

TABLE OF CONTENTS

FOREWORD.....	III
ABOUT THE AUTHORS	V
NOTE FROM THE AUTHORS	VII
Introduction.....	1
Chapter 1. The Role of Inside Counsel.....	5
Inside Counsel—“Wedded” to His/Her Client	6
Challenges Facing Inside Counsel	7
Client Identification	7
Duty to Inquire	9
Dealing with “Suspected” Employees.....	11
Inside Counsel’s Liability Exposure.....	13
Role Within the Boardroom	13
Law Compliance Role	15
Becoming In-House Counsel	17
The ‘Dark Side’ Of Going In House	27
Chapter 2. Identifying Who Is Inside Counsel’s Client	35
Principle of Confidentiality	35
Counsel’s Communications with the Company’s Constituents	36
Closely-Held Corporations.....	37
The “Entity” Rule	39
Avoidance of Conflicting Interests	40
In the Matter of Carter and Johnson	40
Restatement of the Law (Third) Governing Lawyers	41
New York City Bar Association Task Force Report on the Lawyer’s Role in Corporate Governance (2006)	44
Chapter 3. What It’s Really Like to Work In-House and How to Find In-House Job Opportunities	49
What Do In-House Lawyers Do and Why?	50
What Else Can Attorneys Do in Corporations?	52
Common Perceptions About In-House Practice	52
In-House Attorneys Work Less.....	53
In-House Jobs Are More Stable.....	57
In-House Jobs May Be Less Prestigious	59
It Is Better to Be a Generalist	61

In-House Counsel Cannot Be Lonely	63
In-House Attorneys Do Not Have to Worry About Malpractice	64
Pathways to In-House Practice	65
The General Rule.....	65
The Exceptions to the Rule.....	69
Opportunities with Very Large Legal Departments	69
Opportunities with Smaller Companies.....	72
What Are Corporations Looking for in Corporate Counsel?.....	75
Starting Your In-House Job Search	77
Identifying Your Experience and Skill Sets.....	77
Focusing on an Industry	81
Identifying “Target” Companies	81
The Active Job Search	83
The Passive Job Search.....	88
Application Materials— <i>Your Resume</i>	90
Cover Letters	91
LinkedIn.....	92
Professional Organizations.....	95
Tips for Law Students Who Want to Work In-House	95
Internships with Corporate Legal Departments	97
Externships and Practicums.....	100
Chapter 4. Corporate Governance	105
Board of Directors	107
Functions of the Board of Directors	107
Business Judgment Rule and Related Principles	108
Dual Role as CEO and Chair of Board of Directors; Lead Director	110
Independent Directors	110
Committees of the Board	111
Audit Committee	112
Compensation Committee.....	113
Nominating/Corporate Governance Committee	114
Corporate Executive Officers.....	115
Loans	115
Conclusion.....	116
The Federalization of Corporate Governance (2018)	116
American Law Institute, Principles of Corporate Governance: Analysis and Recommendations (1994).....	120
Certification of Disclosure in Companies’ Quarterly and Annual Reports	133

Chapter 5. Client Confidentiality	137
Applicable Rules	137
Withdrawal and Its Consequences	140
The Ostrich Approach	142
Remarks before the Spring Meeting of the Association of General Counsel	144
SEC v. Jordan H. Mintz and Rex R. Rogers	153
SEC v. John E. Isselmann, Jr.	155
SEC v. Nancy R. Heinen	156
SEC v. David C. Drummond	158
Trustee's Report in OPM Leasing Services, Inc. (1983).....	159
Independent Examiner's Report in Spiegel, Inc. (2003)	166
Chapter 6. Working with Your "Internal Clients"	173
In-House Counsel as Business Partner	174
Becoming a Trusted Legal Advisor and Business Partner	176
Develop Strong Relationships	176
Communicate Effectively	182
Know the Business	185
Be a Facilitator Whenever Possible	189
Helping Internal Clients Identify and Evaluate Risk	191
Allocating Resources	195
In-House Counsel in Business Meetings	197
Corporate Minutes	200
Chapter 7. Law Compliance	205
Law Compliance—Inside Counsel's Role	205
Advising Regarding Law Compliance	205
Impact of Sound Law Compliance Programs on Government	
Prosecution	207
Overseeing the Compliance Function	208
The General Counsel as a Corporate Culture Influencer (2017)	209
Compliance Programs for Insider Trading	219
Minimizing Corporate Liability Exposure When the Whistle Blows in the Post Sarbanes-Oxley Era	225
Chapter 8. Working with Outside Counsel.....	227
Why Use Outside Counsel?.....	227
What Type of Work Is Typically Sent to Outside Counsel?.....	231
Criteria for Selecting Outside Counsel	232
Top Quality Legal Work	233
Specialization	234
Cost	235

Willingness to Enter into Alternative Fee Arrangements	236
Personal Relationships.....	237
Diverse Staffing	239
Key Relationships with Third Parties	241
Geography and Other Local Considerations.....	241
Methods Used to Select Outside Counsel	242
Requests for Proposals	242
Referrals.....	243
“Inherited” Outside Counsel.....	245
Discovered Through Networking or Speaking	
Engagements	245
Management and Board Member Recommendations	246
Is a Bigger Firm Better than a Smaller One?	246
“Pet Peeves”	247
Poor Communication	248
Unresponsiveness.....	250
Not Being Accessible	252
Missing Deadlines	252
Billing Surprises.....	253
Sharing Confidences.....	253
Not Listening	253
Being Arrogant	255
Spotting Problems but Not Providing Solutions	255
Ineffective Law Firm Marketing	256
Putting the Law Firm’s Interests Ahead of the Client’s	
Interests	257
Going over Budget	257
Delivering Poor Invoices	259
Staffing up.....	261
Doing More than the Client Wants	262
What Should Outside Counsel Do?	264
 Chapter 9. Focusing on the Securities Laws	271
Meaning of “Material” and “Non-Public” Information	272
Material Information	272
Non-Public Information	273
Insider Trading.....	274
SEC Filings.....	276
Resales of Securities.....	278
State Securities Laws	279
Conclusion.....	279
The “Work” of the SEC.....	279
SEC v. Andrew S. Marks	296

SEC v. Mitchell S. Drucker.....	297
SEC v. Gene D. Levoff	298
Chapter 10. Corporate Internal Investigations	301
Factors to Be Evaluated.....	301
Client Confidentiality	302
Purposes of Internal Investigations	304
Components of an Internal Investigation.....	306
Need for <i>Miranda</i> -Type Warning.....	309
Disclosing the Internal Investigation	311
In Re: Kellogg Brown & Root, Inc.	312
Law School Didn't Prepare You for This: Tips for the Internal Investigation	319
Chapter 11. Early Case Assessments	331
What Is an "Early Case Assessment Program"?	331
Using ECA to Develop a Roadmap.....	332
An Important Lesson from the Plaintiff's Perspective	332
Know 80% of What You Will Ever Know in 60 Days.....	333
The ECA Program—Defined	333
The Early Case Assessment Checklist.....	334
Putting the Checklist into Action.....	336
Better Settlements from Better Information	337
Better Docket Management Through Early Case Assessments	339
Chapter 12. Inside Counsel as Director	345
Potential Drawbacks	346
Benefits of the Dual Role	346
Ethical Rules	347
Risks of Serving as Attorney-Director	349
Suggested Alternative.....	353
TABLE OF CASES	355