

# Inside

A publication of the Corporate Counsel Section  
of the New York State Bar Association

## Message from the Chair

To the members of the Corporate  
Counsel Section:

I trust you have been enjoying  
your summer.

We are busy planning our Fall  
Meeting, *Ethics for Corporate Coun-  
sel*, which again will be chaired  
by Steve Nachimson. Our panel  
of speakers is still being finalized,  
but it will feature the return of  
NYC attorney and legal ethics expert Michael Ross, who  
again presents teaching hypotheticals specifically geared  
toward important issues faced by inside counsel, an  
exercise which has proven in past years to be extremely  
informative and relevant to our members. Mark your  
calendars for Tuesday, Oct. 28. The program will run  
from 9 a.m. to 1 p.m. at the New York City Bar Build-  
ing and provide 4 MCLE credits in Ethics. Registration  
forms will be mailed to all members in the early fall.

In addition, our Annual Meeting subcommittee,  
chaired by Conal Murray, is organizing a half-day  
program entitled *E-Record Management and E-Discovery  
for the Corporate Lawyer*. The program, scheduled for the  
morning of January 28, 2009 during the NYSBA An-  
nual Meeting, will include presentations by judges and  
attorneys who have experienced the brave new world  
of electronic information and its impact on corporate  
governance, operations and litigation. The program will  
also include participation by experts in the technology of  
document retention and retrieval, including representa-  
tives of document management service providers. This  
program, for which we expect to provide 4 CLE credits,  
should be extremely timely and important to you as  
electronic discovery issues—both legal and practical—  
become more prevalent. We hope you will make a point



of attending in January what is sure to be an interesting  
and enlightening session.

As you know, one of our Section's notable recent  
achievements has been the establishment and mainte-  
nance of the Kenneth G. Standard Diversity Internship  
Program, named for a Past President of the Associa-  
tion whose term included a commitment to expanding  
NYSBA membership to under-represented minority  
practitioners. The Diversity Internship Program affords  
minority law students an opportunity that they might  
otherwise not have for summer internships at corpora-  
tions in New York State. Past hosts have been Goldman  
Sachs, McGraw-Hill, Con Edison, Oneida, Ltd. and  
FINRA. These host companies have been unanimous  
in their praise of the quality of candidates they have  
been given to consider and have hired, and the students  
have showered accolades on our Section for having  
given them the opportunity to work in the corporate  
environment with major companies. Now in its third  
year, the Program is seeking to expand its reach next  
year and beyond to additional host companies. If any of  
you work for or know of any companies that would be

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willing to host a Kenneth Standard intern, please contact program chair Barbara Levi at Barbara.Levi@unilever.com. The Corporate Counsel Section contributes to the company half of the cost of hosting the intern for the summer.

As always, please contact me at groth@bmi.com with any suggestions for programs that your Executive Com-

mittee might consider. Also, if you would like to become more involved with your section, we always are looking for new members to serve on the Executive Committee. Let me know of your interest.

**Gary F. Roth**

**Save the Date!**

## ***Annual Meeting***

**January 28, 2009**

**Corporate Counsel Section Presents:**  
***E-Record Management and  
E-Discovery for the Corporate Lawyer***

The Corporate Counsel Section of the New York State Bar Association will be presenting a program entitled “E-Record Management and E-Discovery for the Corporate Lawyer” at the Annual Meeting of the NYSBA on January 28, 2009. The Program, which is being held at the New York Marriott Marquis, is scheduled for 9 a.m. to 12:30 p.m. and will include presentations by judges and attorneys who have experienced the brave new world of electronic information and its impact on corporate governance, operations and litigation. The program will also include participation by experts in the technology of document retention and retrieval, including representatives of document management service providers. The Program is expected to provide 4 CLE credits to attendees.

# Profiles

We want *Inside* to be an interactive forum, in which our members can exchange questions, ideas, and information. To that end we want to get to know each other—starting with some members of our Executive Committee. Future profiles will focus on the remaining members of this Committee and our members. We invite you to participate by sending your profiles to us at [handlerj@aol.com](mailto:handlerj@aol.com) or [allison11955@aol.com](mailto:allison11955@aol.com).

In profiling our Executive Committee, we were gratified to learn of the wide variety of specialties and interests among us—what a resource we can be to each other and the members of our Section who wish to tap our expertise. We are in industries such as telecommunications, Internet business, retailing, consumer goods, finance, banking, utilities, insurance, and career counseling. We represent not-for-profits, such as the Cerebral Palsy Association; the world's largest performing rights organization; NYC's leading department store; and the Battery Park City Authority.

Our specialties include regulatory law, insurance, anti-trust, international trade, intellectual property, health care law, employment law, real estate, litigation, and transactions. Our offices span the Hudson River from the Battery to Albany. Some of us are law firm attorneys with special interest in corporate matters. Others teach law school. Some are beginning corporate careers and others are winding them down. We are diverse in every way you can think of, and our common element is a desire to share our knowledge and expertise with other corporate counsel.

This is who we are. In future issues, we will get to know who **you** are.

