



Succession Planning: A Joint Primer for the GC and Outside Lawyer

Law Department Management





CHEAT SHEET

- ***Find the right fit.*** As general counsel have become trusted business advisors, law departments cannot afford to hire candidates lacking industry-specific knowledge.
- ***Clear eyes, right start, can't lose.*** Plan for succession with a dispassionate assessment of the company's growth plans and the skills the future GC will need.
- ***Don't overlook soft skills.*** While industry-specific experience is a valued commodity, a candidate's ability to fit in and function within your organization is paramount.
- ***Use your outside counsel.*** Look to law firm partners for help identifying candidates, for temporary slot-filling, or an outside look at your department's needs.

The importance of succession planning for corporate law departments and the law firm practice group leaders who serve them is understood, even if it's often honored in the breach. What's often not acknowledged is that law firms and their corporate clients have a mutual interest in succession planning, and are stakeholders in the outcomes of each other's planning.

Law firms like to give lip service to the idea that they “partner” with clients, getting to know the dynamics of their industry, the strengths and foibles of their people, and the regulatory environment and other external factors that affect their operations and prospects.

And yet, each often proceed with their succession planning — to the extent they do so at all — with only cursory input from the other, in the belief that informing them of outcomes is sufficient. We suggest that is not enough. If law firms and their clients really are “partnering,” then they will benefit if they work together in succession planning.

The authors — a regional bank corporate counsel with 16 years of previous corporate practice experience and a law firm business litigation practice group leader — work together in a client relationship. The bank and the law firm have daily communication on matters large and small, allowing the bank to leverage its three-lawyer staff. While the firm's legal experience is where the relationship begins, the people involved are critical, too. It's not a stretch to say that if the relationship partner at the law firm changed, the bank would not have an unbridled commitment to go forward with the firm. Certainly the bank could find comparable legal services at competitive prices. Like the vast majority of corporate law departments, the bank's legal services are not so specialized that it doesn't have options.

We value this relationship on both sides, but we also recognize that new key players would require adjustments and perhaps a reevaluation.

Like all law departments, we're regarded as a cost center and that's even more true since the department is only three years old. The bank's young management team is focused on growth and is much more likely to ask about the legal spend than plans for succession. If something is going to get done about succession planning, it will have to start in the chief legal officer's office.

We recently have been discussing how we can support each other in our succession planning and this article reflects how we intend to bring a formal structure to that process. For simplicity's sake, the article speaks from the viewpoint of the corporate counsel, but it reflects our mutual understanding of this issue.

The importance of succession planning

While the importance of succession planning ought to be obvious, it still is a highly neglected area both at law firms and within corporate law departments. The neglect stems from failure to recognize the consequences, a lack of time, passive resistance and, even if these obstacles don't exist, the failure to execute a formal plan.

Consequences

The full consequences of haphazard succession planning are not understood. The lack of attention to this process can hurt the bottom line and impair the efficiency of both law departments and law firms.

Shareholders know the value of continuity at the CEO level, but executives immediately down the organizational chart don't get much attention. You will not hear anyone at the annual meeting ask if the GC is grooming a successor.

The board and top management, however, would be wise to see down to this level. GCs who come to the position from private practice are surprised to learn the extent to which their positions are company and industry-specific.

Our bank is in the midst of consolidating branches, and at the same time we are actively looking for acquisitions that complement our core organic growth strategy. We are making a big push into online mortgages and other electronic products as customer behavior changes, and we have the garden-variety litigation that you would expect at any company of our size. We're in a regulation-intensive industry, and the legal department expends a great deal of quiet effort making sure the bank is compliant with a host of ever-changing state and federal rules that carry harsh penalties for even inadvertent violations.

Everybody can be replaced, but a new corporate counsel would have a steep learning curve.

At the law firm, the skillset is a bit more fungible and the consequences are clear. Clients can be lost in transitions — either abruptly or over time. While it is true that the client belongs to the firm and not the partner, a general counsel doesn't call the law firm for advice; she calls the one or two lawyers who know her business.

Time

Nobody within the company would disagree on the benefits of law department succession planning, but we're like every other business these days. There simply isn't enough time. We mentioned earlier that our bank is expanding its geographic and product footprint, and we have other exciting changes on the way. Little wonder that something like succession planning for the legal department is still on the long-range to-do list at the end of the day.

Over at our law firm, the priorities are similar. The firm has made growth a priority in recent years, expanding its client base and practice offerings in the competitive middle-market law firm sphere. Like many firms, it has brought on quite a few new people and seen some depart, too. The management committee has its arms full keeping up with day-to-day changes.

