

LAW WEEK

COLORADO

GOING IN-HOUSE

By Doug Chartier



IT'S A QUESTION nearly all lawyers ask themselves at some point: Should I go in-house? Perhaps after a few years of private practice, one imagines what life would be like without tracking billable hours or juggling clients, and suddenly an in-house position seems more appealing.

While practicing law in a corporate setting isn't for everyone, lawyers like Jennifer Friednash don't regret leaving private practice behind. She serves as corporate and general real estate counsel at Intrawest, a Denver-based mountain resort company, and for a legal professional with a passion for skiing, the position is "a dream come true," she said.

In-house legal work presents unique career opportunities that vary with the company, and an attorney's reasons for going in-house, of course, tend to be personal. For the lawyer determined to enter the corporate world, however, sources have shared some general guidelines for making that transition a smooth one.

Almost no matter what in-house position you assume, the consensus is that your scope of practice is sure to change. Most Colorado companies have small legal departments, which can require the counsel to be more of a "generalist" and advise on a variety of areas. Intrawest originally hired Friednash on as general real estate counsel, but she now also assists with various other issues such as intellectual property and entertainment law depending on the day-to-day needs of the company.

Clay Smith, associate general counsel at ADA Carbon Solutions, said his legal focus is quite broad since the company's legal department consists of only him and its general counsel. In addition to assisting with real estate transactions, he supports ADA's operations, human resources, research and development and sales.

However, a much larger company with a comprehensive legal department may allow an individual in-house counsel to maintain a narrow legal focus — and in some cases even narrower than some firm attorneys. Brian O'Donnell, counsel at Kilpatrick Townsend, previously spent three years as in-house intellectual property counsel at Kellogg's food company in Battle Creek, Michigan. Kellogg's, which employs more than 30,000 people worldwide, only needed him to practice in IP transactions and without many of the litigation responsibilities he previously handled in private firms.

Regardless of the their size, however, most companies tend to hire in-house lawyers whom they can also see as executives. As in-house counsel, legal professionals can participate in major decisions that steer the company's course, said Seth Belzley, counsel at Hogan Lovells. He was previously senior vice president and assistant general counsel at TransMontaigne, a fuel wholesaler.

"You're the legal voice sitting next to the financial voice, and next to the operations voice and the CEO," Belzley said. "You're being asked not just to provide legal advice but to help the company make the best decisions."

Instead of focusing on the success of individual cases, the in-house lawyer has to be open-minded to factors that aren't necessarily core legal issues, such as accounting or investor relations, but are nonetheless drivers of a company's overall success. How might a certain sales transaction influence the company's relationship with a vendor? How will statewide changes in labor regulations affect the company's bottom line? Once within a corporation, attorneys must address those other variables.

The corporate environment also demands a different communication



Brian O'Donnell previously practiced in-house at Kellogg's. | COURTESY PHOTO

style for getting things done that many private practice lawyers aren't used to. What often presents a steep learning curve to the new in-house attorney, O'Donnell said, is "the ability to foster relationships across many business units and ... making sure you understand who the stakeholders are in an issue, and making sure your circle of communication is not too big yet not too small."

He gave the example of a patent litigation issue at Kellogg's involving a food manufacturing process. Resolving the issue required collaboration with not only the company's food scientists who understood the processes and ingredients but also the manufacturers who produced the food and the vendors who supplied the ingredients.

But this sort of collaborative environment can be especially satisfying to some lawyers. Smith said he's come to appreciate the in-house corporate mentality that "everyone is pulling in the same direction," and that coworkers' goals are not as fragmented as they can often be in a law firm.

Also vital to that in-house transition is how quickly the lawyer can become intimately familiar with the company's structure, processes, products and services. Sources agree that it helps to do as much homework on the company as possible prior to day one. This is also where it pays to already have a colleague within the company, and not just during the hiring process. O'Donnell joined Kellogg's because his best friend from law school, who was already at the company, invited him to come interview for a position. The fact he had a close friend in the organization helped familiarize him with the corporation and its intricacies.

Still, because companies value the institutional knowledge among their in-house counsel, they're usually willing to invest in it.

"When a client thinks of you as on the clock, there's a tendency to consult you to the extent that is necessary but not a whole lot more than that," Belzley said. "As in-house counsel, there's more of an inclination for business people to invest in helping you understand the full picture because that's to their benefit."

For example, in order to familiarize Friednash with its properties on-site, Intrawest flew her to the company's far-flung resorts in locations such as Hawaii and Canada's Columbia Mountains — certainly not the least pleasant orientation period a lawyer has undergone.

While some lawyers find their niche within a corporation, other in-house counsel will eventually feel the pull again from the private practice realm. The decision to return to outside counsel is as personal as the one made for going in-house. Among his other reasons for making the move back out, O'Donnell realized after three years at Kellogg's that he was more of a hands-on litigator at heart.

"I missed writing the briefs," he said. "I missed going into court and making the arguments. I missed taking depositions. And I would get a lot of funny comments from colleagues in-house saying, 'Are you out of your mind? Why would you want to do that again?' But I think it's personal to everyone in terms of what their career ambitions are."

It can be much easier going in-house than coming out of it. Many legal professionals harbor the often-legitimate concern their in-house experience will someday limit them from ever getting a law firm job afterward, should they ever start looking back in that direction. While in-house practice works its own set of transactional and corporate muscles, it can often leave others skills to atrophy. When O'Donnell sought his current

position at Kilpatrick, which would put him back in the courtroom, he hadn't tried a case in three years. Delivering an opening statement, taking a deposition or drafting a substantive brief were skills that he had to pick up again swiftly.

"For me, it was very important in the first year of coming back to prove that I could do that again," he said, adding that this was the greatest challenge of returning to outside counsel.

Also key to making a successful transition back to outside counsel is timing. O'Donnell didn't join Kellogg's until after his seventh year of practicing law, so he had a foundation of private firm experience to draw upon once he returned to outside counsel. And the three-year tenure at Kellogg's wasn't quite so long that he had lost familiarity with the courtroom.

In-house experience by itself can be marketable to certain law firms. The interdepartmental communication skills fostered by an in-house environment, O'Donnell said, can be more applicable to private practice today, at least in the sense that many firms are growing larger and are beginning to be run more like corporations. Belzley said that while it's imperative for in-house counsel to be sensitive to peripheral factors affecting a client's business, that open-mindedness is also the mark of a good outside counsel lawyer.

These considerations are part of what one might call an "exit strategy" from in-house work, which many lawyers would agree is good to have regardless of how attractive the position looks going in. As with any career move, it's best to assume it won't be your last. •

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