

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:

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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.

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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.

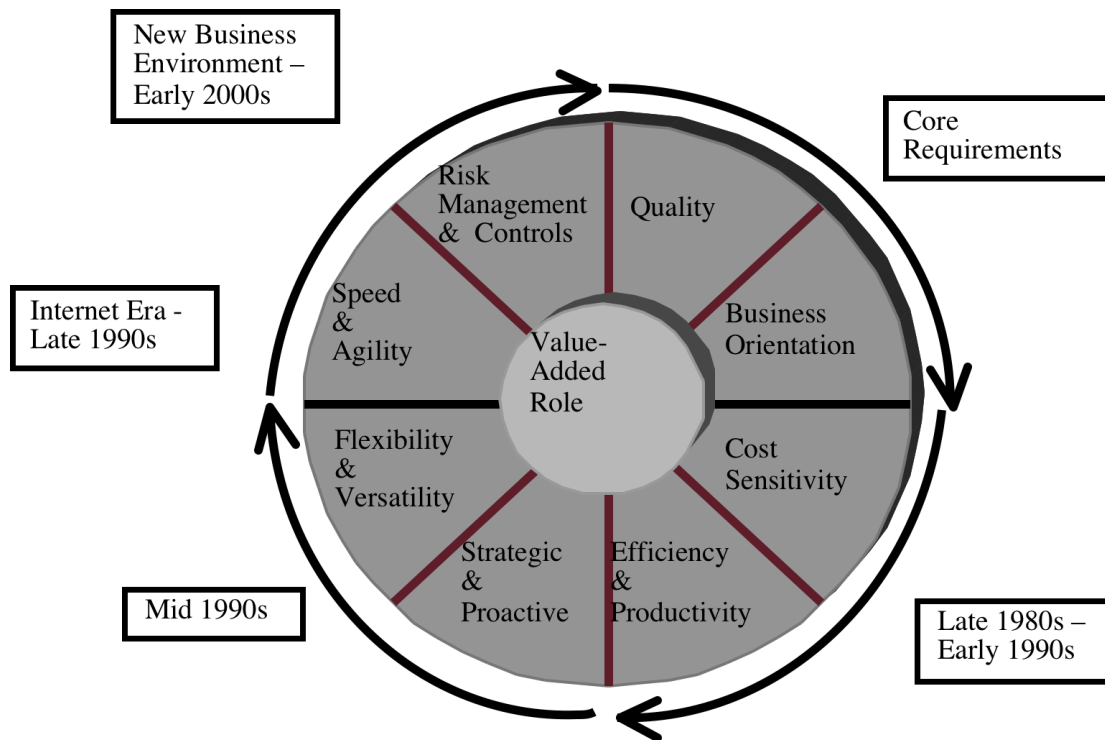
I. General Expectations

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;

