General Counsel Offer?

Once a first general counsel understands company expectations, they must determine how to best meet those expectations. This requires an understanding of how in-house counsel can best benefit the company, and perhaps more importantly, how the GC can demonstrate the value of such benefits to company management. This Section identifies the key roles upon which a first general counsel should focus, and then illustrates how to quantify the benefits of these roles in order to demonstrate the law department's value.

I. Key Roles of In-House Counsel

In order to benefit the company, some of the most important roles and responsibilities that a first general counsel should focus upon include:³³

- **Developing Intimate Knowledge of the Company:** A first general counsel is in a position to learn more about a company's business than any outside lawyer, so the GC should seize this opportunity. In-house counsel can also take time to meet and get to know the company's employees and executives. In this way, a first general counsel can bring added value by learning about the company's culture, values, needs, and history. This knowledge will provide an in-house attorney with a context for providing the company with improved legal services.
- **Reducing Overall Legal Expenses:** Performing legal services in-house can also be an effective cost-saving measure for a company. In-house counsel can typically perform the same work as outside counsel at a cheaper cost. Thus, a first general counsel can benefit their company by strategically performing tasks in-house and occasionally avoiding the cost of outside counsel. For more discussion on reducing legal expenses and extracting value from the use of outside counsel, see the InfoPAKs: "ACC Value Challenge Practices for the Small Law Department" and "Managing Value-Based Relationships with Outside Counsel."³⁴

- **Serving as a Trusted Advisor:** In-house counsel, by virtue of their broad range of knowledge of their company and its specific legal issues, are well positioned to be trusted advisors to senior management. To this end, in-house counsel can provide useful services in corporate planning, strategic decision-making, and accounting. A first general counsel is well situated to provide these services while considering the corporate bottom-line and developing a relationship of trust with management.
- **Developing Corporate Compliance Programs:** In-house counsel can further benefit a company by developing internal programs to ensure the company is in compliance with all applicable regulations and follows appropriate procedures in areas like employment and financial reporting. Effective compliance training can help a corporate client reduce the risk of criminal and civil liability. As such, a first general counsel can bring significant benefits to the company by creating compliance programs and regularly educating company employees about the demands of such programs.³⁵ Some examples of topics a GC may cover are sexual harassment, contract management, compliance, appropriate workplace communications and dialogue.
- **Improving Corporate Governance:** In-house counsel can particularly help their company by advising senior management on matters relating to corporate structure, including the appropriate structure of a board of directors and the liability issues related to board membership. A general counsel is uniquely equipped to provide advice on such matters because, unlike outside attorneys, they can observe current corporate procedures and understands company goals.³⁶ After a first general counsel learns about their company's preexisting corporate governance structure and develops strong relationships with senior management, they should consider suggesting improvements to these corporate procedures.
- **Minimizing Legal Risks:** In-house counsel can benefit a company by identifying potential risks and taking steps to protect the company from legal liabilities. Risks arise from the impact of uncertain events, the nature of which will vary significantly for each company and industry. Consequently, a first general counsel can bring value by understanding the particular risks faced by their company and taking proactive steps to prevent the risks from becoming a problem in the long run.
- **Crisis Prevention and Management:** By virtue of their extensive understanding of a corporation's structure and their access to information, in-house counsel are in a better position than outside counsel to anticipate and prevent corporate crises. Additionally, if an issue does arise, a general counsel is on hand immediately to respond quickly and resolve any problems before they escalate into a crisis.³⁷
- **Codifying Company Policies and Creating Knowledge Capital:** In-house counsel's intimate corporate knowledge also puts them in a position to develop written company policies on issues such as records retention, contract review, and human resources procedures. The creation of centralized policies can reduce company liability, improve the organization of company activities, and help codify corporate knowledge.
- **Developing the In-House Law Department:** A company's first general counsel will be required to develop a company legal function from scratch. This may require

establishing administrative support, implementing technology, improving office facilities, hiring new staff, or utilizing resources from the company's existing business function as support functions for the legal department. Thus, a new general counsel must be prepared to manage the legal function and address any related logistical challenges. This process is discussed in detail in Section VI, below.

- **Managing Outside Counsel:** Due to their broad understanding of the company's business and legal position, in-house counsel have a unique perspective and can better grasp the "big picture" and effectively manage the partnership with outside counsel. A new general counsel should be prepared to select, manage, evaluate, and control the costs of outside counsel as needed.³⁸

2. Quantifying Benefits and Demonstrating Law Department Value

While the addition of in-house counsel can significantly benefit a company, it is often very difficult to quantify and demonstrate the value of these benefits. This is because many of the benefits derived from the GC's roles (described above) are intangible, which means proving their value to the company may require the use of estimates and assumptions based on benchmarking data. This section provides some tips to help a first general counsel try to quantify law department cost savings and estimate the value of some of a first general counsel's more intangible benefits.

The simplest metric that a first GC can use to demonstrate the law department's value involves calculating the hourly cost of performing work in-house in order to compare this cost to outside counsel hourly billing rates. ACC's Value Challenge Tool Kit Resource, "Demonstrating the Law Department's Value: Calculating In-house Counsel Costs," provides a template to use and a description of the required calculations necessary for determining this metric.³⁹ In general, this metric calculates total law department employee expenses (including adjustments for the costs of salaries, benefits, and facilities expenses) and divides by the total number of law department hours worked. The resulting metric will provide a number for the hourly cost of performing work in-house, which can be compared to the hourly rates charged by outside counsel. This comparison can demonstrate to company management the amount of money that is saved by performing work in-house.

While lowering costs for the company can be demonstrated because it is quantifiable, it is much more difficult to quantify the value of more intangible benefits like in-house counsel's knowledge of the business and preventive legal efforts. For example, the ability to prevent a lawsuit is far more cost-effective than having to litigate a claim, settling, or worse – losing a case. However, determining exactly how costly the litigation would have been is extremely difficult. Estimating the cost based upon various factors (such as the type of matter/lawsuit, jurisdiction, parties involved, amount in controversy, etc.) and using historical data/information can provide some indicators of the value the GC achieved through this preventative approach. Diagram II below provides estimates on the value added from these more intangible benefits:

Diagram II: Value of In-house Counsel⁴⁰

Benefits of In-house Counsel	Added Value
Knowledge of the business	20% to 25%
Lower legal costs	Most often 20% to 30% lower
Early intervention / preventative legal efforts	Conservatively 10% to 15%

In addition to using value estimates like the ones above, a first general counsel can demonstrate law department value in the following ways:

- In highly regulated industries (or for companies subject to regulations like the Sarbanes-Oxley and Dodd Frank Acts), in-house counsel can demonstrate value through the development of corporate compliance programs that clearly meet the requirements of such relevant regulations.⁴¹
- In cases where litigation was avoided or settled, in-house counsel should explain to management that the costs of trial were avoided.⁴² The value of these cost-savings can be estimated by looking at the historical costs of similar litigation.
- In-house counsel can also demonstrate value to management by keeping track of any tangible work product created by the law department (such as written company policies, employee training materials, or memoranda written to company management that contain advice on legal or business matters). Work product like this is particularly useful at demonstrating value if it was created in response to specific company expectations.⁴³ Further, where a company has a number of departments that are making different, segmented (uncoordinated) requests of the GC, it is imperative that the GC track these various assignments and provide one comprehensive list of the tasks the GC has completed for every department to see. Particularly in larger companies or ones with multiple office locations, the various departments often have no knowledge of the other departments' assignments and matters that the GC is handling, therefore part of the challenge for the GC is simply informing the different departments and educating them on the GC's various responsibilities at any given time.
- The law department's value and success can be further demonstrated through setting clear goals (i.e., through a Mission Statement or Strategic Plan) and then periodically documenting affirmative steps taken towards accomplishing those goals.⁴⁴
- A first general counsel can also demonstrate value by creating and distributing client satisfaction surveys to evaluate law department performance. Even though satisfaction surveys rely upon subjective measures, they should be designed to use a quantitative scale (e.g., scoring on a numerical scale) so that results can be benchmarked and

compared to demonstrate department improvement.⁴⁵ The use of client satisfaction surveys is discussed in more detail in Section IV(F) below.

- Another way to demonstrate law department value is through extensive use of metrics. By comparing metrics over time, a GC can demonstrate improvements in law department performance and cost savings. The following are some metrics that can help demonstrate value:
 - Reduction in litigation / lawsuits filed against the company;
 - Reduction in regulatory investigations, violations, or sanctions;
 - Reduction in internal ethics and compliance issues or complaints;
 - Improved turnaround time for law department processes (e.g., faster contract review);
 - Improved terms (e.g., reduced liability or better prices) in vendor contracts; and
 - Improved staff retention rates.

For more details on how to implement and utilize metrics like those above, please see ACC's Leading Practices Profile, "Legal Department Leading Practices for Adding Value and Moving Beyond the Cost Center Model."⁴⁶

Therefore, from the outset it is critical that the GC be cognizant of the importance of demonstrating the new law department's value and should be prepared to collect data to create their own company-specific metrics and estimates similar to those addressed above. In addition, it is advisable for a first general counsel to attempt to demonstrate value early on by addressing some smaller (and easily measurable) issues up-front that are likely to deliver early and noticeable successes before working on larger, more difficult issues.⁴⁷ The details and specific responsibilities in serving the role as the first GC are discussed fully in Section III of this InfoPAK, "Getting Started As the First General Counsel."

C. Law Firm Partner v. General Counsel: How Are They Different?

Many first general counsel have extensive prior experience working in the private sector at a law firm. Thus, it is important to note that there are substantial differences between the partners' role in a law firm and the role of in-house counsel in a corporation. Diagram III below details the different requirements and features of these two roles.

Diagram III: What's Different?

Law Firm Partner	General Counsel
Have a business sense	Have a thorough understanding of the industry and business
Manage lawyers and staff on a transactional, case-by-case, matter-by-matter basis	Be both a corporate leader and manager of executives, other lawyers, staff and outside counsel
Compete with other outside counsel	Manage outside counsel
Define own behavioral norms based on power and prestige in the law firm	Conform to corporate culture, norms, and behavior
Know legal specialty extraordinarily well	Recognize and anticipate a wide, and broad, variety of legal issues
Establish and meet personal annual billable hour and fee goals	Establish and manage annual legal budgets
Ensure that promotion and marketing goals and objectives are accomplished, resulting in accomplishment of fee goals and objectives	Ensure that clients understand how to obtain legal services and that client needs are being met
Total hours worked will be in the 2,500 to 3,000 range and are dictated by client needs	Hours will be approximately the same as a partner in a law firm, but a GC will allocate them quite differently between managing and performing legal work
Compensated based on fee production and work origination and retention of clients	Compensated based on corporate compensation philosophy including salary, bonus, and deferred compensation / stock options; compensation package is usually dependent on overall corporate performance
Law firms are more horizontal, where partners are ostensibly peers	The corporate world tends to be more vertical and "siloed" than a law firm; i.e., in a company, command-and-control exists far more than in a law firm
Practice is more independent and solo	Practice requires teamwork with other attorneys and corporate clients
Support is provided from a preexisting administrative and technology infrastructure	Less infrastructure exists to support a legal function and a GC may be required to be more self-sufficient regarding administrative tasks and technology solutions. ⁴⁸

There are also a number of different skills that may not be expected of a law firm partner, but which are beneficial to general counsel. The following is a list of attributes that may be more important once an attorney enters in-house practice:

- **Financial Acumen:** The world of business moves on financial analysis and discounted cash flows, which may require different knowledge than that held by a law firm partner.
- **Presentation Skills:** General counsel need better presentation skills than private or outside attorneys. They need to learn how to quickly synthesize and simplify legal points, especially for Board of Director presentations.
- **Decision Making:** Compared to a law firm partner, a first general counsel may act more like a principal (rather than an agent or advisor) and will be responsible for a greater degree of decision making.
- **Chemistry with the CEO:** The GC's welfare usually depends upon his/her crucial relationship with the CEO.

III. Getting Started as the First General Counsel

Once a first general counsel understands the basic responsibilities and expectations of an in-house counsel, there are a number of steps they should take immediately upon joining the company (or, in some cases, before beginning employment). This Section discusses the initial steps that a company's first general counsel should take to prepare for their new role. These steps include defining expectations (e.g., through an employment agreement), understanding the company's culture, developing knowledge of the company's business operations and overall industry, establishing reporting relationships, promulgating a law department mission statement, and creating a timeline of first year priorities.

A. Codify Expectations

When beginning as a company's first general counsel, it is important to be able to document the general responsibilities and main duties of the position. Any written agreement regarding responsibilities should be informed by the discussion on expectations described in Section II(A) above. This process of codifying expectations is primarily the responsibility of the incoming general counsel, who should push for the creation of the following documents:

- **Employment Agreement:** Often, a formal employment agreement will contain only terms that would apply to a senior employee, such as terms of compensation, non-compete and confidentiality provisions, etc. A first general counsel can ask, however, that their employment agreement also specify some aspects of the work that they will be expected to perform.

- **Position Description:** Position descriptions will vary greatly based on the unique aspects of each position; however, this document should define at least the scope of the general counsel's responsibilities. In a brand new position, the description of what should be done may be very broad, especially if the company is growing and rapidly changing. Section IX includes some examples of actual position descriptions for general counsel.
- **Memorandum of Understanding:** The exact details of the new position, which the employment agreement likely will not address and the position description will cover only at a high level, can be explained in an additional document. That document may be in the form of a memorandum of understanding from the CEO or a letter.⁴⁹ This document can spell-out in greater specificity the details of a first general counsel's duties and responsibilities.

Practice Highlight:

Craig Long, General Counsel for Capital Financial Services Corporation, said he worked carefully with his company to define his role up front when he was hired as their first general counsel. However, because it was the company's first time employing an in-house attorney, a large portion of the roles/responsibilities that they discussed and anticipated for him in his role as the GC did not match the reality of what he does today. He said that codifying his role has been an ongoing learning process because he has ultimately been useful in some other areas that they did not think to even discuss during their initial employment discussions. Even after almost five years with the company, Mr. Long finds his role is constantly evolving and is especially contingent upon the market and current events; for example, the recent economic downturn has shifted his work away from mortgage issues to more debtor/creditor work.⁵⁰

As the experiences detailed in the above Practice Highlight illustrate, it is also important for a first general counsel to be aware that their role will likely evolve over time as the exact utility of the new law department becomes clearer. Thus, a first general counsel should ensure that any agreements with the company regarding the details of the GC position are sufficiently flexible and permit ongoing discussion and reevaluation of the in-house counsel's responsibilities. This flexible, and even adaptable, approach helps to manage expectations and avoid confusion or tension if circumstances change.

B. Understand Company Culture

It is important for a company's first general counsel to understand that each company has its own corporate culture and proverbial personality. "Corporate culture" refers to a company's general

attitude, which often reflects the mindset of a company's upper management and serves as a common premise that defines how things are done and what is valued.⁵¹

Understanding a company's corporate culture is critical to ensuring that in-house counsel provide advice that is pragmatic, effective, and implemented by the client. Taking into consideration the atmosphere in which advice is heard is often as important as ensuring that the advice is legally correct.⁵² Otherwise, a client may not take a general counsel's advice seriously and the general counsel may be viewed as irrelevant.

Thus, a first general counsel should prepare for their new role by considering the cultural issues the GC might face and the overall cultural context within which they must operate. This process should begin with talking to members of senior management to determine their goals, management styles, and how top management works with each other. These discussions can help a general counsel understand whether the company's organizational structure is rigid and highly monitored by senior staff or whether management takes a more "hands-off" approach. A first general counsel should be prepared to adapt to its company's business techniques and approaches.

Practice Highlight:

Maria Pasquale, Chief Counsel at Celgene Corporation, emphasized the importance for a company's first general counsel to understand the structure and culture of the company as it relates to client legal needs. In her experience, such an understanding requires an assessment of organization size, geography of the organization, the priorities of top managers, potential risks that seem significant for the organization, and risks that do not seem as significant but must nevertheless be communicated to management by legal counsel.⁵³

A general counsel's first few weeks will set the tone for how well the GC (or legal department) interact with the rest of the organization.⁵⁴ In order to set the correct tone, it is vital for the new GC to quickly understand how information flows through the company and to connect with office staff.⁵⁵ The sooner a first general counsel understands how things work, the sooner they will show their value and be seen as an ally.⁵⁶ Additionally, because a first general counsel may initially face apprehension from clients regarding their role, they may need to employ interpersonal skills to connect with clients and surmount their preconceived notions. For some, the key to connecting with clients may be humor or a shared interest in sports or other activities.⁵⁷

C. Learn About Your Company's Business Operations

Intimate knowledge of a company's business and operations is a critical component of an in-house counsel's success. Thus, a company's first general counsel should undertake significant efforts to learn about that company's business. A new general counsel should strive to be thoroughly familiar with the company's operations, financial results, and objectives. One of the best ways to

help build client confidence is to think like a businessperson, not like a lawyer concerned only with legal rights and liabilities; act like a member of the management team, not like a legal technician.

This Section details a variety of methods that a new general counsel can employ to obtain an effective general grasp of the client–company's business.

1. Observe the Operations

A simple way to learn what actually goes on at a company is to visit and walk through the various centers of corporate activity, beginning with a complete tour of the first general counsel's own office.⁵⁸ Additionally, if the company is engaged in other operations such as manufacturing or assembly and it is possible to visit those sites, do so. A tremendous amount of insight can be gained from simply touring various corporate facilities, speaking to personnel, and observing first-hand the company's operations.⁵⁹

2. Talk to Managers and Department Heads

A new general counsel can also benefit from talking with various business unit leaders within the company.⁶⁰ Getting to know colleagues around the company is one of the most important things to do when first starting out according to Maria Pasquale, who is Chief Counsel (and the first general counsel) at Celgene Corporation.⁶¹ Ms. Pasquale particularly stressed the importance of talking to various department heads in order to understand their goals and legal needs.⁶²

When meeting with business unit leaders, a first general counsel should try to learn the answers to the following questions:

- What does each business unit do and how does that function relate to the company's overall operations?
- What would each business unit like to see in terms of legal support?
- Are there any immediate issues or problems that the business units would like to have addressed?
- What issues are already being worked on?
- Are there any issues or problems on the horizon that the law department should be aware of?

Talking with managers and asking these questions can help a first general counsel manage expectations and avoid being surprised by ongoing issues or problems later on.

A new general counsel should also make an effort to speak with the accounting and audit staff to discuss whether there are any significant accounting or tax issues that are relevant to the company, its business operations, or the industry in general.

3. Look Through Files

As the first GC, one should also take time to review relevant files or records that the company has maintained. Ms. Pasquale suggests that the GC obtain and read as many company materials as possible.⁶³ In particular, if there is any existing paperwork regarding the company's prior legal issues, a new general counsel should be certain to review that information. Looking through existing legal paperwork will not only clarify the actual legal issues that the company has faced in the past, but it may also facilitate outside counsel management by indicating which outside law firms have assisted the company in the past.

4. Identify the Most Influential Company Executives

Another important task is identifying which employees at the company carry the most influence and political power. A new general counsel can benefit from identifying these "power brokers" and learning how they are politically aligned within the company. Nicolas Vanasse, the first general counsel at Aveos Fleet Performance Inc., suggested that a first general counsel begin by identifying and getting to know corporate and operational decision-makers.⁶⁴ Admittedly, this process will likely take time. Informal discussion with clients and organizational charts are an excellent place to start to discern the basic political make-up of the company. A new general counsel should quickly obtain and study these charts for each division or department in the company. These charts will most often be maintained by the company's human resources department.

