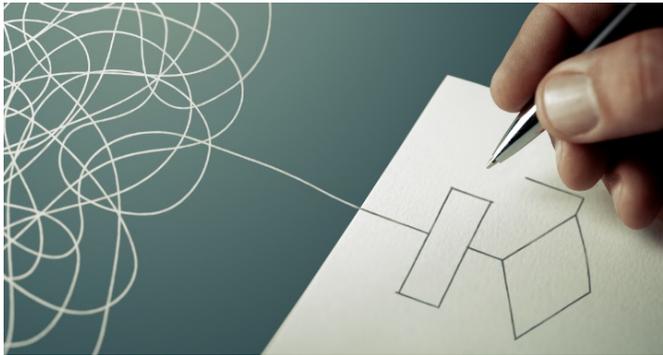


Corporate Counsels Discuss Managing Internal and External Relationships

Written By **Whitney Campbell Christensen** (wcchristensen@wardandsmith.com)
September 11, 2020



OUR 2020 IN-HOUSE
COUNSEL SEMINAR
IS GOING VIRTUAL!
Date and Time: TBA

SEND AN EMAIL TO
RSVP@WARDANDSMITH.COM TO
SIGN UP FOR SEMINAR UPDATES

A panel of general counsels discussed how they manage internal and external relationships in the first panel of Ward and Smith's 2019 In-House Counsel Seminar.

Panelists covered everything from how they structure their outside counsel relationships and internal legal teams to how they handle having to fire an outside law firm.

The session was moderated by Jason Christie, market president and publisher of the *Triangle Business Journal*.

Working with Outside Counsel

For outside counsel, different companies have different needs — and different philosophies.

"We have a firm that I would call my 'warm blanket' firm for day-to-day matters," said Jason Idilbi, general counsel of Passport, a Charlotte-based technology company focused on parking and transportation. "There are some others that are specialists. When we're acquiring companies or raising capital, for example, we find ourselves having to match prestige and subject matter expertise to maintain credibility with the parties on the other side."

Jena Taft, assistant general counsel at Research Triangle Park-based Affordable Care, a dental support organization that has affiliated dentists and dental practices in 44 states, said there's an advantage to having a firm that knows your company well.

"That way, when you call them for something, they don't have to spend a ton of time getting up to speed on just the core of your business," she said. "I do think it's helpful, depending on what areas of the country or internationally that you do business in, to have a firm that can help you in whatever part of the country you need help in."

David Onuscheck, senior vice president and legal and integrity general counsel for the Americas region for Switzerland-based ABB Group, said he often turns to smaller, boutique firms for litigation or specific kinds of legal matters.

"I think you get better value," he said. "I try very hard to stay away from New York, D.C., L.A., Chicago — they're just way too expensive."

But, he added, "with M&A, if you're throwing an army of people at it, you need a New York firm or something like that."

Some general counsels may not always be able to choose their outside lawyers.

Panelist Hope Murphy Tyehimba, general counsel for N.C. Central University in Durham, said she most often works with the N.C. Attorney General's Office because her university is part of the UNC system. However, for some areas where the state doesn't employ lawyers with the right expertise, she hires outside firms.

"Whenever we have intellectual property matters that arise, we engage outside counsel," she said. "Our university just completed a public-private partnership, and so we were able to engage outside counsel for that matter as well."

Ground rules are critical for outside counsel, Tyehimba said.

"I understand what the expectations are for outside counsel, but they also need to understand what the expectations are for in-house counsel," she said. "Establishing what the ground rules are, initially, is very important, and that will help us to have a [good] working relationship."

"You get out what you put in," Taft added. "You've got to invest a little bit in your outside counsel if you want to get a lot out of them."

When asked about how to go about firing an outside counsel, though, Taft put it bluntly.

"You need to remind them that you're not married and that you can shop around," she said.

