

Part-Time General Counsel

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By Stephen E. Seckler

Traditionally, many smaller and earlier-stage companies have met their legal needs by retaining outside law firms. Many rightly believed that their budget and workload would not justify the considerable expense of an experienced, full-time general counsel to handle day-to-day issues and provide proactive advice about upcoming issues.

However, a growing number of companies in Boston and the Silicon Valley are taking a new approach. Instead of getting their legal help from a law firm or hiring a full-time staff lawyer, they are hiring one of the growing number of part-time "general counsels." These are experienced senior lawyers who work on an as-needed basis to handle the company's inside legal needs, while continuing to use the outside firm for esoteric issues or matters outside their expertise.

For Hologic, Inc., a manufacturer of medical devices, this means that attorney Andrew Stone spends at least three days a week on site and is available by telephone, email, and fax at other times. Before starting to practice as an independent corporate counsel, Stone, a former chair of the Boston Bar Association's Corporate Counsel Committee, spent 10 years in increasingly responsible legal positions at Digital, followed by three years serving as Cambridge start-up Thinking Machines' sole corporate counsel.

Stone spends the rest of his week providing similar services for three other clients in the software, Internet, and security areas. For his clients, Stone

provides all of the services normally provided by inside counsel, from negotiating (and dissolving) U.S. and international joint ventures, distribution arrangements, and project deals to handling customer disputes, providing HR advice, advising on marketing programs, and preparing and advising on software development contracts. Stone also works closely with an outside firm on litigation, corporate, and other matters requiring the resources of a large firm. And he works with his client's patent counsel to manage its patent portfolio.

Stone has different relationships with each of his clients, although each client treats him as an independent contractor. He has been able to keep his overhead low, and his fee is modest compared to fees normally charged by a firm lawyer with his experience. Because he goes to the company on a regular basis, he can provide experienced "hallway" advice, which can avoid legal problems later. And because he limits his practice to a few companies, he is able to provide fast service.

In the case of Stone's clients, these companies benefit by having Stone available on site as needed; by telephone, email, and fax; and on a "walk in the door" basis whenever else they need him.

Jeffrey Levine also describes himself as an "independent general counsel." Like Stone, Levine was a senior lawyer at DEC, who left in the early 1990s and began to provide inside counsel services on a consulting basis to emerging software, Internet, and other technology companies. Levine currently has four clients that he considers his "core clients" and four clients for whom he does periodic work. Also like Stone, Levine is the initial point of contact for legal issues for his clients. However, Levine does not currently spend a set period of time at any particular client's office (although he has operated this way in the

past). Levine also sees a significant difference between an "outside general counsel" and an "independent general counsel." Levine believes that the distinction lies in his understanding of the client and its business. He keeps the number of his clients small because "that's the only way I can develop relationships with client management and get to understand their business and goals." Rather than using associates to do the client work, he operates solo and remains hands-on. When a specialized legal resource is required Levine assists his clients to find that resource and when appropriate manages the resource to attain the desired result. The role of "independent general counsel" can be structured in many ways, and can evolve with the company's needs. The basic concept is providing a company with a way to enjoy the advantages of having a senior attorney available to meet its ongoing business needs without having to pay a full-time salary or law firm rates. Companies can begin on a short-term, project-focused basis and see how the relationship works out. Stone began one of his assignments helping his client and outside counsel deal with a major piece of litigation and another by putting together a major international business relationship.

Both Levine and Stone like the variety and flexibility of being an "independent general counsel". Both note, however, that it is always a delicate balance trying to juggle the needs of all of their clients. Several years ago, for example, Levine had to say goodbye to one of his clients because they decided that they needed someone on a full-time basis.

Both Levine and Stone have carved out a new niche in the legal community. They think it is a niche that will grow as more and more companies realize that there is a way to get the benefits of in-house counsel without having to increase the head count.

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