## Mitchell F. Borger

Mitchell F. Borger is a past Chair of the Corporate Counsel Section and has been a member of its Executive Committee since 1999. Mitch has been practicing over 25 years since his graduation from Albany Law School. He started his career as an Assistant District Attorney in the Office of the Bronx District Attorney. For the majority of Mitch's tenure there, he prosecuted child abuse and domestic violence crimes. In 1987 Mitch began his in-house counsel career as a litigator for the New York Power Authority. In 1992 Mitch moved to a generalist position at United Merchants & Manufacturers, Inc., a textile company that has since dissolved.



In 1995 Mitch joined Federated Department Stores, Inc. in its New York Regional Office, handling employment and loss-prevention matters, along with the supervision of litigation. Federated, which last year changed its name to Macy's, Inc., is the parent company to the Macy's and Bloomingdale's Department Stores chains. In 2006 Mitch was promoted to Divisional Vice President and Associate General Counsel, with responsibilities for the management of the Company's uninsured litigation process. Those responsibilities include direct management of a ten-person in-house litigation team and the oversight of cases that are litigated by outside counsel. In addition, Mitch is an active participant in the annual Macy's Thanksgiving Parade clown program. Mitch can be reached at 212-494-1655 or at [mitchell.borger@macys.com](mailto:mitchell.borger@macys.com).

## Sarah Feingold

Sarah Feingold, Esq. works in house at Etsy, Inc. ([www.etsy.com](http://www.etsy.com)). Etsy is an online community and marketplace to buy and sell all things handmade. Etsy's vision is to help all kinds of people make their living making things. This is a deceptively simple but incredibly powerful mission with wide-ranging effects on interpersonal relationships, the environment, consumer culture, and labor distribution, as well as empowering each seller. Most recently *Time Magazine* voted Etsy one of the 50 Best Websites in 2007.



In her role as in-house counsel, Sarah handles intellectual property, e-commerce, business and other legal issues for Etsy. She also has a regular column in Etsy's online newspaper, "The Storque," where she provides legal information to Etsy's creative community.

Sarah is an accomplished jeweler who completed graduate-level art classes while attending Syracuse University College of Law. In addition to working for Etsy, Sarah also sells her artwork on Etsy at [www.feingoldjewelry.etsy.com](http://www.feingoldjewelry.etsy.com). Sarah combined her passions for law and art with her book *Copyright for Artists: Quick and Easy Copyright Protection*, which, yes, she also sells on Etsy. This book is available at [www.attorneysarah.etsy.com](http://www.attorneysarah.etsy.com). Finally, Sarah is a freelance legal writer and presents seminars on the topic of art and intellectual property law. Sarah is a member of the American Bar Association and the New York State Bar Association, where she serves on the Corporate Counsel Executive Committee. For more information on Sarah please visit her website: [www.sarahfeingold.com](http://www.sarahfeingold.com).

## David M. Hayes

David M. Hayes is a member of the Executive Committee's upstate wing. He is of counsel to the Syracuse law firm, Bond, Schoeneck & King PLLC, where he specializes in business law, antitrust cooperatives, corporate governance, finance, insurance, securities, and strategic planning.

David attended Syracuse University and the University of Virginia Law School. He is Adjunct Professor of Law at Syracuse University College of Law.

David is very active in professional and pro bono activities. In addition to serving on several committees of the New York State Bar Association, he is President of Legal Services of Central New York, Inc. and President of Legal Aid Society of Mid- New York Inc. He is Past President of the Boys and Girls Club of Syracuse and a former Director of the Onondaga County Bar Foundation.

## Fawn Horvath

Fawn Horvath is Senior Counsel for Macy's, Inc., which operates approximately 850 retail department stores across the country under the names Macy's and Bloomingdale's.

Her practice involves managing trademark, copyright, and patent conflicts, policing infringements, and counseling clients regarding intellectual property issues in advertising and product development. She also drafts and negotiates license agreements and partners with clients on antitrust law, business ethics, and general business matters. She is the Company's primary counsel for intellectual property and on-line brand protection issues.

Prior to accepting her current position in 2003, she worked at the firm of Hall Dickler, LLP (later merged with Reed Smith LLP), practicing in the areas of intellectual property and advertising compliance. Fawn received her B.A. from Middlebury College and her J.D. from Benjamin N. Cardozo School of Law.



## Jeffrey P. Laner

Jeffrey P. Laner is Associate General Counsel of the Hugh L. Carey Battery Park City Authority ("BPCA"), having arrived in February 2004 as Assistant General Counsel and promoted to his current position in September 2006. Jeff coordinates BPCA's personal injury litigation defense with outside counsel, writes contracts, assists BPCA's Security



Committee, and oversees BPCA paperwork related to condominium unit closings.

Created by the New York State Legislature in 1968, BPCA is a New York State Public benefit corporation whose mission is to plan, create, co-ordinate and maintain a balanced community of commercial, residential, retail, and park space within its designated 92-acre site on Manhattan's lower west side. Parcels of land are leased to developers who build in accordance with the Authority's guidelines, which also incorporate green provisions mandating state-of-the-art environmental specifications to maximize energy efficiency and minimize water usage.