5. Read Corporate Documents and Public Filings

Some of the best sources of information regarding a new general counsel's company are the very internal documents they will eventually be asked to write and review. A new general counsel should initially dedicate many hours to reading the documents listed below, to the extent they are applicable to their company.⁶⁵ It is also advisable to read these documents before starting as a company's first general counsel in order to be ready to hit the ground running. Also, any questions that arise regarding the documents can serve as the basis for introductory meetings with the important people who can answer those questions. In particular, be sure to review the following documents:⁶⁶

- Articles of incorporation and any amendments;
- Audit-committee charter;
- By-laws and amendments;
- The company's last few 10-K, 10-Q, and 8-K reports;
- S-1 registration statement (if the company did an IPO within the past few years);
- Description of the business and of risk factors in the above documents;

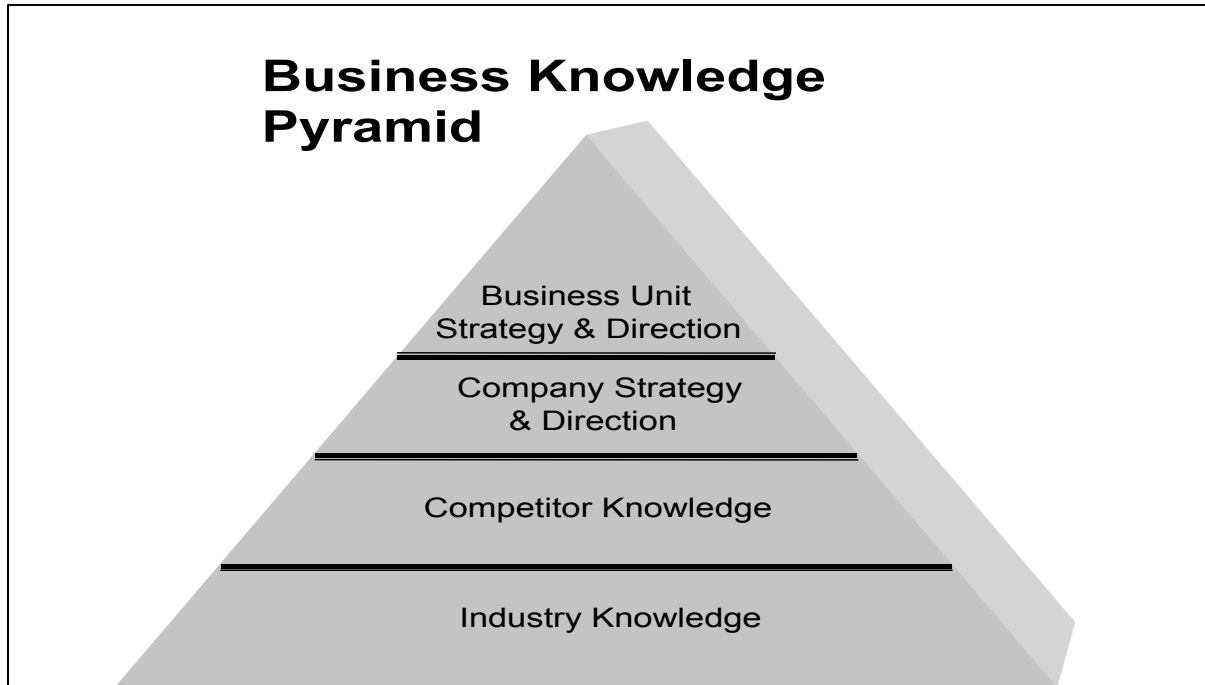
- Employment contracts, stock-option agreements, and change-of-control agreements for key executives;
- Last few proxy statements;
- Exhibits to their SEC filings (also determine if they are up-to-date);
- Press releases from the last year or so, which should be available from news outlets or the company's website;
- Legal-matters responses to the auditors in the last couple of audits;
- Pension plans;
- Stock-option plans; and
- Separation agreements for recently-departed executives.

D. Learn About Your Company's Industry, Market, and Strategy

It is also essential for a new general counsel to understand their company's industry and how the company fits strategically within its market situation.⁶⁷ Similar to learning about the company's business operations, this step is important because it allows an in-house attorney to serve the company from a business perspective and take a more active role within the management team. This knowledge will also increase a new general counsel's credibility among business unit leaders and will encourage such leaders to consult the law department more frequently.

This Section details a number of ways in which a new general counsel can learn more about a company's industry, market, and strategic alignment. The subsections below follow and expand upon the "Business Knowledge Pyramid" laid out in Diagram IV below, which illustrates the key layers of knowledge a new general counsel must obtain regarding her client's industry, market, and strategy. The pyramid begins with broader knowledge at its base (industry and competitor knowledge) and becomes more specific at the top (knowledge of company and business-unit strategy).

Diagram IV: Business Knowledge Pyramid



I. Industry Knowledge

As in-house counsel, it is critical to understand the nature of the client-company's industry. Nicolas Vanasse, the first general counsel at Aveos Fleet Performance Inc., in reflecting upon the skills required of a first GC, succinctly stated, "knowing the industry of your client is paramount."⁶⁸ Indeed, the ability for an in-house lawyer to learn about the client's business and industry is one of the essential benefits of in-house counsel.⁶⁹ Thus, learning about their company's industry is a good way for a first general counsel to begin to better understand the company's legal needs and to provide greater value.⁷⁰

There are a number of ways in which a first general counsel can learn more about a new client's industry, including:

- Reading industry trade magazines, newsletters, and other periodicals;⁷¹
- Signing-up for industry news alerts through services like ACC's Newsstand⁷² or law firm blogs;⁷³
- Joining and participating in relevant trade organizations;⁷⁴
- Attending trade conferences;⁷⁵

- Interacting with colleagues from other companies in the industry, either online (e.g., through ACC's eGroups⁷⁶) or in person by attending networking events;⁷⁷
- Reading financial analysts' reports, corporate biographies of related companies, and industry material prepared internally;
- Meeting with knowledgeable business executives within the company;⁷⁸ and
- Discussing industry matters with colleagues from outside law firms.⁷⁹

When researching the industry and consulting the above sources, a new general counsel should particularly look for answers to the following questions:

- Who are the industry's major competitors?
- What are the industry's fundamental business strategies?
- What are the major threats to the industry?
- What is the regulatory environment?
- What are the strategic legal issues facing the industry?
- In which areas do I (the GC) need to acquire more information or gain more experience?

The first general counsel should try to utilize the above resources and suggestions as quickly as possible upon starting employment at the new company, and should continue to stay abreast of industry events throughout their tenure.

2. Competitor Knowledge

A first general counsel should also learn as much as possible about the company's key competitors. Knowledge about competitors, their key staff, the legal issues they have faced, and how they have responded to such legal issues can help a new general counsel better anticipate and address their own company's legal issues. In addition, developing relationships with the chief legal officers ("CLOs") at competitor companies enhances a general counsel's credibility both within and outside of the client corporation. Networking with and getting to know these other in-house counsel can also be an invaluable tool for learning more about the industry (as discussed in Section III(D)(1) above).

In particular, a first general counsel should consider the following questions:

- What are the major legal issues facing competitors?

- How have competitors responded to major legal issues? Have they implemented any specific policies, compliance programs, litigation strategies, etc.?
- Who are competitors' CLOs? Is it possible to meet with these other in-house attorneys and get to know them personally?⁸⁰
- Is competitor law department benchmarking information available?⁸¹
- Does your client company participate in any industry trade associations that might compile information on competitors and other large industry participants?
- Does an industry group exist for CLOs? When and how often does it meet? Does the group provide opportunities to network with other CLOs?

A first general counsel can research the answers to these questions using many of the same sources listed in Section III(D)(1) above (e.g., reading industry periodicals, talking to company colleagues, attending trade conferences, reading competitor's websites and public filings, etc.). Moreover, ACC provides a variety of opportunities and resources geared directly to Chief Legal Officers. For example, ACC offers:

- CLO ThinkTank Sessions: An opportunity for live interaction with fellow CLOs across the country to engage in intimate roundtable discussions;
- CLO Chapter Networks: Networking and specialized groups offered at the local (regional) ACC Chapter level, based upon your specific geographic location;
- CLO Executive Bulletin: An e-newsletter designed exclusively for CLOs.
- CLO Surveys: ACC conducts annual CLO surveys that capture current CLO thinking and examine changes over time.

These CLO-specific offerings are excellent ways for a GC to indoctrinate himself in the legal and business landscape of his/her client company, and to connect with colleagues who can provide the new GC with a foundational understanding of the role and attendant responsibilities.

3. Company Strategy and Direction

A general counsel should be intimately involved with and aware of their corporation's strategy and direction. They should be able to succinctly articulate the company's business strategy and be able to explain it to others in the company.⁸² This knowledge is important because it will help guide the GC in making difficult decisions on how to best support the business, and it will inform the process of developing a law department mission statement (discussed in Section III(E), below).⁸³

Strategic planning is the process of defining a company's direction and making decisions in order to pursue a particular course of action. In particular, a first general counsel should be able to answer the following questions about corporate strategy and direction:

- Does the company have a written Strategic Plan or Mission Statement that the general counsel can review? If not, can top executives summarize the basic elements of corporate strategy?
- Will the law department be involved in any future attempts to design (or redesign) overall corporate strategy? If not, can the general counsel become more involved in this process?
- Is the company using the law to advance the business?
- Is the law department's mission and strategic plan aligned with the corporate mission and plan? This aspect is discussed in detail in Section III(E) below.

By answering these questions, a first general counsel can better understand the strategic business context for any future legal issues facing the company, which will improve her ability to provide valuable legal services to her new client. Further, the Strategic Plan and attendant goals of the company should inform the GC's own decisions in assigning priorities, in work and expense allocation, and ultimately, in what the GC determines to be the law departments' goals. Without the law department's goals being aligned with the company's goals and contributing to the strategic plan, there will be discordance on the macro level and a disconnect on the micro level.

4. Business Unit Strategy and Direction

The highest level of the Business Knowledge Pyramid (Diagram IV) involves intimate knowledge of the company's various business units and their strategies. This will likely require direct communication with business unit leaders and other business colleagues. The business unit-level strategies are typically not as formalized as the overall corporate strategy, but discussions with business colleagues should reveal the basic strategy for each unit's operations.

A first general counsel should be able to answer the following questions about business unit strategy and direction:

- What are the individual business unit strategies and objectives?
- Are there preventative law programs that would assist the business unit in achieving their objectives, reducing costs, or managing legal risks?
- Do the business units understand who to contact when faced with legal issues?
- Do the business units understand the role of the law department?

- In the past, has the law department (or outside counsel) been contacted early enough to address a legal issue before it becomes a major problem?
- Are there ways in which the business units can better integrate open and frequent communication with the law department into their strategies?

Addressing these questions will help a first general counsel understand business unit goals. This information can help the general counsel learn how to integrate business strategy into the new law department and can help facilitate open communication between the general counsel and key business colleagues.

E. Promulgate a Law Department Mission Statement

A company's first general counsel should also be prepared to draft a law department mission statement. A mission statement is a statement of the law department's purpose of an organization. It should serve as a guidepost and provide the framework within which strategies are formulated.⁸⁴ It provides clients with a clear understanding of the role and priorities of the law department and can serve as a guide for subsequent law department activities.⁸⁵ A mission statement can also illustrate the ways in which the law department will contribute to the company's business operations, which helps demonstrate the general counsel's value to the company.⁸⁶

In addition, the law department's mission statement should align with the company's overall corporate strategy (see Section III(D)(3) above) and it should be developed with input from key company executives.⁸⁷ When drafting a mission statement, a first general counsel should also consider:⁸⁸

- The client's needs and perceptions;
- The law department's services and deliverables;
- The company's competitive marketplace;
- Ways in which they can leverage the law department's distinctive competencies; and
- The potential benefits to various company stakeholders (e.g., directors, business units, senior management, employees, and regulators).

The final mission statement should then be documented and published to all members of the company. A mission statement can be as simple as:

- The Legal Department's mission is to efficiently and effectively administer the legal affairs of the Company by internally providing professional, timely, and useful legal advice and services, and by arranging and actively managing the services of outside counsel as needed; to minimize liability exposure by recommending and implementing appropriate policies, practices, and procedures; and to administer such legal affairs in the most cost-efficient manner reasonable so as to contribute to the Companywide team effort to maximize the Company's return to its stockholders.⁸⁹

Once the department's mission is defined and communicated, it should be reviewed periodically and examined to see if the general counsel and other members of the department are spending time consistent with the stated mission. In addition, periodically documenting how the law department is working to achieve its mission is a good way to demonstrate the department's value to the company (as discussed in Section II(B)(2) *infra*).

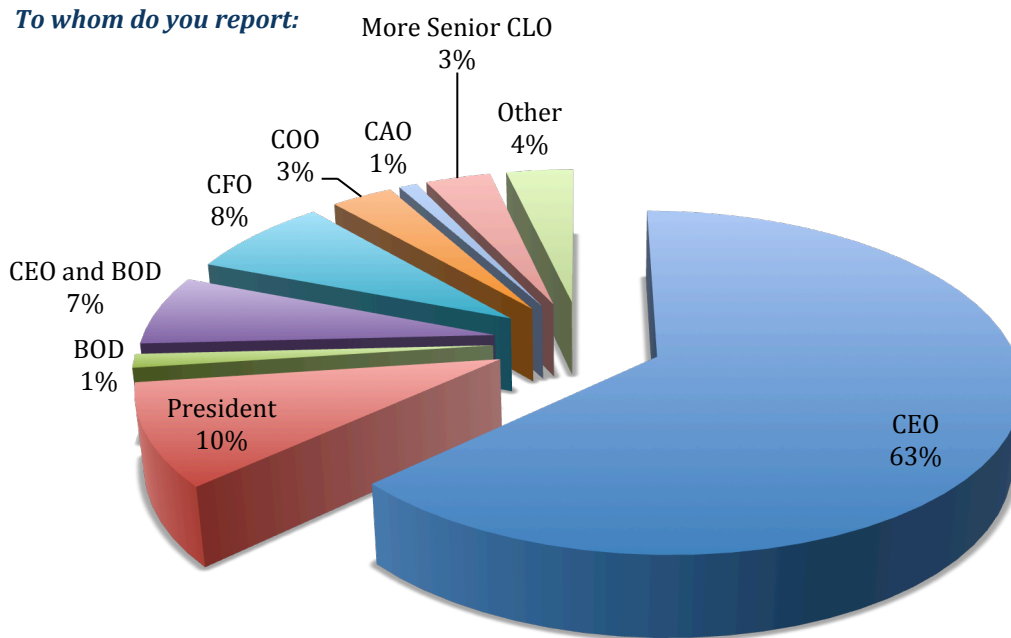
F. Establish Reporting Relationships

A first general counsel should address within the first month or two with the company the essential reporting relationships within their new company. In fact, in a company that has never had in-house counsel, the task of establishing or clarifying law department reporting relationships may fall to the first general counsel. To assist with this process, this section analyzes the two reporting relationships that are most important to a first general counsel: (1) to whom should the general counsel report, and (2) who should report to the general counsel?

I. To Whom Does the General Counsel Report?

The general counsel's reporting relationship is important because it indicates to other company employees and outside counsel the relative importance and accountability of the law department.⁹⁰ Thus, a company's first general counsel should determine early on the individual to whom they will report directly.

According to the ACC 2011 CLO Survey, general counsel's reporting relationships are predominantly aligned to report to the CEO, President, and/or the Board of Directors (collectively comprising 81% of the respondents). The figure below illustrates the results:⁹¹



Nearly three-fourths of responding general counsel (73%) indicated they report to their company's CEO or President.⁹² An additional 7% of respondents report to both their CEO and the Board of Directors.⁹³ A smaller number of general counsel report, instead, to the CFO or another C-suite executive.⁹⁴ According to Catherine Valentine, who served as the first general counsel for five different companies, it is not uncommon for a general counsel of a smaller company to report to the CFO.⁹⁵ As a company grows, however, Ms. Valentine has found that the general counsel tends to report to the CEO.⁹⁶

Having the general counsel directly report to the top corporate officer (usually the CEO or President) has two key advantages. First, it gives law department decisions more weight in the eyes of other executives and outside counsel.⁹⁷ Second, it gives the general counsel more authority to audit and become involved with aspects of the company's business planning.⁹⁸ This increased involvement, in turn, allows the general counsel to better anticipate and prevent legal issues.

It is generally considered less advisable for a general counsel to report to the head of a business unit. Even though the business unit leaders may have driven the charge to hire in-house counsel and participated heavily in the hiring process, in the long run it is more strategically important for a general counsel to have the backing of the CEO in order to have influence over the legal affairs of the entire company. ACC's 2011 Census Report⁹⁹ shows a significant increase reporting directly to the CEO/Board of Directors. Seventy-three percent of respondents indicated that their departments were housed in the corporate center, compared to 55 percent in the previous survey.

It is important that a first general counsel speak with the CEO (or equivalent executive manager) to clarify their own reporting relationship in their new company early on. During this conversation, a first general counsel might also suggest improvements to this reporting relationship based on the data provided above.

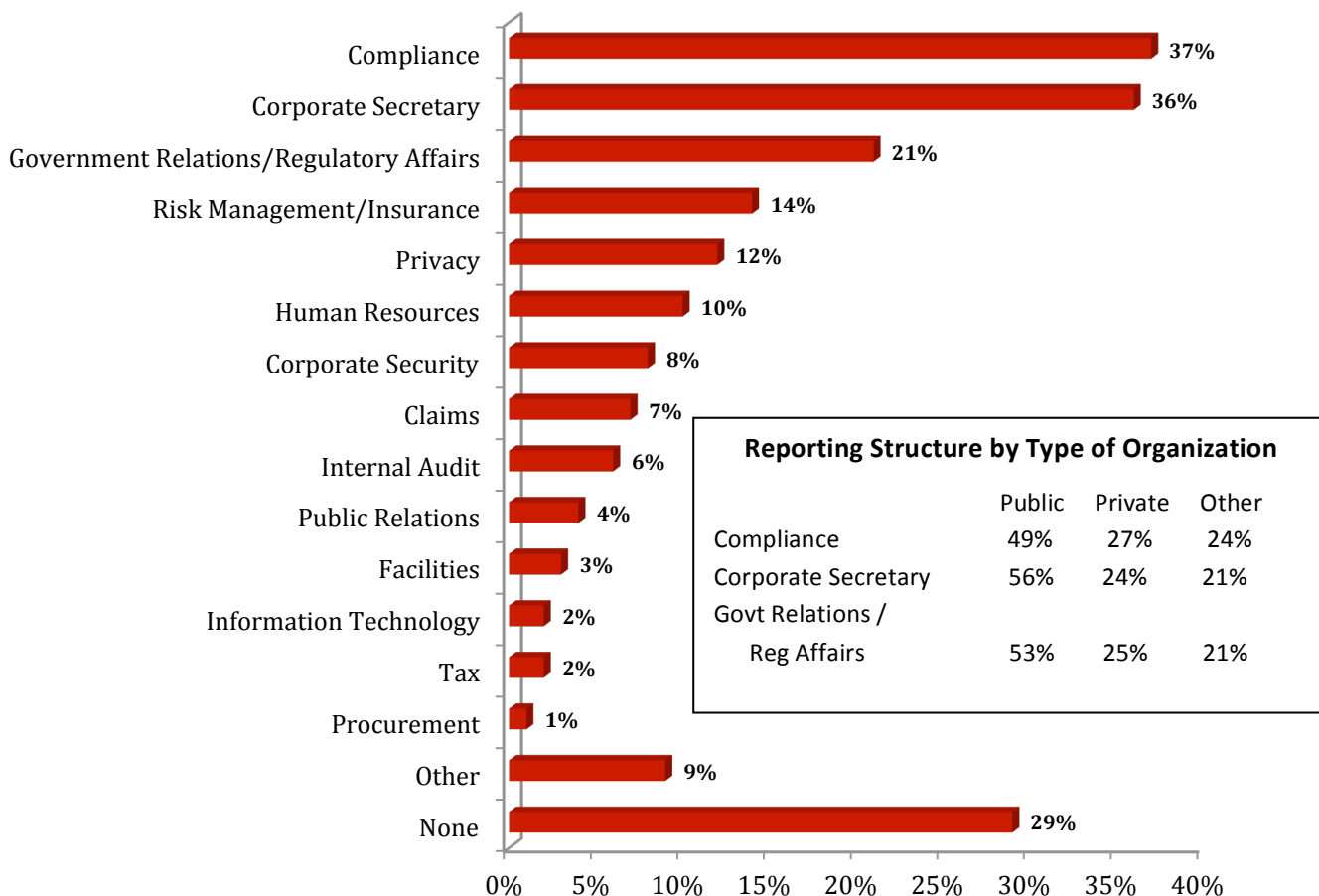
2. Which Functions Report to the General Counsel?

A company's first general counsel should also be careful to clarify which, if any, of the company's other functions and employees will report to the general counsel. To assist with this process, this section describes the functions (or departments) within a company that most commonly report to the law department.

Based upon the 2011 ACC In-House Census Report, compliance and the corporate secretary are the functions that mostly commonly report directly to the general counsel (see Diagram V below).¹⁰⁰ Thirty-seven percent (37%) of compliance departments and 36% of corporate secretary departments report to their company's general counsel.¹⁰¹ As a company's revenue and number of employees increase, so does the likelihood of that organization having both the compliance and corporate secretary report to the general counsel.¹⁰² In addition, only 29% of respondents indicated that no other departments reported to the general counsel.¹⁰³

The following Diagram (Diagram V) illustrates the full responses regarding which functions typically report to the general counsel.

Diagram V - What other departments report to the Office of the General Counsel?¹⁰⁴



As the diagram indicates, a general counsel will likely have a number of employees outside their department directly reporting to them. A first general counsel should also consider whether it wants certain departments to provide informal, periodic reports to the law department, even if the general counsel does not regularly supervise those departments. Such informal reporting can help to ensure that the general counsel is apprised regularly of various departments' key actions, especially those that may involve legal liability. Employees often are not even aware that some of their responsibilities, which they consider to be "routine" functions, actually involve legal issues that should be handled or reviewed by the legal department. This misidentification of legal versus non-legal matters is particularly common in organizations that have never had an in-house attorney and thus, are accustomed to handling many "legal" tasks themselves (or completely skipping the legal review process). A common example is when manager-level employees (who usually have higher levels of authority and autonomy) enter into agreements with outside vendors or service-providers through which they contractually obligate the company to various things, not realizing the legal implications of their agreements.

