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Working with Corporate Culture: Best Practices for Attorneys in Business

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WORKING WITH CORPORATE CULTURE: BEST PRACTICES FOR ATTORNEYS IN BUSINESS

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In this essay, I wish to define corporate culture and introduce a theory on how corporate culture matters in legal decision-making. To do so, I discuss the best practices for attorneys in business to work with and around the established corporate culture. My goal is to come up with ideas that help attorneys in practice grow as leaders within the framework of business corporate culture by managing it, understanding it, and at times, by changing it.

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I. ORGANIZATIONAL AND CORPORATE CULTURE

The term culture has several definitions, but is generally understood to be an evolving concept that is multifaceted and multidimensional.¹ While culture is understood as an influential element within the field of alternative dispute resolution, rarely are the cultures of individual companies given proper consideration in the assessment of a dispute. A vital subset of culture which permeates

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1. See generally, Sukhsimranjit Singh, *Beyond Foreign Policy: A Fresh Look at Cross-Cultural Negotiations and Dispute Resolution Based on the India-United States Nuclear Test Ban Negotiations*, CARDOZO J. CONFLICT RESOL. (Nov. 23, 2012).

virtually every aspect of a company is a distinct *corporate culture*. Unlike traditional approaches to culture, which look broadly to factors such as nationality and religion to identify the nature of a company, corporate culture is defined by the specific values, operating mechanisms, and organizational environment cultivated by a corporation's leadership.²

Though a corporation's leadership will be influenced by macro-level cultural factors, getting to the heart of corporate culture is paramount for effective business lawyering in both intranational and international markets.

Discerning corporate cultures begins with the recognition of the *organizational culture* comprising the larger market of which a company is a part. Organizational dimensions, including a company's country of origin, industry, and history, inform the corporate culture.³ Thus, attentiveness to organizational culture is a necessary yet insufficient instrument in the informed business lawyer's toolkit. Considered practically, this concept is intuitive: an organizational culture offers context but overlooks the inner functions of a business.

II. WHY SHOULD CORPORATE CULTURE MATTER?

Like a national culture is the spirit of its people, corporate culture is the spirit of a company. Resistant to change, yet continuously evolving, a corporate culture dictates acceptable business practices, relationships between managers and those whom they lead, and the value employees place on their work.⁴ Corporate culture is the force behind everything from how well offices are cleaned at night to the efficiency of meetings and attitudes of board members.⁵ Because company leadership sets the tone for a corporate culture, decisions made at the highest echelon of a business will have a trickle-down effect on the mindsets and productivity of other employees. It is therefore essential for persons handling corporate disputes to go beyond organizational assessments of culture and pursue a molecular analysis of relevant parties' corporate culture. This is particularly significant in cases whereby both parties are from the same country,

2. STANLEY M. DAVIS, *MANAGING CORPORATE CULTURE* (Ballinger Pub. Co. 1984).

3. Richard Summerfield, *CULTURAL ISSUES IN DISPUTE RESOLUTION*, *CORPORATE DISPUTES*, Jan-Mar 2018, at 15–20.

4. *Id.*

5. Karl Mackie, *Dispute Resolution Skills and Company Culture-A Recipe for Successful Leadership*, *CORPORATE DISPUTES MAGAZINE*, 2016, at 133–137.

and consequently, are difficult to distinguish on the sole grounds of organizational culture.

Just as it is critical for an ADR professional to recognize corporate culture as legitimate, so too is it necessary for a corporate culture to legitimize the practice of ADR. Corporate culture is an indicator of (1) whether parties will be willing to pursue ADR in the first place, (2) how the ADR process, if utilized, will function, and (3) the longevity of an agreement (if reached).⁶ To save steps in the resolution process, it is prudent for a mediator, arbitrator, or negotiator to consider how a particular corporate culture views ADR strategy before embarking on an ADR path. Mergers and acquisitions are particular sectors of business which illustrate why a thorough understanding of corporate culture is paramount. In M&A disputes, which frequently send two or more corporate cultures colliding, miscommunication is bound to arise without proper prevention mechanisms in place. To illustrate this phenomenon, consider the merger of two international businesses: one Asian business and one European business. In this example based on true events, an Asian company is merged into the European market and is now subject to the corporate culture of its European parent company.⁷ With a cultural gap that includes difference in language, law, cultural practices, and varied approaches to respect for management, both employees and leadership struggle to find common ground. A year and a half later, the merged company shuts down due to absenteeism, lack of productivity, and spurious activities of a union imposed on the Asian company without sufficient warning.⁸ Why? It was not because the companies each lacked an effective leadership style, but rather because corporate culture was not given dual consideration when the merger was established. For legal professionals working in the M&A world, developing a sense of corporate culture and working with clients to ensure that their cultures are compatible is not only responsible, but is essential in ensuring survivability of a corporation.