Jeff is a graduate of Fordham Law School, where he was a member of the *Journal of Corporate and Financial Law* and the Moot Court Board. He remains an active alumnus, attending events and judging Moot Court rounds. He also graduated from New York University, *cum laude*, with a double major in History and Politics, as well as from Stuyvesant High School. He is a lifelong and loyal resident of Queens, New York, and when not practicing law, he can be found either in a billiard league, fiddling with computers, social networking or writing.

## Barbara Levi

Barbara is a former Chair of the Section (2004 Term) and founder and Chair of the Section's Diversity Internship Committee.

The Section's Diversity Internship Program was founded in 2005 and is named in honor of former NYSBA President Kenneth G. Standard, a strong proponent of increasing diversity in the legal profession. The Committee has recruited students from Albany, Buffalo, Brooklyn, Cardozo, CUNY, Hofstra and St. John's law schools and placed them in internships in law departments at companies including Con Ed (anticipated Summer '08), FINRA (anticipated Summer '08), Goldman Sachs, McGraw-Hill, and Oneida. The Committee is always interested in recruiting new members and new corporate hosts, and Barbara would welcome your inquiries. She can be reached at [Barbara.Levi@unilever.com](mailto:Barbara.Levi@unilever.com).



Barbara is also active in the NYSBA International Law and Practice Section, where she co-chairs the Corporate Counsel Committee.

Barbara is Assistant General Counsel (Corporate) for Unilever United States, a multinational home and personal-care products company. She joined their Law Department in 2001, after having served as Assistant General Counsel for Elizabeth Arden Co., a wholly owned subsidiary, where she provided general legal support to its global cosmetic and fragrance business. Prior to that Barbara was a Special Assistant Attorney General for the



State of New York, specializing in the investigation and prosecution of white-collar crime in the area of Medicaid fraud. Before becoming an attorney, Barbara worked at NBC News, the NYC Department of Probation's R.O.R. program, and was an adjunct instructor at the New York Institute of Technology.

Barbara is a graduate of Skidmore College (B.A.), the City University of New York (M.A.), and Brooklyn Law School (J.D.). She lives in Manhattan with her husband and son.

### Steven G. Nachimson

Steven G. Nachimson is Assistant General Counsel of Compass Group USA, Inc., the American division of the world's largest foodservice company. He manages contractual, regulatory, and general corporate matters for Chartwells, Compass' educational dining sector based in Rye Brook, New York, and for other Compass sectors operating in the business dining industry. Prior to this, Mr. Nachimson was Corporate Counsel with Fine Host Corporation of Greenwich, Connecticut, where he was recognized as Corporate Employee of the Year. He previously served as General Counsel of Besicorp Group Inc., an independent power and alternative energy company in Kingston, New York. He began his career in private practice in Kingston, where he was a member of the firm Samoff, Kaplan, Benton & Franzman, P.C.



Mr. Nachimson has been a member of the Corporate Counsel Section's Executive Committee since 2000 and served as Chair of the Section in 2007. He has also served as Chair of the Section's CLE and Meetings Committee, and as Treasurer for the Section. Mr. Nachimson has chaired and organized the Section's highly successful annual presentation of "Ethics for Corporate Counsel." Mr. Nachimson's other bar association activities have included service as President of the Ulster County Bar Association and membership in the House of Delegates of the New York State Bar Association.

Mr. Nachimson received his J.D. from State University of New York's Buffalo School of Law, and his A.B. from Vassar College. He is admitted to practice in New York, North Carolina, and the United States District Court, Northern District of New York. He resides in Rockland County, New York with his wife and two sons.

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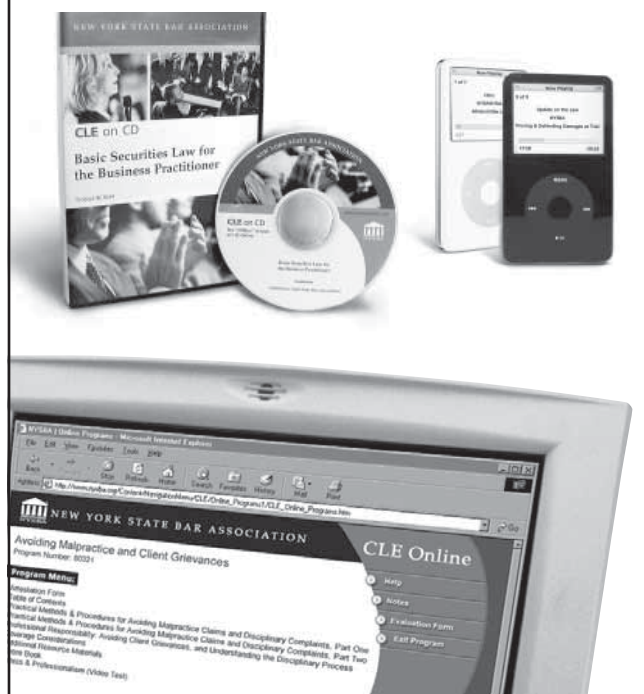
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## CAREER CORNER:

# Preparing for Your Annual Review

By Allison B. Tomlinson

What happens when it's that time of year again at work and you need to schedule time to speak to your supervisor about your annual review? You want to be sure to present yourself well, and also make cogent arguments as to how you have added value to the organization in the past year, thereby deserving an increase, title change, or just general recognition.