Passive resistance

Let's be honest here: not everyone regards succession planning to be in their best interest. While the authors don't believe this to be the case in their respective organizations, they both know that the exclusivity of a relationship makes lawyers feel more valued. When there is no backup plan, the key players in relationships are essential. There is an inherent disincentive for lawyers to dilute relationships.

This is especially true at law firms where lawyers may find it hard to downstream work and maintain their own billing goals. What if someone does it better than me? The entire process is counterintuitive and seems to diminish hard-won relationships.

The plan

If your good intentions get you past these obstacles, it means little without a formal process and plan. The authors have sat in meetings where everyone agreed to the necessity of succession planning for practice group leaders and corporate department heads, with little subsequent progress at identifying or training successors. Succession planning requires an actual plan. That means process, measureable goals, accountability, and regular attention to all the details.

Start with assessment

Planning for succession begins with assessment. On the corporate side, this assessment must square with the company's strategic plan and broader plans for growth. At both the law department and the law firm, this should include metrics such as looking at ages of key personnel, age and suitability of people in the pipeline, revenue dependence, firm culture, and the types of files and work. Soft assessments also are critical, and these include looking at the leadership style, legal knowledge, and relationships of the key players.

The biggest mistake many companies make is to base their succession plan on the skillset needed right now. At the bank, assessment of all key positions includes a recognition of the skills that may be needed five or 10 years in the future. That will reflect regulatory and technology changes as well as management's plans for growth. Our \$1.5 billion market cap bank will be a very different company in the not-so-distant future if we stay on course.

At another type of company, these considerations might involve plans for international growth, new product lines, expansion into states where the regulatory environment, or laws that impact the company and intellectual property. Will the company need a GC with a greater knowledge of trademarks and patents? Would fluency in another language be an asset? Is experience in a related industry ripe for acquisitions important?

In a large law department, a company may find it has some of this talent down the hall, but most of us are lean with a handful of lawyers doing the work. There is no pipeline in these smaller departments.

Take a hard look at skillsets

The hard skills include experience with mergers and acquisitions, the state and federal financial regulatory environment with emphasis on the South Carolina Department of Banking and the federal Dodd-Frank Act, data privacy, tenure at middle-market banks, and a knowledge of South Carolina communities and businesses.

The soft skills are just as important. Most of these come under the broad categories of leadership and collaboration, which means something quite different in a business than in a law firm where lawyers stick to their practice groups.

These soft skills are not to be taken for granted or regarded as psychobabble. Every day, the corporate counsel works with the CEO, CFO, and department heads. They don't just ask for legal opinions; they want creativity and problem solving. They don't want disinterested legal opinions that throw all the decisions back to them; they want to work with a peer who is invested in a course of action and is an integral part of the team that is growing the company.

And they want someone who embraces change. Our markets and regulatory environments are evolving, consumer expectations are constantly evaluated, technology is altering the products we can

bring to the marketplace, and all of this is taking place against a backdrop of volatile financial markets.

GCs are leaders and managers. Lawyers are lawyers. We've seen excellent lawyers who were never able to understand the difference. All law firms are different, but there are similarities in the legal work, representing clients and in the billing and work processes that create revenue. While some law firms like to tout their internal collaboration, it pales next to what the average GC deals with every day. Law firms don't have regular meetings with 10 practice areas discussing firm strategy. They don't have anything close to the layers of bureaucracy that are endemic to even mid-size companies. Law firms also are authoritarian in their outlook, while businesses work best when there is a genuine effort to understand other people's point of view. A GC who isn't a communicator and manager — up and down the org chart — will struggle.

Legal department succession planning process outline

THE ASSESSMENT

- Stakeholders inside and outside the legal department should contribute to the assessment.
- How do stakeholders outside the department view its function?
- Evaluate current pipeline personnel.
- What is the likelihood of the GC or other senior managers leaving, and when?
- What current skillsets will need to be replaced?
- In view of the strategic plan, what legal and management skillsets will be needed five or 10 years in the future? Focus equally on management and legal competencies.
- Who will lead the legal department on an interim basis if the position opens up unexpectedly?
- Is continuity the primary priority or does department need a change agent?

THE LAW FIRM

- Can the law firm advise on how regulatory and legal changes are likely to affect the legal department over the next five to 10 years?
- Can the law firm commit to providing an experienced attorney as a loaned GC in the event of an abrupt transition?
- Does the law firm have a succession plan for its relationship attorney? Will it accept meaningful input from the client, including feedback on specific candidates?
- Is the relationship partner incentivized to groom a successor?