Practice Highlight:

The experiences of Craig Long, who was first general counsel at Capital Financial Services Corporation, illustrate the potential utility of informal reporting relationships between the general counsel and key business colleagues. Capital Financial operates multiple branch offices through which the company provides various financial and credit services. Mr. Long asked each branch office manager to informally report to him on any issues involving fraud or employment complaints. This requires branch managers to report to Mr. Long whenever necessary on legal matters, even though he is not their direct supervisor (in the sense that he does not conduct their performance reviews, etc.).¹⁰⁵

Finally, if there are any other employees in the law department, such as other attorneys, paralegals or administrative staff, they should also report directly to the general counsel. In fact, as more functions (and more people) report to the general counsel, the GC may need to increase the law department's staff and reorganize the department's reporting relationships so that some employees or business units report directly to other staff within the law department. Law department development and expansion concerns are discussed in detail in Section VI(A) *infra*.

G. Creating Company Policies

A company that has never before had in-house counsel may be particularly ill-prepared with regard to company policies. Without legal counsel, corporate processes may have developed informally, haphazardly, and without consideration of potential legal liability. Thus, within the first year, general counsel should work to develop written policy statements for the company, such as a contract review policy, a corporate ethics and compliance policy, and a policy on retention of outside counsel. General counsel should also consider promulgating a policy on when clients

should consult the legal department (please see Section IV(B) on Marketing the Law Department for more information). The General Counsel can also use the process of preparing, drafting, and distributing such policy statements as a way to reach out and learn from colleagues within the company.

Some of the most common policies that pertain to the legal function include:

- Who can retain outside counsel and review their invoices?
- When must a lawyer review contracts and agreements?
- How can potential trademarks and patents be protected?
- What are the obligations under relevant statutes (e.g., the Foreign Corrupt Practices Act)?
- Who must review terminations of employees?
- To whom should complaints and grievances be directed?

For example, Mr. Smith found that his company had not developed detailed internal policies, partly because it is a private company and had not been forced to comply with public reporting requirements.¹⁰⁶ When asked what tasks he focused upon in the first year, Mr. Smith discussed creating a variety of written policies, including an employee conduct policy, and social media and technology policies.¹⁰⁷

H. Suggested Timeline of Priorities for the First Year

This Section offers a general timeline, by quarter, for the top priorities that a company's first general counsel should address during its first year with the company. Even though circumstances will differ for each new general counsel, Diagram XII below highlights some of the central tasks that a general counsel should consider during its first year with the organization.

Diagram XII: First-Year Priorities

First Quarter	Meet senior clients and evaluate their legal needs and expectations ¹⁰⁸	Start tracking ongoing and new legal matters	Sign up for industry periodicals, join trade groups, and actively network with colleagues in the industry ¹⁰⁹	Talk to outside counsel the company has worked with in the past ¹¹⁰	Review existing client contracts (both external and internal agreements) ¹¹¹	Evaluate and develop the new law department's administrative and technological infrastructure (e.g., a contract database) ¹¹²
Second Quarter	Establish key policies and common work processes (e.g., code of ethics, contract review policy, records retention policy) ¹¹³	Continue developing key client relationships and meeting more internal clients	Meet in-house colleagues from key industry competitors	Begin gathering law department spending data	Become more involved with corporate governance issues and develop board of director policies as needed ¹¹⁴	
Third Quarter	Present company management with summary of legal activities thus far	Benchmark the law department's performance against data for other law departments	Manage client expectations for the role of the law department ¹¹⁵	Meet as many non-management employees in each business unit as possible	Roll out additional internal policies (e.g., social media and technology policies) ¹¹⁶	Develop and distribute an outside counsel management policy ¹¹⁷
Fourth Quarter	Develop a written law department mission statement ¹¹⁸	Start distributing FAQs and legal guides for clients (preferably via an intranet system)	Develop employee training and compliance programs ¹¹⁹	Consider purchasing budget and matter management software	Conduct a client satisfaction survey for the law department ¹²⁰	Evaluate the law department's first year performance and integrate feedback to develop a plan to improve during the next year ¹²¹

The chart above should be used as tool for visualizing when some of the tasks discussed should be done during the first year of tenure. It is important to keep in mind that not *all* of the tasks outlined in this section were included in the chart because they did not fit within the quarterly breakdown; nevertheless, these tasks are no less important, and they should be done within the first year if possible.

IV. Building Client Relationships

A first general counsel should be certain to build strong relationships with their corporate clients. This is true not only as they are starting out, but also throughout their career with the company. This Section discusses various ways in which a first general counsel can build successful client relationships – specifically, through open communication with clients, marketing the law department, setting appropriate law department standards, and using surveys to measure and improve client satisfaction.

A. Openly Communicate with Clients

All in-house lawyers, particularly a first general counsel, must understand the importance of communicating with their corporate clients.¹²² As was discussed in the earlier sections of this InfoPAK, to better serve the company, a general counsel must know the professional goals and objectives of individual corporate clients. This knowledge requires open and regular communication with the clients themselves.

Communication with business people is often different than communication with other lawyers or litigators.¹²³ When communicating with business colleagues, a first general counsel should be careful to explain their decisions and legal arguments, avoid rejecting proposals, and try to propose alternative solutions.¹²⁴ Furthermore, a first general counsel will likely have to show significant initiative when speaking with their clients, who will not be accustomed to discussing matters with in-house counsel.¹²⁵ This may be particularly surprising for attorneys who are used to a private law firm setting, where reporting relationships and lines of communication are typically hierarchically predetermined and thus require less initiative.¹²⁶

Most clients will be happy to talk to the general counsel when they show an interest in their facet of the business and in them personally. Only sincere interest and support will be effective in building strong client relationships. When talking to clients, a first general counsel should be creative in looking for ways to help the client succeed. This will encourage clients to treat the general counsel as a confidant and allow the general counsel to be a better adviser.

One way for a first general counsel to promote open communication is to attend client staff meetings. They should also periodically stop by client offices to discuss any current projects and the potential legal implications thereof.¹²⁷ These steps will help them learn the types of projects and activities currently being planned by clients and will reinforce the perception of the general

counsel as part of the corporate team. A well-informed general counsel is also in a better position to practice preventative law efforts.¹²⁸

Additionally, a general counsel should openly communicate with clients during the delivery of legal services. It is important to respond quickly to clients' legal requests and to keep clients updated during the law department's review process.¹²⁹ Furthermore, a first general counsel should regularly talk to clients about important developments in case law and new legislation. Some clients may also be interested in receiving copies of relevant articles or other timely information about the company or the industry. Keeping such open lines of communication with clients will make a first general counsel a better legal adviser to their client and will strengthen the law department's image.

B. Market the Law Department

Once a first general counsel has established open lines of communication, they can further bolster client relationships by marketing the law department. This section details two ways the general counsel can market their new department: educating clients on law department services and conveying a compelling law department culture.

I. Introducing and Explaining Law Department Processes

In a company that has not previously had in-house counsel, it is important to promote law department services and explain how they fit in with the overall business. Many corporate clients will have to learn which matters to bring to the general counsel, when to bring them, and how to prepare for the discussion. Thus, a first general counsel needs to educate them about each of these steps. They will also need to show clients how to benefit from the law department and the range of services it offers. In practice, much of this introduction and education will be achieved via open communication and individual meetings with clients, as described in Section V(A) above.¹³⁰

Another good method for communicating this information is through a written handbook for clients on law department procedures, which is especially useful for larger companies/organizations or ones with more than one office. A client handbook will help publicize the law department and should explain how and when clients should contact the general counsel.¹³¹ The handbook should also identify any instances when clients are authorized to take legal actions without consulting the law department (e.g., when clients can enter into agreements on behalf of the company and when they can contact outside counsel).¹³² Furthermore, the handbook should include biographies and full contact information for each law department staff member. Key law department procedures and policies can also be included in the corporate bylaws to give them more weight.¹³³

Practice Highlight:

Nicolas Vanasse, Vice President, Chief Legal Officer and Corporate Secretary at Aveos Fleet Performance Inc., made a point early on to publicize his position throughout the company. He did so by developing and distributing written law department procedures (e.g., contract review procedures) that educated clients on which issues they should discuss with Mr. Vanasse. Some of these procedures were also included in the corporate bylaws so they could not be circumvented. He felt these procedures (and resulting discussions with clients) made his clients realize that the law department was there to help them.¹³⁴

In addition, a first general counsel can introduce and market the law department by hosting regular training sessions or seminars with clients.¹³⁵ According to Craig Long, such sessions will not only train clients on key legal issues, but they will also help clients relate to and trust the general counsel and see the benefit of the law department.¹³⁶ These events can range from official training sessions to more informal “lunch and learn” sessions. The legal department at ACC follows this practice, engaging in a variety of techniques to educate staff on law department processes, from providing internal resources on various compliance issues, such as a *Top Ten Employee Dos and Don'ts Regarding Political Dialogue in the Workplace*, to conducting informal educational sessions for staff, to mandatory training sessions on contract management and internal processes.

2. Conveying a Law Department Culture

In addition to introducing law department processes, a first general counsel should also convey a strong and supportive law department culture to clients. The following list provides some techniques to communicate and reinforce the culture of the legal function:

- Articulate the general counsel's role, the role of outside counsel, and the risk posture of the law department;¹³⁷
- Get out regularly and informally talk to clients;
- Actively participate in meetings and share legal opinions;
- Conduct a client survey;¹³⁸
- Publicly thank clients who follow procedures and openly consult with the law department;

- Demonstrate sensitivity to business and cost considerations in order to create an image as being part of the business team.

Marketing the law department and conveying a supportive culture will make it easier for a first general counsel to build good relationships with their new clients. However, it is important to remember that changing both attitudes and habits takes time, and each company will be different in terms of how entrenched it is in prior practices that are contrary to the legal function. Thus, a first general counsel must understand that through patience, consistency, and persistence, the GC will ultimately convert his or her client from being skeptical or adversarial to being cooperative and collaborative. These strong client relationships will, in turn, make the general counsel's job easier and will make them a better legal advisor for the company overall.

C. Set the Right Law Department Standards

The GC's marketing efforts will be successful only if clients also perceive that the law department has adopted successful procedures and effective internal standards. Thus, a first general counsel should not only provide quality legal work, but should do so in accordance with the right standards. This Section highlights key standards that, when properly implemented, should improve a general counsel's relationship with clients.

I. Demonstrate a Willingness to Assume Risk

Clients appreciate a general counsel who not only gives legal advice, but also shares in the management responsibility for decisions. According to Nicolas Vanasse and Catherine Valentine, a first general counsel should demonstrate a willingness to take risks for the business and should avoid appearing like they are only concerned with risk management.¹³⁹ Such willingness to assume reasonable risks establishes the general counsel as part of the business team and distinguishes them from outside counsel or legal consultants. Especially where the company is growing the business, Ms. Valentine indicated the general counsel should accept that some degree of legal risk will be unavoidable, and should remain calm and work within the company's reasonable risk tolerance levels.¹⁴⁰ This approach will help build credibility for the law department and will encourage clients to treat the general counsel as part of the corporate team.

2. Run an Approachable, Open-Door Department

To supplement the open communication efforts described in Section V(A) above, a first general counsel should also implement an open-door policy that makes it clear they are available to their clients. This will make the law department more "user friendly" and will encourage clients to share matters with the general counsel. Each member of the department (including any support staff) should convey the sense that their principal goal is to assist employees in meeting corporate objectives.

3. Set the Standard for Excellence

The law department should constantly seek to achieve excellence in all areas, including professionalism, diligence, accuracy and timeliness of legal advice. They should demonstrate a strong desire to help the corporation meet its goals, and uphold the highest standards of ethical behavior and good business practices. The law department staff should be committed to being proactive, solution-oriented, hardworking, self-confident (but not overbearing), and good at listening. Management and staff will appreciate the law department's sincere enthusiasm for supporting its clients and its commitment to excellence in all respects. By setting the bar for excellence, the law department can gain the respect and confidence of its clients.

D. Measure and Increase Client Satisfaction

A key element to building strong client relationships is obtaining feedback from clients and constantly taking steps to increase their satisfaction. One of the best ways to measure client satisfaction is through a survey. This Section provides guidance on how a first general counsel can plan to use client surveys to measure and increase client satisfaction.

I. Surveying Client Satisfaction

Surveying client satisfaction serves a number of important purposes, including focusing the law department on creating value, informing future strategic planning, showing the benefits of in-house counsel, and establishing benchmarking data for measuring future improvement.¹⁴¹ Thus, a company's first general counsel should immediately begin a policy of periodically surveying clients to measure and benchmark client satisfaction.

The most important element of a client satisfaction survey is obtaining enough responses from a representative number of executives and staff. A first general counsel should invite all clients to take part in a general survey, but might also create specific questions or sub-surveys for clients in particularly important positions. The law department should also invite senior clients to forward the invitation to those members of their group whom they believe would be productive participants. Furthermore, the general counsel should arrange to interview the company's most senior executives, who may not wish to spend time filling out a written questionnaire. A target client's participation rate of 40 to 50% should be considered a success.

Each law department should shape its survey to meet its own needs and priorities; however, a sample survey has been provided in Section IX. It illustrates some of the major segments of a typical client survey.

2. Increasing Client Satisfaction

Measuring client satisfaction is only half the battle. Once a general counsel discovers what their clients think of the law department, they need to act clearly and decisively to improve any areas clients criticize. After completing a survey, a general counsel should consider sending out a summary of the law department's proposed revision plan. This will show clients that the law department actually listened to them and is working to improve.

Each company's survey will yield different results; however, the following is a list of considerations that most commonly impact client satisfaction:

- **Be Timely** – clients are happier when the law department gets back to them with an answer, or at least an update on steps taken within the timeframe they are expecting.
- **Be Clear** – clients are more likely to support the law department if they can easily understand law department responses. Thus, a first general counsel should avoid unnecessary legal jargon and undue complexity.
- **Be Practical** – clients are happiest when law department responses' meet their needs for a pragmatic solution.

Using these general considerations and the client satisfaction survey results as a guide, a first general counsel can significantly improve the quality of service that the law department provides. This increased quality of service and demonstrated responsiveness will improve the law department's reputation and build stronger client relationships.

V. Identifying and Managing Responsibilities

A. Overview of Typical Business and Legal Responsibilities

I. Legal Responsibilities

Typically, general counsel are responsible for addressing both the legal issues arising from their clients' work within specific industries, as well as more general issues that are common to all industries. Common legal tasks for which most in-house counsel are responsible, irrespective of their clients' industries, include.¹⁴²

- Contract negotiation and review (e.g., ensuring that contracts between clients and employees, customers, or other parties are written in accordance with guidelines promulgated by the legal department);
- Risk management and compliance (e.g., assessing whether the client's business processes, products, and policies comply with pertinent regulations and determining the degree to which such compliance is necessary);
- Handling of ethical issues (e.g., providing advice on business ethics); and

- Developing company policies and procedures.

Industry-specific tasks generally reflect the nature of the industry in which the client organization is engaged. For example, as the general counsel of various tech companies over the past 20 years, Catherine Valentine has typically provided for “the protection and commercialization of the company[ies’] intellectual property.”¹⁴³ Similarly, the general counsel for a credit union often assumes the company’s litigation to collect unpaid debt.¹⁴⁴

2. Business Responsibilities

As managers, general counsel are also involved in tasks typically classified as business functions, including, for example:¹⁴⁵

- Budget management (see Section V(C): Budgeting);
- Workforce planning (see Section VII: Developing a Legal Department);
- Developing departmental goals;
- Managing legal department staff and other direct reports (e.g., compliance, risk management, or regulatory affairs officers); and
- Negotiating contracts and larger company transactions.

B. Prioritizing Work

To be a successful general counsel, especially as the first general counsel of an organization, a GC will need to develop a process for prioritizing all of her tasks, both legal and business-based. The following sections outline the key steps within that process.

In the role of Chief Legal Officer, it is critical to prioritize time and effort. To ensure that the most important legal issues rise to the proper level, the employees of the corporation should be made aware of what must come to the attention of the Chief Legal Officer. The following list should be considered in an effort to ensure that there are “no surprises.”

- Matters having strategic importance or corporate-wide implications
- Issues involving significant financial exposure
- Matters which will involve an unusual consumption of time and/or resources
- Ethical implications, or when serious ramifications could result if advice and counsel are ignored

- Major contracts
- Unbudgeted items
- Matters which might entail adverse publicity, liability or embarrassment to the corporation
- Lawyer and staff employment, compensation and career progression
- Matters involving corporate wrongdoing
- Anything which, in the judgment of a manager or executive, should be reported to the Chief Legal Officer
- When legal trends are identified that are significant to the corporation or would be advantageous for others to know

I. Needs Assessment

In order to assign priorities to his/her work, a GC's primary step should be to assess the legal needs of the client organization; a process commonly called a "needs assessment." A GC can employ several methods for the needs assessment. One simple and direct method is communicating directly with management to ascertain what tasks management needs addressed. Alternatively, a general counsel can defer to outside counsel who have previously worked with the client organization, to gain an understanding of which legal issues outside counsel considered most significant.¹⁴⁶

Once a general counsel has an increased understanding of the respective industries their client organization is involved in, they will be better-equipped to independently identify legal needs. For example, after serving as the first general counsel for several companies within the technology industry, Ms. Valentine knows that some of the most pressing tasks to be undertaken by the GC of a technology company include "determining the strength of the company's patent portfolio..., whether licenses exist for all third party code, and how strong the financial group is in terms of its oversight of the sales function."¹⁴⁷

Moreover, if a solo general counsel is successful in building a legal department (*see* Section VII for a full discussion of this topic), the GC can collaborate with other attorneys within the department to assess client needs.¹⁴⁸ For example, Maria Pasquale meets with her legal team periodically to discuss Celgene's legal needs and gain an understanding of issues arising out of the company's work.¹⁴⁹

Throughout the assessment process, a general counsel must identify not only current legal issues affecting the organization, but also potential legal issues that could arise as a result of future projects and changes in the industry. As the general counsel of a pharmaceutical producer, Maria Pasquale constantly thinks about the impact of new regulations affecting the pharmaceutical industry and often attends company board meetings in order to keep herself informed of the company's direction.¹⁵⁰ In general, Ms. Pasquale devotes an equal amount of time to addressing

current needs and anticipating future needs.¹⁵¹ Similarly, Mr. Smith suggests that 60% of a general counsel's time be spent on the former task and 40% on the latter.¹⁵²

2. Prioritization of Needs

Once a general counsel has identified the comprehensive needs of their respective organization, they must prioritize these needs in terms of importance. In so doing, a general counsel should consider the following:

a. Clients' perceptions of their needs

Depending upon the size, structure, and nature of the organization, a clients' perceptions of the organization's needs can either provide a foundation for the prioritization process or interfere negatively with this process. For example, one general counsel working for a relatively small organization often defers to the CEO in determining which needs to address first.¹⁵³ On the other hand, Mr. Smith, who works as GC for a major corporation with hundreds of employees, advises maintaining relative independence in the prioritization process.¹⁵⁴ Although Mr. Smith acknowledges the importance of "satisfying the needs of...human capital," he cautions against succumbing to pressure from clients who believe that their respective needs should take priority.¹⁵⁵

b. Assessment of risk potential and competitive advantages

A general counsel can also prioritize needs according to their propensity to create potential risks and/or generate competitive advantages for the organization. Left unaddressed, some needs can lead to risk for the organization by causing financial loss, non-compliance with industry regulations, and/or damage to the organization's reputation. The timely resolution of some needs can provide a competitive advantage and support for the organization's business strategy. For example, by interacting regularly with and providing proactive legal advice to the product development function at Logitech, Ms. Valentine is able to facilitate revenue generation for the company.¹⁵⁶

A general counsel can prioritize needs according to risk potential or impact on competitive advantage by assigning each need a quantifiable value corresponding to these factors and then ranking them accordingly.¹⁵⁷ For an example of such a calibration and ranking system, please see "ACC Primer: Using a Structured Process to Allocate Work."¹⁵⁸

C. Budgeting¹⁵⁹

I. Overcoming Preliminary Budgeting Challenges

Before beginning the development of a budgeting process, a general counsel should prepare themselves to meet some of the challenges associated with this process.

