

SEVEN WAYS

for

NEW

In-house

COUNSEL

to

START

OFF

on

the

RIGHT

FOOT

By Adrienne Cook



You are a newly minted in-house attorney, and perhaps the only one in your company. You stop to think: Now what? The business people in this company will be looking to you for all of their legal advice, that's what! Perhaps you are used to working as a lawyer in a firm, where you had a number of clients and divided your time among them. Your knowledge of each client was limited by the structure of the relationship. Perhaps you were outside counsel and concentrated in one area of the law. Your goal now, though, is to quickly get up to speed on the industry, business and culture of your new employer, thus making yourself indispensable. How to begin? Well . . .

30-SECOND SUMMARY

Illustrate your value to the C-suite and make them believers in your goals and supporters of you personally. Become comfortable with business risk. Learn the business by reading your industry/association journals and attending meetings and conventions. Ask the business leaders to be kept up-to-date on new/planned business; make sure they know you are interested. If you are able to do so, attend annual legal conferences, such as those given by ACC, where you can participate in a wide variety of seminars and meet other in-house counsel to discuss common work problems and solutions. Manage your information — start with ACC's recommendations on contract management systems. Most important, hone your customer service orientation: Become the advisor your business people can count on and the one they turn to because you have earned their trust. View your job as assisting them to achieve their goals.

Ensure members of the C-suite are your closest allies

What are the goals of your company or association, and how can you affect them? Talk to C-suite members and key board members for their ideas, which will be broad and comprehensive. Ask yourself: What business process improvement initiatives are your company involved in, and how can you enhance them with legal services? The operations managers will be able to provide concrete examples of projects currently in process and those in the pipeline. You have a lot of learning to do. Ask questions and listen — really listen. This is a good time to begin building solid business relationships with your company's leaders. They will be glad to be dealing with someone who wants to understand their business.

You truly need the support of the C-suite to guide your company in instituting sensible legal protections into the business. Aligning the legal department's goals with current business initiatives assists in making “true believers” out of the C-suite, thus supporting your vision of promoting the business, while at the same time, protecting it through proper legal procedures and advice. The people at the top must insist that everyone follow rules about contract formation (i.e., using templates and following a review and approval process), hiring consultants, business practices, financial administration and customer relations (to name a few), to enhance revenue and prevent waste and loss.

Be comfortable with risk

Life in-house ... well, it's a horse of a different color¹ from law firm days. No longer are you called upon to solve isolated problems or deal with issues one at a time before moving onto the next project. Now, you are a constant and integral part of a functioning business. You are in plain sight of management, and they want to be able to rely on you

on a daily basis for protection from liability, for planning and for business advice going forward. Businesses can move quickly, and decisions must be made quickly as well. Be aware there is often little patience for the development of thoughtful legal opinions. You will be asked for on-the-spot advice often and must be prepared to take a moment, rely on your knowledge of the business, synthesize the information given, and offer preliminary advice. Then, of course, return to your office, where you will research an unfamiliar point or begin to prepare a memorandum detailing a clear path for management to take.

Risk — what is your comfort level? If you are a business person, your focus is getting the deal done or the sale made, and getting the contract out of your way. “Legal is *always* slowing us down,” they say. But, you are the lawyer for the business. You have two responsibilities: to protect the organization and to foster business activity. There is tension between the two and a line to be drawn. How much risk can you reasonably allow, to ensure business gets done? As the sales staff pushes, you may relent on certain contract provisions or negotiation positions where you feel you can make accommodations. At some points, you must say “no.” But do not become the dreaded “no man” or even “Dr. No” to your business colleagues. The outside law firms too often do just that. They are the ones who tend to overly focus on protecting the business instead of getting business done, earning lawyers the bad rep we have in the business world.

Understanding how much risk you can live with is a perennial struggle. When faced with business risk, consider approaching your business

people as partners working on a problem together. And rather than acting as a barrier, find ways to get the deal done differently, yet in a manner that is legal and compliant.

Learn the business

Understanding the business cycles of your organization is a requirement for basic business knowledge of your company. Show your interest in the business by listening more than you speak. When you do speak, make sure to ask and answer plenty of questions. For instance, find out what is most important to the business units: the timing of their significant events, such as an annual meeting or quarterly sales meetings, or earnings reports. This information will assist you in anticipating and providing the services your business people need.

We all know most lawyers are not numbers people, and newer lawyers in particular are known to be lacking in business know-how. After all, you went to law school, not business school, right? Nevermind: You must learn how to read financial reports, a spreadsheet, and become comfortable using Excel and PowerPoint. (Take a class. Most companies offer them for staff.) Also, just how are your business's products or services manufactured or created? How are they distributed or sold? Being able to answer these questions in some detail means you will be of real use to your clients.

