

An Ounce of Prevention – Strategic Outside General Counsel

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All businesses face legal issues ranging from the big (a lawsuit was just filed against the company), to the routine (a customer marked-up our form contract), to the mundane (where do we put our minimum wage poster?).

Big issues are easy: engage a law firm with the appropriate expertise. The routine and mundane are not.

The Corporate Dilemma

Engaging outside attorneys for routine legal matters gets expensive quickly; outside counsel fees are often unpredictable and frequently outweigh the value of a business matter. With that said, most business executives recognize that consulting an attorney on key issues can (and frequently does) minimize risk and potential liability to the company.

To address this corporate dilemma, businesses traditionally take one of two paths:

1. Hire an in-house attorney. This path offers predictability for budgeting purposes, potential costs savings and peace of mind. The biggest drawback to this path is that in-house attorneys are expensive employees whose cost effectiveness is difficult to measure and whose overhead burden is difficult to adjust as work flow fluctuates; OR
2. Don't consult an attorney and hope nothing bad happens (aka the "Hope and Pray" approach). This path is less expensive in the short term, but risky in an increasingly complex and litigious business environment. This approach is the preferred choice for most small to mid-size businesses.

After 13 years as an in-house attorney for three (3) very different companies, I recommend an alternative solution to this corporate dilemma that offers predictability for clients, real costs savings and the intangible benefits offered by in-house counsel: Outside General Counsel services.

What are Outside General Counsel services?

Outside General Counsel services are legal services provided under a predictable billing structure (e.g., reduced rates, fixed fee or retainer) that allows client and attorney to develop a working relationship based on trust, consistency and sound legal advice. Clients benefit by having a "go to" attorney at a reduced cost who understands their business, management team and legal/business sensitivities. Law firms benefit

because routine issues sometimes turn into big issues and being the first point of contact allows a law firm to seamlessly expand the scope of its representation to meet client needs.

What types of legal issues are best suited for Outside General Counsel?

1. **Contracts.** All businesses encounter contractual issues. Outside General Counsel can quickly review a contract, identify potential issues and offer practical solutions.
2. **Corporate Governance.** Business entities are subject to contractual and statutory requirements that require regular corporate housekeeping (e.g., resolutions/written consents, authority delegation, reporting, etc.). Outside General Counsel will regularly review a company's governing documents and provide guidance in order to avoid running afoul of obligations to lenders, investors, landlords and other stakeholders.
3. **Employment Matters.** Every California business faces complex and frequently changing laws related to employment matters. Outside General Counsel will review company policies and provide practical legal guidance as employment issues arise.
4. **Unexpected Legal Issues** (aka the "Unknown"). Unexpected legal issues will arise and when they do, time is of the essence. Outside General Counsel will respond immediately and be well-positioned to take affirmative action to minimize risks to the company.

Who makes a good Outside General Counsel?

An effective Outside General Counsel understands the goals and objectives of a client's business and executive team and is prepared to offer practical solutions based upon this understanding. Too many attorneys merely issue spot and offer a menu of potential risks. Outside General Counsel will identify these risks, but then make clear recommendations for action. To be effective, Outside General Counsel should also have the resources of a full-service law firm that can provide timely and targeted legal solutions through prevention and, if necessary, zealous advocacy. This practical approach to business counseling saves time and money by prioritizing legal issues and offering real solutions across the entire legal spectrum.

For more information about Outside General Counsel services, visit <https://www.swlaw.com/services/outside-general-counsel>.

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Mark Foster joined the Orange County and Los Angeles offices of Snell & Wilmer in 2016 after more than 13 years as in-house corporate and real estate counsel to major investment and development companies. His practice includes Outside General Counsel services as well as the representation of institutional owners, operators and developers, financial institutions and investors focused on equity investments, joint venture formations, acquisitions and dispositions, leasing, real estate-related lending, and debt restructuring, workouts and reorganizations. Reach Mark at mfoster@swlaw.com or 714.427.7435.

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