First, because legal work tends to be more reactive than proactive, a general counsel may find it difficult to predict the level of financial resources required for a particular fiscal year.¹⁶⁰ Thus, the

GC should be prepared to account for potential differences between the proposed budget and actual spending by informing clients of the possibility of unforeseen legal expenses.¹⁶¹ For example, Mr. Smith is careful to inform his company's Chairman that unanticipated events like litigation will change his budget projections.¹⁶² In fact, such circumstances have affected his department's actual spending in the past, but Mr. Smith has been able to address any discrepancies without incidence because his company was already aware of the possibility.¹⁶³ Moreover, tracking spending patterns and drawing correlations between these patterns and company revenue may provide support for an argument for increased budgetary resources.¹⁶⁴

Second, because management may view the legal function as an inhibitor to, rather than facilitator of, revenue growth, it may be reluctant to provide adequate funding to the legal function. According to Mr. Smith, general counsel may be able to overcome this hurdle by demonstrating that "spending a little bit more now may save you a lot more later."¹⁶⁵ For example, when proposing retention of outside counsel to update an outdated company policy, Mr. Smith worked to convince management that investing in the update would protect the company from potential costly legal actions in the future.¹⁶⁶

2. Developing a Budgeting Process

Although the unpredictability of legal expenditures (as discussed in subsection V(c)(11)) may make budgeting a particularly difficult task for general counsel, this unpredictability can be mitigated through a variety of measures, which are discussed in the subsections below.

a. Accounting for Specific Matters

Because a large portion of a typical legal function's expenditures consists of costs incurred on specific matters, a general counsel should develop a method of calculating budgets for these individual matters. In so doing, the general counsel should account for the following budget drivers:¹⁶⁷

- Anticipated hours, rates and expenses (out-of-pocket, pass through, and third party) of a legal matter;
- The roles and responsibilities of each outside and in-house legal counsel;
- Jurisdictional or other regional considerations that may impact cost;
- Matter inception date and anticipated life expectancy;
- The matter phase; and
- Anticipated strategy for resolving the matter.

A general counsel may want to account for these factors through use of a standard template. Used properly, such a template "provides for consistency among like matters, facilitates consolidation into the master budget, and provides the necessary data for reports and metrics."¹⁶⁸

b. Factoring-In Spending

Factoring past expenditures into the budgeting process can increase a general counsel's predictive power in determining future expenses. When tracking spending, a general counsel may find it helpful to look at individual expenditures (e.g., for overhead costs or specific legal matters), total legal spending, and total legal spending as a proportion of the client's total revenue (i.e., legal expenditures divided by total revenue).

Of course, a company's first general counsel naturally will not be able to track past expenditures within the initial year(s) of their employment. In light of this, a general counsel may want to look at spending patterns at organizations of comparable size, organizations within the same industry, or at national averages for legal function expenditures.

The following charts display legal department spending according to industry.

Total 2010 Internal Law Department Expenditures¹⁶⁹

	Internal Law Department Expenditures (not including outside counsel, insurance or liability payments)									
Primary Industry	< \$500,000	\$500,000 - \$999,999	\$1 - \$2.4 million	\$2.5 - \$4.9 million	\$5 - \$9.9 million	\$10 - \$19.9 million	\$20 - \$49.9 million	\$50 million or more	Average	Median
Accommodation/ Food Services	27%	27%	0%	18%	0%	9%	9%	9%	\$4,991,944	\$1,000,000
Construction & Engineering	44%	33%	22%	0%	0%	0%	0%	0%	\$3,215,290	\$1,200,000
Educational Services	35%	15%	30%	10%	5%	5%	0%	0%	\$1,681,131	\$975,000
Energy	24%	20%	36%	8%	0%	8%	4%	0%	\$170,453,830	\$1,000,000
Finance & Banking	44%	33%	11%	11%	0%	0%	0%	0%	\$5,462,978	\$1,050,000
Health Care /Social Assistance	38%	23%	23%	8%	0%	0%	8%	0%	\$4,154,130	\$592,500
Information Technology/ Software/ Internet Related Services	0%	0%	100%	0%	0%	0%	0%	0%	\$2,024,921	\$700,000
Insurance	33%	0%	33%	0%	0%	0%	0%	33%	\$24,490,896	\$750,000
Manufacturing	28%	17%	28%	11%	0%	6%	11%	0%	\$1,882,946	\$750,000
Not for Profit Organization	26%	22%	31%	11%	2%	4%	2%	2%	\$931,250	\$525,000
Pharmaceuticals/ Medical Devices	25%	13%	38%	13%	13%	0%	0%	0%	\$4,135,763	\$1,000,000
Professional, Scientific and/ or Technical Services	43%	25%	18%	7%	0%	5%	0%	2%	\$696,245	\$500,000
Real Estate/ Rental and Leasing	58%	17%	25%	0%	0%	0%	0%	0%	\$1,552,857	\$900,000
Retail Trade	38%	15%	15%	23%	0%	8%	0%	0%	\$2,750,849	\$1,050,000
Service Company and Organization	25%	17%	25%	8%	8%	8%	4%	4%	\$1,381,893	\$650,000
Telecommunications	50%	33%	17%	0%	0%	0%	0%	0%	\$4,279,776	\$1,150,000
Wholesale Trade/ Distribution	35%	22%	29%	5%	5%	3%	2%	0%	\$2,977,284	\$750,000

Total 2010 Outside Counsel Expenditures¹⁷⁰

Primary Industry	Outside Counsel Expenditures (including fees, expenses and expert fees)									
	< \$500,000	\$500,000 - \$999,999	\$1 - \$2.4 million	\$2.5 - \$4.9 million	\$5 - \$9.9 million	\$10 - \$19.9 million	\$20 - \$49.9 million	\$50 million or more	Average	Median
Accommodation/ Food Services	17%	17%	28%	6%	11%	11%	11%	0%	\$5,518,889	\$1,450,000
Construction & Engineering	27%	14%	18%	27%	0%	5%	9%	0%	\$3,838,275	\$2,000,000
Educational Services	37%	16%	26%	11%	5%	5%	0%	0%	\$2,121,457	\$850,000
Energy	30%	13%	26%	4%	4%	9%	9%	4%	\$439,742,260	\$1,000,000
Finance & Banking	33%	11%	21%	16%	11%	5%	0%	4%	\$15,205,944	\$1,100,000
Health Care/ Social Assistance	38%	15%	26%	8%	3%	3%	5%	3%	\$4,914,439	\$700,000
Information Technology/ Software /Internet Related Services	43%	9%	25%	7%	9%	3%	3%	0%	\$2,316,360	\$700,000
Insurance	52%	8%	10%	10%	4%	10%	4%	0%	\$3,589,077	\$400,000
Manufacturing	18%	13%	22%	21%	6%	11%	8%	1%	\$5,800,107	\$2,000,000
Pharmaceuticals/ Medical Devices	21%	17%	25%	13%	8%	0%	4%	13%	\$29,080,167	\$1,900,000
Real Estate/ Rental and Leasing	31%	4%	27%	12%	19%	4%	4%	0%	\$4,095,769	\$1,313,000
Retail Trade	10%	35%	29%	13%	6%	6%	0%	0%	\$2,311,031	\$1,100,000
Service Company and Organization	53%	5%	21%	5%	0%	11%	5%	0%	\$2,971,334	\$400,000
Telecommunications	29%	10%	29%	19%	5%	5%	5%	0%	\$4,146,926	\$1,500,000
Wholesale Trade/ Distribution	29%	18%	24%	18%	6%	6%	0%	0%	\$2,151,040	\$1,000,000

The following chart displays legal department spending in accordance with size.

Total 2010 Internal Law Department Expenditures¹⁷¹

Internal Law Department Expenditures (not including outside counsel, insurance or liability payments)											
		< \$500,000	\$500,000 - \$999,999	\$1 - \$2.4 million	\$2.5 - \$4.9 million	\$5 - \$9.9 million	\$10 - \$19.9 million	\$20 - \$49.9 million	\$50 million or more	Average	Median
Number of Employees	< 100	62%	24%	10%	1%	2%	0%	0%	1%	\$10,704,539	\$350,000
	100 - 499	51%	23%	20%	4%	1%	1%	1%	0%	\$1,047,005	\$466,000
	500 - 999	36%	28%	26%	6%	3%	1%	0%	0%	\$1,156,016	\$600,000
	1,000 - 4,999	22%	23%	36%	11%	3%	3%	2%	0%	\$20,264,354	\$1,000,000
	5,000 - 9,999	13%	17%	29%	21%	10%	7%	3%	0%	\$3,797,532	\$1,650,000
	10,000 - 49,999	6%	12%	30%	23%	10%	11%	6%	1%	\$5,848,735	\$2,500,000
	50,000 - 99,999	8%	0%	8%	25%	0%	8%	33%	17%	\$28,541,680	\$11,500,000
	100,000+	5%	5%	15%	5%	15%	15%	15%	25%	\$38,700,437	\$12,500,000
Annual Revenue (millions)	< \$25	70%	23%	5%	0%	1%	0%	0%	0%	\$441,824	\$270,000
	\$25-\$49	60%	24%	13%	2%	2%	0%	0%	0%	\$660,387	\$400,000
	\$50-\$99	52%	29%	14%	5%	0%	0%	0%	0%	\$713,700	\$480,000
	\$100-\$299	45%	24%	26%	3%	2%	1%	0%	0%	\$967,664	\$500,000
	\$300-\$499	30%	32%	34%	3%	0%	0%	1%	0%	\$1,153,818	\$650,000
	\$500-\$999	21%	28%	32%	14%	4%	2%	1%	0%	\$1,843,372	\$1,000,000
Annual Revenue (billions)	\$1-\$1.9	9%	14%	37%	23%	8%	6%	1%	1%	\$54,398,715	\$2,000,000
	\$2-\$2.9	2%	7%	48%	30%	9%	2%	2%	0%	\$3,120,032	\$2,000,000
	\$3-\$3.9	0%	11%	33%	28%	11%	11%	6%	0%	\$5,458,333	\$3,000,000
	\$4.0 +	4%	6%	20%	12%	15%	17%	16%	10%	\$29,714,272	\$8,000,000
Organization Type	Public	11%	17%	32%	17%	8%	7%	5%	4%	\$23,877,536	\$1,600,000
	Private	45%	25%	22%	4%	2%	1%	1%	0%	\$4,308,250	\$500,000
	Non-Profit	40%	19%	26%	6%	4%	6%	0%	0%	\$1,748,539	\$750,000

Total 2010 Outside Counsel Expenditures¹⁷²

		Outside Counsel Expenditures (including fees, expenses and expert fees)									
		< \$500,000	\$500,000 - \$999,999	\$1 - \$2.4 million	\$2.5 - \$4.9 million	\$5 - \$9.9 million	\$10 - \$19.9 million	\$20 - \$49.9 million	\$50 million or more	Average	Median
Number of employees	< 100	61%	15%	15%	3%	3%	2%	1%	0%	\$1,304,047	\$300,000
	100 - 499	57%	17%	16%	5%	3%	2%	0%	0%	\$1,172,642	\$375,000
	500 - 999	33%	17%	24%	14%	6%	2%	5%	0%	\$2,891,815	\$950,000
	1,000 - 4,999	21%	16%	31%	18%	8%	4%	2%	0%	\$50,250,896	\$1,500,000
	5,000 - 9,999	10%	19%	19%	29%	11%	11%	2%	0%	\$3,934,029	\$2,500,000
	10,000 - 49,999	4%	11%	23%	12%	11%	16%	14%	9%	\$14,301,734	\$4,000,000
	50,000 - 99,999	9%	0%	18%	9%	0%	9%	36%	18%	\$58,933,814	\$20,000,000
100,000+	11%	6%	6%	6%	17%	11%	17%	28%	\$64,682,667	\$13,250,000	
Annual Revenue (millions)	< \$25	71%	13%	12%	1%	1%	0%	1%	0%	\$1,012,327	\$250,000
	\$25-\$49	68%	14%	12%	2%	2%	3%	0%	0%	\$962,395	\$200,000
	\$50-\$99	62%	20%	12%	4%	1%	0%	0%	0%	\$592,397	\$255,000
	\$100-\$299	38%	18%	27%	8%	8%	2%	0%	0%	\$1,559,577	\$725,000
	\$300-\$499	20%	19%	39%	13%	5%	3%	1%	0%	\$2,068,049	\$1,200,000
	\$500-\$999	18%	19%	26%	23%	7%	4%	3%	1%	\$3,905,413	\$1,400,000
Annual Revenue (billions)	\$1-\$1.9	8%	10%	32%	31%	4%	8%	4%	1%	\$144,723,939	\$2,400,000
	\$2-\$2.9	2%	18%	23%	23%	18%	11%	5%	0%	\$5,359,267	\$2,800,000
	\$3-\$3.9	0%	21%	26%	11%	16%	21%	5%	0%	\$5,726,316	\$2,500,000
	\$4.0 +	8%	6%	8%	10%	12%	18%	21%	17%	\$34,918,484	\$11,250,000
Organization Type	Public	11%	11%	26%	21%	10%	10%	7%	6%	\$55,843,019	\$2,700,000
	Private	44%	20%	18%	9%	4%	2%	2%	0%	\$2,005,843	\$500,000
	Non-Profit	54%	8%	19%	8%	3%	3%	4%	0%	\$2,309,299	\$400,000

Finally, in regards to legal spending across all industries and sizes, the median total legal spending for law departments in 2010 was \$24 million in the U.S. and \$33 million worldwide, and the national average legal spending to revenue ratio was 0.40 percent.¹⁷³ These numbers are lower than in previous years, as law departments are cutting their total spending. This decrease results from a reduction in budgets for outside counsel spending, although there are increasing budgets for inside legal spending due to an increased focus on “optimizing the use of internal resources through organizational and operational effectiveness.”¹⁷⁴ However, spending on outside legal counsel continues to consume the majority of many legal functions’ budgets.¹⁷⁵

c. Planning for Regular Budget Updates

A general counsel can mitigate unpredictability by instituting an update schedule that accounts for material alterations to the budget.¹⁷⁶ A general counsel may wish to preface this by alerting management to the possibility of unforeseen expenditures prior to initial calculation of the budget (as discussed in sub-section V(C)(1)).

3. Sticking to the Budget

After developing a process for budgeting, a general counsel should develop measures for sticking to the budget. In general, a general counsel should aim to keep expenditures from going more than 5% over or under the projected budget.¹⁷⁷

Where a general counsel has successfully developed a multi-member legal department, they can enforce adherence to the budget by:¹⁷⁸

- Requiring submission of periodic reports and updates by members of the legal department;
- Reviewing these reports and noting any substantial variances;
- Following up on notable variances with the issuer of the report by discussing reasons for the variance, proposals for getting back on track, and/or adjustment of the budget;
- Taking budget adherence or variance into consideration during performance reviews and, where appropriate, rewarding adherence.

Ultimately, a general counsel should be aware that the company’s upper management will ultimately hold the internal legal function accountable for impermissible budget variances. In light of this, it is incumbent on a general counsel to enforce adherence to the budget by outside counsel and by any other members of the legal department.¹⁷⁹

VI. Managing Outside Counsel

A. Engaging Outside Counsel

I. Assessing Whether a Matter should be Outsourced or Handled Internally

Perhaps one of the biggest challenges that all in-house counsel face is deciding whether a legal matter should be handled internally or should be outsourced. This is a particularly difficult issue for a new general counsel, given that the company's expectation in hiring a GC is often to stop outsourcing the legal work. Thus, the GC must be sensitive to not only the cost of outsourcing, but also to the image that outsourcing legal work conveys to the company/client. The GC will need to balance these sometimes competing interests.

A useful first step in assessing whether to outsource a legal matter is to determine whether the legal department has sufficient "knowledge and manpower to handle a task [internally]," and whether "the work adds value to the company."¹⁸⁰ If the legal department is unable to complete the task, or if the costs of doing so internally outweigh the costs of outsourcing, then it should assign the task to outside counsel. A legal department should try to minimize the cost of outside counsel retention, through a variety of approaches, such as selecting solo practitioners or temporary attorneys instead of major law firms and/or negotiating value-based fee structures (as opposed to hourly-rate fee structures).¹⁸¹

a. Preliminary Guidelines

Because a general counsel will often lack the time to assess in detail whether the costs of outsourcing outweigh the benefits, they should develop a general preliminary approach to how particular tasks should be handled. For example, Catherine Valentine, corporate counsel at Logitech, recommends that legal departments assign high-volume, repetitive tasks to in-house attorneys and overflow work of this nature to solo practitioners.¹⁸² She suggests that outside counsel be utilized only where in-house attorneys lack the experience and judgment to complete a particular task.¹⁸³ Maria Pasquale, Chief Counsel at Celgene Corp., suggests that this latter category may include litigation and intellectual property matters.¹⁸⁴

b. Cost Evaluation Measures

Where a general counsel has not yet developed a sense for determining when using outside counsel will be most cost-effective, they should use measures that will assist in analyzing the cost. These include market price comparison and cost reduction measures.

- **Market Price Comparison.** A general counsel should develop a method of determining whether the amount sought by a particular firm or practitioner for a particular service reflects the market price for this service. To this extent, they should ascertain the average price charged for this service. They should also look into how this price fits

with current pricing trends by, for example, reviewing past bills for similar or equivalent work.¹⁸⁵

- **Cost Reduction Measures.** A general counsel should also develop a series of measures when engaging outside counsel that could result in reduction of costs. When determining whether a task should be outsourced, a general counsel can then evaluate outside counsel based partly on the degree to which they are willing to accept these measures. These measures may include:
 - **Alternative Price Structures.** Alternative pricing structures refer to payment methods that differ from the traditional billable hours model, and their implementation into contracts with outside counsel may help reduce expenditures. Alternative pricing options include:¹⁸⁶
 - Fixed Fees – fixing a definite price to a distinct piece of work;
 - Capped Fees Under an Hourly Rate – placement of a ceiling on what the client will pay the firm for a particular piece of work or for work on a particular matter;
 - Flat Fee Per Month/Quarter – fixing a definite price for services delivered during the course of a specified period;
 - Portfolio Fixed Fee – assignment of large portfolios of work for a fixed fee;
 - Per Capita Fees/Ad Agency Model – Paying for the use of the full services of a particular person or team of people;
 - Performance-Based Holdback – contingency of a portion of compensation received upon achieving a pre-defined outcome or success metrics; and
 - Pure Contingency – complete contingency of compensation paid upon success in the legal matter.
- **Budget Guidelines.** A detailed budget may include, among other points, the following:
 - Identification of planned tasks;
 - Forecast of staffing numbers and identification of staff members in terms of experience; and
 - Projected timeframe for completing the project.
- **Workflow Control Guidelines.** These guidelines provide for a means of determining the requisite experience level (e.g., that of a paralegal, junior associate, senior associate, or partner) necessary for a particular task, and the degree to which a general counsel is able to dictate task delegation based upon these determinations.¹⁸⁷
- **Cost Control Guidelines.** These guidelines can be tailored to provide caps or exclude charges for routine expenses such as photocopying, faxing, printing, telephone usage,

and online research.

2. Evaluating and Selecting Outside Counsel

In deciding which firm or practitioner to use for a particular matter, a general counsel should consider cost (as discussed above) and the extent to which a particular firm or practitioner will perform satisfactorily. Quality of performance can be measured by assessing the degree to which outside counsel will meet the expectations of the general counsel. To this extent, a general counsel should develop a set of expectations that they expect outside counsel to meet. These may include the following:¹⁸⁸

- Effectiveness in achieving a favorable outcome for the client;
- Transparency and open communication;
- Overall business perspective and thorough understanding of the client company's specific industry and business; and
- Timeliness in preparation and filing of materials.

Additionally, in conducting this evaluation and selection process, a general counsel should consider adopting a strategy of convergence (i.e., reducing the number of outside law firms with which the legal department regularly works),¹⁸⁹ which allows for greater control over outside counsel spending.¹⁹⁰

B. Supervising Outside Counsel

Along with selecting which firms to retain as outside counsel, the general counsel must draft a series of documents that will establish the framework for managing outside counsel. This includes preparing outside counsel guidelines and an outside counsel retention policy.

I. Preparing Outside Counsel Guidelines

A general counsel should draft a set of guidelines that govern retention of and relationship with outside counsel. These guidelines ensure that clients and/or law department staff interact with outside counsel in an appropriate manner. Although a general counsel should draft guidelines adapted to the unique needs and culture of their respective clients, guidelines should generally address the following:¹⁹¹

- **Engagement with Outside Counsel** – the guidelines should limit who can engage outside counsel to those approved by the general counsel and restrict discussions of legal matters with outside counsel to law department attorneys;

- **Conflicts of Interest** – a general counsel should develop a policy regarding outside counsel’s representation of other clients with adverse interests;
- **Staffing Matters** – the guidelines should govern the number of outside counsel staff members permitted to work on a particular legal matter and promote diversity among this staff;
- **Confidentiality** – the guidelines should also restrict the dissemination of nonpublic information;
- **Ethical Conduct** – there should be a policy regarding the ethical expectations for both in-house attorneys and the outside counsel with whom they interact;
- **Malpractice Insurance Coverage** – the guidelines should require that outside counsel maintain malpractice insurance;
- **Managing Litigation** – a general counsel should lay down guidelines for file retention, discovery, and early case assessment; and
- **Invoicing** – There should be guidelines regarding invoicing procedures, budget considerations, requests for rate increases, reimbursement of expenses, non-billable time, etc.