The tips in this article are designed to take some of the mystery out of how to successfully handle your annual review, and ultimately, navigate your job growth.

### What have you accomplished in the past year?

- Taking time to list measurable accomplishments between your last review and the current one is an important first step.
- Go through your records and write down all instances where you initiated and helped to implement a new program, along with the benefit that the program added to your department and/or company.
- If you led a team through a particularly tricky situation, highlight it.
- Two things that always are impressive are taking initiative (as opposed to just taking a paycheck and going home), and displaying leadership and teamwork. It's even better if you can tie your accomplishments to how it saved the company money or mitigated a legal risk, for example, "By handling the corporate dissolutions completely in house, I saved the company \$X in outside legal fees, as well as helped management reach their objective of simplifying the current organizational structure."

### Have you learned any new skills in the past year, or honed any of your current skills?

- Intellectual curiosity is always a good thing, and highlighting where you have displayed this trait is helpful.
- Accentuate any new skill sets that you've acquired in the past year, particularly if they are relevant to your job function. For example, if you recently switched from the IP area to work on corporate governance issues and have attended various CLEs on the topic to learn the ins and outs of this area of the law, talk about that.

- Also, if you've learned a skill that appears to be tangential to what you do—for instance, a new language—it might be relevant to list it at this time. The key will be to tie the new skill back to your current function and point out why it might be useful, i.e., if you've learned French in the past year and your company is expanding its European presence, the ability to communicate with your international counterparts could prove to be an asset.
- It is also important to hone the skills that you have. If you have always worked within a particular area, and you've worked on learning more about the topic, discuss it.

### What do you do outside of work which should be discussed?

- Being a member of professional organizations and networking groups can be a huge asset to your company, and your skill level as a whole. List your outside activities, i.e., if you are actively a member of relevant networking or professional organization and it has enhanced your skills or provided insight to goings-on in your industry, discuss it. It is particularly important to show how these memberships have enhanced you and your department if your company pays your membership dues and allows you to use work time to attend meetings, etc.
- Don't forget to discuss your involvement with your alumni clubs, as well. For instance, if you guest lecture from time to time or organize events for your alma mater, it can augment your resume. Depending on your industry, you could also be helping the business people make valuable contacts.

### Let others help prove your case:

- Keep records of praise that you receive from your internal clients, colleagues outside of work and others, and share them with your supervisor.

### How to answer the #1 question that you will be asked—"Where do you see yourself in 1, 5 and 10 years?"

- It's important to think through this question before you get asked and really do some soul searching to figure out where you want your career to go. Do you want to be a general counsel in 10 years? Or are you more interested in becoming an expert in

a particular area of law? Maybe you want to leave your current industry altogether and be a corporate generalist? Or a professor? Whatever your “plan” is, the first step is to be sure to have one. Once you have a clear end game in mind, think incrementally about how you can achieve this goal.

- Discuss openly with your supervisor what your plans are for the future and how you intend to get there. Ask your supervisor how he or she foresees you fitting into the overall growth strategy/succession plan for the department. If your supervisor envisions you leading a practice group within 2 years, ask for clear steps for how you can achieve this goal, i.e., taking more CLEs on a particular topic, or attending leadership training.

- Also, if you have been in your current title for a while and you are interested in growing, ask for specific steps on how you can change pay grades, titles, and so forth. Write down the feedback so that when your next review comes around, you can point to the steps that you were told to take and show your achieving and surpassing these goals.

The bottom line is that it is incumbent upon you to be proactive in your career growth, and to clearly guide your path. Much of this comes from honing and growing your skills and network, adding value to your department and company as a whole, and correctly packaging yourself.

**Allison B. Tomlinson, Esq. is a Vice President and Senior Associate Counsel in the Americas' Legal Department of Parsons Brinckerhoff.**

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“Look Who’s Talking . . .”

## THE NINE

### *Inside the Secret World of the Supreme Court*

Jeffrey Toobin, Doubleday, 2007

Reviewed by Janice Handler

One of the best guilty pleasures has to be reading a book that’s both good and good for you, an erudite book that is professionally relevant but also packed with gossip and juicy anecdotes that keep you turning pages. Jeffrey Toobin’s *The Nine* is just such a guilty pleasure—a historical narrative of the Supreme Court, a legal analysis of its most important recent cases, and a goldmine of nuggets about the personalities and lives of The Nine.

