



102 - Juggling Other (Nonlawyer) Roles

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William A. Barnett currently holds the positions of vice president, general counsel, vice president of human resources, corporate risk manager and corporate secretary for State Industrial Products Corporation based in Cleveland, Ohio. He is responsible for providing legal advice to the corporation and all of its business subsidiaries as well as representing the corporation in court. The corporate legal practice has included a significant emphasis on alternative dispute resolution. Mr. Barnett was actively involved in the development and implementation of the State Industrial Products alternative dispute resolution program.

Prior to joining State, Mr. Barnett was an associate with the Cleveland law firm of McCarthy, Lebit, Crystal & Haiman, Co. L.P.A. State Industrial Products manufactures and sells a full line of industrial maintenance products throughout the United States, Canada, Puerto Rico, Europe as well as parts of Asia and the Middle East. The company employs approximately 1800 people and has several manufacturing and distribution centers.

Mr. Barnett is active as a board member for the Lutheran Metropolitan Ministries Homeless Shelter and formerly with ACC's Northeastern Ohio Chapter, and the Northern Ohio regional commercial advisory committee of the American Arbitration Association.

Mr. Barnett received his B.S. from Northwestern University and J.D. from Case Western Reserve University.

Jennifer Gorman

Jennifer H. Gorman is senior attorney for State Industrial Products Corporation based in Cleveland, Ohio. State Industrial Products manufactures and distributes industrial maintenance products throughout the United States and other parts of the world. Ms. Gorman's responsibilities include providing legal counsel to the organization, including its subsidiaries, and representing the corporation in court. Her practice is focused on litigation, employment matters, intellectual property and training. Ms. Gorman actively handles litigation involving the company and claims brought through the company's alternative dispute resolution program.

Prior to joining State Industrial Products, Ms. Gorman was with the Cleveland law firm of Ulmer & Berne for nine years, where she concentrated on business litigation and employment law.

Ms. Gorman served on the board of the ACC's Northeast Ohio Chapter as its programming chair for two years. She has also served as a guardian ad litem in the juvenile court system on a pro bono basis.

Ms. Gorman received a B.A. from Miami University and is a graduate of Cleveland Marshall School of Law, cum laude J.D.

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ACC Meeting - Chicago Small Law Department Session October 29, 2007

“Juggling Other (non-lawyer) Roles”

There has been a lot of press on the subject of in-house attorney positions and what they mean for the companies and how the role of the in-house lawyer has expanded. Increasingly, the press has focused on the changing role of in-house lawyers and how their role has grown to include non-lawyer functions. This discussion is geared towards the unique challenges posed by taking on these non-traditional and non-lawyer functions, which are nevertheless important to the careers of the in-house attorney. We will discuss how non-traditional roles can provide opportunities to in-house counsel, but at the same time cause one to say “did I really go to law school for this?”

History of In-House Counsel

Let's begin with a short trip down memory lane. The in-house attorney function has gone through various evolutionary stages. “There is little question that expectations of general counsel and law departments have evolved over the past two decades. The expansion of in-house law departments in the late 1970s and 1980s was largely driven by cost reduction- substituting much cheaper inside legal resources for increasingly expensive outside legal services. For much of this period, legal teams were focused on building effective organizations and internal legal service delivery capabilities.”¹ Furthermore, it was not unusual “during this period for the legal function to be exempt from company-wide management initiatives.”² When one looks at the current stage of the evolutionary process of the in-house legal function there is one truism, in-house attorneys have achieved an expanded role within our companies, in both legal and non-legal roles. What does that mean to us today?

In the last few years, in-house attorneys have increasingly become part of the valuable decision-making brain trusts within their companies. Not only legal advice but also decisions on the essential aspects of the business deal are being made with the input of attorneys. When the attorneys are giving business advice they are stepping outside of the traditional “lawyer” role, which brings up both practical and ethical issues.

¹ Jonathan P. Bellis, *The Evolving Role of In-House Counsel: Adding Value to the Business*, Hildebrandt International (Winter 2003).