Once completed, these guidelines should be sent both to company employees and outside counsel that the company plans to retain for future legal matters. These guidelines should also accompany any future engagement letters retaining a firm for legal services. A general counsel should ask outside counsel to sign and return the guidelines within a reasonable timeframe.¹⁹²

2. Drafting An Outside Counsel Retention Agreement

Like outside counsel guidelines, outside counsel retention agreements govern engagement with outside counsel. They are often drafted in the form of a letter and addressed to outside counsel, and may contain terms addressing:¹⁹³

- Billing cycles and formats;
- Project budgets;
- Approval for change of attorneys;
- Approval for change of rates;
- Limits on costs and travel expenses;
- Discounts from standard hourly rates (e.g., for early payment);

- Client ownership of work product;
- Early case assessments;
- Alternative dispute resolution;
- Technology requirements; and
- Minimum required associate experience.

3. Implementing Strategies to Manage Outside Counsel

The management of outside counsel that is retained is also very important and requires the development of metrics and practices by the law department.

a. Developing Metrics to Evaluate Effectiveness

In order to evaluate the effectiveness of outside counsel, the general counsel should develop and utilize a series of metrics that can assist in quantifying and comparing performance. These can be based on the following:¹⁹⁴

- Rate of overall success in achieving client goals (e.g., tracking numbers of “wins,” frequency with which outcomes within expected parameters are achieved, and/or frequency with which matters are resolved within particular timeframes, etc.);
- Scoring by members of the legal department of outside counsel in terms of creativity, responsiveness, efficiency, willingness to engage in knowledge-sharing, etc.;
- Comparative costs (i.e., comparing the rates of a particular firm to those of others for producing a particular piece of work);
- Percentage of matters for which a firm submitted a full-year budget on time;
- Percentage and frequency of matters for which outside counsel submitted updates of expenditure forecasts;
- Actual spending as a percentage of budgeted spending for particular matters;
- Average blended rate for all firm attorneys who billed to the client; and
- Frequency with which outside counsel submit monthly reports, early case assessments, after action reviews/lessons learned, etc. for particular matters; and
- Degree to which a particular firm adheres to outside counsel guidelines and the outside counsel retention agreement.¹⁹⁵

b. **Developing Management Practices**

It is also incumbent on the first general counsel to formulate and implement practices for overseeing and managing projects undertaken by outside counsel. Some best practices include:

- **Designating in-house relationship managers for core law firms.** These relationship managers can serve as ambassadors to firms with which the client frequently works, and to this extent, can manage the performance of these firms by scheduling periodic check-ins or annual meetings to review outside counsel performance.
- **Appointing business managers to help with outside counsel management procedures.** A general counsel can solicit assistance from business managers in completing tasks with which attorneys may be less experienced, such as review of outside counsel budgets, forecasts, and invoices, and tracking of performance scorecards.
- **Instituting regular early case assessments.** Engaging in early case assessment to develop an overview of a particular legal matter can provide inside counsel with insight regarding the overall objectives and projected legal costs. In turn, inside counsel are then better equipped to communicate specific goals to outside counsel and to ensure that outside counsel expenditures are reasonable in light of these goals.
- **Developing a method for reviewing outside counsel expenditures.** Such a method could entail, for example, tracking expenditures by means of spreadsheets and comparing these expenditures to the market value for comparable services.

VII. Developing the Law Department

A. Staffing the New Law Department

As workload increases, a general counsel may find it necessary to increase staff, which may entail hiring additional lawyers, paralegals, personnel, and technology administrators. To this extent, a general counsel should be ready to justify expansion to management, determine who to hire, and develop strategies for attracting and retaining staff.

I. Hiring Attorneys

a. **Justifying expansion to management**

Before hiring additional staff members, a general counsel must often demonstrate a need for more staff to management. In-house counsel should convey to management that the increase in productivity resulting from expansion justifies the additional expenditures.¹⁹⁶

Some of the arguments that can be used to persuade management to hire additional in-house counsel are that they:¹⁹⁷

- Understand the company better than outside counsel;
- Can participate in strategic/business planning;
- Are better than clients at managing outside counsel;
- Have better relationships with the client;
- Are more cost effective in the long term;
- Are accessible to the client.
- Provide for easier maintenance of costs;
- Have interests and objectives that are more closely aligned with the company's objectives as compared to outside counsel; and
- Understand the business and nuances of the client's particular industry.

However, it may be difficult in practice to quantify potential cost savings created by expansion. In light of this, Nicolas Vanasse, Chief Legal Officer at Aveos Fleet Performance, Inc., recommends finding benchmarking data on sizes of typical legal departments and tracking the number of hours legal department staff members are working so as to demonstrate the risk of these employees burning out.¹⁹⁸ To assist in this effort, the following tables from the 2011 ACC Chief Legal Officer Survey display correlations between numbers of attorneys and numbers of overall employees, annual revenue, type of organization, and type of industry:

Attorney Staffing Levels by Company Size and Type¹⁹⁹

		Number of lawyers						Average	Median
		Solo	2 to 5	6 to 20	21 to 50	51 or more			
Number of employees	< 100	67%	28%	4%	0%	2%	3.60	1	
	100-499	45%	48%	7%	0%	0%	2.86	2	
	500-999	29%	56%	14%	1%	0%	3.45	3	
	1,000-4,999	20%	49%	29%	2%	0%	5.08	3	
	5,000-9,999	13%	38%	39%	9%	1%	8.91	5	
	10,000-49,999	5%	24%	43%	19%	9%	23.31	12	
	50,000-99,999	0%	6%	29%	24%	41%	79.35	41	
	100,000+	0%	7%	11%	25%	57%	91.18	55	
Annual revenue (millions)	< \$25	68%	29%	2%	0%	2%	3.24	1	
	\$25-\$49	63%	32%	5%	0%	0%	1.82	1	
	\$50-\$99	50%	44%	7%	0%	0%	2.24	2	
	\$100-\$299	44%	47%	10%	0%	0%	2.67	2	
	\$300-\$499	30%	58%	12%	0%	0%	3.06	3	
	\$500-\$999	16%	55%	28%	1%	0%	4.62	3	
Annual revenue (billions)	\$1-\$1.9	5%	49%	44%	2%	0%	6.79	5	
	\$2-\$2.9	2%	43%	49%	6%	0%	8.80	6	
	\$3-\$3.9	3%	28%	41%	14%	14%	23.62	9	
	\$4.0 +	3%	9%	33%	29%	25%	50.48	25	
Organization Type	Public	12%	41%	31%	9%	7%	19.51	5	
	Private	46%	41%	11%	2%	1%	4.03	2	
	Non-Profit	33%	44%	20%	3%	1%	5.41	3	

Attorney Staffing Levels by Primary Industry²⁰⁰

Primary Industry	Number of Lawyers						Average	Median
	Solo	2 to 5	6 to 20	21 to 50	51 or more			
Accommodation/Food Services	44%	28%	11%	6%	11%	10.94	2	
Arts, Sports & Entertainment/Recreation	53%	24%	24%	0%	0%	3.24	1	
Aviation/Aerospace	39%	22%	28%	6%	6%	14.44	2	
Biotechnology/Life Sciences	33%	50%	11%	0%	6%	8.94	2	
Construction & Engineering	31%	36%	25%	6%	3%	7.53	3	
Educational Services	40%	36%	24%	0%	0%	4.20	2	
Energy	26%	29%	34%	9%	3%	9.03	4	
Finance & Banking	29%	44%	23%	2%	1%	9.22	2	
Health Care/Social Assistance	33%	48%	13%	2%	3%	6.32	3	
Information Technology/Software /Internet Related Services	32%	45%	20%	2%	0%	4.38	2	
Insurance	35%	37%	11%	10%	8%	17.06	3	
Manufacturing	28%	35%	26%	8%	3%	9.12	3	
Not for Profit Organization	33%	52%	14%	0%	0%	3.33	2	
Oil & Gas	22%	52%	13%	4%	9%	18.26	3	
Pharmaceuticals/Medical Devices	36%	24%	27%	9%	3%	21.30	4	
Professional, Scientific and/or Technical Services	18%	55%	27%	0%	0%	3.50	3	
Real Estate/Rental and Leasing	26%	46%	23%	5%	0%	5.26	2	
Retail Trade	16%	55%	18%	7%	5%	9.68	3	
Service Company and Organization	38%	38%	19%	4%	0%	4.23	2	
Telecommunications	17%	48%	17%	7%	10%	17.83	4	
Transportation & Warehousing	37%	26%	11%	16%	11%	15.95	3	
Wholesale Trade/Distribution	50%	38%	13%	0%	0%	3.54	2	

b. Hiring the Right Attorneys

Once a general counsel is able to establish that the department needs to expand, he or she needs to decide what to look for in potential hires. A general counsel may want to focus on the following characteristics:

- Technical competency and experience;
- Compatibility with company culture;
- Business savvy; and
- Project management skills.

A general counsel should take advantage of effective interviewing strategies to ascertain whether a potential hire has these characteristics. For example, when interviewing candidates for positions at Aveos, Mr. Vanasse determines the extent of their business savvy by asking about the commercial side of candidates' previous companies, as well as what they know about Aveos' industry and its unique business and legal challenges.²⁰¹ Ms. Pasquale of Celgene Corporation allows other attorneys in her office to screen candidates for technical competency, while she focuses on whether "candidates fit in with the company culture."²⁰²

c. An Alternative to Full-Time Hiring: Project Attorneys/Legal Support Professionals

In order to reduce the costs associated with full-time staffing, general counsel may engage in flexible staffing by hiring attorneys on an interim basis. This entails contracting attorneys to work with members of the legal department on specific projects and retaining them only until such projects are completed. These project attorneys (or legal support professionals) are hired where they possess expertise integral to particular projects and where full-time staff members lack this expertise²⁰³.

Flexible staffing provides several advantages, including:

- Decreased costs as project attorneys are paid only on an interim basis;
- Increased efficiency as specific skill sets are utilized for specific projects; and
- Increased employee morale, as the jobs of staff members are not threatened by recruitment of additional full-time staff members.

When hiring attorneys on a project basis, it is important that general counsel establish good relationships with these attorneys. They can do so by²⁰⁴:

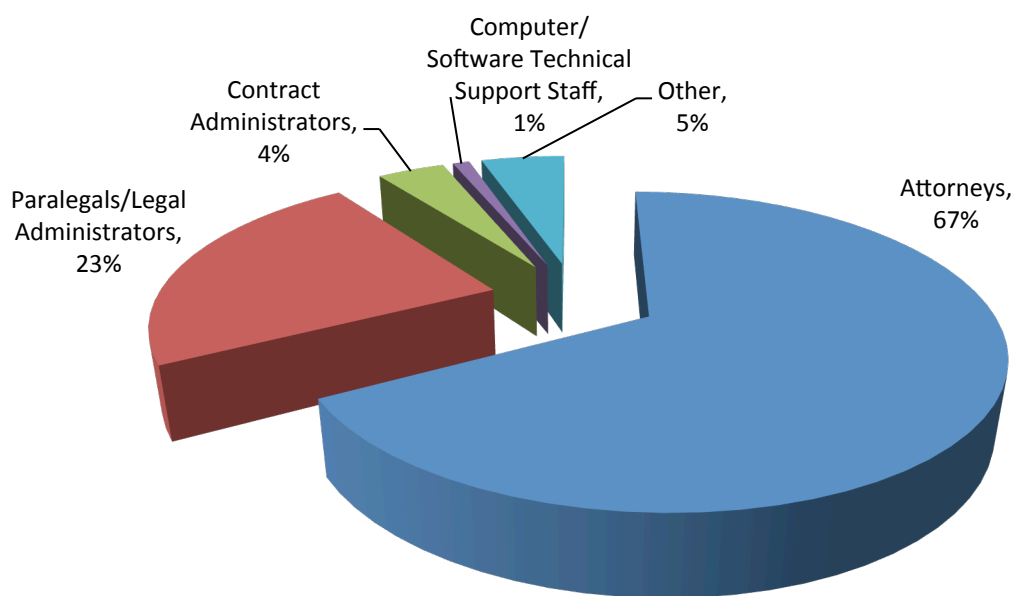
- Familiarizing them with the organization, introducing them to key people, and identifying resources at their disposal;
- Outlining their job responsibilities and job titles;
- Preparing a dedicated work area or office for use by the attorneys prior to the commencement of the project; and
- Maintaining frequent communication by meeting regularly with the project attorneys to receive status reports, clarify responsibilities, and review the scope of their authority.

2. Hiring Other Staff Members

Expansion of the legal department does not always entail the hiring of attorneys. Often, paralegals, secretaries, administrators, and technology experts can fill particular needs at costs lower than those of hiring additional attorneys.

The overall composition of the law department has changed very little over the last few years. Respondents to the 2011 CLO Survey report that, on average, two-thirds (67%) of their law department staff consists of lawyers. The remainder is comprised of paralegals/legal assistants (23%), contract administrators (4%), technical support (1%), and other (5%). These results are identical to 2009 and very similar to the results from 2008.²⁰⁵

What percentage of your law department staff are...



a. Paralegals

The use of paralegals is cost-effective and efficient because paralegals can often do the work of attorneys at lower costs. The functions typically performed by paralegals have expanded to include those traditionally handled by attorneys, including:²⁰⁶

- Assisting in preparation for transactional closings, depositions, hearings, and conferences;
- Conducting research, factual investigations, preparing legal documents, reviewing and organizing case files, assisting with depositions, preparing cases for trial, interviewing and communicating with clients and witnesses, etc.;
- Drafting legal documents such as contracts, real estate leases, and closing documents; and
- Organizing and tracking files for important transactions or case documents, including pleadings and research and discovery documents.

Hiring paralegals instead of attorneys to handle these tasks can help reduce expenditures by minimizing the cost pressures of lawyer career progression programs, which may impose increases in attorney salaries without corresponding increases in productivity.

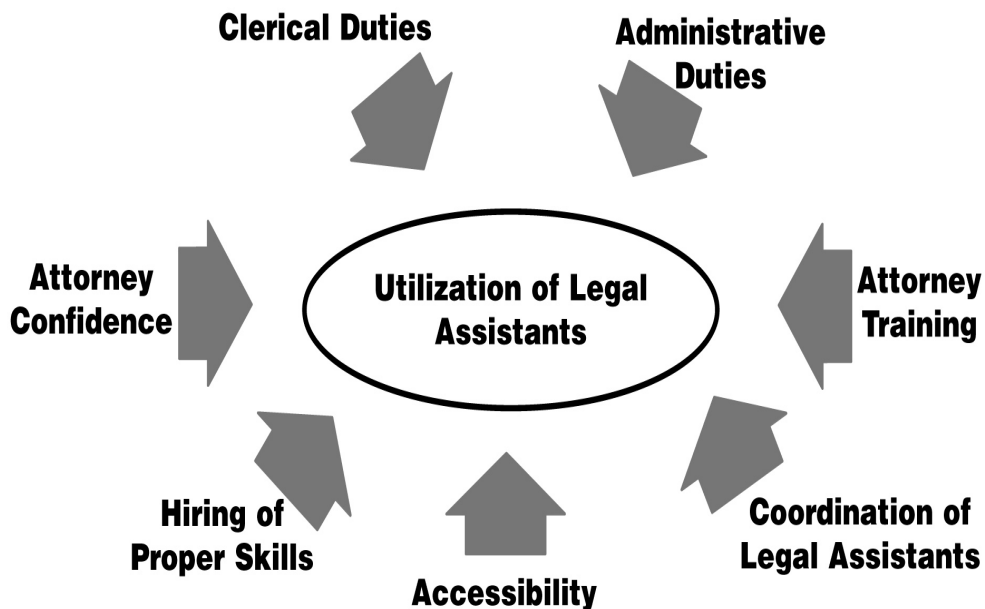
In determining how many paralegals to hire, general counsel can look both to the number of attorneys in the department and to the size (as measured in revenue) of the organization. In regards to hiring based on the number of employees, the average benchmark number for paralegals to the number of lawyers employed in-house is approximately 1 to 3.²⁰⁷

There are a number of factors that can increase or diminish the effectiveness of a paralegal program. The following chart addresses some of these factors:

Utilization of Legal Assistants

Utilization Factors

The following diagram represents the numerous factors contributing to the effective, or ineffective use of legal assistants within a department. Addressing each of these factors will result in more effective utilization of legal assistant skills.



b. Legal Secretaries

Legal secretaries can help ensure the smooth functioning of a legal department by providing support for attorneys. Highly coveted legal secretaries possess the following skills and qualifications:²⁰⁸

- Proficiency in Microsoft Office;
- Strong backgrounds in litigation and e-discovery;
- Experience in document management, legal research, time tracking, and billing software such as Concordance, CT Summation, iManage and Relativity.

Generally, the tasks of legal secretaries include:

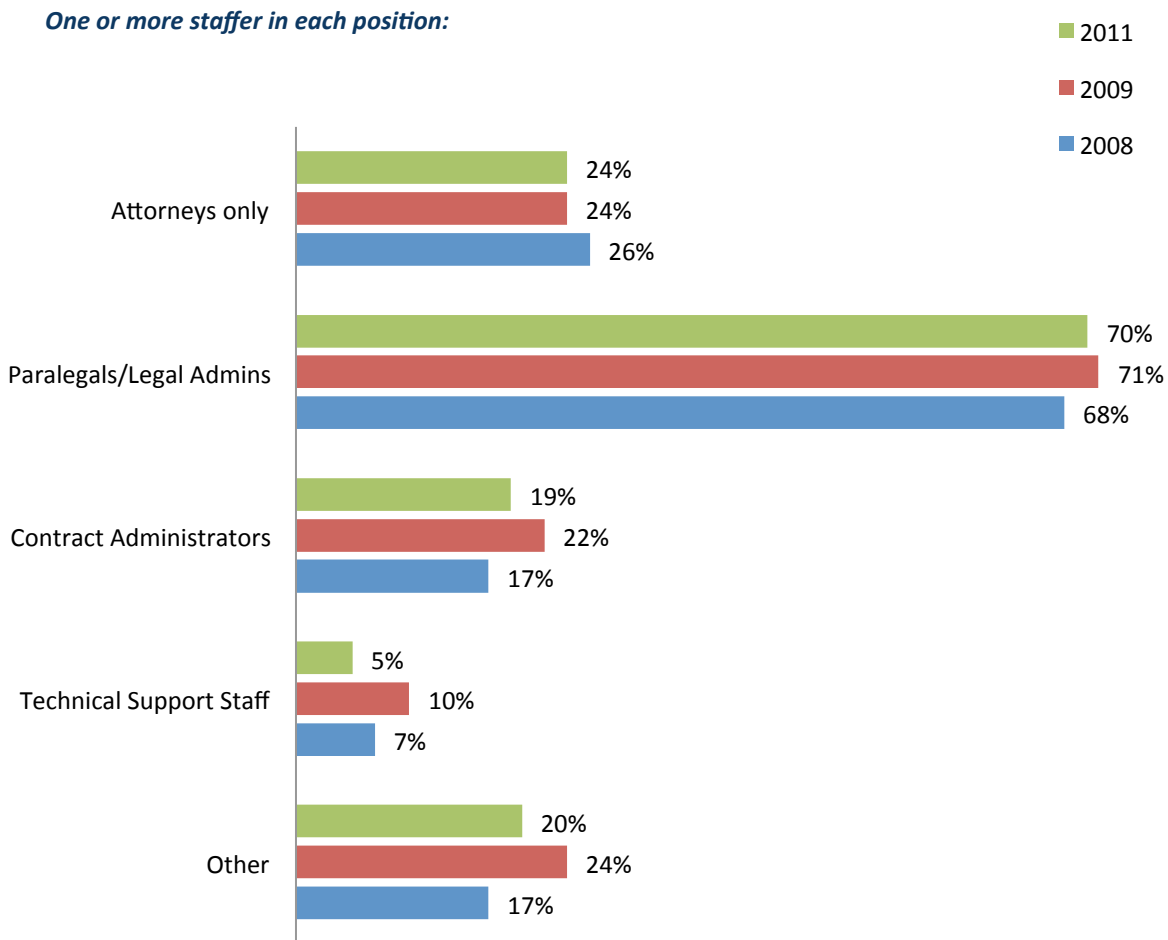
- Attending and taking notes at meetings;
- Preparing legal documents and updating transactional documents;
- Transmitting legal correspondence; and
- Completing administrative forms, organizing and maintaining case and correspondence files.