Do you remember when the Supreme Court was shrouded in secrecy? In 1979 Bob Woodward and Scott Armstrong wrote in *The Brethren* (Simon and Schuster, 1979) “For nearly two hundred years the Court has made its decisions in absolute secrecy . . . The Court’s deliberative process . . . is hidden from public view.” *The Brethren* was the first book to seriously dent the wall of Supreme Court secrecy. Based primarily on interviews with Justice Potter Stewart, who was allegedly frustrated with Chief Justice Warren Burger’s haphazard management of the judicial conference, it interviewed Justices, over 170 law clerks, and other Court employees, resulting in a book that, according to Toobin, was full of vivid detail, never before divulged to the public. Toobin, in *The Nine*, pushes the envelope one step further—the Justices are regular Chatty Cathies in describing their judicial philosophies, views on important cases and, yes, their feelings about one another.

The theme of *The Nine* is the changing balance on the court from decades of liberal activism to potential conservative control. It describes a court divided between William Brennan-style liberals who used the Constitution as a vehicle for social change and to build a society of greater freedom and equality and William Rehnquist/Antonin Scalia conservatives who feel that the Courts should defer to political majorities and legislators and interpret the Constitution in line with the original intent of the Framers. From the 60s to the present, Toobin believes, on the major controversial issues before the Court—race, sex, religion, power of federal government—the control of the Court belonged to moderate swing justices, first Lewis Powell, then Sandra Day O’Connor (who the reader feels must have been the chattiest Cathy of all, given such encomiums as “No justice has ever succeeded more in putting her stamp on the law of a generation.”),

who steered the Court in line with their own cautious instincts—which were remarkably similar to those of the American people. That cautious balance may be about to change, says Toobin. A conservative rebellion against the Court has been building, and conservatives are within one vote of total control of the Court.

This book is perfect for the multi-tasker. It works on so many levels. It is a detailed history of the post-Warren Court, a thoughtful analysis of competing judicial styles and philosophies, a description of the rise of the legal conservative movement, an in-depth discussion of the key cases of the past 20 years, a good description of the mechanics of how the court works, and finally, a lively (think *People* magazine) take on the private lives and eccentricities of the justices.

The Court described in *The Nine* is light years away from the Court described in the *Brethren*, where the Court’s “deliberative process—its internal debates, the tentative positions taken by the Justices, the preliminary votes, the various drafts of written opinions, the negotiations, confrontations, and compromises—is hidden from public view.” In *The Nine*, the interactions amongst the Justices to secure majority opinions is painstakingly described—one comes to realize that the process is as much personal and political as juridical. In a fascinating chapter, Toobin describes the negotiations and horse trading amongst the Justices (particularly Justices Souter and O’Connor) in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, a process that ultimately resulted in the preservation of *Roe v. Wade*. (For some readers, the hairs will stand up on the back of your necks when you see how close this precedent was to being over-turned.)

Toobin, a staff writer for the *New Yorker* and senior legal analyst for CNN, describes the leading cases of the last 20 years in fascinating detail, including *Clinton v. Jones* (which held that the president could not stay proceedings in the Paula Jones case until he left office); *Bush v. Gore* (which Toobin characterizes as a low point in the Court’s history where “the Justices displayed all of their worst traits . . . they embarrassed themselves and the Supreme Court”); the University of Michigan affirmative action cases; the Guantanamo Bay right to counsel cases, the Terry Schiavo right to die controversy.



The best part of the book for me (I would have majored in gossip in college if I could have) is the inside glimpses of the Justices up close and personal. Whether he is describing an elderly Thurgood Marshall struggling to hang on until a Democratic President could appoint his successor ("If I die, just prop me up" he told his law clerks); David Souter leaving lights off in his office and maneuvering his chair around the room so he can read by the light of the sun; Sandra Day O'Connor making her law clerks decorate a "newsy pumpkin" for Halloween ("Osama Bin Pumpkin" was a recent effort); or Chief Justice Rehnquist running the Court's betting pools on NCAA basketball, NFL football, and the Kentucky Derby, the anecdotes are pointed, telling, and frequently humorous. The picture of the elderly Justices struggling to get to work on a snowy day in Washington (Justice Ginsburg

navigating snowdrifts in high heels and a straight skirt is particularly endearing) is amusing but makes a broader point about dependability and work ethic. Whether or not you agree with their opinions, you can't help but like these people.

Jeffrey Toobin is generally kind to the justices. His profiles are nuanced and mostly complimentary. Their strengths loom large, their foibles less. Apparently he never met a Justice he didn't like—or one who wouldn't talk. You will most likely finish this book with pride in the Court, affection for the Justices, and a realization that what you learned in High School Civics (or law school Con Law) class tells you very little about how the Court really works.

## Request for Articles



If you have written an article and would like to have it considered for publication in *Inside*, please send it to either of its editors:

Allison B. Tomlinson  
Parsons Brinckerhoff  
1 Penn Plaza, 2nd Floor  
New York, NY 10119  
allison11955@aol.com

Janice Handler  
handlerj@aol.com

Articles should be submitted in electronic document format (pdfs are NOT acceptable), and include biographical information.

