2012 Workshop for Board Professionals

Wearing Two Hats: The Joys and Pitfalls of Serving as Attorney and Secretary to the Board
Presenters

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Wearing Two Hats

- Nature of the Roles – Are they compatible?
  - Advisory versus operational functions
    - Should the lawyer have operational responsibilities?
  - Conveyor of privileged versus non-privileged communications
    - Speaking with Board as governing body versus Board as client
    - Lawyer as public spokesperson versus secretary as public spokesperson
  - Public institutions versus private institutions: does it make a difference?
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• Attributes of the Legal Function
  – Does a legal focus add to the secretarial role?
    • Form and substance? The legal component of governance.
    • Training focus on compliance?
  – Does a legal focus detract from the secretarial role?
    • Form over substance?
    • Over-emphasis on risk management/risk avoidance?
    • The art of communication: can lawyers overcome our training and write clearly?
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• Attributes of the Board Professional Function
  – Are there advantages to the legal function for an attorney to be the secretary?
    • Engaging the legal office in defining the institutional direction
    • Enriching legal services with an awareness of governance issues
    • Preparing Board resolutions with an attorney’s eye
    • Including legal issues in board orientation
  – Are there advantages to the board function for the secretary to be an attorney?
    • Trusted counselor or venal intruder?
    • Improving governance with an awareness of legal issues
    • Board orientation: better, or just more legalistic?
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Organizational efficiencies and effectiveness

– Are there advantages?
  • Administrative streamlining
  • Interrelatedness of legal and governance considerations

– Are there disadvantages?
  • Loss of the dedicated board professional
  • Time management
    – When the lawsuit comes in, where will the priorities lie
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• Managing potential conflicts
  – Who is the client?
    • Institution versus board versus president
  – When should the secretary/attorney step away from giving legal advice?
    • Presidential compensation and conduct
    • Advice on the governance function
    • Should the secretary/attorney ever step away from the secretarial role?
  – Who makes the call?
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• Who’s the boss?
  – Board, chair OR president?
  – Different function, different boss?
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• The attorney-client relationship
  – Risks to maintaining the relationship
    • Ambiguity of roles
    • Communications pitfalls
  – How can we protect the relationship?
    • Clarity
    • Control
    • Outside counsel/other in-house attorneys
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• Impact on relations:
  – With the president
  – With Board members
  – With other Officers
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• Multiple hats -- Other types of roles for the attorney and/or secretary
  – E.g., compliance officer, human resources director, government relations
  – Nature of the function
    • Operational versus advisory
    • Having a “dog in the fight”
  – Nature of the institution
    • Thinely staffed operations
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Questions and Discussion