

# What is Important to Boards in Their General Counsels

First and foremost, the board deserves thoughtful legal guidance from the General Counsel. She should have her finger on the pulse of the company's legal issues and distill what is legally important to terms that the board can understand and act on. This ear to the legal ground needs to spot trends and raise early warnings.

Peter Kriendler, the General Counsel of Honeywell International, gives the board an annual update on the company's litigation docket. He also tells them of material developments in cases as they happen. Also, at every meeting, the board receives a copy of the quarterly litigation report. Second, Kriendler advises the board of significant corporate governance problems. Each year “we review those practices and the shareholder proposals.”

Not that a board can expect even the most experienced General Counsel to know the law applicable to every issue. Indeed, the “General” in General Counsel implies sound legal judgment, which means knowing how to rely on other lawyers in the department as well as outside counsel.

The General Counsel should also contribute to the vision of the business. At the level of Chief Legal Officer, the role demands as much business acumen as legal sharpness. As David Machlowitz, the General Counsel of Medco, puts it: “In dealing with the board, business sense is an invaluable asset.” Here, the attorney-client privilege can blur and it is important for the General Counsel not to misstep. The board needs to know when the General Counsel speaks or opines as a lawyer as compared to when the General Counsel weighs in as a business executive.

On the business side, Kriendler of Honeywell takes part in all the annual operating plan reviews, the strategic planning process, and oversees preparation of the board books. He is involved with all significant acquisitions “especially of a public company” and advises the board on the mechanics of the deal, timetables and the board's responsibility.

The management ability of the General Counsel is a third important expectation. It is typical for a law department to oversee spending what amounts to approximately one-half of one percent of a company's revenue. In US companies, about 60 percent of that spend goes to outside law firms. The business implications of legal decisions, such as patents obtained or licenses negotiated, are profound. Accordingly, the board looks to the General Counsel to be an effective manager of the legal function. Typically, in US corporations, for every billion dollars of revenue there will be between three and six lawyers, and one non-lawyer for every lawyer. The management abilities of a General Counsel, and the leadership skills he or she exhibits, count for much.

The fourth contribution of a General Counsel is providing objective advice. There should be no thumb on the scale when the top lawyer advises the board because the General Counsel should represent the entire corporation and its shareholders, not individual executives. Notwithstanding the reporting line of a General Counsel, since more than 80 percent of them report to the CEO, the General Counsel needs to give unbiased, unvarnished and uncensored information and opinions to the board and its committees.

A fifth expectation boils down to the General Counsel keeping a calm head in a crisis. If something happens that shakes the business or legal foundation of a company, if a crisis erupts that the board must deal with, it should expect its General Counsel to remain steady in the maelstrom. It should expect, in the words of Machlowitz, “cool leadership.” Sometimes, of course, boards must retain independent counsel to assure objectivity and perspective, but the General Counsel ought to be a voice of reason in the din.

This is not to imply that the General Counsel has a higher obligation than other executives to remain poised and reasoned; Kriendler, a veteran of years at the legal helm, believes that is “not necessarily a role that falls to the General Counsel. It falls to a senior statesman officer who is a veteran and has the trust of the other executives. Thus it is not a positional responsibility but one that depends on personal attributes and confidence.”

Finally, but not least importantly, these days it is expected that the General Counsel speaks also for ethics, compliance and good governance. The board should look to the General Counsel to stand up for what is not only legally permissible but also ethically acceptable. Here too, the legal department and its head are not responsible for ethical behavior in a company; everyone in the company shoulders that responsibility.

How can a board assess whether the company's General Counsel performs adequately under each of these responsibilities? Legal awareness and thoughtfulness prove themselves over time, or else there are blowups, litigation, contractual disputes and other legal snafus that point to poor judgment.

How well the General Counsel understands the business can be assessed directly, by the quality of comments and questions the General Counsel makes, as well as by how much the executives of the company turn to the General Counsel for opinions and ideas. Management of the law department can be assessed through benchmarks and diagnostic reviews of the department. Composure under stress is something a Director can observe first hand. How does the General Counsel respond when the issues loom large, complexities and unknowns press from all sides, and somebody has to decide whether to act and how to act? Objectivity shows up over time as even-handedness, and an ability to buck the tide of opinion sometimes. Ethics and compliance are complicated; unfortunately, there is no shortcut to assessments of a General Counsel's performance in this area.

These are the half dozen expectations that a General Counsel should meet or exceed. A Board of Directors has the right to expect these attributes, there are tools to assess them, and the board will function better when it has a stalwart General Counsel who meets these expectations.