[www.nysba.org/Inside](http://www.nysba.org/Inside)

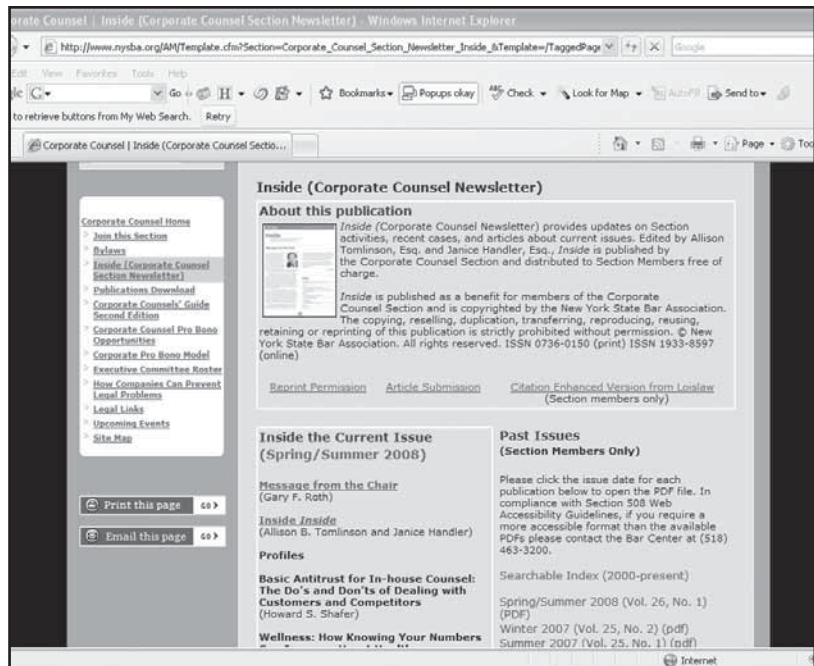
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For more information on these and many other resources go to [www.nysba.org](http://www.nysba.org)





# Dear **Inside**

**Dear *Inside*** will be a forum for the questions, ideas, and inputs of our readers. Each issue will feature questions and hypotheticals and we will solicit reader responses that will be published in the following issue. This is your chance to get answers to the questions that plague you and contribute your own expertise to others. Please e-mail your responses on the questions in this issue to [handlerj@aol.com](mailto:handlerj@aol.com).

*Dear Inside (answer will be published in future issue)*

*I understand that there has been a lot of buzz lately about the erosion of attorney-client privilege in corporations. Can you please give me a basic primer on the protection of attorney-client privilege for in-house lawyers, especially in light of the 2006 McNulty Memorandum? In particular, if my department intends to publish new policies and procedures for our team on the protection of privilege, do you know any good resources where I can find samples?*

## Questions from Spring Summer 2008 *Inside*

**In our last issue of *Inside* the newly appointed General Counsel of a public company in Westchester asked for advice on how to go from being a law-firm associate concentrating in securities law to being a newly appointed General Counsel grappling with a myriad of issues. We received three responses:**

### **Response from Bob Stone, Former VP, General Counsel of A NYSE-Listed Corporation**

You obviously recognize the predicament you are in, which is an excellent first step. What you need to know in your job is readily available from many wizened GCs who have traveled the path you are on. They are available and many will be flattered at the opportunity to impart their knowledge and experience. The issue is how you meet them.

First, I recommend that you immediately join the Corporate Counsel Section of the NYSBA. You should also contact the Association of Corporate Counsel [www.acc.com](http://www.acc.com) and join your local chapter. ACC's website can lead you to a storehouse of information that will be helpful. Both organizations are valuable resources that sponsor programs to fulfill your CLE needs and educate you in the areas you need to master. And above all else, both provide networking opportunities that will enable you to find mentors and colleagues whom you can call or e-mail whenever faced with something a bit new to you.

### **Response from Jeff, In House Counsel, New York City**

I would recommend that as a new General Counsel, you should introduce yourself to the directors of the other departments and put them in "help mode" by establishing an open friendly continuing relationship, early on. Also, I would recommend, over time, getting to know those other departments, the work they do, their challenges, and the great things they offer the company. I found that by not "laying down the law" of the legal department, and involving other departments into the analysis of complicated situations (taking into account their needs as well), I gained a reputation as a "problem solver" and someone willing to work with other parties. This means that when I shared my thoughts of "Hey, really, I want to do this for you, but legally, we just can't do it"; or "it's not worth the risk" they respected my opinion much more and the situations resolved themselves with far less office politics.

As for managing a staff, similar collaborative principles apply. Carefully keep a mental note of what work your subordinates do better or enjoy more. If they are getting bored, try to reshuffle responsibilities when you can. Encourage good working relationships between co-workers where possible. I am blessed to work with three paralegals that get along amazingly well, two of them under my direct supervision. There is nothing they aren't willing to try or trade off with each other if it will make for a team success! This is the Nirvana any manager should shoot for. Even if efficiency occasionally temporarily suffers from trading responsibilities, you get the added benefit of cross-training, so when someone goes on vacation or is out sick the other person can fill in without a problem. Always praise where possible; correct in a positive tone to encourage them to want to do better; withhold the urge to teach and strive for perfection by always correcting every mistake when the overall balance of the work product is excellent (you seem too nitpicky and sometimes they feel they can't do anything "right"); and if something goes seriously wrong, take some time before

addressing the underlying issue, let everyone cool down and put a positive spin on improving future procedures, rather than erratically and hectically performing damage control (if time allows).