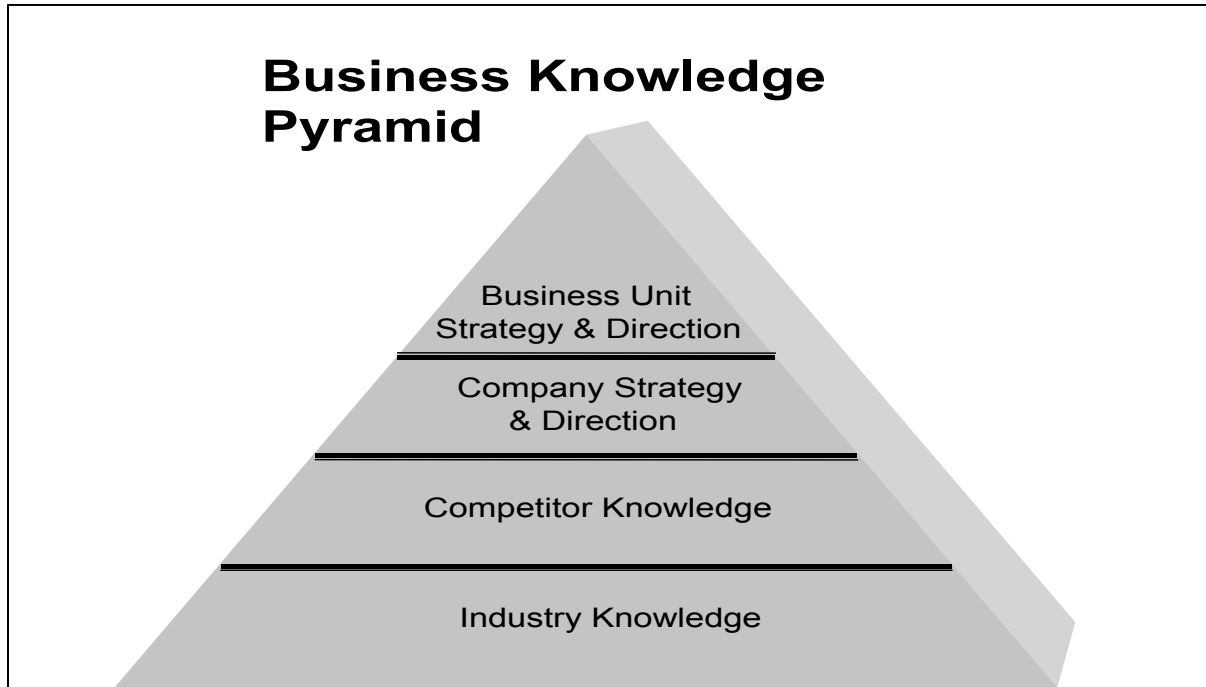
- Employment contracts, stock-option agreements, and change-of-control agreements for key executives;
- Last few proxy statements;
- Exhibits to their SEC filings (also determine if they are up-to-date);
- Press releases from the last year or so, which should be available from news outlets or the company's 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*).

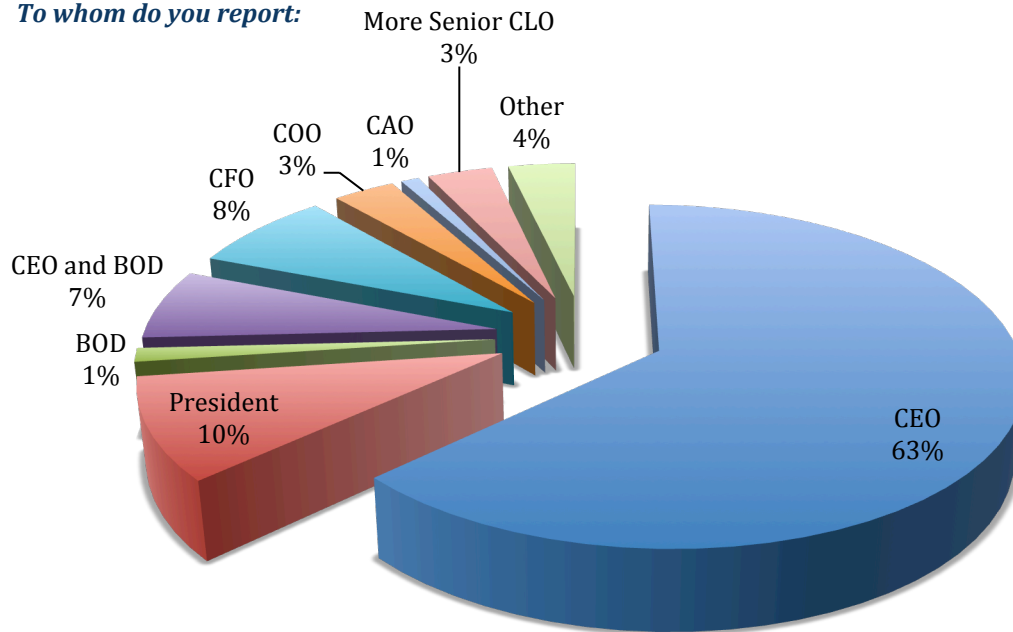
F. Establish Reporting Relationships

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

To whom do you report:

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.