6. Paul Eric Mason, *Corporate Culture and Business Mediation*, KLUWER MEDIATION BLOG (Sept. 4, 2018), <http://mediationblog.kluwerarbitration.com/2018/09/04/corporate-culture-business-mediation/>.

7. Arthur Gemmell, *Culture: The Oft Forgotten Ingredient for a Successful International M&A Transaction*, CORPORATE DISPUTES MAGAZINE, 2015, at 124–127.

8. *Id.*

III. ROLE OF THE LEGAL COMMUNITY IN THE DEVELOPMENT OF BETTER BUSINESS LAWYERS

A better business lawyer is both perceptive and proactive. Recognizing that involvement in a lengthy, bitter dispute is costly for all parties, a better business lawyer works with their clients to rectify the problem at hand while contributing to the establishment of future prevention mechanisms. One such prevention mechanism is the adoption of in-house dispute resolution, which is sometimes enacted via “Corporate Policy Statements on ADR” or “ADR Pledges.”⁹ Under such agreements, a Chief Executive Officer and Chief Legal Officer (both of whom contribute to the corporate culture) must sign and enforce ADR practices for internal conflict.¹⁰ With proper foresight and understanding of the corporate culture, a better business lawyer can guide their clients in the implementation of institutional ADR. Additionally, the reflection needed to determine whether in-house ADR is a good fit for a company is an opportunity to identify the values most important for the company’s mission. It can also help determine where beneficial existing or potential business relationships exist.¹¹ Though some companies will resort to practices like mediation only after excessive time and money has been absorbed through litigation, a better business lawyer does the opposite. Using dispute resolution as a first step coupled with the identification of corporate culture affords legal professionals an opportunity to work with parties before positions harden and parties become alienated.¹²

IV. HOW CAN ATTORNEYS BETTER UNDERSTAND CORPORATE CULTURE?

Developing an understanding of corporate culture requires a commitment by attorneys to get to know a corporation’s leadership, business model, and purpose. Beyond identifying the conflict and immediate parties it impacts, a vested interest in learning the “language” of the business and its people must be developed. In

9. Kenneth Feinberg, *Mediation-A Preferred Method of Dispute Resolution*, 16 PEPP. L. REV. S6, S22 (1989).

10. *Id.* at S22.

11. Don Peters, *It Takes Two to Tango, and to Mediate: Legal Cultural and Other Factors Influencing United States and Latin American Lawyers’ Resistance to Mediating Commercial Disputes*, 9 RICH. J. GLOB. L. & BUS. 381, 388 (2010).

12. Peter Benner, *Corporate Conflict Management 4.0: Reflections on How to Get There from Here*, 16 PEP. D.R. L. J. 289, 290 (2016).

practice, this may involve observation of daily operations, discussions with employees at different levels of leadership, and creating a map of the organization's structure.

A challenge to the task of cultivating corporate culture fluency is the perception that to invest additional time into getting to know the business is to detract from time spent solving the issue. Some may argue that by delegating time to have discussions with employees not immediately linked to the conflict and observations of operations, an attorney is both increasing costs to the client and not working to resolve the conflict as efficiently as possible. When dealing with highly time-sensitive, classified, or potentially volatile matters, it is prudent for attorneys to recognize the opportunity cost in a thorough analysis of corporate culture. Some scenarios will require working exclusively with leadership and drawing inferences about the corporate culture based on the attorney's intuition and experience. Additionally, the willingness of the client to afford the attorney time to develop a working understanding of the company's structure and values can be an indicator of corporate culture. If a corporation is taken aback by an attorney's desire to understand the conflict as part of a larger picture, the attorney may infer that the corporate culture is better suited to transactional relationships. Just as the client may perceive a lawyer as an individual paid to conduct a specific task, so too may it be inferred that employees of the business are regarded as valuable within the confines of their specialized role. Thus, it is the responsibility of the better business lawyer to read the situation and tailor an approach accordingly.

In-house counselors are the best positioned to recognize corporate culture and are responsible for contributing to it in a purposeful way. Whereas an attorney hired to assist with a specific conflict in the short-term must work within the bounds of the existing culture, corporate counsel has the legitimacy and leverage to help shape it. In discussing the merits of general counsel, Sarah Helene Duggin notes:

General counsel are ideally situated to serve as leaders in the struggle to define the parameters of corporate conscience. They can and should be held accountable for promoting integrity on the part of corporations and their constituents and for fostering responsibility on the part of corporate lawyers.¹³

13. Sarah Helene Duggin, *The Pivotal Role of the Corporate General Counsel in Promoting Corporate Integrity and Professional Responsibility*, 51 ST LOUIS U. L J. 989, 992 (2007).