### **Response from Janice Handler, Former General Counsel, Elizabeth Arden Cosmetics Co. and Co-editor of *Inside***

Going from a specialist's berth in a law firm to a generalist's spot in a corporation can be a daunting experience. I was a regulatory lawyer in a large legal department before joining a two-woman legal department of a cosmetics company. The first week I was there, a major retailer/customer filed for bankruptcy (about which I knew nothing) and an arrest warrant was issued for some of our employees in Poland (the best advice I could come up with was, stay out of Poland). Compounding the problem—there was never enough money around, and our outside counsel budget was minuscule.

Some tips for handling the transition—and the crises along the way:

#### **You don't have to be ready on day 1**

Yes, you are trying to prove yourself. Yes, you are trying to show leadership and decisiveness. But Hillary notwithstanding, you don't have to be ready for everything on day 1. Few legal issues demand immediate response. Take a breath. Explore the existing resources of the company. (In many companies there are other departments such as insurance, risk management, consumer affairs that handle legal issues.) Go on line. Tap into the resources my colleagues discuss above. Think before you act! There are exceptions to this rule—an environmental spill, a criminal arrest. But they are few and far between. You will know them when you see them, and the only rule then is run, do not walk, to outside counsel.

#### **Learn the Business**

While not always apparent to law-firm lawyers, in-house corporate lawyers have to know as much about the business as the law. As soon as you arrive at your new post, tap into every available resource to learn about your Company's business. Resources include: Certificate of Incorporations and Bylaws, SEC filings, policy and procedures manuals, compliance plans, codes of conduct, sales and income statements, permits, licenses, and regulatory filings, and consumer complaint files.

### **Response from Rees Morrison, Law Department Management Consultant**

We also received a response from Rees Morrison, a Law Department Management Consultant, who steered our letter writer to his blog on Law Department Management which contains a large amount of info about

managing legal departments. The URL is: <http://www.lawdepartmentmanagementblog.com/>

\* \* \*

In our last issue, Ethan asked if we were aware of any resources that would outline the New York State Bar's policy on allowing barred attorneys from other states to practice law in house in New York.

### **Response from Steven C. Krane, Chair, Law Firm Advisory Practice Group, Proskauer Rose LLP**

Dear Ethan,

I'm sorry to tell you that there are no resources discussing New York State's policy on allowing lawyers admitted to practice in other states to practice law in-house in New York. The short answer is that New York has no such policy. The longer answer will take some time.

**The New York Judiciary Law** prohibits anyone other than lawyers admitted in the state from engaging in certain activities that, taken together, constitute the core of the practice of law. Violations of these statutes are criminally punishable as misdemeanors. New York has never defined the "practice of law" by statute, but there could be little doubt that the work of an in-house lawyer ordinarily constitutes the practice of law. So, as a technical matter, an in-house lawyer admitted in New Jersey but physically working in New York could be prosecuted under the Judiciary Law. That said, there are no known instances of that occurring. The only solution is to become admitted to the New York bar, which may require taking the bar exam, but more on that later.

New York's policy on out-of-state lawyers is further reflected in its **Disciplinary Rule 3-101(B)**, which states: "[a] lawyer shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction." This does not apply to the Connecticut lawyer who comes to New York to work in house, because the New York disciplinary rules only apply to New York lawyers, with limited exceptions not applicable here. What this rule means is that if a New York lawyer relocates to Connecticut to work for a corporation, the lawyer could be subject to professional discipline in New York unless Connecticut permits the lawyer to practice law in the state. It will be important for any out-of-state lawyer coming to New York to check the rules of the home jurisdiction to determine whether any disciplinary exposure exists irrespective of what New York may say. Every state has a provision like this, but in most parts of the country it would be referred to as Rule 5.5(a), since nearly every other state has adopted the American Bar Association's Model Rules of Professional Conduct.

The landscape is not completely bleak, however. The large majority of states have created exceptions for various kinds of temporary legal practice, recognizing that



many lawyers do travel between states to serve their clients. As long as a lawyer does not, in effect, open an office in a state in which the lawyer is not admitted or otherwise hold out to the public that the lawyer is admitted to practice law in the state, temporary presence is permissible under these rules. Most of those states have also adopted rules carving out an exception for in-house counsel.

Such a rule is currently under consideration by the Appellate Division, the court that has the power to adopt rules governing the conduct of lawyers in New York. Proposed New York Rule of Professional Conduct 5.5 would permit in-house lawyers to provide legal services to their “employer or its organizational affiliates” as long as the services do not require *pro hac vice* admission. Patterned on Rule 5.5(d)(1) of the ABA Model Rules, the exception would recognize that companies employing in-house counsel are typically sophisticated users of legal services and are unlikely to be harmed simply because a lawyer employed at the company’s New York offices is not admitted to practice here. The exception would also recognize that an in-house lawyer presents no threat to the public as long as the lawyer is rendering services only to the employer.