THE PLAN

- Build a profile that is suitable for a headhunter, based on hard and soft skills, of the ideal successor.
- If successor talent is identified within the company, establish a formal mentoring and training program.
- If there is no likely successor within the company, establish tactics for identifying a successor and handling day-to-day responsibilities during a transition.
- Document, in detail, all the current processes of the legal department. Update it each time the staff handles a new type of matter, creating a roadmap for the next GC.
- Put the succession plan in writing and establish dates for deliverables. This includes quarterly, written reports followed by discussion.

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- Make one senior person accountable for implementing the plan, with regular reports to C-level management.
 - Treat the plan as an ongoing process that changes as the business changes.

How can law firms and law departments help each other?

One of the reasons we pay law firm rates is we don't necessarily know what we don't know. As GCs, we don't always have the time to do a deep dive on how our business will be altered by changes in health care regulations or data privacy or new EEOC rules. We expect our outside lawyers to immerse themselves in these issues and keep us informed. Helping us anticipate legal developments is never more important than in succession planning when we make structured transitions to a new chief legal officer.

In a small legal department where it is unlikely there will be an heir apparent, the company's law firm may be the first place to look for a GC's successor. These alumni positions solidify the client relationship for the law firm and it's often an easy step for a firm lawyer to go from a practice that handles the client's business to occupying the GC's office. This is especially true in industries, like banking, where regulation is such a big factor in the job.

The law firm also can help us identify candidates in the larger legal community, including other law firms or companies. We're all lawyers, but the truth is that GCs and law firm lawyers run in different professional circles. We tend to build different networks and the law firm has the opportunity to meet many lawyers who are off the radar for the GC.

If there is an unplanned departure or absence, the law firm should be prepared to offer a temporary attorney to move into the GC's suite for a few months. Caution: this isn't a job for a second-year associate struggling to fill in his billable hour requirement. We'll need a mid-career lawyer who has seen a lot of matters and is comfortable in the world of business.

On the law firm side, we don't expect a client to dictate the new practice group leader or relationship partner to its law firm, but presenting us with a done deal won't win any points. Ask us what we're seeking out of the relationship. Maybe there are qualities in the existing relationship partner we didn't like and here's our opportunity to fix the deficiency. Most GCs had a previous professional life inside a law firm, and they have the advantage of an insider's knowledge in both business and a law firm. You might genuinely learn something rather than just being solicitous.

Law firms shouldn't take the shortsighted view that succession planning on its end is only about "keeping the client happy." Certainly, you want to keep the client happy, but it's going to take more than tickets to the ball game. The bank has a legal team that is on speed dial, as accessible as if they were in the building. They listen, have ideas, and are thinking about how to save the GC money rather than searching for new ways to run up hourly bills. The GC wants assurance that this won't change with a new practice group leader.

It's also a mistake to think that the relationship revolves around one lawyer. Unless the business is very simple, the law firm is utilizing a team to serve the client. Soliciting input on succession planning is a good opportunity to get feedback on processes, such as status reports, billing and other matters.

Don't let the partner place a fence around clients. As GCs, we often don't get to meet other lawyers at the firm or its management. You'd be surprised how often we bring up a legal problem and someone says we have someone who does that work. And we think, why did you wait so long to tell us?

The process can start easily enough with a two-minute phone call to the GC: "I'm thinking of retiring next year and I'm going to continue to handle your matters, but I'd like to start grooming someone to take over my role and want to get your feedback on getting the right person in place."

The plan is more than a notion

Any plan centers on identifying talent and then embarking on a long-range plan of grooming and testing. That means grooming with legal and personal skills, as well as constantly assessing whether the identified people are proving they have the potential to blossom at the other end of this pipeline.

A plan is not an idea or a sense of direction; it is a document that outlines the challenge in terms specific to the company and how it will be addressed. Plans will be as different as the companies across the broad horizon of business, but if you can't print it out, it's not a plan.

At a small legal department, our plan starts with the acknowledgment that we can't afford a GC in waiting. Since we can't identify a successor, we are doing the next best thing: we focus on identifying the skills the next GC will need. We approach this like writing an extremely detailed job description for a head hunter, and it is put together with input from everyone who comes into contact with the legal department.