c. General Administrative Support

A general counsel must also plan for appropriate levels of administrative support. The average staffing ratio of administrative employees to lawyers is approximately 1 to 2.²⁰⁹

Close to one-fourth (24%) of respondents to the 2011 CLO Survey report that their law department staff consists of only lawyers. This percentage has not changed from 2009 but is still down slightly from the 26% reported in 2008; yet it is still not at the 22% reported in 2007. More than two-thirds (70%) indicate they have paralegals and/or legal assistants in their law department. This is just slightly down from the 71% in 2009, but is still up compared to 68% in 2008. The percentage reported in 2007 was 76%.²¹⁰

Though the number of respondents stating their offices consists of lawyers only has remained the same, fewer respondents report having various types of non-lawyer staff in their law department as compared to 2009; however, there are still more support staff than those reported in 2008. The only exception is technical support staff, which dropped from 10% in 2009 and 7% in 2008 to only 5% in 2011.²¹¹



3. Recruiting and Retaining Employees

a. Determining Appropriate Compensation

While compensation for legal department staff members remains below pre-recession levels, it is nevertheless increasing. Average salaries for in-house attorneys have risen by 1.9–3.4% from 2011 to 2012 (depending on the experience of the particular attorney), while salaries for in-house paralegals and legal secretaries have increased by .6–2.0% over this same period (also depending on experience).²¹²

Current compensation levels for legal department staff members are as follows:²¹³

Position Type	Experience	Salary
In-House Attorney	10-12 years	\$130,750-\$225,500
	4-9 years	\$96,750-\$184,000
	1-3 years	\$76,750-\$118,000
	First-Year Associate	\$64,000-\$98,250
In-House Paralegal	7+ years	\$54,750-\$83,500
	4-6 years	\$46,750-\$65,000
	2-3 years	\$40,000-\$51,500
	0-2 years	\$32,000-\$41,000
In-House Legal Secretary	7+ years	\$50,750-\$65,250
	3-6 years	\$42,250-\$54,000
	1-2 years	\$37,000-\$42,000
General Administrative	Legal Word Processor	\$40,750-\$53,750
	Document Coder	\$30,500-\$41,000
	Office Clerk	\$27,000-\$36,750
	Legal Receptionist	\$27,500-\$37,250

These salary levels reflect national averages, but true salary levels may vary by city. For example, law department employees in New York City, San Francisco, and Washington D.C. earn, respectively, 141%, 135.5% and 130% of the national average. In contrast, employees in Cleveland, Pittsburgh, and Las Vegas earn 95%, 96.2% and 94% of the national average.²¹⁴

a. Benefits of Working In-house

When recruiting new staff, a general counsel should also be prepared to sell potential hires on the benefits of working in-house. One benefit of working in-house that general counsel can tout as a recruiting tool is the opportunity for personal development and career progression. Because in-house counsel are expected to perform both legal and business functions, attorneys working in legal departments often have the opportunity to enhance their knowledge of various business operations through work on various projects or participation in meetings or presentations by other

departments. Moreover, general counsel can facilitate this development by rotating assignments among staff attorneys and thus increasing each attorney's exposure to various areas of law or business. In addition, because each member of a particular legal team may offer unique expertise, there are often ample opportunities for mutual education through the sharing of ideas or experiences within the legal department.

In addition, establishing a clear and well-defined career progression process is essential to ensuring in-house job satisfaction. A chart listing criteria for lawyer progression is included in the Appendix to this InfoPAK.

B. Technology

General counsel should also endeavor to ensure that the technology utilized by the legal department is up-to-date. Doing so involves tracking the development of, and implementing, essential technologies. If possible, a general counsel should also consider implementing more advanced, non-essential technologies. For a full discussion of these technologies, please see "Technology Primer," ACC InfoPAK (June 2011), available at <http://www.acc.com/legalresources/resource.cfm?show=19671>.

In addition to the administrative staff, there is a need for personnel to properly service the law department's technology needs. This service can be provided by the company's general information services department or, alternatively, the law department itself.

VIII. Ethics and Advocacy

A. Combining Roles as a Business Advisor and a Legal Advocate

A first general counsel must also be careful to clarify and reconcile their many roles within the company.²¹⁵ For instance, company employees may not initially understand who qualifies as the general counsel's corporate client.²¹⁶ Clients must learn that the GC does not represent them individually, but rather represents the company as a whole.²¹⁷

A first general counsel should also be particularly careful when drawing the line between giving legal advice and giving business advice.²¹⁸ When a GC gives legal advice to a client, the communications enjoy the protection of the attorney-client privilege, however if they step into the role of management and offer business advice on a question, they forfeit that protection.

In today's corporation, a GC often plays a unique role; not only is she looked to as the company's legal officer, but she may also be expected to take part in business discussions or operations.²¹⁹ A GC may frequently serve as a sounding board regarding business activities, whether at the request of the CEO or some other officer, or as a member of the company's top management team.²²⁰ When performing this dual role as business advisor and legal advocate, a GC should be careful to avoid inadvertently waiving attorney-client privilege. The risks of such dual roles are discussed more fully in "Compliance Officer and General Counsel: Benefits and Pitfalls of Combining Roles,"

ACC InfoPAK (Sept. 2010), available at <http://www.acc.com/legalresources/resource.cfm?show=995124>.

B. Attorney-Client Privilege

Attorney-client privilege also presents unique challenges to a company's general counsel. Unlike their law firms peers, in-house attorneys cannot always assume that by virtue of their being a lawyer the attorney-client privilege will be upheld. GCs generally face two major challenges to the assertion of the privilege:

- The first regards their *role* (i.e., whether they are acting in the capacity of an attorney or a business person). Privilege may not apply where an attorney is found to be acting in a non-legal role. See *Georgia-Pacific Corp. v. GAF Roofing Mfg. Corp.* NO. 93 Civ. 5125 (RPP) (S.D.N.Y. Jan. 25, 1996) (Ordering in-house counsel to respond to deposition questions, because his actions as negotiator of contract terms constituted business judgments divorced from legal advice and therefore were not protected by attorney-client privilege under New York law.)
- The second regards their *advice* (i.e., whether it was legal advice or business advice). Note, however, that in-house counsel's legal advice to her board of directors may be privileged even though the board uses such legal advice to make business decisions. See *Kelly v. Ford Motor* 110 F.3d 954 (3d Cir. 1997) (General counsel's legal advice provided to Board is protected by attorney-client privilege even if used as basis of business decision, and work product produced by agents of company's attorneys is protected even if developed for, or in anticipation of, litigation in another suit).

The seminal case on the attorney-client privilege for in-house counsel is *Upjohn Co. v. United States*, 449 U.S. 384 (1981). The following elements make up the *Upjohn* rule for applying the privilege in the in-house setting:

- a) communication between counsel and employee;
- b) at the direction of the employee's superior so corporation could obtain legal advice;
- c) employee aware that communication is for the purpose of seeking legal advice;
- d) communication concerned matters within the scope of employee's duties;
- e) information sought not available from the upper echelon management and needed to supply legal advice; and
- f) communication was confidential when made and kept confidential thereafter.²²¹

C. Multijurisdictional Practice

Another potential hurdle for a general counsel is the fact that each state's Right to Practice Rules may affect the ability of in-house attorneys to adequately represent the client in different jurisdictions. The current rules may prevent an attorney admitted to the bar in a particular state from working as the GC for a corporation situated in a different state or from representing the client's interests another state. A first general counsel can review the "Right to Practice Rules" for each US jurisdiction on ACC's Advocacy webpage, at <http://advocacy.acc.com>.

Many argue that these jurisdictions' various rules governing the practice of law by in-house corporate counsel amount to a patchwork of half measures, which no longer have a rational basis, do not serve the public interest, undermine attorney mobility and impinge on the ability of corporations to hire the most qualified attorneys.²²² For this reason, ACC and others regularly advocate for broader and more expeditious rules on multijurisdictional practice.²²³ Until such time as changes can be effected however, a GC must analyze whether there are any jurisdictional conflicts or issues concerning their licenses and the company's business needs.

IX. Sample Forms

A. General Counsel Job Description

Mission

As a senior vice president of XYZ Company and a member of the executive management team, the general counsel is functionally responsible for legal affairs for the entire enterprise.

The general counsel acts as the legal advisor to the board of directors, the chairman of the board and chief executive officer, the president, chief operating officer, the executive vice president, and other senior executives of XYZ Company.

Pursuant to the "Management Control Process," he/she has the responsibility and obligation to identify, develop, communicate, and monitor policies which will ensure compliance with law by the entire enterprise.

The incumbent has the responsibility for assuring the availability, continuity and quality of competent, timely, and cost-efficient legal services throughout the function.

Role

There is in fact a dual role which consists of being the principal legal advisor for the XYZ Company board of directors and senior management and being responsible for the corporate-wide legal function.

This position has a major role in providing legal advice in areas of significant company-wide impact, in the formulation of the corporate strategic plan, in the evaluation of new ventures, acquisitions, mergers, divestments, and in major investment proposals.

The general counsel must maintain oversight responsibility in law related areas of significant company-wide impact, as well as direct involvement in policy matters outlined in the "Management Control Process." Also, where overlap or irreconcilable conflict involving legal matters occurs between two or more operating units, the general counsel by necessity must become involved in assuring that an acceptable resolution is achieved.

Other General Counsel roles include:

1. Reporting manager of the assistant general counsel and the corporate secretary.
2. Formulation and involvement in administration of corporate policies involving law, such as "Conflict of Interest" and "Standards of Business Conduct."

3. Assurance to directors and officers of corporate legal compliance per "Management Control Process."
4. Counseling on legislation and government relations.
5. Ensuring of career development for corporate-wide legal staff.
6. Inputting to operating unit management in the performance appraisal and salary administration of operating unit chief counsel.
7. Seeking input from operating unit management as to the quality, timeliness, and responsiveness of legal support.
8. Seeking input from operating unit chief counsel as to the quality, timeliness, and responsiveness of Radnor law department legal support.

The general counsel concentrates his activities on providing advice and guidance to the senior executive staff and board of directors. To properly fulfill these responsibilities, there is a need for the general counsel to delegate numerous tasks to the assistant general counsel such as the management of the ABC Company law department and ongoing communication with subsidiary chief counsels.

B. Sample Mission Statement²²⁴

We seek to use the law to advance the business of XYZ Company.

The Legal Department is the principal legal advisor to the Chief Executive Officer and has the responsibility for managing all of the legal affairs of XYZ Company.

The Legal Department is dedicated to:

- Ensuring that the business affairs of XYZ Company are carried out promptly and in compliance with ethical standards, existing laws and administrative regulations, and in a manner which minimizes the likelihood of adverse publicity arising from disputes or lawsuits.
- Representing the interests of XYZ Company in resolving disputes, claims or lawsuits against it, in a manner, which is both economical and consistent with the best business and ethical interests of the company.
- As a service unit within XYZ company, the Legal Department will respond quickly and efficiently to requests from management for legal advice and service.

The Legal Department plays three primary roles as:

1. An integral member of the management team.
2. A participant in decision-making processes, offering both legal and strategic business advice.
3. A manager of legal affairs within the entire organization.

Legal services will be provided by a mix of In-House and outside counsel. In-House Counsel will be employed when it is cost justified and in the best interests of the organization.

When it is necessary to engage outside counsel, the General Counsel will retain the highest quality outside law firms, within proper cost-control guidelines, and supervise their work closely to ensure that the company's objectives are met and that outside counsel fees and expenses are reasonable and proper.

To accomplish this mission, the Legal Department will:

- Be responsible for all corporate legal matters.
- Act as legal consultant to XYZ Company management.
- Participate in corporate policy development.
- Be responsible for all litigation.
- Establish a corporate-wide, consistent policy for the retention, management and evaluation of outside counsel.
- Be responsible for reviewing and amending, as appropriate, the company's policies for Business Conduct, Legislation and Lobbying, Contract Preparation, Risk Management, Fraud Investigation, Corporate Compliance, Intellectual Property Law and Litigation/Legal Support.

C. Client Satisfaction Survey

The Law Department is sending this questionnaire to you, one of our important clients, to obtain your views regarding our performance. Your ratings are important measures for us as we evaluate how we are doing and how we should improve.

Before completing this questionnaire, please understand the rating system in the box below. After you have completed the questionnaire, please return it as soon as possible, but **not later than [two weeks to reply]**, to [consulting firm], the consulting firm that is assisting us with this survey. To complete the survey, log onto [consulting firm]'s secure website, using the password "XYZ Corporation" and your first initial and last name, e.g., scook, as the user code.

XYZ International
Client Evaluation of the Legal Function

Client Name: _____ Date: _____

Department / Organization: _____

My contact with the law department, over the last year, has been:

~ Regular (Monthly) ~ Irregular (twice a year) ~ No Contact ~ Other, please explain

XYZ Law Department - Client Survey

1. How available are the lawyers when you need them?

Totally Unavailable

1

2

Always Accessible

3

2. How responsive are the lawyers in addressing your business and legal issues?

Advice Bears
No Relationship
To My Problem

1

2

Advice has
Pinpoint Accuracy

3

3. How fast are the lawyers in providing you what you asked for or need?

Extraordinarily
Slow

1

2

Exceptional Turn-
around Time

3

4. Do the lawyers provide advice and rationale in a way that is clear, concise, intelligible and useful?

Never

1

2

Always

3

5. How helpful are the lawyers in finding solutions to problems?

Not Helpful At All		Exceptionally Helpful
1	2	3

6. Do the lawyers demonstrate, on a consistent basis, the level of expertise that you want your counsel to have?

No		Always
1	2	3

7. How do you rate the quality of the lawyers' work product?

Poor		Excellent
1	2	3

8. How proactive are the lawyers in anticipating issues and working to avoid problems?

Reactive Only		Always Proactive
1	2	3

9. How good have the lawyers been in helping you and your business avoid problems that could have had legal or financial risks?

Poor		Excellent
1	2	3

10. Are the lawyers active, accepted members of the business team?

No		Absolutely
1	2	3

11. Do the lawyers project personalities that inspire trust, approachability, candor?

Not at All			Yes, Definitely
1		2	3

12. How effectively (quality and costs) do the lawyers manage outside counsel

Ineffective			Excellent
1		2	3

13. What is your overall satisfaction level with the Law Department?

Disappointed			Excellent
1		2	3

14. We encourage you to provide additional observations and comments that will assist us in meeting your legal needs:

(Please attach additional comments, as appropriate)

I: ~ would like a meeting to discuss this evaluation

~ do not require a meeting at this time

~ I would like the consultants to maintain my confidentiality and not share this survey with the law department members

~ I authorize the consultants to share a copy of this response with the appropriate members of the law department

Please return this form by _____, in confidence, to: _____

THANK YOU FOR YOUR FEEDBACK

APPENDIX – Criteria for Lawyer Progression

<i>Position Title</i>	<i>Grade</i>	<i>Knowledge of Company/ Industry</i>	<i>Legal Skills Standards</i>	<i>Problem Solving Abilities</i>	<i>Clients Relations/ Interaction</i>	<i>Scope of Work</i>	<i>Management/ Supervision</i>	<i>Guidelines, Years of Experience Since Admission to Bar</i>
Counsel		Some knowledge required including strategic business values and objectives	Understands basics of defined specialties Drafts routine documents and negotiates routine matters unaided	Can handle routine tasks with little supervision	Informed, reliably accurate and diplomatic in client meetings	Can directly affect Company's objectives and direction	May manage / supervise paraprofessionals	2 - 8 Years
Senior Counsel		Detailed knowledge of strategic business values and objectives	Solid grasp of defined specialties, plus good understanding of concepts, rules and issues in major related specialties Can draft all documents and negotiate matters needed with little guidance Good analyst, advocate and presenter of legal points	Can handle routine tasks without supervision; can solve some difficult problems with minimal supervision Exhibits good people skills and a basic business sense and awareness of the industry	Can reliably counsel important clients	Can directly affect Company's strategic objectives and direction	May manage / supervise paraprofessionals	6 - 9 Years

<i>Position Title</i>	<i>Grade</i>	<i>Knowledge of Company/ Industry</i>	<i>Legal Skills Standards</i>	<i>Problem Solving Abilities</i>	<i>Clients Relations/ Interaction</i>	<i>Scope of Work</i>	<i>Management/ Supervision</i>	<i>Guidelines, Years of Experience Since Admission to Bar</i>
Assistant General Counsel		Detailed knowledge of strategic business values and objectives	Reliable and versatile practitioner across all major areas of specialty Broad and deep expertise enhanced by considerable experience in major issues and matters Needs no significant professional guidance Superior draftsman, analyst, negotiator and presenter of legal points	Can handle all major problems in practice area without supervision; shows initiative and advanced people skills in team problem solving situations Exhibits sound business sense and industry knowledge	Can reliably counsel all decision making clients and executives	Directly affects Company's strategic objectives and direction	May manage other attorneys on a defined project basis	9 + Years
Associate General Counsel		Intimate knowledge of corporate direction and strategic business values and objectives	Reliable and versatile practitioner across major areas of practice Broad and deep expertise enhanced by considerable experience in major issues and matters Needs no professional guidance Superior draftsman, analyst, negotiator and	Can handle all major problems in practice area without supervision; shows initiative and advanced people skills in team problem solving situations Exhibits sound business sense and industry	Can reliably counsel all clients	Directly affects Company's strategic objectives and direction	Manages the legal affairs of a section of a practice area Supervises all attorneys, paralegals and support staff	9 + Years

<i>Position Title</i>	<i>Grade</i>	<i>Knowledge of Company/ Industry</i>	<i>Legal Skills Standards</i>	<i>Problem Solving Abilities</i>	<i>Clients Relations/ Interaction</i>	<i>Scope of Work</i>	<i>Management/ Supervision</i>	<i>Guidelines, Years of Experience Since Admission to Bar</i>
			presenter of legal points	knowledge				

X. About ACC

The Association of Corporate Counsel (ACC) is a global bar association that promotes the common professional and business interests of in-house counsel who work for corporations, associations and other private-sector organizations through information, education, networking opportunities and advocacy initiatives.

We anticipate and understand the needs of the in-house bar; help members deliver services to their corporate clients efficiently; promote the value of in-house services; influence the practice of law as it affects the in-house bar; and deliver a mix of relevant, timely services including information, education, networking, and advocacy.

With more than 30,000 members employed by over 10,000 organizations in more than 75 countries, ACC connects its members to each other and to the people and resources necessary for their personal and professional growth.

Members of ACC enjoy a number of valuable benefits, including:

- In-person and online networking opportunities through 54 [chapters](#) and 18 [committees](#), plus [blogs](#), [Member-to-Member Community \(including eGroups\)](#)
- A subscription to the award-winning [ACC Docket](#), our monthly journal featuring articles written by corporate counsel on issues you face daily
- Numerous [continuing education opportunities](#), such as [online courses](#), [webcasts](#) and other educational events
- A [daily newsfeed](#) with updates on a range of legal topics, completely customizable by topic and jurisdiction
- Access to the [ACC In-house Jobline](#), the premier electronic employment resource for in-house jobseekers and employers;
- Access to a [comprehensive library of legal resources](#) including sample forms and policies, checklists, articles and surveys; and
- Discounts and direct access to useful litigation and matter management tools and resources through the [ACC Alliance](#), a partnership with top-tier legal and business service providers.

For more information, visit us at www.acc.com

XI. Additional Resources

A. ACC Docket Articles

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Greg Wharton and Robert A. Major, Jr., "Fast-Growth GCs: What It Takes to Succeed," *ACC Docket* 29, no. 8 (Oct. 2011): 70, available at <http://www.acc.com/legalresources/resource.cfm?show=1292376>.

Todd H. Silberman, "Small Law – Starting Over ... Again," *ACC Docket* 29, no. 3 (Apr. 2011): 22, available at <http://www.acc.com/legalresources/resource.cfm?show=1279916>.

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2012), *available at*
<http://www.acc.com/legalresources/resource.cfm?show=1304804>.

"Technology Primer," ACC InfoPAK (June 2011), *available at*
<http://www.acc.com/legalresources/resource.cfm?show=19671>.

"Compliance Officer and General Counsel: Benefits and Pitfalls of Combining Roles," ACC InfoPAK (Sep. 2010), *available at*
<http://www.acc.com/legalresources/resource.cfm?show=995124>.

"Effective Compliance and Ethics for the Small Law Department - Doing More With Less," ACC InfoPAK (Aug. 2010), *available at*
<http://www.acc.com/legalresources/resource.cfm?show=19635>.

"Role of the General Counsel," ACC InfoPAK (Sep. 2009), *available at*
<http://www.acc.com/legalresources/resource.cfm?show=700992>.