² *Id.*

On a practical level, the lawyer in the boardroom who is giving business advice must determine their proper role at that moment. Are they giving legal advice or providing business counsel outside the scope of their legal counsel (and their insurance coverage)? While seemingly innocuous and prevalent, this dual-role of Lawyer-Director in the boardroom is the first to be pointed out when corporate actions go awry and scandals surface. Was the lawyer involved in the actual business decision or did they recognize the illegality of the decision and try to stop it? It is realistic to assume that in the major business scandals of the recent past the corporate lawyers were not far from the decision-making action. Professor Geoffrey C. Hazard, Jr. has discussed this very issue when he states, "...paradoxically, lawyers in a corporate law department confront situations that resemble the ethical challenges faced by the criminal defense lawyer. In all kinds of law practice, there are times when the lawyer should not know everything, even though lawyers in independent practice are extremely reluctant to acknowledge that truth."³

How far therefore should one be willing to stray outside of the traditional legal role and what are the risks and benefits? In the spectrum of opportunities (different hats), being part of the decision-making process on the business side is high on the list of adding value (it's where the action is). In the middle are non-lawyer functions such as Human Resources (HR), Risk Management, Real Estate etc. This list can go on and on, even embracing seemingly irrelevant but important social functions such as: Chief Office Decorator, "COD," Corporate Challenge Captain "CCC," President's Marathon Supporter "PMS" and, my favorite, Artwork Selection Specialist, "----."

Adding Value to our Position of In-House Counsel

What does this mean? In-house attorneys are expected to "add value" and we, for personal and professional reasons do wish to add value -- if not only to continue to establish our worth and for continued job satisfaction. Sometimes, in our limited legal roles, it is hard to demonstrate our value (lower billings, less lawsuits, quicker resolution of deals, etc.) and even, in the expanded role of the lawyer in the new evolution of the inside counsel role it becomes more difficult to show "what you've done for me lately." In-house counsel want a job performance review where the successes jump off the page instead of stating the same line, "pushed papers from one pile to another for the past 365 days, expenses are in line with budget."

Taking a look at the essential benefits of in-house attorneys from the company and individual perspective can beef up the *add-to value* factor.

From the company point of view:

1. In-house counsel are solely focused on the business, and so can become experts of the business;
2. In-house counsel are employees with more than a passing interest in resolving matters that affect the company, and are willing to stay "on the clock";
3. In-house counsel can bring a multiplicity of disciplines to address an issue (such as finance/accounting, inventory, regulatory);
4. Interpersonal relationships and institutional knowledge are helpful for getting things done.

³ 46 Emory L.J. 1011, 1019 (Summer 1997).

From the individual's perspective:

1. The work is generally interesting and allows a greater breadth of contact with and control over matters (for example, you can handle a file from beginning to end);
2. Career opportunities can develop from the close contacts and a chance to shine on new tasks undertaken;
3. Financial opportunities may be greater in-house than at an outside firm (especially when law firms are scrutinizing the value of senior partners;⁴
4. Relationships with corporate individuals mean connection to interesting job opportunities and board appointments.

Since lawyers are increasingly expected to add value we need to figure out ways that can keep our role, not just the lawyer role, on the radar screen. Perhaps applying a creative side to a project? It is always good when business people come to the attorneys for creative solutions. After all, who has better judgment than lawyers? How about designing logos, and writing and performing jingles for company advertising? Not a lawyer's job, but who does not like to get out and show their creative side if they can? An interesting survey would be to ask how many lawyers had a creative life before law school?

It is certainly a challenge to keep up with all of the legal issues in the changing legal environment. That is expected of the lawyer but may not be seen as an added value. Therefore, communicating on the services and contributions is as important as providing the high quality services that in-house attorneys do.⁵ The lawyer has the ability to add values from inside with an insider's knowledge that others (outside attorneys) cannot.

According to Elisabeth Opie (an Australian in-house attorney) in her article "So, you're an in-house counsel. What now?"⁶ "The key issue to resolve is: what do you want to achieve as an in-house counsel? Shorter working hours than your law firm counterparts is no longer the norm, so think again about that one. To work for a particular purpose that your employer represents? To become general counsel or company secretary? To move into management? Obviously, the key is to focus on your long-term objectives and work towards those. But to be a well-rounded and successful legal counsel, it is necessary to take part in a variety of development and educational programs, create good working relationships across and outside your business, and take advantage of the many opportunities that arise for in-house counsel."