The second thing we do is document the processes that create structure for our work. We have spent the past three years putting procedures in place for everything from how we handle notifications of lawsuits to sign-offs on regulatory filings. Every time we do something different, we document it. There will be a new corporate counsel at the bank someday who will be grateful that we took the time to create a roadmap by documenting the hundreds of things we do. What was done, why was it done, what were the deadlines and compliance factors, and did we save forms?

Ideally, these documents on processes are shared between the law firm and the law department in a manner that allows them to be easily accessed.

Implementation is more than intentions

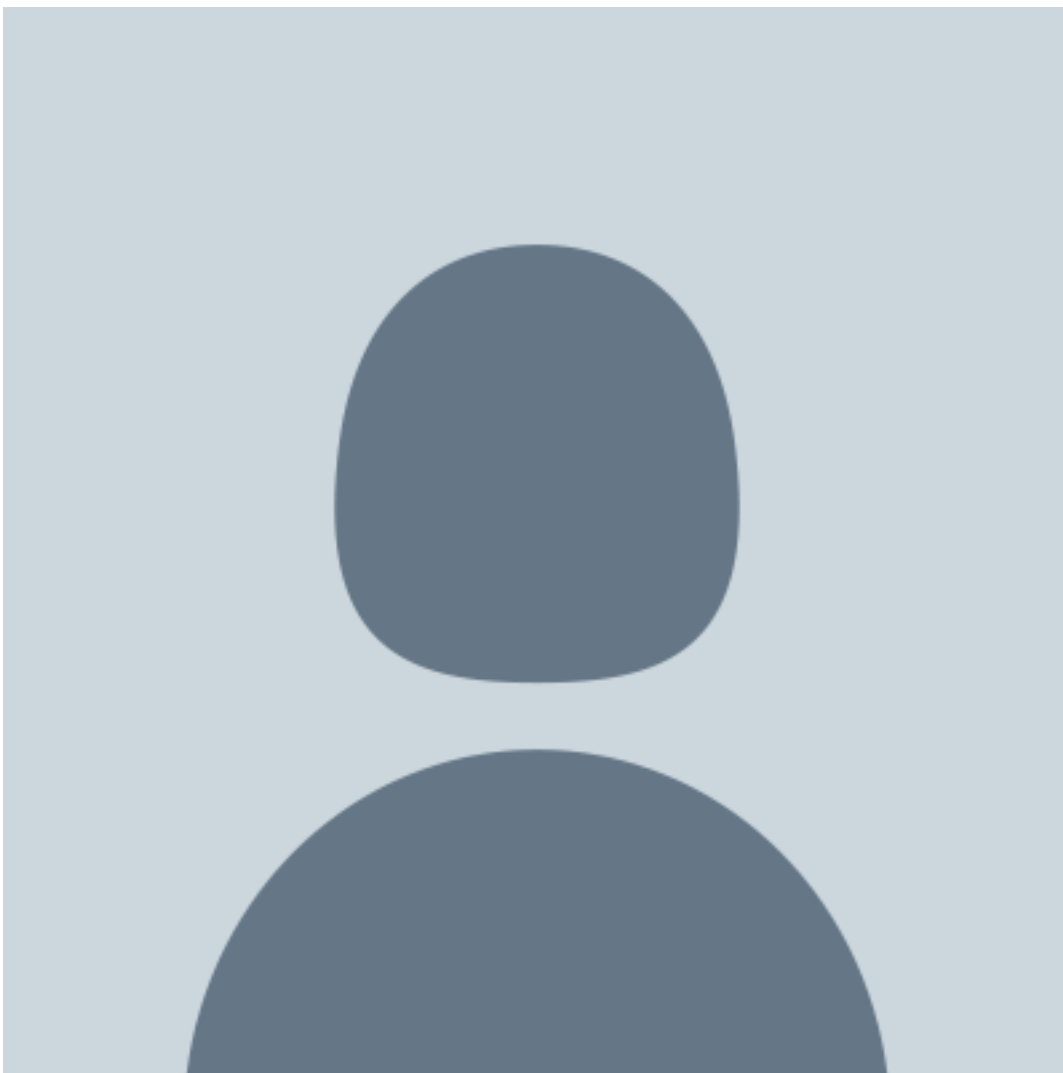
Like strategic plans, succession plans will become nothing more than a time-intensive statement of good intentions if there is no process for implementation. This has to include monitoring and accountability. Like a financial plan, the succession plan is never done; it is always changing and being updated to reflect current circumstances. A quarterly meeting and accompanying progress report to the CEO is a good way to ensure that the GC makes ongoing progress.