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D. Quick References

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E. Other ACC Resources

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"The Role of the General Counsel in Europe: Leading Practices in Law Department Management," ACC Leading Practices Profile (Sep. 2009), *available at* <http://www.acc.com/legalresources/resource.cfm?show=691365>.

XII. Endnotes

¹ Throughout this InfoPAK the term “company” or “corporation” will be intended to include all entities represented by in-house counsel, including non-profit organizations, associations, and other such organizations, while “in-house counsel” and “General Counsel” (“GC”) will be used interchangeably, unless specified otherwise.

² Rachel M. Zahorsky, “Changing Demands Have In-House Counsel Gaining Over Outside Firms, GCs Say,” *ABA Journal* (Mar. 15, 2010), available at http://www.abajournal.com/news/article/changing_demands_have_in-house_counsel_gaining_over_outside_firms_gcs_say/.

³ Many titles represent steps up the hierarchy of corporate levels. For example, an “Executive Vice President & General Counsel” is generally more senior than a “Senior Vice President & General Counsel.”

⁴ “The Value and Benefits of In-House Counsel,” ACC InfoPAK (Feb. 2006), available at <http://www.acc.com/legalresources/resource.cfm?show=19631>, excerpted from Jonathan P. Bellis, “The Evolving Role of In-House Counsel: Adding Value to the Business,” *LEGAL DIRECTOR*, February 2003.

⁵ *Id.*

⁶ For more information on the Mini-MBA program and similar courses, please see ACC’s “Business Education for In-House Counsel” webpage at <http://www.acc.com/education/businessedu/index.cfm>.

⁷ “Managing Value-Based Relationships with Outside Counsel,” ACC InfoPAK (Aug. 2011), available at <http://www.acc.com/legalresources/resource.cfm?show=19673>; see also “Applying Project Management to Legal Matters,” ACC Webcast (May 13, 2010), available at <http://www.acc.com/education/webcasts/projectmanagementtolegalmatters.cfm>.

⁸ Interview with Craig Long, General Counsel, Capital Financial Service Corporation, July 22, 2011.

⁹ Interview with Craig Long, General Counsel, Capital Financial Service Corporation, July 22, 2011.

¹⁰ For purposes of anonymity, we have used the pseudonym “John Smith” for all references to this individual throughout the InfoPAK.

¹¹ Interview with John Smith, General Counsel & Senior Vice President, insurance company, Aug. 3, 2011.

¹² Interview with John Smith, Aug. 3, 2011.

¹³ Interview with Nicolas Vanasse, Vice President, Chief Legal Officer and Corporate Secretary, Aveos Fleet Performance, Inc., July 27, 2011.

¹⁴ Interview with Nicolas Vanasse, July 27, 2011.

¹⁵ Interview with Craig Long, General Counsel, Capital Financial Service Corporation, July 22, 2011.

¹⁶ Interview with Craig Long, July 22, 2011.

¹⁷ Interview with Nicolas Vanasse, Vice President, Chief Legal Officer and Corporate Secretary, Aveos Fleet Performance, Inc., July 27, 2011.

¹⁸ Interview with Craig Long, July 22, 2011.

¹⁹ Interview with Maria Pasquale, Senior Vice President Legal & Chief Counsel, Celgene Corporation, July 25, 2011.

²⁰ Interview with Craig Long, General Counsel, Capital Financial Service Corporation, July 22, 2011.

²¹ Interview with John Smith, General Counsel & Senior Vice President, Insurance Company, Aug. 3, 2011.

²² Interview with John Smith, General Counsel & Senior Vice President, Insurance Company, Aug. 3, 2011.

²³ Interview with John Smith, General Counsel & Senior Vice President, Insurance Company, Aug. 3, 2011.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Interview with Craig Long, General Counsel, Capital Financial Service Corporation, July 22, 2011.

²⁷ Interview with John Smith, General Counsel & Senior Vice President, Insurance Company, Aug. 3, 2011.

²⁸ Interview with Nicolas Vanasse, Vice President, Chief Legal Officer and Corporate Secretary, Aveos Fleet Performance, Inc., July 27, 2011.

²⁹ *Id.*

³⁰ Interview with Nicolas Vanasse, Vice President, Chief Legal Officer and Corporate Secretary, Aveos Fleet Performance, Inc., July 27, 2011.

³¹ *Id.*

³² *Id.*

³³ For additional information on the roles and responsibilities mentioned below, please see “Role of the General Counsel,” ACC InfoPAK (Sept. 2009), available at

<http://www.acc.com/legalresources/resource.cfm?show=700992> and "The Value and Benefits of In-House Counsel," ACC InfoPAK (Feb. 2006), *available at* <http://www.acc.com/legalresources/resource.cfm?show=19631>, "ACC Value Challenge Practices for the Small Law Department," ACC InfoPAK (Mar. 2012), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1304804>, "Managing Value-Based Relationships with Outside Counsel," ACC InfoPAK (Aug. 2011), *available at* <http://www.acc.com/legalresources/resource.cfm?show=19673>, "The Role of the General Counsel in Canada: Leading Practices in Law Department Management," ACC Leading Practices Profile (Sept. 2009), *available at* <http://www.acc.com/legalresources/resource.cfm?show=691310>, "The Role of the General Counsel in Europe: Leading Practices in Law Department Management," ACC Leading Practices Profile (Sept. 2009), *available at* <http://www.acc.com/legalresources/resource.cfm?show=691365>.

³⁴ "ACC Value Challenge Practices for the Small Law Department," ACC InfoPAK (Mar. 2012), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1304804>, "Managing Value-Based Relationships with Outside Counsel," ACC InfoPAK (Aug. 2011), *available at* <http://www.acc.com/legalresources/resource.cfm?show=19673>.

³⁵ Please visit ACC's Compliance Training Portal at www.acc.com/compliance for more information.

³⁶ For further information on corporate governance, see "Governance: Crisis Management & Risk Management in the Boardroom," ACC Webcast (Feb. 2, 2012), *available at* <http://webcasts.acc.com/detail.php?id=664058&go=1>; *see also* "Corporate Governance and In-house Counsel" Corporate Secretary (Apr. 6, 2011), *available at* <http://us1.campaign-archive2.com/?u=025665a58234f217acb943372&id=48f4716b4b#krebs>.

³⁷ Additional information can be found at "Crisis Management in Litigation and Investigations: Parallel Proceedings, Competing Stakeholders, and Multiple Venues in a Global Environment" ACC InfoPAK (July 2011), *available at* <http://www.acc.com/legalresources/resource.cfm?show=77428>; "Crisis Management and the Role of In-house Lawyers: Company Leading Practices" ACC Leading Practices Profile (June 2011), *available at* <http://www.acc.com/legalresources/resource.cfm?show=16813>; "Checklist for Crisis Management Planning" ACC List (Apr. 2003), *available at* <http://www.acc.com/legalresources/resource.cfm?show=16744>.

³⁸ Additional information can be found on the ACC Value Challenge page of the ACC website, *available at*

<http://www.acc.com/valuechallenge/>; *see also* "Outside Counsel Retention Agreements," ACC Quick Counsel (Sep. 2011), *available at* <http://www.acc.com/legalresources/quickcounsel/ocra.cfm>.

³⁹ "Value Practice: Demonstrating the Law Department's Value: Calculating In-house Counsel Costs," ACC Value Practice (May 2009), *available at* <http://www.acc.com/legalresources/resource.cfm?show=233481>.

⁴⁰ "Benchmarking and Best Practices in Managing In-House Law Departments," Altman Weil, Inc. (May 7, 2003), *available at* http://www.altmanweil.com/dir_docs/resource/affeafa6-74-4742-b008-f94d30b647d8_document.pdf.

⁴¹ Interview with Maria Pasquale, Senior Vice President Legal & Chief Counsel, Celgene Corporation, July 25, 2011.

⁴² Interview with Maria Pasquale, July 25, 2011.

⁴³ Interview with Nicolas Vanasse, Vice President, Chief Legal Officer and Corporate Secretary, Aveos Fleet Performance, Inc., July 27, 2011.

⁴⁴ "Adding Value: Strategic Planning and Demonstrating Success," ACC Presentation (May 2011), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1288495>.

⁴⁵ "Strategic Planning: Why a Plan is Needed and How to Develop One," ACC InfoPAK (Sept. 2009), *available at* <http://www.acc.com/legalresources/resource.cfm?show=699365> (see Section I(H) on identifying metrics to measure progress).

⁴⁶ "Legal Department Leading Practices for Adding Value and Moving Beyond the Cost Center Model" ACC Leading Practices Profile (Sept. 2010), *available at* <http://www.acc.com/legalresources/resource.cfm?show=16804>.

⁴⁷ "Top Ten Things to Consider When You're the First In-House Counsel," ACC Top Ten (June 2009), *available at* <http://www.acc.com/legalresources/publications/topten/to-p-top-things-to-consider.cfm>; "Adding Value: Strategic Planning and Demonstrating Success," ACC Presentation (May 2011), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1288495>.

⁴⁸ Interview with Nicolas Vanasse, Vice President, Chief Legal Officer and Corporate Secretary, Aveos Fleet Performance, Inc., July 27, 2011.

⁴⁹ "Sample Memorandum of Understanding," ACC Form & Policy (Oct. 2006), *available at*

<http://www.acc.com/legalresources/resource.cfm?show=12725>.

⁵⁰ Interview with Craig Long, General Counsel, Capital Financial Service Corporation, July 22, 2011.

⁵¹ James A. Nortz, "Business Ethics — Be Careful ... You May Get What You Ask For," *ACC Docket* 22, no. 1 (Jan. 2011), available at <http://www.acc.com/legalresources/resource.cfm?show=1267366>.

⁵² See Tanina Rostain, *General Counsel in the Age of Compliance: Preliminary Findings and New Research Questions*, 21 *GEO. J. LEGAL ETHICS* 465, 474 (2008) ("Consistent with their claims about corporate culture, several [general counsel] insisted that reputational considerations were often as important as legal ones.").

⁵³ Interview with Maria Pasquale, Senior Vice President Legal & Chief Counsel, Celgene Corporation, July 25, 2011.

⁵⁴ "Top Ten Things to Consider When You're the First In-House Counsel," *ACC Top Ten* (June 2009), available at <http://www.acc.com/legalresources/publications/topten/to-p-top-things-to-consider.cfm>.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Interview with Craig Long, General Counsel, Capital Financial Service Corporation, July 22, 2011.

⁵⁸ "The First Year – A Dozen Things on the 'To Do' List," *ACC Quick Reference* (Aug. 2010), available at <http://www.acc.com/legalresources/resource.cfm?show=990624>.

⁵⁹ See *id.*

⁶⁰ *Id.*

⁶¹ Interview with Maria Pasquale, Senior Vice President Legal & Chief Counsel, Celgene Corporation, July 25, 2011.

⁶² *Id.*

⁶³ Interview with Maria Pasquale, Senior Vice President Legal & Chief Counsel, Celgene Corporation, July 25, 2011.

⁶⁴ Interview with Nicolas Vanasse, Vice President, Chief Legal Officer and Corporate Secretary, Aveos Fleet Performance, Inc., July 27, 2011.

⁶⁵ A new general counsel can use a site such as www.10kwizard.com to easily retrieve/download relevant SEC filings.

⁶⁶ This list can be found at: D. C. Toedt III ET AL., "GC Rules: Over 350 things I wish I'd known my first year as General Counsel," *ACC Docket* 23, no. 5 (May 2005): 1-25, available at <http://www.acc.com/legalresources/resource.cfm?show=16997>.

⁶⁷ Interviews with Maria Pasquale, Senior Vice President Legal & Chief Counsel, Celgene Corporation, July 25, 2011, and Nicolas Vanasse, Vice President, Chief Legal Officer and Corporate Secretary, Aveos Fleet Performance, Inc., July 27, 2011.

⁶⁸ Interview with Nicolas Vanasse, Vice President, Chief Legal Officer and Corporate Secretary, Aveos Fleet Performance, Inc., July 27, 2011.

⁶⁹ See Part II(B)(1), *supra*; see also "The Value and Benefits of In-House Counsel," *ACC InfoPAK* (Feb. 2006), available at <http://www.acc.com/legalresources/resource.cfm?show=19631>.

⁷⁰ See Part II(B)(1) & (2).

⁷¹ Interviews with Craig Long, General Counsel, Capital Financial Service Corporation, July 22, 2011, and Nicolas Vanasse, Vice President, Chief Legal Officer and Corporate Secretary, Aveos Fleet Performance, Inc., July 27, 2011.

⁷² ACC Newsstand can be accessed at <http://www.lexology.com/?about=&b=acc>.

⁷³ Interview with John Smith, General Counsel & Senior Vice President, Insurance Company, Aug. 3, 2011, Craig Long, July 22, 2011, and Maria Pasquale, July 25, 2011.

⁷⁴ Interview with Maria Pasquale, Senior Vice President Legal & Chief Counsel, Celgene Corporation, July 25, 2011.

⁷⁵ Interviews with Maria Pasquale, July 25, 2011, and Nicolas Vanasse, July 27, 2011.

⁷⁶ ACC's Member-to-Member online platform, including the eGroups, can be accessed at www.acc.com/m2m; see also "Networking Opportunities for Solo General Counsel," *ACC Article* (Aug. 2011), available at <http://www.acc.com/aboutacc/newsroom/accinthenews/Networking-Opportunities-for-Solo-General-Counsel.cfm>.

⁷⁷ Interview with Maria Pasquale, July 25, 2011.

⁷⁸ Interview with Nicolas Vanasse, July 27, 2011.

⁷⁹ Interviews with Maria Pasquale, July 25, 2011, and John Smith, Aug. 3, 2011.

⁸⁰ "2011 CLO Survey," *ACC Survey* (Oct. 2011), available at <http://www.acc.com/legalresources/resource.cfm?show=1294806> (ACC conducts the CLO Survey every year).

⁸¹ See the 2011 Empsight Law Department Compensation Surveys (Nov. 2011), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1296033> (large company edition), <http://www.acc.com/legalresources/resource.cfm?show=1296036> (mid-market edition), and <http://www.acc.com/legalresources/resource.cfm?show=1296039> (small law department edition).

⁸² “Top Ten Tips for Assessing Your Department’s Alignment to Your Corporate Strategy,” ACC Top Ten (Mar. 2012), *available at* <http://www.acc.com/legalresources/publications/topten/ttt faydatycs.cfm>.

⁸³ *Id.*

⁸⁴ “Strategic Planning: Why a Plan is Needed and How to Develop One,” ACC InfoPAK (Sept. 2009), *available at* <http://www.acc.com/legalresources/resource.cfm?show=699365>.

⁸⁵ “Top Ten Tips for Assessing Your Department’s Alignment to Your Corporate Strategy,” ACC Top Ten (Mar. 2012), *available at* <http://www.acc.com/legalresources/publications/topten/ttt faydatycs.cfm>.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ This list is adapted from one that is available in “Strategic Planning: Why a Plan is Needed and How to Develop One,” ACC InfoPAK (Sept. 2009), *available at* <http://www.acc.com/legalresources/resource.cfm?show=699365>.

⁸⁹ D. C. Toedt III ET. AL, “GC Rules: Over 350 things I wish I’d known my first year as General Counsel,” ACC Docket (May 2005), *available at* <http://www.acca.com/protected/pubs/docket/may05/rules.pdf>. Another sample mission statement is included in Section VIII of this InfoPAK.

⁹⁰ “Role of the General Counsel,” ACC InfoPAK (Sept. 2009), *available at* <http://www.acc.com/legalresources/resource.cfm?show=700992>.

⁹¹ “2011 CLO Survey,” ACC Survey (Oct. 2011), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1294806>.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Interview with Catherine Valentine, VP Legal & General Counsel, Logitech, Inc., July 29, 2011.

⁹⁶ *Id.*

⁹⁷ See “Role of the General Counsel,” ACC InfoPAK (Sept. 2009), *available at* <http://www.acc.com/legalresources/resource.cfm?show=700992>.

⁹⁸ *Id.*

⁹⁹ “ACC 2011 In-House Counsel Census Report,” ACC Survey (Feb. 2012), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1306363>.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Interview with Craig Long, General Counsel, Capital Financial Service Corporation, July 22, 2011.

¹⁰⁶ Interview with John Smith, General Counsel & Senior Vice President, Insurance Company, Aug. 3, 2011.

¹⁰⁷ *Id.*

¹⁰⁸ Interviews with Craig Long, General Counsel, Capital Financial Service Corporation, July 22, 2011, Catherine Valentine, VP Legal & General Counsel, Logitech, Inc., July 29, 2011, and Maria Pasquale, Senior Vice President Legal & Chief Counsel, Celgene Corporation, July 25, 2011.

¹⁰⁹ Interview with Craig Long, July 22, 2011.

¹¹⁰ Interview with Nicolas Vanasse, Vice President, Chief Legal Officer and Corporate Secretary, Aveos Fleet Performance, Inc., July 27, 2011.

¹¹¹ Interview with John Smith, General Counsel & Senior Vice President, Insurance Company, Aug. 3, 2011.

¹¹² Interview with Maria Pasquale, Senior Vice President Legal & Chief Counsel, Celgene Corporation, July 25, 2011.

¹¹³ Craig Long, General Counsel, Capital Financial Service Corporation, July 22, 2011, Catherine Valentine, VP Legal & General Counsel, Logitech, Inc., July 29, 2011, Nicolas Vanasse, Vice President, Chief Legal Officer and Corporate Secretary, Aveos Fleet Performance, Inc., July 27, 2011, and John Smith, General Counsel & Senior Vice President, Insurance Company, Aug. 3, 2011.

¹¹⁴ Interview with Nicolas Vanasse, Vice President, Chief Legal Officer and Corporate Secretary, Aveos Fleet Performance, Inc., July 27, 2011.

¹¹⁵ See Part II(A)(3), *supra*.

¹¹⁶ Interview with John Smith, General Counsel & Senior Vice President, Insurance Company, Aug. 3, 2011.

¹¹⁷ Interview with Nicolas Vanasse, Vice President, Chief Legal Officer and Corporate Secretary, Aveos Fleet Performance, Inc., July 27, 2011.

¹¹⁸ Interview with Nicolas Vanasse, Vice President, Chief Legal Officer and Corporate Secretary, Aveos Fleet Performance, Inc., July 27, 2011.

¹¹⁹ See Interview with John Smith, General Counsel & Senior Vice President, Insurance Company, Aug. 3, 2011.

¹²⁰ See Part IV(F), *infra*.

¹²¹ Interview with John Smith, General Counsel & Senior Vice President, Insurance Company, Aug. 3, 2011.

¹²² See, e.g., Interview with John Smith, General Counsel & Senior Vice President, Insurance Company, Aug. 3, 2011.

¹²³ Interview with Craig Long, General Counsel, Capital Financial Service Corporation, July 22, 2011.

¹²⁴ See *id*.

¹²⁵ Interview with John Smith, General Counsel & Senior Vice President, Insurance Company, Aug. 3, 2011.

¹²⁶ *Id*.

¹²⁷ Interview with Catherine Valentine, VP Legal & General Counsel, Logitech, Inc., July 29, 2011.

¹²⁸ See Part V(A)(5).

¹²⁹ Interview with Nicolas Vanasse, Vice President, Chief Legal Officer and Corporate Secretary, Aveos Fleet Performance, Inc., July 27, 2011.

¹³⁰ See *id*.

¹³¹ *Id*.

¹³² Interviews with Nicolas Vanasse, Vice President, Chief Legal Officer and Corporate Secretary, Aveos Fleet Performance, Inc., July 27, 2011.

¹³³ Interview with Nicolas Vanasse, Vice President, Chief Legal Officer and Corporate Secretary, Aveos Fleet Performance, Inc., July 27, 2011.

¹³⁴ Interview with Nicolas Vanasse, Vice President, Chief Legal Officer and Corporate Secretary, Aveos Fleet Performance, Inc., July 27, 2011.

¹³⁵ Interview with Craig Long, General Counsel, Capital Financial Service Corporation, July 22, 2011.

¹³⁶ *Id*.

¹³⁷ A first general counsel should have already considered these issues when drafting a law department mission statement. See Section IV(E), *supra*.

¹³⁸ See Part V(D), *infra*.

¹³⁹ Interviews with Nicolas Vanasse, Vice President, Chief Legal Officer and Corporate Secretary, Aveos Fleet Performance, Inc., July 27, 2011.

¹⁴⁰ See Interview with Catherine Valentine, VP Legal & General Counsel, Logitech, Inc., July 29, 2011.

¹⁴¹ For more information on the benefits of client satisfaction surveys, see Karen M. Redford, "Lessons Learned from Internal Client Satisfaction Surveys," ACC Docket 28, no. 7 (Sept. 2010): 22, available at <http://www.acc.com/legalresources/resource.cfm?show=987107>.

