

The Increasing Need for Law Firm's General Counsel

By Amy E. Wong

"Firms are being sued more and more, and claims are getting bigger," Ward Bower, principal of Altman Weil Inc., said in a Law.com article. "There are just more ways that a firm can get in trouble, and they need someone on site to deal with those things."

In 2005, Altman Weil Inc. released their *Survey on Law Firm General Counsel*, revealing that law firms are increasingly employing their own General Counsel. Because law firms are transitioning to a more corporate business model, there is a growing need to create new General Counsel positions in order to protect the interest of the firm itself.

Bower said that firms conventionally ask their management committees to handle issues. However, when law firms dramatically expanded in size and scope in 2000, Bower noticed that many firms started creating their own General Counsel position to specifically handle their growing legal issues.

Bower said in a *GC California Magazine* article, "These are billion-dollar law firms and it's hard to imagine a billion-dollar company not having a designated GC. They've got a whole host of legal issues that any business of comparable size would have."

The survey, based on 77 responses from Am Law 200 firms, shows that the number of firms that have a designated general counsel have increased from 63% in 2004 to 69% in 2005.

This growth correlates to the Sarbanes-Oxley Act of 2002 and the growing number of malpractice claims, clients' conflict suits, and internal conflict.

The survey also reveals that, as of 2005, all general counsels were in-house, and 92% of those in-house general counsels were partners of the firm. Bower explained this phenomenon in a *GC California Magazine* article, saying, "Almost all firms, even smaller firms, appoint GC from inside the partnership. Firms need someone who really understands the issues, the culture and the history so they tend to be very senior people."

Roger Klein, General Counsel at Howrey, agrees with the Bower's opinion that General Counsels should be knowledgeable of the firm. He said in a *GC California Magazine* article,

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“A law firm GC must be sensitive to the pressures of working at a large law firm. The GC needs an understanding of the internal workings of law firms and the process of decisions and informal rules.”

Besides having an intimate knowledge of the firm, an ideal General Counsel should also be able to assume a wide variety of roles within the firm. In his *Report to Legal Management*, Bower said that a GC’s role and function include: engagement of outside counsel, professional liability, professional responsibility, firm disputes, in-house ethics training, and partnership issues. General Counsels have to strike a balance between the roles of confidant, reporter, mentor, and mediator.

Lawyers should feel comfortable describing any potential legal problems to the General Counsel early on. The quicker a lawyer reports an issue, the easier it is resolved.

“You don’t want to create an impediment such as the possibility that you might rat the lawyer out to [management],” Alfred Wilcox, General Counsel of Gibbons Del Dio, said in *The Legal Intelligencer* article.

In their attempt to create a sense of comfort and trust, law firm General Counsels tend to shy away from the board. They do not want their clients to feel as if they are reporting their concerns to a snitch. Bower elaborated on this point in a *GC California Magazine* article, saying, “To better advise, the GC should be separate from the board. It also helps preserve the lawyer-client privilege.”

The Altman Weil Report reflects how General Counsels try to separate themselves from the board. 64% of law firm General Counsels report to chairmen or managing partners while only 8% report to the board. It also reveals that 74% of General Counsels do not to serve on the firm’s governing committee.

Robert Blum, General Counsel for Thelen Reid & Priest, is among many other lawyers who separate themselves from the managing and clientele party. He strives to keep an objective and critical mindset. He told *GC California Magazine*, “I am not a member of the committee for management purposes apart from providing legal representation to the firm.”

Tom Clay, principal at Altman Weir, agrees with Blum’s idea that General Counsels ought to serve the firm’s best interest--not management’s or lawyers’ best interest. He told *The Legal Intelligencer* that, “We have a defined role in which my only dog in the fight is to protect the firm’s interest, to make sure we do things that are ethical.”

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This growing trend is expected to continue as firms expand and face more legal issues. Bower said in a *GC California Magazine* article, "Overall, we expect to see virtually all major firms with designated general counsel in the near future."

Currently, many mid-sized law firms have numerous problems that they do not know about because their lawyers have no one specific to report to. Bower predicted, "More mid-sized firms are moving in this direction as well, either in-house or via engagement of a lawyer in another firm."