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GCs Belong on Boards, Just Not Their Own

From the Experts

By Bob Barker

There has been a running conversation in this publication about the value of general counsel serving on boards of directors and whether they should serve on boards at all. The focus has mainly been on GCs serving on their own company's board and informed observers—including attorneys—have weighed in on the wisdom and potential conflicts of GCs as inside directors. In addition, a February 2013 Cornell Law School survey mentioned in *Corporate Counsel* strongly suggests that lawyers on the board, generally, can have a significant positive impact on company value.

Our view, as executive search consultants who recruit GCs to boards as outside, independent directors, is a somewhat different one. We would say, unequivocally, that not only are GCs in greater demand by many companies' boards, but the right candidate can add significant value to the board. Our data is admittedly anecdotal, based on a wide range of client experiences, but we believe, nonetheless, that it makes a compelling case.

First, let's look at the issue of GCs serving on their own company's board. The overwhelming trend in the corporate governance arena, captured in best practices and strongly advocated by vocal shareholders and governance experts, is to strictly limit the number of insiders on the board. Watchdog groups and proxy advisory services regularly keep close track of board independence as one measure of board effectiveness, and on many boards now the CEO is the only insider. So we would not expect to see a significant increase in the number of GCs serving on their own company's board.

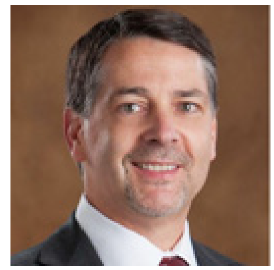
Serving as a director on *another* company's board, however, is an appealing proposition to many GCs who welcome the chance to bring valuable new perspectives and solutions back to their own board.

Traditionally, lawyers have gotten something of a bad rap as directors, with many boards fearing they would be excessively analytical, either wasting the board's time or "leading the jury" rather than striving to be a collegial member of the board team. Consequently, GCs were not much sought as directors. But we are now witnessing an increase in clients seeking GCs as independent directors for their boards. Why?

Times have changed, and with an uptick in regulation, lawyers who combine legal skills with sophisticated business acumen are increasingly welcome on boards. There are GCs who work for large global companies and have wrestled with every possible business challenge. They're well versed in risk and compliance, and they work closely with their own board. Legal training helps to ensure a detail orientation—and those details can count, for example by helping to vet the board's position before taking action on an issue by asking the right questions.

Of course, not all GCs will make great directors. We find those who are particularly in demand are a somewhat rare hybrid of lawyer and business executive. They possess the legal skills, experience, and know-how to view the sorts of issues boards regularly face through a business lens. They are valued partners in strategy discussions, and they understand how to approach the issue of risk from a business perspective and determine what is an appropriate "risk appetite" for a company. That often means stepping outside the traditional legal role of telling the board what it legally can or cannot do, and helping it think through alternate paths to the same goal. This requires flexibility and a deep understanding of a company's strategic objectives, as well as the ability to work closely with the rest of the board as a colleague, not just an expert who occasionally weighs in to say yes or no.

Boards and CEOs are increasingly likely to think of director recruitment as a broader challenge than merely filling an empty seat or adding a new skill to the board. Enlightened boards start with the company's strategy and determine what specific expertise they require to support the CEO and make sure the strategy succeeds. Directors may be generalists with operating experience, such as CEOs or other senior-level managers, or they may have a specific functional background, such as financial or legal expertise—combined with significant business experience.



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As boards move beyond a traditional, superficial definition of diversity that is limited to gender and race, they are embracing something broader—and a key element, which can provide real value to the board, is diversity of thought. By virtue of their training and professional experience, GCs are likely to see business issues from a different perspective than the other executives who comprise the board. This expanded view of diversity can greatly enrich board discussions and decision-making.

A board that is in the market to recruit a new director may determine, among its key selection criteria, that it requires candidates who are able to view issues from a broad business context; understand regulatory and other legal issues; quickly grasp a company's strategy; and assess risk and set risk levels. They're looking for candidates who can ask questions that illuminate key issues in board discussions. Such a board might well end up with a GC as its new director. And, from what we are seeing of GCs serving as independent directors, that would not be a bad thing.

Bob Barker is the managing partner of BarkerGilmore LLC, a leading executive search firm specializing in general counsel, chief compliance officer, and board member recruiting. He can be reached at rbarker@barkergilmore.com, (585) 598-6550, and barkergilmore.com.

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