In his article "The Evolving Role of In-House Counsel: Adding Value to the Business," Johanthan P. Bellis touches upon a key area of the evolution of the in-house lawyer's role where true value-added contributions have been made. They include: developing a company-wide dispute prevention/resolution strategy and program; promoting an effective intellectual property strategy function process and system to protect and enhance the intellectual assets of the company; integrating document and contract production processes and systems; integrating ethics compliance and preventive law efforts; establishing comprehensive records (including electronic) management program; integrating legal and public relations; supporting superior execution of deals and transactions; supporting creative sales marketing and distribution programs; contributing to new product ideas or design; providing client coaching and deal

⁴ See Wall Street Journal (7/5/07).

⁵ Bellis at 3.

⁶ Elisabeth Opie, *So, you're an in-house counsel. What now?*, www.lawyersweekly.com.au/articles/97/0C020C97.asp (June 4, 2004).

making negotiation skills, risk evaluation and judgment; influencing governmental and regulatory policy; serving as internal early warning system in identifying potential risks to the company; cutting through toughest problems facing the company/crisis management; supplying leadership talent within the company.⁷

Ethical Issues Presented by Non-Lawyer Roles

As in-house counsel, we are inevitably going to assume non-lawyer roles. Whether they are the more traditional non-lawyer roles (risk manager, government relations, compliance, board of directors) or veer toward the non-traditional (COD, CCC, PMS, Artwork Selection Specialist “---”), we are presented with unique ethical dilemmas. Consider the following:

1. You have served as a decision maker, and someone is challenging the validity or legality of the decision.
2. You are asked by an individual employee or officer for legal advice about something that is personal to him or her (e.g. car accident, estate planning, divorce).
3. You are asked to serve on the board of directors of your company.
4. You are asked by an employee or an officer to keep a problem confidential.
5. You are asked for legal advice on something in which you have a personal stake.⁸

The question becomes how to balance our ethical obligations with the pressures to be valuable player on the corporate team. In arriving at an answer, it is important to keep in mind certain key ethical rules:

Model Rule of Professional Conduct 1.6

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

- (1) to prevent reasonably certain death or substantial bodily harm;
- (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;
- (3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;
- (4) to secure legal advice about the lawyer's compliance with these Rules;
- (5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was

involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or
(6) to comply with other law or a court order.

Model Rule of Professional Conduct 1.7

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (3) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing.

Model Rule of Professional Conduct 1.13

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) Except as provided in paragraph (d), if

- (1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and

⁷ Bellis at 5.

⁸ Steven N. Machtinger and Dana A. Welch, “In-house Ethical Conflicts: Recognizing and Responding to Them,” *ACC Docket* 22, no. 2 (February 2004), 22 – 36.

(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

While there is no doubt under The Model Rules of Professional Conduct that the organization is always the client and that an attorney cannot divulge client confidences, the Rules do not offer much guidance when in-house counsel steps outside of his/her legal role or when she finds herself in a hybrid lawyer/non-lawyer role. The dual roles that in-house counsel often face have triggered judicial scrutiny. In particular, as pointed out in the cases below, the corporation's privilege can be imperiled when in-house counsel does not keep multiple roles distinct:

Grimes v. LCC Int'l Inc., 1999 Del. Ch. LEXIS 64: Defendants were not entitled to invoke the attorney-client privilege to protect the production of documents requested when defendant attorney was not acting solely in his capacity as a lawyer. In a derivative suit, defendants could claim attorney-client privilege with respect to documents made when defendant attorney was acting in his capacity as a lawyer, subject to plaintiffs' right to defeat the privilege by showing good cause.

Motley v. Marathon Oil Co., 71 F.3d 1547 (10th Cir. 1995): In a suit claiming that racial discrimination was the cause of termination of her employment, the ex-employee argued that the trial court erred in denying her motion to compel the employer to turn over documents prepared by in-house counsel that detailed the

employer's voluntary termination plan for its employees. The court affirmed the trial court's conclusion that in-house counsel prepared the memorandum on corporate reduction of work force for purpose of giving legal advice rather than business advice. In-house counsel's position invited judicial scrutiny because he also sat on the reduction of work force committee; however, he testified that his position was that of legal advisor to the committee and that the subject documents were not prepared for business purposes.