Your job now is to hone the skill of viewing business deals from the perspective of your clients when structuring a deal or working out an agreement. What is the point of protecting your business if no business is getting done? In-house counsel really must focus on the dual goals of protection



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and getting business done. Finding the right balance is absolutely key to your success.

Other ways to learn the business include the following:

- Learn your industry's key words and phrases, concepts, jargon, acronyms, products or services, so you can converse and understand the business people with whom you work.
- Read your industry/association journals and attend meetings and conventions.
- Ask the business leaders to be kept up-to-date on new/planned business so you can understand it and plan the kind of services you should be providing them to enhance their business plan.
- Make sure the business people know you are interested. Ask to sit in on business meetings with outside business partners at the outset of business deals. Depending on the size of your business and the nature of the deal, you may be one of the people involved in negotiations later.
- Learn to be an active listener (i.e., remain quiet and listen in business meetings, and be there in the background to help with talking points and preliminary business documents, such as memoranda of understanding or term sheets).
- Start to show your interest in advancing business interests and working as partners. Do not just say it. Key in on what is vital to your business units so you know where to place priorities.
- Keep up-to-date on the various areas of practice you find most useful and look for ways to expand your knowledge. Take advantage of opportunities, such as local ACC lunch or dinner programs, both to remain current and earn CLE credits. If you are able to do so, attend annual legal conferences, such as those given by ACC, where

you can attend a wide variety of seminars and meet other inside counsel to discuss common work problems and solutions; attend local and national bar association meetings to do the same.

- You cannot know it all: Keep a file of helpful articles on topics that will be of use in your practice for future reference and make use of online (help) information lines to ask more experienced lawyers for assistance in solving problems for which you are (for the moment) at a loss.

Be a problem solver and offer alternatives

Do not make the mistake of automatically thinking or saying that something is a business decision, not a legal decision, and therefore, is not your problem. Learning the business means you will become a valued team member who contributes ideas that can work. You, as a lawyer, are a logical person. Put that to work and get in the trenches with your business clients in working out business problems. Careful drafting of documents in clear English can go a long way toward achieving business goals, while facilitating and protecting the business. This promotes the idea that "legal" is not there to burden business, but rather to assist in getting business done properly.

Early in your tenure, approach heads of business units to assist them in achieving their goals. Offer to help them with their proposals and to help negotiations and contracting move more smoothly, efficiently and with better results. Ask for buy-in from those at the top of operations, with the goal of pushing this down through the ranks. People will be very happy to hear this approach, especially from a lawyer. This is not the usual deal. This could actually work!

- It is vital to find out what the business units' motivators are by asking and reading business plans.

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- How does "legal" conflict with these goals?
- How can this be remedied?
- Become thought of as dependable and responsive.
- Do what you say you are going to do, and do your best not to promise unrealistic results.
- Show your colleagues you share their priorities whenever possible.
- Let them know you think their work and goals are important to you by how you respond to their needs.
- Make an attempt to answer emails the day they arrive, if only to acknowledge them.
- Set expectations up front on turnaround time for such items as contracts.
- Flag emails for follow up or create different inboxes for projects to separate them from your regular emails. This will help you control what you have on your plate.

Manage your data

It is not uncommon for a small company to store its contracts and other business and legal documents on paper and electronically in numerous departments. This means when someone needs to see a particular document or contract, the hunt is on. At times, documents are difficult to locate or are lost forever. One of the first orders of

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business if your company has not had a lawyer before, or you are starting a new department, is to corral all existing legal documents in a central electronic depository, a document management system, and putting procedures in place to gather and handle all legal documents on an ongoing basis. But, how do you change organizational processes for numerous business units and build a system that could work for the needs of the business — and do it on the fly? Rely on your relationship with the C-Suite and other company leaders to put into place new procedures that are necessary to gain control over the company's documents.

Following are a few recommendations for beginning to put into place a document management system where none currently exist:

- First, see what others are doing and how it is working out for them. I began looking at systems with assistance from ACC's recommendations on contract management systems and then relied on online searches for "contract management system comparisons" to find numerous recommended vendors and their individual attributes. There are many options; therefore, it is advisable to focus on a list of factors you cannot live without. I also found out early in the process that it is nearly impossible to obtain pricing information from any vendor without enduring a sales pitch and doing a trial or a demo first.