¹⁴² Interviews with Nicolas Vanasse, Vice President, Chief Legal Officer and Corporate Secretary, Aveos Fleet Performance, Inc., July 27, 2011, John Smith, General Counsel & Senior Vice President, Insurance Company, Aug. 3, 2011, and Craig Long, General Counsel, Capital Financial Service Corporation, July 22, 2011.

¹⁴³ Interview with Catherine Valentine, VP Legal & General Counsel, Logitech, Inc., July 29, 2011.

¹⁴⁴ Interview with Craig Long, General Counsel, Capital Financial Service Corporation, July 22, 2011.

¹⁴⁵ Interviews with Maria Pasquale, Senior Vice President Legal & Chief Counsel, Celgene Corporation, July 25, 2011, Craig Long, General Counsel, Capital Financial Service Corporation, July 22, 2011, and John Smith, General Counsel & Senior Vice President, Insurance Company, Aug. 3, 2011.

¹⁴⁶ Interview with Craig Long, General Counsel, Capital Financial Service Corporation, July 22, 2011, and Maria Pasquale, Senior Vice President Legal & Chief Counsel, Celgene Corporation, July 25, 2011.

¹⁴⁷ Interview with Catherine Valentine, VP Legal & General Counsel, Logitech, Inc., July 29, 2011.

¹⁴⁸ Interview with Maria Pasquale, Senior Vice President Legal & Chief Counsel, Celgene Corporation, July 25, 2011; "ACC Primer - Using a Structured Process to Allocate Work," ACC Primer (Dec. 2010), available at <http://www.acc.com/legalresources/resource.cfm?show=1217370>

¹⁴⁹ Interview with Maria Pasquale, Senior Vice President Legal & Chief Counsel, Celgene Corporation, July 25, 2011.

¹⁵⁰ Interview with Maria Pasquale, Senior Vice President Legal & Chief Counsel, Celgene Corporation, July 25, 2011.

¹⁵¹ Interview with Maria Pasquale, Senior Vice President Legal & Chief Counsel, Celgene Corporation, July 25, 2011.

¹⁵² Interview with John Smith, General Counsel & Senior Vice President, Insurance Company, Aug. 3, 2011.

¹⁵³ Interview with Craig Long, General Counsel, Capital Financial Service Corporation, July 22, 2011.

¹⁵⁴ Interview with John Smith, General Counsel & Senior Vice President, Insurance Company, Aug. 3, 2011.

¹⁵⁵ Interview with John Smith, General Counsel & Senior Vice President, Insurance Company, Aug. 3, 2011.

¹⁵⁶ Interview with Catherine Valentine, VP Legal & General Counsel, Logitech, Inc., July 29, 2011.

¹⁵⁷ "ACC Primer - Using a Structured Process to Allocate Work," ACC Primer (Dec. 2010), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1217370>

¹⁵⁸ "ACC Primer - Using a Structured Process to Allocate Work," ACC Primer (Dec. 2010), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1217370>

¹⁵⁹ This InfoPAK addresses budgeting more expansively than it does other business-oriented tasks due to the complexity of budgeting and its high degree of importance to the work of many general counsel.

¹⁶⁰ Interview with Catherine Valentine, VP Legal & General Counsel, Logitech, Inc., July 29, 2011, and Maria Pasquale, Senior Vice President Legal & Chief Counsel, Celgene Corporation, July 25, 2011.

¹⁶¹ Interview with Maria Pasquale, Senior Vice President Legal & Chief Counsel, Celgene Corporation, July 25, 2011, and John Smith, General Counsel & Senior Vice President, Insurance Company, Aug. 3, 2011.

¹⁶² Interview with John Smith, General Counsel & Senior Vice President, Insurance Company, Aug. 3, 2011.

¹⁶³ Interview with John Smith, General Counsel & Senior Vice President, Insurance Company, Aug. 3, 2011.

¹⁶⁴ See interview with Catherine Valentine, VP Legal & General Counsel, Logitech, Inc., July 29, 2011.

¹⁶⁵ Interview with John Smith, General Counsel & Senior Vice President, Insurance Company, Aug. 3, 2011.

¹⁶⁶ Interview with John Smith, General Counsel & Senior Vice President, Insurance Company, Aug. 3, 2011.

¹⁶⁷ "Law Department Cost Management," Huron Consulting Group, at 12 (June 1, 2009), *available at* <http://www.huronconsultinggroup.com/researchdetails.aspx?articleId=2162>.

¹⁶⁸ "Law Department Cost Management," Huron Consulting Group, at 12 (June 1, 2009), *available at* <http://www.huronconsultinggroup.com/researchdetails.aspx?articleId=2162>.

¹⁶⁹ "2011 CLO Survey" ACC Survey, at 22 (Oct. 2011), *available at*

<http://www.acc.com/legalresources/resource.cfm?show=1294806>.

¹⁷⁰ "2011 CLO Survey" ACC Survey, at 26 (Oct. 2011), *available at*

<http://www.acc.com/legalresources/resource.cfm?show=1294806>.

¹⁷¹ "2011 CLO Survey" ACC Survey, at 21 (Oct. 2011) *available at*

<http://www.acc.com/legalresources/resource.cfm?show=1294806>.

¹⁷² "2011 CLO Survey" ACC Survey, at 25 (Oct. 2011) *available at*

<http://www.acc.com/legalresources/resource.cfm?show=1294806>.

¹⁷³ "Forecast for Legal Services - Corporations Have Cut Legal Spending 1%," Hildebrandt Baker Robbins (Oct. 20, 2010), *available at*

<http://www.lawmarketing.com/pages/articles.asp?Action=Article&ArticleCategoryID=7&ArticleID=1091>.

¹⁷⁴ "Forecast for Legal Services - Corporations Have Cut Legal Spending 1%," Hildebrandt Baker Robbins (Oct. 20, 2010), *available at*

<http://www.lawmarketing.com/pages/articles.asp?Action=Article&ArticleCategoryID=7&ArticleID=1091>.

¹⁷⁵ "2011 CLO Survey" ACC Survey (Oct. 2011) *available at*

<http://www.acc.com/legalresources/resource.cfm?show=1294806>.

¹⁷⁶ "Law Department Cost Management," Huron Consulting Group, at 12 (June 1, 2009), *available at*

<http://www.huronconsultinggroup.com/researchdetails.aspx?articleId=2162>.

¹⁷⁷ "Law Department Cost Management," Huron Consulting Group, at 3 (June 1, 2009), *available at*

<http://www.huronconsultinggroup.com/researchdetails.aspx?articleId=2162>.

¹⁷⁸ "Law Department Cost Management," Huron Consulting Group, at 13 (June 1, 2009), *available at*

<http://www.huronconsultinggroup.com/researchdetails.aspx?articleId=2162>.

¹⁷⁹ "Law Department Cost Management," Huron Consulting Group, at 13 (June 1, 2009), *available at*

<http://www.huronconsultinggroup.com/researchdetails.aspx?articleId=2162>.

¹⁸⁰ Interview with Nicolas Vanasse, Vice President, Chief Legal Officer and Corporate Secretary, Aveos Fleet Performance, Inc., July 27, 2011.

¹⁸¹ Interview with Catherine Valentine, VP Legal & General Counsel, Logitech, Inc., July 29, 2011.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ Interview with Maria Pasquale, Senior Vice President Legal & Chief Counsel, Celgene Corporation, July 25, 2011.

¹⁸⁵ "Top Ten Proven Tactics to Generate Cost Savings," ACC Top Ten (Dec. 2009), *available at* <http://www.acc.com/legalresources/publications/topten/ptoventactics.cfm>.

¹⁸⁶ "Managing Value-Based Relationships with Outside Counsel," ACC InfoPAK (Aug. 2011): 28-36 *available at* <http://www.acc.com/legalresources/resource.cfm?show=19673>

¹⁸⁷ "Top Ten Proven Tactics to Generate Cost Savings," ACC Top Ten (Dec. 2009), *available at* <http://www.acc.com/legalresources/publications/topten/ptoventactics.cfm>.

¹⁸⁸ "Legal Departments Expecting More from Outside Counsel," Robert Half (June 2010), *available at* <http://www.acc.com/legalresources/resource.cfm?show=951472>.

¹⁸⁹ "Managing Value-Based Relationships with Outside Counsel," ACC InfoPAK (Aug. 2011): 24-25 *available at* <http://www.acc.com/legalresources/resource.cfm?show=19673>

¹⁹⁰ "Managing Value-Based Relationships with Outside Counsel," ACC InfoPAK (Aug. 2011): 24-25 *available at* <http://www.acc.com/legalresources/resource.cfm?show=19673>

¹⁹¹ Excerpted from "Sample Document—Outside Counsel Guidelines," ACC Form & Policy (Sept. 2008), *available at* <http://www.acc.com/legalresources/resource.cfm?show=40433>.

¹⁹² "Sample Document—Outside Counsel Guidelines," ACC Form & Policy (Sept. 2008), p. 7, *available at* <http://www.acc.com/legalresources/resource.cfm?show=40433>.

¹⁹³ "Outside Counsel Retention Agreements," ACC QuickCounsel (Dec. 2009), *available at* <http://www.acc.com/legalresources/quickcounsel/ocra.cfm>.

¹⁹⁴ "Managing Value-Based Relationships with Outside Counsel," ACC InfoPAK (Aug. 2011): 10-11 *available at* <http://www.acc.com/legalresources/resource.cfm?show=19673>

¹⁹⁵ "Top Ten Proven Tactics to Generate Cost Savings," ACC Top Ten (Dec. 2009), *available at* <http://www.acc.com/legalresources/publications/topten/ptoventactics.cfm>.

¹⁹⁶ Interview with Nicolas Vanasse, Vice President, Chief Legal Officer and Corporate Secretary, Aveos Fleet Performance, Inc., July 27, 2011.

¹⁹⁷ "The Value and Benefits of In-House Counsel," ACC InfoPAK (Feb. 2006), *available at* <http://www.acc.com/legalresources/resource.cfm?show=19631>.

¹⁹⁸ Interview with Nicolas Vanasse, Vice President, Chief Legal Officer and Corporate Secretary, Aveos Fleet Performance, Inc., July 27, 2011.

¹⁹⁹ "2011 CLO Survey," ACC Survey (Oct. 2011), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1294806>.

²⁰⁰ "2011 CLO Survey," ACC Survey (Oct. 2011), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1294806>.

²⁰¹ Interview with Nicolas Vanasse, Vice President, Chief Legal Officer and Corporate Secretary, Aveos Fleet Performance, Inc., July 27, 2011.

²⁰² Interview with Maria Pasquale, Senior Vice President Legal & Chief Counsel, Celgene Corporation, July 25, 2011.

²⁰³ Charles A. Volkert, "Utilizing Paralegals, Legal Support Staff and Project Teams to Achieve Cost Savings and Enhance Productivity," ACC Article (Apr. 2009), *available at* <http://www.acc.com/legalresources/resource.cfm?show=198529>; John Morrow et al, "Recruiting, Retaining & Developing Top In-House Talent" *ACC Docket* 27, no. 6 (July 2009), *available at* <http://www.acc.com/legalresources/resource.cfm?show=422517>.

²⁰⁴ Charles A. Volkert, "Utilizing Paralegals, Legal Support Staff and Project Teams to Achieve Cost Savings and Enhance Productivity," ACC Article (Apr. 2009), *available at* <http://www.acc.com/legalresources/resource.cfm?show=198529>.

²⁰⁵ "2011 CLO Survey" ACC Survey, at 15 (Oct. 2011), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1294806>.

²⁰⁶ *Id.*

²⁰⁷ "2011 CLO Survey" ACC Survey, at 15 (Oct. 2011), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1294806>.

²⁰⁸ “2012 Salary Guide,” Robert Half Legal, at 5,
available at
<http://www.roberthalflegal.com/FreeResources>.

²⁰⁹ “2011 CLO Survey” ACC Survey, at 15 (Oct. 2011),
available at
<http://www.acc.com/legalresources/resource.cfm?show=1294806>.

²¹⁰ *Id.* at 16.

²¹¹ *Id.*

²¹² “2012 Salary Guide,” Robert Half Legal, at 11,
available at
<http://www.roberthalflegal.com/FreeResources>.

²¹³ “2012 Salary Guide,” Robert Half Legal, at 11,
available at
<http://www.roberthalflegal.com/FreeResources>.

²¹⁴ “2012 Salary Guide,” Robert Half Legal, at 13-14,
available at
<http://www.roberthalflegal.com/FreeResources>.

²¹⁵ *See* Part II(A)(3).

²¹⁶ Interview with Craig Long, General Counsel, Capital Financial Service Corporation, July 22, 2011.

²¹⁷ *Id.*

²¹⁸ *See* “Compliance Officer and General Counsel: Benefits and Pitfalls of Combining Roles,” ACC InfoPAK (Sept. 2010), *available at*
<http://www.acc.com/legalresources/resource.cfm?show=995124>.

²¹⁹ *See* Part V(A).

²²⁰ *See id.*

²²¹ For more information on the attorney-client privilege as it applies to in-house counsel, see “Attorney-Client Privilege,” ACC InfoPAK (Jan. 2006), *available at*
<http://www.acc.com/legalresources/resource.cfm?show=19681>.

²²² John Okray, “Multijurisdictional Practice: Know Your Roaming Charges,” *ACC Docket* 29, no. 1 (Jan. 2011), *available at*
<http://www.acc.com/legalresources/resource.cfm?show=1266762>.

²²³ *See* ACC Advocacy’s multijurisdictional practice archives at <http://advocacy.acc.com/tags/mjp-2/>; *see also* John Okray, “Multijurisdictional Practice: Know Your Roaming Charges,” *ACC Docket* 29, no. 1 (Jan. 2011), *available at*
<http://www.acc.com/legalresources/resource.cfm?show=1266762>.

²²⁴ Additional sample mission statements are available at www.acca.com/vl.php.

Best Software and Web Resources

James J. Holmberg, III

I. Technological Tools

From the Paper Age to the Web Age

The advancement of the Hardware.

A. The copy machine. The copy machine has come from the old mimeograph machine of our grade schools to a small multifunctional color copy/fax/scanner document processor, the Swiss army knife of the office.

B. Fax machine has improved from the thermal paper curling up in files and rolling over floors to be part of the office Swiss army knife.

C. Scanner which started out as a slow single page process of turning pictures and documents into computer files for digital storage, into a process as easy as copying.

D. The computer, originally designed and used to crunch numbers, as an oversized, building size calculator, to replace the slide rule, to being able to do almost everything a mind can do. For our purposes, the advent of word processing programs for main frames, 'Wordstar', 'Word Perfect' and other programs enabled staff to edit and save documents digitally.

The invention of the Personal Computer, PC for the DOS based machine and Apple and Mac for the Apple based operating system, compacted the power of the mainframe into the size of an ever shrinking suit case or portfolio.

The newest notebook or Ipad computers are dispensing with the keyboard and becoming the size of a pad of paper.

E. Telecommunication tools, the phone. The cell phone has gone from a luxury of the traveling salesman or executive to being an essential accessory for every pre-teen.

The cell phone capacity for communication has leapt from voice only in a briefcase size unit to the Iphone/Droid/Blackberry size minicomputer doing voice, text, email, and internet connectivity.

II. Free and Almost Free Websites

What's available on the World Wide Web? Everything

A. Legal Research.

Case law, Statutory and Regulatory law.

Statutory and Case Law

State Bar Association Websites. The various State bars provide links to legal research web sites as a benefit of paying dues.

Casemaker - Fastcase <http://www.lawriter.net/Statecat.aspx?scd=NE>

Find California Law <http://www.leginfo.ca.gov/calaw.html>

Federal, the Federal government, through the court system, and its various agencies have web sites that contain information useful to the in-house counsel, especially those that deal with the regulations of the IRS and other department.

<http://www.supremecourt.gov/>

<http://www.federalregister.gov/>

Law School Libraries. Several law schools opened up their law libraries for legal researchers not able to make in on campus. Cornell University and University of Georgetown were the leaders in this endeavor.

Cornell University: <http://www.law.cornell.edu/>

Court Sites

Local and Appellate jurisdictional courts have created websites to provide information to practitioners, including the local court rules, office hours and contact information. They also have self help areas for Small Claims, Restraining Order and Eviction processes

Local State Court

http://www.sdcourt.ca.gov/portal/page?_pageid=55,1&_dad=portal&_schema=PORTAL

Appellate/State Supreme Court

<http://www.courtinfo.ca.gov/courts/supreme/>

Federal, Federal Courts also provide website access, and electronic filings to assist the practitioners.

<http://www.supremecourt.gov/>

Forms.

The Courts have become enraptured with forms, making life easier for everyone in providing an easy checklist for filings. There are Court provided forms which are free and depending on your jurisdiction, the numbers and types of forms available for free go from those used by pro per parties in a self help

<http://www.courtinfo.ca.gov/cgi-bin/forms.cgi>

Legal News and Research:

There are the various sites that provide, business and legal news, non-statutory legal research and forms.

ACC <http://www.acc.com/>

The Law Shack <http://www.thelawshack.com/LawsandCodes.html>

Findlaw <http://www.findlaw.com/>

Martindale Hubble <http://www.martindale.com/>

Katsuey's Legal Gateway <http://www.katsuey.com/>

Google Legal Research – Google Scholar <http://scholar.google.com/>
http://www.google.com/Top/Society/Law/Legal_Information/

vLex <http://vlex.com/>

Government Sites:

Forms, Compliance and Information: Every business has relationships with the various state and federal agencies.

On the Federal level, there is the Internal Revenue Service and Department of Commerce in addition to the different regulatory agencies focused on specific industries.

At the least in each state the organization deals with the Secretary of State and its Taxing agencies (Income, excise and sales taxes).

Federal Agency Sites

IRS <http://www.irs.gov/index.html>

SEC <http://www.sec.gov/>

FTC <http://www.ftc.gov/>

State Sites

Tax <http://ftb.ca.gov/index.shtml?disabled=true>

Secretary of State <http://www.sos.ca.gov/business/forms.htm#be>

B. General Information/Calculators/News

Numerous web sites have been created to fill the need for that bit of information or calculator for a specific application, from financing to aeronautical engineering. Also with every news organization having their own web site, an easy access to most of the world's newspapers is found on the Drudge Report.

Martindale Calculators <http://www.martindalecenter.com/Calculators.html>

Wolfram Alpha <http://www.wolframalpha.com/>

Drudge Report <http://www.drudgereport.com/>

Wall Street Journal http://online.wsj.com/home-page?_wsjregion=na,us&_homepage=/home/us

C. Document Preparation and Review

The web offers a number of sites that allow for multiple people to review documents and edit them online, so that everyone is working on the same version of the document.

Google Docs

<https://www.google.com/accounts/ServiceLogin?service=writely&passive=1209600&continue=http://docs.google.com/&followup=http://docs.google.com/<mpl=homepage>

Open Office, has a free suite of programs compatible with Microsoft Office.

<http://openofficedownload.us/openoffice/?d=Openofficedownload.Us&dn=Openofficedownload.Us&TargetSite=FDZ&source=CCN-CD347-OOO-yah-arr>

Microlaw law firm technology management consultants, this company provides consulting services to mostly law firms to keep them abreast of the changes in technology.

<http://microlaw.com/index.html>

D. Document Processing Tools

There are a number of program add-ons that provide additional tools in creating legal documents, whether contracts or litigation.

Best Authority is an add-on for Word to create Tables of Authority.

<http://www.levitjames.com/bestauthority/bestauthority.html>

Numbering Assistant Programs for Word

<http://www.payneconsulting.com/products/numbering/>

Digital Dictation - Voice recognition Program

<http://www.nuance.com/naturallyspeaking/>

<http://www.winscribe.com/>

E. Security Risks

Metadata and other hidden electronic document risks.

Metadata is the hidden information contained in Computer generated documents, the edits, deletions, comments etc. that are permanently attached to the word processing, spreadsheet, or presentation file. The Microsoft products have the metadata files attached to them. Microsoft has come out recently with their fix to the problem.

1st defense is to not send out word or excel documents to outside the wagon circle. Send only secured pdfs.

2nd defense if it necessary to share the editable document outside of the office, then use a stripping program to clean the metadata. The new Microsoft Office programs have added the stripping feature.

http://www.workshare.com/go/metadata-software.aspx?_kk=metadata%20cleanup&_kt=8780a819-5850-4c56-a504-07c6f67cbfe7&gclid=CI7vv5i-qKMCFQQtawod_3lM4g

Email, Cloud document processing programs.

There are potential risks of not properly protecting confidential attorney-client protected work product by transmitting via email and use of web based programs to store and review documents. The risk is that if it physically not on site there is a potential for the data to be hacked into. In August there was a convention in Las Vegas of hackers trying to break into the Defense Department's computers.

The risks if using a web service for handling documents are:

1. Ethical - having a third party control the documents and information of the client.
2. What happens if internet connection is lost.
3. What happens if the service company goes out of business, or has their own crisis.