Andritz Sprout-Bauer v. Beazer East, 174 F.R.D. 609 (M.D. PA 1997): The attorney/client privilege attaches only if the attorney is acting in the role of legal advisor. Issues as to what role the attorney was fulfilling arise most frequently in cases involving in-house counsel who may perform a number of functions for the corporation, only some of which place them in the role of legal advisor. Communications made by in-house counsel functioning in the role of business advisor or corporate administrator are not privileged. Drafts of documents prepared by counsel or circulated to counsel for comments on legal issues are considered privileged if they were prepared or circulated for the purpose of giving or obtaining legal advice and contain information or comments not included in the final version. Preliminary drafts of contracts are generally protected by the attorney/client privilege because they may reflect not only client confidences, but also legal advice and opinions of attorneys, all of which is protected by the attorney/client privilege.

Borase v. M/A COM, 171 F.R.D. 10 (D. MA 1997): The vice-president/general counsel of the defendant corporation spoke with various management personnel in connection with negotiating a separation agreement for the discharged employee. At his deposition, in the employee's race discrimination case, the vice-president/general counsel was instructed not to answer certain questions regarding on the grounds of attorney-client privilege. On review, the court granted the employee's motion to compel. The court found that the vice president, although general counsel, had other responsibilities aside from rendering legal advice and that the corporation failed to carry its burden in establishing that legal advice was sought or rendered during the conversations with management.

Georgia-Pacific Corp. v. GAF Roofing Mfg. Corp., 1996 U.S. Dist. LEXIS 671: Where in-house counsel acted as negotiator of the environmental provisions of a contract entered into between the parties, the manufacturer alleged that testimony of the in-house counsel could not be compelled because of the attorney-client privilege. The roofing company alleged that the in-house counsel was acting as a negotiator of terms and provisions of the contract, not in his legal capacity; therefore, the privilege did not apply. The court agreed, finding that the in-house counsel served as a company officer with mixed business and legal responsibility, and that the attorney-client privilege would not be recognized when the in-house counsel was acting as a business advisor and not as legal counsel. The in-house counsel was not exercising a lawyer's traditional function when he negotiated the environmental provisions of the agreement and when he

served as negotiator of the matters to be included in the agreement. As a negotiator of the terms of the agreement, conversations regarding the status of the negotiations and the manufacturer's options involved business judgments and were not privileged.

In reaction to cases like these, the ABA House of Delegates adopted a resolution at its 1997 annual meeting declaring the ABA's position that "the attorney-client privilege for communications between in-house counsel and their clients should have the same scope and effect as the attorney-client privilege for communications between outside counsel and their clients." In attempt to protect sensitive corporate communications, in-house counsel should heed the following suggestions:

- Avoid serving in both a legal and an administrative or business decision-making role.
- When not clearly acting as a legal advisor, make a written record of the legal aspects of any communication and/or have another lawyer participate in the communications in the role as legal advisor.
- Make sure that requests for legal advice are so designated and that counsel's capacity as legal advisor is spelled out in writing.
- Avoid combining legal and non-legal matters in either oral or written communications, and never let non-legal matters predominate in sensitive communications.

In-house attorneys also face conflict of interest issues when taking on dual roles. Of course the organization is the client, but it can only act through its officers, directors, employees and shareholders. A rule of thumb followed by many in-house attorneys is to treat the relevant managers as if they are the company representative so long as they are acting appropriately. As soon as they act inappropriately (i.e. against the company's best interests), they should no longer be treated as the client.⁹

A typical conflict situation arises when in-house counsel serves also as a director of the company. While the attorney role has its own set of duties to the company, a director may have different duties (e.g. fiduciary duties) that pose several conflict dilemmas:

- An ethical arises when a lawyer-director is asked to represent the corporation on a matter where he, as a director, opposed the undertaking. In this situation, the lawyer must determine whether his representation of the company may be "materially limited" by his opposition (under Model Rule 1.7).
- A lawyer who serves as a director could be disabled from rendering opinions or offering her best legal judgment with respect to a specific matter because of her role as director.
- The lawyer-director may encounter a conflict concerning matters presented to the board that could affect his role as legal counsel in the future.
- Ethical issues also arise when the corporation and its directors are named in lawsuit.