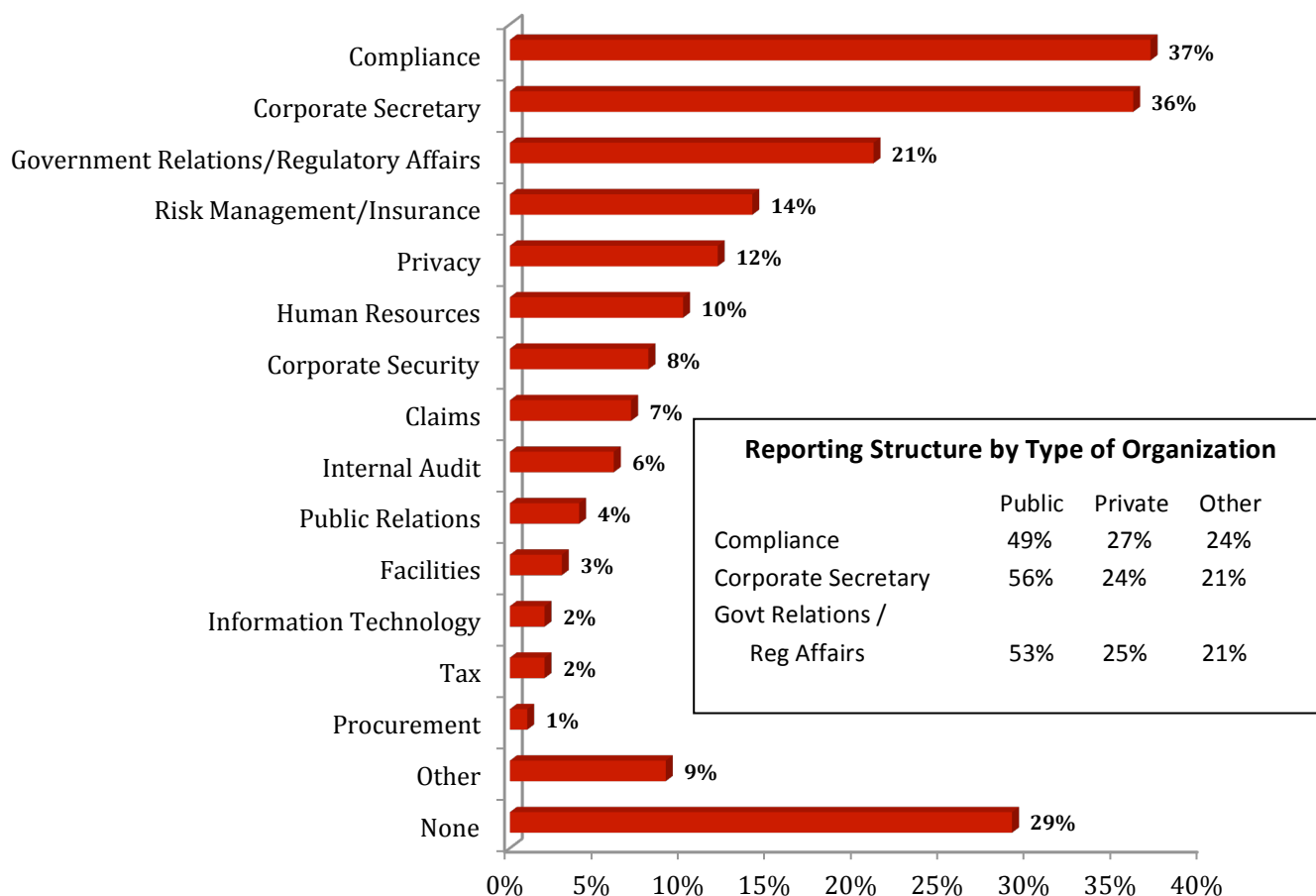
2. Which Functions Report to the General Counsel?