As such, this promotion of integrity and corporate responsibility comes to mold the corporate culture in terms of operations and values. Further, in-house attorneys can help create the necessary infrastructure for dispute resolution within the company. By being proactive in dissolving conflict before it becomes a legitimate issue, a company spends less time on legal controversy and more time on objectives central to corporate value generation.¹⁴

In the long term, investing in an attorney who values identifying corporate culture has payoffs. For clients who do not have in-house counsel but are receptive to building working relationships with their attorneys, identifying a corporate culture becomes beneficial on both ends. For the corporation, attorney/firm loyalty helps to foster ongoing partnerships, improved trust, and expedition of the resolution process, if future conflict arises. Because the attorney will have already established a foundation of the corporate culture, the initial process of assessing the leadership and company values will be far less involved. From a financial standpoint, relying on in-house attorneys or those with whom a relationship has been formed can be cost effective; historically, large cash outlays have been necessary to familiarize outside counsel with enough detail to sufficiently represent the case.¹⁵ Additionally, this dynamic is valuable for attorneys. Through prioritizing getting to know the client, it sends a message that the attorney is invested in preserving that which the client cares about most. Further, positive relationships promote consistent business and may contribute to future referrals. An attorney/client relationship built upon mutual understanding of corporate culture encourages longevity and simplifies the resolution process.

V. UNDERSTANDING CORPORATE CULTURE AND HIERARCHY FROM AN ATTORNEY'S PERSPECTIVE

Critical to constructing an accurate picture of corporate culture is recognizing the hierarchy within the business's leadership. Since the leadership of a corporation dictates the corporate culture, knowing who the stakeholders are, who has leverage in business operations, and who holds the decision-making power key is a crucial step for attorneys. Not only is a hierarchy telling of corporate culture, but it also has the potential to impact legal outcomes. For example, if a corporation opts

14. Summerfield, *supra* note 4.

15. Duggin, *supra* note 14 at 997–998.

to use mediation as a means of conflict resolution, parties lower on the hierarchical totem pole may be inclined to sway their information and position for fear of creating problems with a manager or supervisor.¹⁶ Thus, if the attorney is not attentive to how the roles within a company are structured and who has influence over whom, select persons may be automatically at a disadvantage before the dispute resolution process even begins.

Likewise, if the company operates with a heavily hierarchical structure and a conflict is between employees of different corporate status, top-level managers may be unaware of the practices occurring at lower levels of the business. On top of fear to disclose certain information, management may be more likely to make tactical errors as a result of poor communication across the company.¹⁷

This leads us to the question: what can an attorney do to navigate corporate hierarchy when managing a conflict? First, it is the responsibility of the attorney to read the situation and recommend a resolution strategy that is the most charitable to all parties involved. If the attorney senses that the business hierarchy is contributing to coercion (whether explicit or implicit), then making time for lower level employees to speak freely in a comfortable environment might ameliorate those difficulties. Knowing when to utilize a joint-session approach is beneficial for relationship building and ensuring the parties are able to communicate their concerns directly. Second, attorneys within a company should work to develop strong conflict management and leadership skills to mitigate problems before they disintegrate into legal disputes. Assessing communication styles, respect between the “leaders” and the “led,” and the facilitation of information between different levels of the business is beneficial for informed intervention, if and when needed.

For attorneys working with businesses to either create or restructure their organizational hierarchy, it is advisable to prioritize collaboration and productive working relationships between all levels of a business, not just from the top down.¹⁸ It is essential to clarify that, even under corporate cultures which establish a social business ladder, promoting collaboration across the business need not come at the expense of respect for superiors. In other words, it is entirely possible

16. Mackie, *supra* note 6.

17. *Id.*

18. PETER SCHOLTES, THE LEADER'S HANDBOOK: MAKING THINGS HAPPEN, GETTING THINGS DONE (1st ed. 1998).

to preserve divisions of roles and corporate civility while shifting the mindsets of both employers and employees to view one another as teammates and not competitors.

