$7.01$ OVERVIEW

The corporate legal department acts like a law firm but within a corporation rather than as a private business entity like a law firm. The character of the legal department and its relationship with the rest of the corporation are determined largely by the company’s size and culture, by the general counsel’s philosophy, and by how senior management and the general counsel define their working relationship. Their relationship, coupled with the general counsel’s strategic view of the legal department’s capabilities, will, in part, determine the role of its staff attorneys and expectations they must meet. Depending on the extent of the legal work and the types of matters handled “in-house,” the role of a
corporate staff attorney can range from a business partner to a crisis manager to, in a few cases, a drone.

General counsel shape their primary role either as the chief legal officer or as a strategic business partner, or in some cases as both. Such a characterization also impacts the definition and function of the legal department.

If the general counsel sees his or her role as chief legal officer, it is more likely that the legal department will focus solely on law-related matters, and the staff counsel’s work is often compartmentalized into discrete specialty areas of legal practice. For example, a health care company may devote part of the legal staff exclusively to regulatory matters, or a software technology business may focus the work of several attorneys on patents, copyrights, and intellectual property. A unionized manufacturing company may earmark some members of its legal staff for labor and employment matters. Still other companies like insurance companies that are bringing litigation matters in-house will allocate a large number of the legal staff to trial practice. A corporate law department focused only on specialty areas functions more like a law firm.

In contrast, those general counsel who perceive their primary role as a strategic business partner tend to expect the staff attorneys to participate on the organization’s planning teams. In this instance the health care company may use its legal staff not only to draft physician and hospital provider agreements but also to assist in the negotiation and development of provider networks to achieve competitive advantage. The computer technology company may look to legal counsel for advice on emerging trends in creative distribution contracting arrangements or franchise opportunities. Or the vice president
of corporate finance might call upon legal department personnel to assist or partner in developing materials for private placements or secondary offerings.

APPLYING THIS EXPECTATION TO YOUR RESPONSIBILITIES

Understand the role of the law department in your corporation.

Does the general counsel see his role as chief legal officer or strategic business partner, or both? Or is the general counsel simply a crisis manager?

How does this affect your role as staff counsel?

§7.02 LEGAL COUNSEL AS STRATEGIC BUSINESS PARTNER

If the legal department is viewed as a strategic partner, the expectations of counsel take on an additional layer of complexity. This is the most satisfying and most fruitful of the client relationships within the corporate legal department context. The client expects you to understand the business in greater depth and the practical aspects of the client’s issues, to spot both related and unrelated problems, to help design responsive and even creative solutions, and to serve as a resource during planning stages, from the valuable legal perspective. In addition, even though your various corporate clients may not express it, they expect you to be the educator on legal issues affecting their part of the business. You can update your clients on new developments and suggest novel alternatives that meet the same business needs.