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

	Outside Counsel Expenditures (including fees, expenses and expert fees)									
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	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						
		Solo	2 to 5	6 to 20	21 to 50	51 or more	Average	Median
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:

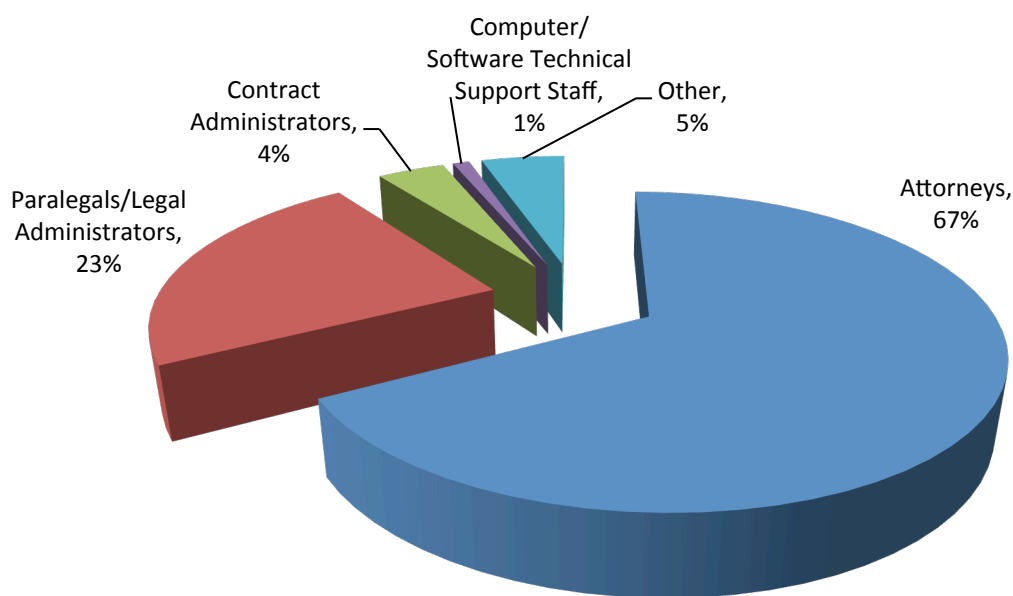
- Familiarizing them with the organization, introducing them to key people, and identifying resources at their disposal;
- Outlining their job responsibilities and job titles;
- Preparing a dedicated work area or office for use by the attorneys prior to the commencement of the project; and
- Maintaining 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.

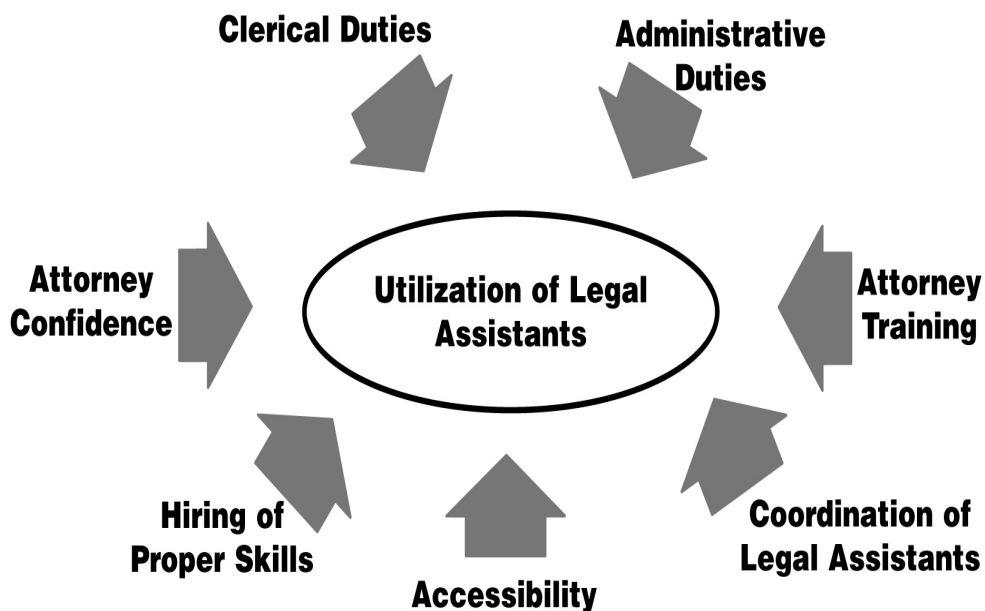
In determining how many paralegals to hire, general counsel can look both to the number of attorneys in the department and to the size (as measured in revenue) of the organization. In regards to hiring based on the number of employees, the average benchmark number for paralegals to the number of lawyers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