Managing the In-house Legal Team

Of course, there's much more to being general counsel than just managing outside attorneys. A key part of the role is managing the internal legal team. Some in-house teams can go as far as embedding attorneys inside other departments in the company, but smaller in-house teams typically don't have that luxury.

"We do have clear [assignment] responsibilities," said Passport's Idilbi. "I have two revenue enablement folks. They support the selling teams and everything in the sales lifecycle, including subcontractors and other relationships. ... One of my attorneys is just an M&A and corporate development specialist."

Hiring the right attorneys for an in-house team is one of the general counsel's chief responsibilities.

"It's so important to have as much diversity as you can," Onuscheck said. "The more diversity that you have, the [more] different opinions you get. ... It helps with decision-making."

It's also important, all the panelists agree, to hire attorneys who have good communication skills and are collaborative.

"You need someone that HR likes and that IT likes and that marketing likes," she said. "You've really got to get someone with a good attitude that can play ball with everybody."

At NCCU, Tyehimba said they deliberately structure interviews for new team members to test for good fit with key individuals and the university's culture.

"We structure the half-day or day-long interview session," she said. "You meet with the search committee, you meet with the Division of Academic Affairs, and you meet with the executive leadership team. You want to be able to see how that individual is going to interact with those different team members and at different levels within the organization."

Working with Other Teams and Departments

Working with other departments inside an organization goes beyond just having attorneys with good people skills. General counsels make deliberate organizations about how and when they integrate with internal teams, particularly when working with outside counsel.

"I bring my internal teams back in towards the end so that they can feel that buy-in and implementation, and they can ask follow-up questions," Taft said. "I try to kind of funnel, to keep cost and time down as much as possible."

Idilbi said how much internal business teams are involved in direct discussions with outside counsel depends in part on how much experience they've had with them. "For example, with our chief analytics officer, who oversees our IP portfolio, everyone reached the right comfortable level for him to coordinate directly with our outside IP counsel," he said.

Internally, he said, "legal does almost nothing that's siloed just within our department. ... Everything involves partnership across the business."

Onuscheck noted that colleagues in other departments often bring unique expertise to a situation.

"If you have an HR issue and all of a sudden someone has sued you for discrimination, wrongful termination, etc.," he said, "You're going to partner immediately with the HR person on the ground."

Protecting the Business While Growing the Business

A critical part of the general counsel's role is balancing legal risk the company's overall business goals and how colleagues in other parts of the company want to do things.

"You do your best to advise your business folks about what the risks are, and alternative options to be considered, but ultimately put the decision to them about how the business wants to proceed," Idilbi said.

"We never want to be the ones to say no, we just want to be the ones that educate and advise in a credible way and then put the wheels in motion to execute on the business team's decisions."

Risk management has to be balanced with the daily task of "putting out fires," Taft said. "You've got to keep the risk management stuff going in the background."

Of course, managers don't always follow the legal advice they get from corporate counsel. "As long as it's not illegal or against company policy, managers do have discretion to choose how to handle issues, even if you **personally** feel that's not in the best interests of the company," Onuscheck said.

Tyehimba pointed out that risk management requires flexibility.

"The UNC system has an enterprise risk management policy where divisions and departments on campus are asked to identify risks, monitor those risks, and then assess those risks on a periodic basis," she said. "The university also has an overall strategic plan ... at some point, the risks that have been identified are going to bump up against the goals that have been identified by others.

"At the end of the day, my hard stops are: is this going to violate an NCCU policy, a UNC system policy, or a North Carolina or federal law."

--

© 2020 Ward and Smith, P.A. For further information regarding the issues described above, please contact Whitney Campbell Christensen.

This article is not intended to give, and should not be relied upon for, legal advice in any particular circumstance or fact situation. No action should be taken in reliance upon the information contained in this article without obtaining the advice of an attorney.

We are your established legal network with offices in Asheville, Greenville, New Bern, Raleigh, and Wilmington, NC.