⁹ *In-House Legal Department Ethical and Professional Conduct Manual*, Ch. 2, 4 (Association of Corporate Counsel 2003).

It is important to keep in mind that while an attorney is governed by the rules of ethics and conduct while performing legal duties, those rules may not apply at all when the lawyer completely steps out of the legal role, as many in-house counsel do. When in-house counsel is called upon to screen applicants, organize a company function, act as media representative, run a marathon with the CEO, the ethical rules must be replaced by a good common sense approach while keeping in mind the primary role of counsel to the corporation.

Personal Liability

In addition to the ethical issues posed by taking on these additional roles, or "hats", another consideration is the increased risk of personal liability.

Personal liability for attorneys is generally focused on civil vs. criminal liability for our actions. For in-house attorneys seeking to take on additional roles that do not fall within their typical legal and professional duties, they must recognize that this may open up the door to additional liability. As we have seen in the last ten years, in-house attorneys (generally the General Counsel) have been exposed to greater personal liability internally from corporate employees and directors and officers, as well as shareholders, other third parties, and the government or governmental agencies pressing both civil and criminal claims. These claims have done much to damage the respect of in-house counsel nationwide, if not worldwide, and can cause anxiety for the counsel whose priorities are no longer only on keeping the client out of trouble, but must "also protect themselves" from claims of personal liability.¹⁰

Liability arising from within the corporation

Conflicts of interest give rise from within the corporate family as in-house counsel take on greater roles in HR, Joint Ventures and Mergers & Acquisitions (M&A), and litigation against the directors and officers of the corporation. Generally, liability arises when there is confusion among employees, the directors and officers and corporate counsel as to whom the in-house counsel is representing and, stemming from that, attorney-client privilege.

Liability to 3rd parties

As in-house counsel are asked to provide legal letter opinions which are relied upon by third parties, they expose themselves to liability from incorrect assumptions and opinions.¹¹

Outside Forces are Working to Limit the Role of In-House Counsel: Liability to the Government, Government agencies and the general public

One of the newest and rising forms of liability for attorneys with multiple "hats" is personal liability arising under fiduciary duties. If the counsel takes on the role of a director or officer (Lawyer-Director), the counsel will take on the officer's fiduciary duties to the shareholders and the corporation and have been found by some courts to have an enhanced standard of care from the duality of the role.¹² Even without the officer role, the government and governmental agencies feel that legal counsel are involved in all aspects of business and have knowledge of the illegal issues through exposure through various roles. These governmental agencies, particularly the SEC, are bringing suit against the corporate counsel for two reasons: 1. to force the attorney

¹⁰ Adele Nicholas, *The RegulatorRunDown*, Inside Counsel (June 2007), 49.

¹¹ John K. Villa, *Individual Liability of the Corporate Lawyer*, § 6.05 (West 1999).

¹² Id at §6.23. See also *Escott v. Barchris Construction Corp.*, 283 F. Supp. 643 (S.D.N.Y. 1968)

to remove him/herself from the position of counsel in matters involving the SEC, sometimes using cease and desist letters to force the counsel out, or 2. to find the counsel liable for aiding and abetting the officers in securities fraud.¹³ Additionally, class action securities fraud suits against in-house counsel generally stem from the lawyer-director position.¹⁴ These regulatory activities provide a chilling effect on the freedom of movement that in-house attorneys have enjoyed in the past to be able to take on additional roles.

Liability to the Corporation/Client

As Federal agencies increasingly call for waiver of attorney-client privilege and work product, the attorney may face greater exposure to lawsuit from its own corporation, as confidential conversations and work products have already been made public. Corporations facing massive suits from the agencies may in turn point a finger at counsel in their increased role.