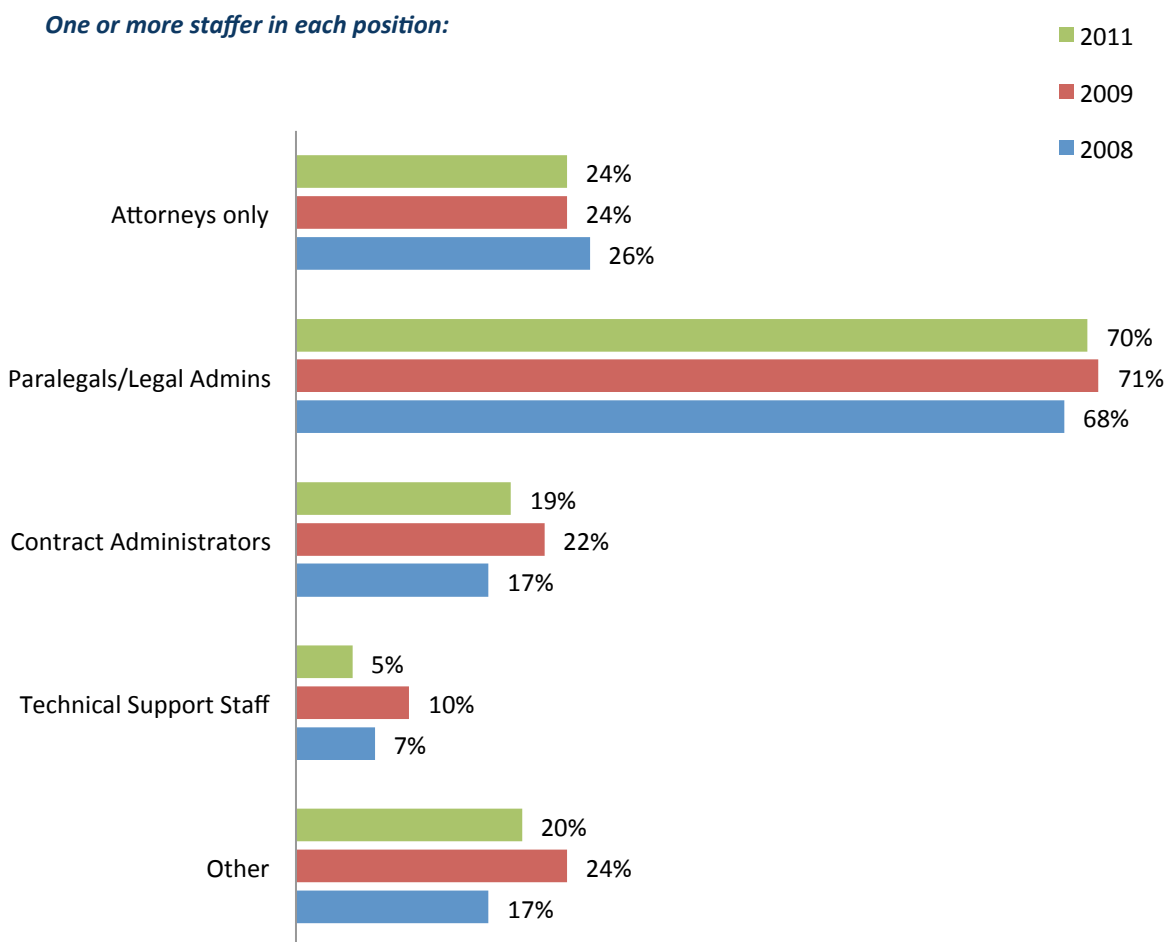
- Attending and taking notes at meetings;
- Preparing legal documents and updating transactional documents;
- Transmitting legal correspondence; and
- Completing administrative forms, organizing and maintaining case and correspondence files.