Implementation has more clarity on the law firm side where metrics can structure the process. There should be reports to someone in authority on the progress of candidates, goals for exposing them to the client's business and people, and a measureable shift in matters to those lawyers. This isn't likely to happen without incentivizing the current relationship partner. A retirement package that provides continued work for the client is one avenue, along with reductions in the billable hour requirement or even bonuses based on the progress of those who are in line for more responsibility.

The managing partner must be prepared to drive this process with frank discussions about the firm's future.

Bring a variety of people into succession planning to get the most out of it. True, only a few people really appreciate all the details of GC's job or the client relationship, but they do know the business or the law firm. They know how others see you and your department or practice, and they're smart people with a knowledge of the marketplace. Listen to them and use what they offer you.

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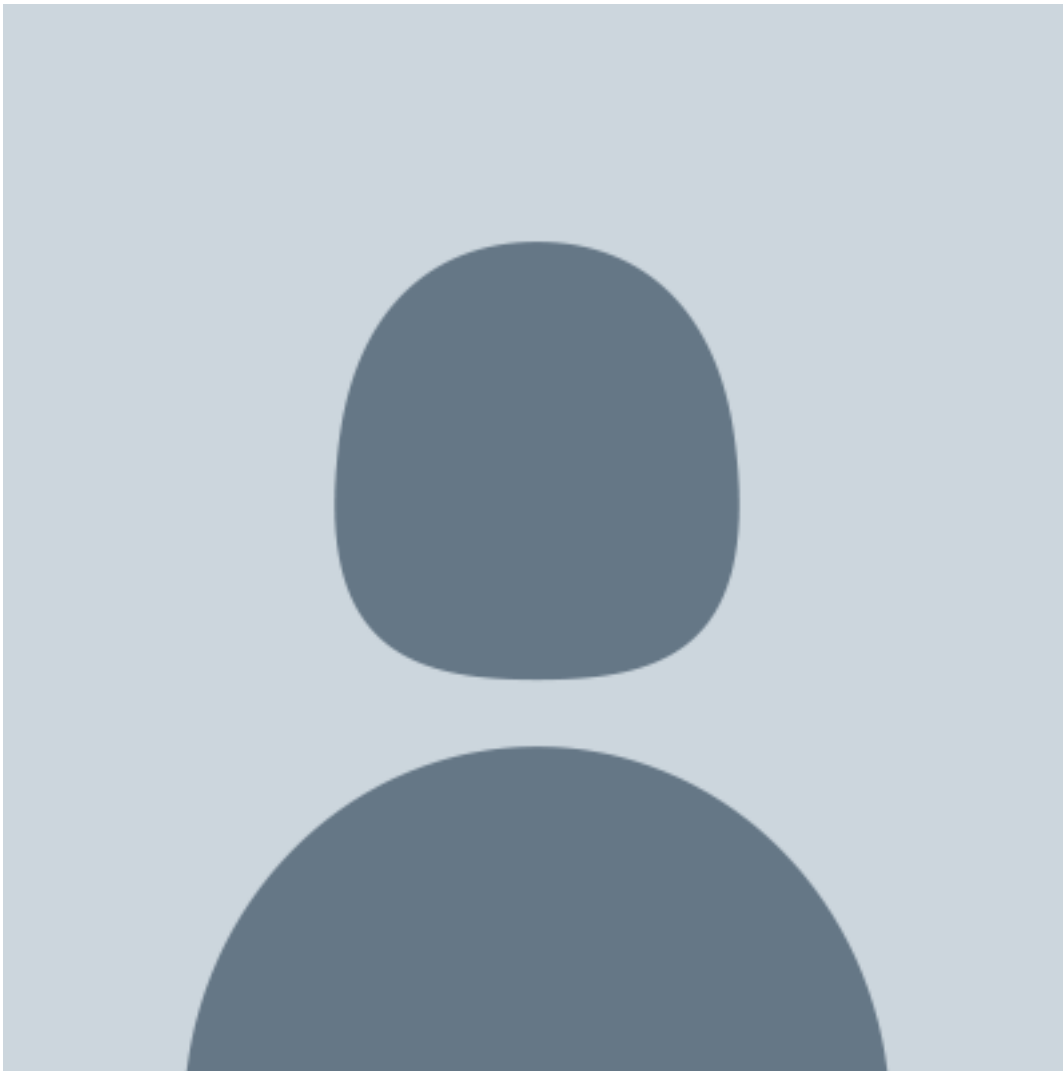


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