You and your colleagues are encouraged to make known to the Appellate Division that this is an important and helpful rule that they should approve. The Presiding Justices might be interested in exploring what other states have done in this area. For example, many states have adopted in-house counsel registration rules permitting corporate counsel to register and agree to be subject to the state’s rules and jurisdiction. For this privilege they pay an annual registration fee, which provides an additional source of funding for the disciplinary enforcement system. Sounds like a “win-win” solution that might be embraced by our courts in New York.

Essentially, a solution is at the fingertips of the New York bar regulators if they want one. It would seem to make tremendous sense from many standpoints, particularly the need to encourage businesses to come to New York and grow here. One might call it hypocritical for our state government to tell businesspeople that they should build new facilities in our state—creating jobs for New Yorkers and boosting the sagging economy—but that they can’t bring any of their current trusted in-house lawyers with them.

Back to the bar exam: An in-house lawyer (or any lawyer, for that matter) may be able to gain admission to the New York bar without taking it. If the in-house lawyer who comes to New York is admitted to practice in a state that provides reciprocal treatment to New Yorkers, and has practiced for five of the preceding seven years in any state in which the lawyer is admitted, the lawyer may be eligible for admission on motion. What this means as a practical matter is that the lawyer has two years to go through the admission process, which largely requires the gathering and submission of forms and a review by the Character and Fitness Committee. Don’t wait too long; two years can fly by.

If the in-house lawyer is not admitted in a state that provides reciprocity, all may not be lost. The District of Columbia is very accepting of out-of-state lawyers and provides very broad reciprocity. The lawyer may be eligible for admission on motion in D.C., a reciprocal jurisdiction. Once admitted in D.C., the lawyer may move for admission without examination in New York. The key here is that the New York rule does not require the lawyer to have practiced for five of the preceding seven years in the reciprocal jurisdiction, just in a jurisdiction in which the lawyer is admitted. Due to the two-year window, this process should be begun as soon as the lawyer knows that relocation to New York is in the cards. This process should probably be undertaken even if New York adopts proposed Rule 5.5(d)(1), because if the lawyer shifts into private practice in New York, the two-year window may no longer be available. The lawyer would then have to pass the New York bar exam.

So, Ethan, sorry for the long and mostly sad answer, but there are current solutions, and possibly future ones that are even better. As with most questions of professional responsibility, knowing the regulatory landscape is 90 percent of the battle. Good luck!

**Steven C. Krane is the Chair of the Law Firm Advisory Practice Group at Proskauer Rose LLP, where he is a partner. He was President of the NYSBA from 2001–2002 and is now Executive Vice Chair of the NYSBA International Law and Practice Section and Chair of its Committee on Standards of Attorney Conduct. He also currently serves as Chair of the ABA Standing Committee on Ethics and Professional Responsibility.**

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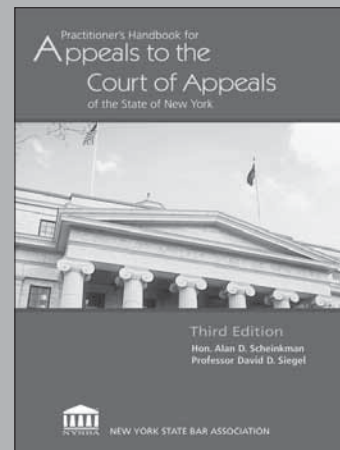
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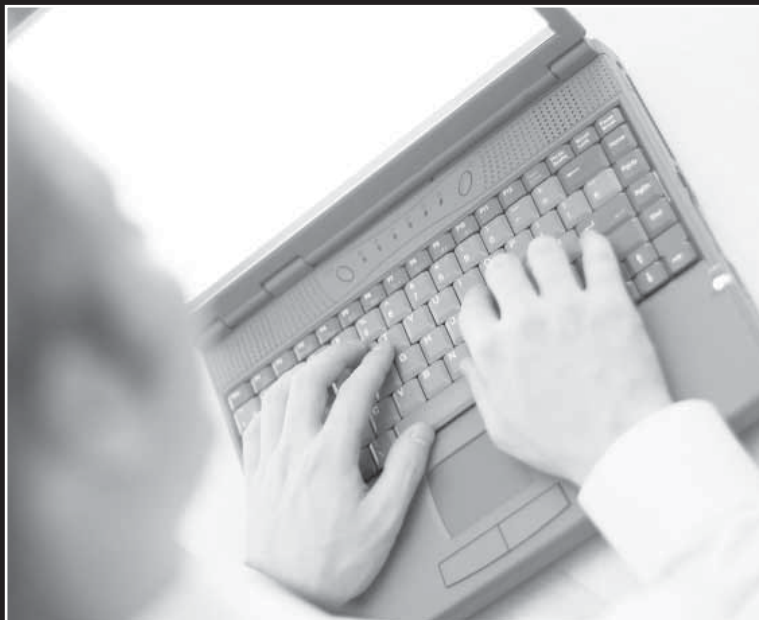
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