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% responded 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

Always Accessible

1

2

3

2. How responsive are the lawyers in addressing your business and legal issues?

Advice Bears
No Relationship
To My Problem

Advice has
Pinpoint Accuracy

1

2

3

3. How fast are the lawyers in providing you what you asked for or need?

Extraordinarily
Slow

Exceptional Turn-
around Time

1

2

3

4. Do the lawyers provide advice and rationale in a way that is clear, concise, intelligible and useful?

Never

Always

1

2

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	<p>Reliable and versatile practitioner across all major areas of specialty</p> <p>Broad and deep expertise enhanced by considerable experience in major issues and matters</p> <p>Needs no significant professional guidance</p> <p>Superior draftsman, analyst, negotiator and presenter of legal points</p>	<p>Can handle all major problems in practice area without supervision; shows initiative and advanced people skills in team problem solving situations</p> <p>Exhibits sound business sense and industry knowledge</p>	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	<p>Reliable and versatile practitioner across major areas of practice</p> <p>Broad and deep expertise enhanced by considerable experience in major issues and matters</p> <p>Needs no professional guidance</p> <p>Superior draftsman, analyst, negotiator and</p>	<p>Can handle all major problems in practice area without supervision; shows initiative and advanced people skills in team problem solving situations</p> <p>Exhibits sound business sense and industry</p>	Can reliably counsel all clients	Directly affects Company's strategic objectives and direction	<p>Manages the legal affairs of a section of a practice area</p> <p>Supervises all attorneys, paralegals and support staff</p>	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

Mark Roellig, "I Just Became a General Counsel: What Should I Do Next?," *ACC Docket* 30, no. 2 (Mar. 2012): 52, *available at* <http://www.acc.com/legalresources/resource.cfm?show=1303337>.

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Amy E. Hutchens, "Wearing Two Hats — In-house Counsel and Compliance Officer," *ACC Docket* 29, no. 9 (Nov. 2011): 66, *available at* <http://www.acc.com/legalresources/resource.cfm?show=1295329>.

Whitnie Henderson, "New to In-house — Give Time, Get Time," *ACC Docket* 29, no. 9 (Nov. 2011): 20, *available at* <http://www.acc.com/legalresources/resource.cfm?show=1295340>.

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>.

Vicken B. Bayramian, "The General Counsel as a Strategic Thinker," *ACC Docket* 29, no. 2 (Mar. 2011): 22, *available at*

<http://www.acc.com/legalresources/resource.cfm?show=1277470>.

Tiffani R. Alexander, "General Counsel Roundtable Discussion: CLO's Role as Strategic Leader, Trusted Advisor & Problem Solver," *ACC Docket* 29, no. 1 (Jan. 2011): 80, *available at* <http://www.acc.com/legalresources/resource.cfm?show=1268001>.

Mark Roellig, "Making Your Legal Organization a Strategic Asset for the Business," *ACC Docket* 28, no. 2 (Mar. 2010): 62-68, *available at* <http://www.acc.com/legalresources/resource.cfm?show=805483>.