- Affordability is probably near the top of the "must have" list. Then, you must make a decision regarding whether to purchase software or to have the information reside in the cloud. (I chose and recommend the cloud to save on expenses and to receive automatic, seamless updates over more costly and difficult software solutions.) You're looking for a system that is robust but not overly complicated, easy to learn and use, with brief but effective training, the ability to set reminders by date for payments/deadlines/re negotiations/ terminations, etc., and a system that has the bugs worked out already (i.e., reliability). You will be encouraged by enthusiastic sales staff to buy overblown, complicated systems intended for a vast multinational corporation and that require a week or more of training for each user — or onsite visits with your IT staff when you may work in a one-person legal department. Resist the urge to go big!
- Once you try out a few systems and sign up for one, the hard work begins: uploading documents and populating the system with all of the updates and information. This task is time-consuming, and you are busy. If you have other legal staff or legal assistants and law clerks, they can help input data, but you may not want clerical staff performing this function. Whoever does this must be able to read contracts with an eye toward ferreting out the relevant information to place into the system. You want quality input or you will regret it later.

Be a teacher

Being a teacher does not mean you are a law professor. You are speaking to business people who are busy, so keep it brief and clear, avoiding longwinded lectures and arcane language. These are intelligent people

— just apply the law to their situations so they can relate to what you are explaining. To assist in influencing your business people to cooperate in the legal process, explain each legal provision that requires explanation and why the provision is there. While some legalese is arguably difficult to avoid, no matter; just define what you cannot remove. Business people become much more comfortable in dealing with "legal" and more cooperative with legal processes once they are comfortable with the "why" behind legal requirements. With this approach, it will be easier to begin to forge a cooperative spirit with the business staff.

Another area of practice that requires a certain amount of pedagogy (along with finesse) is working with your corporate or association board of directors to ensure board members are properly informed on issues involving conflicts of interest, the meaning of fiduciary duty and the gray areas in between. Board members are experienced business people and can also have a sophisticated bearing and strongly stated opinions, which, at first, can be intimidating to new counsel. Despite their sophistication, you will find they have deficits in understanding all that is asked of them ethically and need your advice and counsel. You must be willing to tell board members they cannot take certain actions they want to take if they wish to remain a board member in good standing.

You will notice other staff being overtly deferential to board members, but you must remember that your place is as a trusted advisor. Your role, therefore, is to offer solid advice, explain the reasons behind it in the context of the business you do, and to do so in a professional and courteous, but not solicitous, way. You must earn the trust and respect of board members, and you can do this by providing solid advice in a forthright manner.

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Customer service orientation

To achieve the most advantageous terms in business deals, it is best for the business people to come for legal advice early in negotiations to achieve the most advantageous terms in agreements. If there is a solid, trusting, advisory relationship between counsel and the business and sales staff, this will happen. But, the business and sales staff must know that legal will not ruin their deal but will have ideas to help

the process along. Give the business people a reason to seek out your assistance by:

- truly viewing your business people as customers you want to satisfy and even impress;
- promptly responding to their queries, if only to reply that you received the message and will look into the matter;
- providing them with useful and readable templates for MSAs, NDAs, RFPs and MOUs so that your company's contracts will be at the ready and, therefore, more likely to be used in the business deal than the business partner's paper;
- explaining how to negotiate specific points to the company's advantage; and
- assisting them in understanding legal requirements so they can have confidence in presenting your ideas, making them "look good" during their presentations and in negotiations.

Moving to the position of inside counsel means more than dealing with discrete legal problems or planning

issues one at a time, day after day. It requires committing the entirety of your professional tenure there into reaching and striving to improve (i.e., to achieve for the success of the organization). Integrating these seven recommendations will go a long way toward reaching that commitment. **ACC**

NOTES

1. L. Frank Baum, "The Wonderful Wizard of Oz," George M. Hill Co. Chicago, 1900.

ACC EXTRAS ON... Beginning your in-house career

ACC Docket

New to In-house: Don't Be Nelson (Jan. 2006). www.acc.com/docket/new-ih_jan06

Presentation

Starting Off on the Right Foot as New In-house Counsel (Oct. 2008). www.acc.com/rightfoot/newih_oct08

InfoPAKSM

New to In-House Practice: US & Europe (July 2012). www.acc.com/infopak/newih_jul12

Top Tens

Ten Tips Out of the Gates for New In-house Counsel (Jul. 2013). www.acc.com/topten/newih_jul13

Top Ten In-house Preview for 2013 (Feb. 2013). www.acc.com/topten/ihpreview_feb13

Top Ten New to In-house: What I Know Now that I Wish I Knew Then (Aug. 2012). www.acc.com/topten/newih_aug12

Education

Specifically designed for attorneys who are new to in-house, ACC's Corporate Counsel University[®] (CCU) covers the basics of in-house practice. Earn CLE/CPD while learning from experienced corporate counsel, networking with peers and gaining insights from legal service providers. The 2014 CCU will take place June 1-3 in Minneapolis. More information is available at <http://ccu.acc.com>.

ACC HAS MORE MATERIAL ON THIS SUBJECT ON OUR WEBSITE. VISIT WWW.ACC.COM, WHERE YOU CAN BROWSE OUR RESOURCES BY PRACTICE AREA OR SEARCH BY KEYWORD.