Limiting Liability

All is not lost for the in-house counsel. Although in-house counsel may be leery of roles based on additional liabilities, using a careful analysis of roles and the change of liability can reduce the risks and allow the attorney to protect himself/herself from exposure. The attorney must ask 2 questions: 1. What hat(s) am I wearing in this situation? and 2. What standards of care apply in this role? (E.g. fiduciary duties, legal ethics) After analysis, counsel can accurately look at the options available to limit liability. Typically, the tried and true methods of indemnification and waivers/releases are the corporate attorney's first line of defense from liability.

Indemnification/Release of Claims

The standard limitations come from indemnification. However, bar associations are split on whether attorneys can limit their liability contractually.¹⁵ A standard release of claims form can be used and has been consistently applied. Also, companies can provide a corporate indemnity to protect the in-house attorneys.

Informed Consent/Waivers

When taking on additional roles and claims that involve representation of multiple parties, clear dialogue with the parties, informed consent and use of waivers of the potential conflict of interest are clear ways to mitigate the potential conflict.

Insurance

Unfortunately, waivers and indemnification can only protect in-house counsel from some claims. Where waivers and indemnification are not available, insurance must step in to cover. Often in-house counsel believe that work done for the corporation will be covered by the corporation's insurance policies. However, this is typically not the case. The corporations' various forms of insurance can only protect against various types of claims. Two types of corporate insurance, D&O (Director and Officer) and E&O (Errors and Omissions) can cover claims made for attorneys under the role of officer of the company and for general malpractice claims. However, all legal work is generally excluded from such policies. To cover legal opinions and professional work, corporate counsel should consider purchasing Professional Liability Insurance, particularly

if providing legal opinions to 3rd parties.¹⁶ There is the possibility of obtaining a moonlighting malpractice policy if the extra role is to personally represent individuals within the corporation.

Careers Choices – to Diversify or not to Diversify?

So, with the risk of additional exposures to liability, why then would in-house counsel desire to take on additional roles? As discussed earlier, attorneys need mental stimulation in their career and work-life to maintain interest. Also, attorneys are ambitious by nature. Most importantly, the extra work is often expected by the CEO or to whomever the in-house attorneys report to. While a busy law department may provide stimulation, it is becoming more common for attorneys in-house to specialize and focus upon one type of law and one type of transaction. Movement within the company to a business position, particularly in a company with a small law department, allows the attorney to expand his knowledge of legal and business practices. As Michael Baroni stated in his article, "Table for One" in a recent Inside Counsel Magazine, being in a small law department allows one to "take on a much wider diversity of work, cater to whatever the company needs and quickly learn new areas of law. Small-department lawyers also get to interact more closely with people across the company, in all locations, departments and levels."¹⁷ Of course, working in different roles and across a company leads attorneys to think outside of the typical "legal box", and to think like a businessperson, which is an asset for both the company and the attorney. In fact, this is the only way that an attorney can grow within a corporation, for the in-house attorney must be both a businessperson and the legal advisor at the same time.

CONCLUSION

Since lawyers are ambitious people, our careers in-house must be balanced with a drive to take on expanded roles and the issues that come along with those roles. Some of the issues are not easily reconciled with the ethical parameters we have as attorneys. Other issues require us to stop and take off the legal hat altogether, like taking on the role of a business leader in a decision-making process. Our expanded non-legal roles allow us to demonstrate greater value to our organizations and allows more career opportunities and greater job satisfaction, if taken on with consideration and finesse. The challenges in this article show that a new model is being created for in-house attorneys and that this new model has both benefits and cautions. It is by taking on these roles that we become part of the process of molding the in-house profession to something we can all live with. Perhaps, in ten more years, we will look back at the seamless role of the in-house lawyer in a business role and wonder what the fuss was all about?

¹³ Killa at § 6.05.

¹⁴ Lician T. Pera and Brian S. Faughman for ACC, *Paradise Tarnished: Today's Source of Liability Exposure For Corporate Counsel*, 50 (Association of Corporate Counsel 2005).

¹⁵ Killa at § 6.14.

¹⁶ Michael Carroll, "I Sign the Line", *ACC Docket* 25, No. 2 (February 2006), 14.

¹⁷ Michael Baroni, "Table for One", *Inside Counsel* (June 2007), 80.