VI. CORPORATE CULTURE AND DECISION MAKING

Corporate counsel are positioned to both make decisions in light of the corporate culture and make decisions in effort to reshape it. Because corporate counsel is are involved at multiple levels of a business, their influence extends beyond the highest levels of management into operational environments. Informed by business objectives, corporate governance standards, and rules of professional responsibility, decisions made by corporate counsel inevitably must consider a multitude of variables.¹⁹ In an environment where social responsibility is frequently pushed to the wayside when a promise of profit takes the reigns, corporate counsel are tasked with holding leadership to ethical standards. In recent years, ethical concerns within the business world have expanded, increasing the need for those trained in avoiding legal breaches.²⁰

Not surprisingly, working in the business sector can challenge corporate lawyers with the temptation to compromise professional judgment or override moral standards in the interest of conforming to their business environment.²¹ When potential breaches of law or unethical practices that compromise the legitimacy of the business are entertained, it becomes the responsibility of the corporate counsel to stand firm in adherence to just principles. Doing so may even contradict a corporation's culture should the culture oft disregard decent practices, but it is essential in preserving the integrity of the legal profession. To decrease the chances of this scenario, corporate counsel should clearly establish boundaries for the types of business behavior they will and will not condone. Not only does malpractice reflect poorly on an organization, but it detracts from the credibility of the corporate counsel.

Traditionally, decision-making on behalf of corporate counsel has been predominantly studied by three academic disciplines: sociology,

19. Duggin, *supra* note 14 at 995.

20. GRADUATE MANAGEMENT ADMISSION COUNCIL, DISRUPT OR BE DISRUPTED: A BLUEPRINT FOR CHANGE IN MANAGEMENT EDUCATION (2013).

21. Duggin, *supra* note 14 at 993.

ethics, and law.²² Sociology has added to the understanding on topics like the impact of organizational structure on decision-making.²³ To understand the sociological implications of hierarchy, it is necessary to first understand the corporate culture. In some companies, when the CEO makes a pronouncement, everyone from the vice president to the corporate counsel to the lowest ranking employee is expected to follow it exactly.²⁴ In other companies in the same scenario, pronouncements on behalf of the CEO are interpretive and implemented in the way upper and middle level managers see fit.²⁵ Therefore, the way corporate counsel will approach decisions from a sociological perspective depends on (1) the type of company of which they are a part and (2) whether they have any say in the executive decision-making process.

Ethics literature generally reports on empirical and theoretical cases related to employment, particularly linked to moral leadership.²⁶ It recommends that for corporate counsel to maintain professionalism, a certain independence from other corporate leadership is required. By creating distance between corporate counsel and others in the business, the counselor becomes less likely to succumb to organizational pressures in violation of sound practice.²⁷ A potential downside to this approach; however, if that separation is taken too far, it can contribute to faulty communication across the business. If the corporate counsel is not fully aware of various decisions and operations, they may miss important information or an opportunity to become involved in a useful way. Additionally, it may make the corporate counsel appear unapproachable or out of reach from other employees who may benefit from initiating a conversation or seeking guidance.

From a legal perspective, prior work highlights the history of in-house counsel positions as opposed to external legal aid, as well as inclusion of corporate counsel within uppermost levels of management. One school of thought, known as the “lawyer-statesman” approach, views the responsibility of the Chief Legal Officer (CLO) as ensuring that their corporate decision-making is directly linked with respect to

22. Hugh P. Gunz & Sally P. Gunz, *The Lawyer’s Response to Organizational Professional Conflict: An Empirical Study of the Ethical Decision Making of in-House Counsel*, 39 AM. BUS. L.J. 241, 241–288 (2001).

23. *Id.* at 245.

24. Kluwer, *supra* note 6.

25. *Id.*

26. Gunz and Gunz, *supra* note 23 at 245.

27. *Id.* at 256.

both federal and state regulatory compliance.²⁸ This view also places an emphasis on promoting ethical culture and rapidly applying legal judgement to problems and operations.²⁹ Thus, CLO “lawyer-statesmen” allow two key questions to inform their decision-making: (1) Is the decision *legal*? And (2) Is the decision the *right*?³⁰ Conversely, another school of thought favored by compliance professionals argues that the Chief Compliance Officer (CCO) should be both independent from the CLO and responsible for the firm’s ethical culture.³¹ This leaves the CLO the sole role of advising on technical legal matters and acting as the manager of the firm’s legal department.³² Which school a CLO will function under ties back into corporate culture; division of roles is a direct representation of company structure.

Corporate culture’s role in the negotiation of leadership within the corporation is unmatched, and this essay attempted to bring awareness to such roles to improve corporate lawyering.

28. Robert C. Bird & Stephen Kim Park, *The Domains of Corporate Counsel in an Era of Compliance*, 53 AM. BUS. L.J. 203, 203–250 (2016).

29. *Id.* at 204.

30. *Id.* at 205.

31. *Id.*

32. *Id.* at 206.