Alfred Coleman, "New to In-house: Increase the Size and Productivity of Your Legal Department For Free," *ACC Docket* 27, no. 6 (July 2009): 26, *available at* <http://www.acc.com/legalresources/resource.cfm?show=424043>.

J. Martin Acevedo, "New to In-house: 10 Lessons on Building and Leading a New Small Law Department: Part Two," *ACC Docket* 26, no. 9 (Nov. 2008): 18-19, *available at* <http://www.acc.com/legalresources/resource.cfm?show=86791>.

Jeffrey D. Paquin, "Tips & Insights: Law Department Management with Jeffrey Paquin," *ACC Docket* 26, no. 4 (May 2008): 90-97, *available at* <http://www.acc.com/legalresources/resource.cfm?show=14341>.

B. InfoPAKs

"ACC Value Challenge Practices for the Small Law Department," *ACC InfoPAK* (Mar.

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>.

"Strategic Planning: Why a Plan Is Needed and How to Develop One," ACC InfoPAK (Sep. 2009), *available at*
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C. Program Materials

"Basic Financial Analysis," ACC Presentation (May 2012), *available at*
<http://www.acc.com/legalresources/resource.cfm?show=1310930>.

"How to Optimize Processes - Speed Up Contracts, Cut Outside Counsel Fees & Close Cases," ACC Webcast (Sep. 2011), *available at*
<http://webcasts.acc.com/detail.php?id=158605&go=1>.

"Develop Your Own Guidelines for Retaining Outside Counsel (from the SLD perspective)," ACC Presentation (Oct. 2010),

available at
<http://www.acc.com/legalresources/resource.cfm?show=1240418>.

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<http://www.acc.com/legalresources/resource.cfm?show=1237282>.

"In-house Counsels' Role from an External Lawyers' Perspective," ACC Presentation (June 2010), *available at*
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<http://www.acc.com/legalresources/resource.cfm?show=736913>.

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"Metrics to Creating & Fostering a Successful Law Department," ACC Presentation (Apr. 2007), *available at* <http://www.acc.com/legalresources/resource.cfm?show=20047>.

"Leadership Skills for New General Counsel & Managing Attorneys," ACC Presentation (Apr. 2004), *available at* <http://www.acc.com/legalresources/resource.cfm?show=20422>.

D. Quick References

"Top Ten Things a New Nonprofit GC Should Investigate," ACC Top Ten (Nov. 2011), *available at* <http://www.acc.com/legalresources/publications/topten/nngcsi.cfm>.

"Electronic Billing – The Basics," ACC QuickCounsel (Sep. 2011), *available at* <http://www.acc.com/legalresources/quickcounsel/ebtb.cfm>.

"Outside Counsel Retention Agreements," ACC QuickCounsel (Sep. 2011), *available at* <http://www.acc.com/legalresources/quickcounsel/ocra.cfm>.

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E. Other ACC Resources

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"2011 CLO Survey," ACC Survey (Oct. 2011), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1294806>.

"Establishing and Maintaining the Right Relationship Between the General Counsel and the Chief Compliance Officer - Perspectives of Sven Holmes, KPMG," ACC Leading Practices Profile (Feb. 2011), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1276964>.

"Ensuring the Grass Will Be Greener: Effectively Transitioning from a Private Law Firm to a Corporate Legal Department," Article (Oct. 2010), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1212835>.

"Corporate Minute-Taking: A General Counsel's Guide," Article (Oct. 2009), *available at* <http://www.acc.com/legalresources/resource.cfm?show=789968>.

"The Role of the General Counsel in Canada: Leading Practices in Law Department Management," ACC Leading Practices Profile (Sep. 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 (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-ea74-4742-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/ttfaydatyccs.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/ttfaydatyccs.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/proofentactics.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/proofentactics.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/proofentactics.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.