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The Art of the In-House Litigator

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Traditionally, corporate legal departments looked to outside law firms to handle their litigation needs. The reasons for this are plentitude, ranging from a needed expertise found at select law firms to the abundance of time litigation absorbs from its participants. However, as noted in this publication and elsewhere, times, as they say, "are a changing." Corporations are now looking more and more inward to handle their legal needs, including dispute resolution. Indeed, a cursory review of court dockets reveal an increasing number of companies are now represented by in-house counsel. *See,* e.g., *Kanongataa v. NBC Universal Media*, 16-CV-07383 (SDNY).

Being an in-house litigator differs from litigating through a law firm. It is not so much the mechanics of litigating – motion practice and reviewing documents are par for the course - but rather the overall process and mindset that divides the in-house litigator from her outside counterpart. This litigator is not an outside consultant advising clients in a quasi-arms-length manner, but rather someone with a seat at the table across and beside colleagues who share a common commercial mindset that drives their collective business needs. It is to this business -focused ethos that the litigator must adhere for a successful in-house career.

It is a safe bet to state that aside from die-hard litigators, no one else likes litigation, especially those managing a business. To be sure, these individuals need to spend their waking hours running a business, not embroiled in the *minutiae* of litigation. As such, in-house litigators should hone the skill of **resolving a dispute before it lands in court**. As an insider, the in-house litigator may be exposed to a dispute as it is brewing - before the delivery of a demand letter or service of a summons and compliant. Consequently, she should consider viable ways to resolve the dispute amicably outside of the litigation arena. This is especially true if the dispute involves a business partner or customer with whom the company wishes to maintain positive relations.

An insightful in-house lawyer also **understands the bigger picture** of the litigation's effect on her employer. Gaining insight into the broader industry and the specific sector the employer occupies within it can help the in-house litigator appreciate the real-world implications of litigation. Protecting a brand image and avoiding "bad PR" may trump the benefit of airing the dispute in a public forum. The in-house litigator who avoids litigation and saves her employer the associated time, expense, and other exposures has the makings of the company superstar. In an odd dichotomy with law firm partners and associates, the in-

house lawyer may be more valuable for her skill in *avoiding* litigation rather than making it rain with disputes.

Once the employer is party to litigation, **efficiency** and **resourcefulness** become valuable skills. Ever mindful that an in-house lawyer is an expense rather than a profit center, the efficient use of time becomes an even more important trait. Get straight to the heart of the dispute and determine the best course of action. Alternate dispute resolution may be a better venue to resolve disputes based on the company's dynamics and industry specifics. Rethink motion practice: motion practice for the sake of motion practice without a clear strategy, i.e., it will actually resolve something, may be fruitless and a waste of time and resources. The ability to multitask copying, collating, and filing with drafting and strategizing is key because most legal departments do not have the same level of assistance by way of clerks and paralegals available in law firms. It is also likely the in-house litigator will handle a matter solo, whereas outside counsel would staff a similar case with a couple of partners and associates. As such, the ability to conduct her own research and draft/edit her own documents without a constant failsafe is necessary. Quick status updates in clear plainspoken English and the ability to translate complex legal theories into discernable prose for the nonlawyer is the preferred method of communicating.

Finally, the in-house litigator may need develop a generalist philosophy. While law firms operate in practice areas, promoting expertise in a given subject matter, many law departments service all of the business' legal needs. As such, the in-house litigator will confront a wide arena of disciplines that are fodder for litigation in her employer's industry, such as general contract disputes to employee mattes to discrete regulatory issues. Consequently, in-house litigators reared in specific practice areas need to escape from that comfort zone and learn to become a general problem solver and troubleshooter, reclaiming those broad-stroke critical thinking skills learned in law school.

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