Law Department Succession Planning

by Practical Law

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This Practice Note discusses the importance of succession planning in managing a law department. This Note addresses the benefits of succession planning and key elements of an effective law department succession plan.

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Succession planning is an ongoing process through which a company identifies and develops talented employees to take on future leadership roles within the company. Many companies fail to develop a succession plan for their senior management, including their general counsel. However, given the higher leadership profile and influence of the general counsel's role in today's corporations, succession planning for that position as well as other senior attorney positions in the law department is a fundamental part of sound law department and company risk management.

This Note discusses the benefits of law department succession planning and key elements of an effective law department succession plan. For a related discussion about CEO succession planning, see Practice Note, CEO Succession Planning: Principles and Considerations.

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Benefits of Succession Planning

One of the most important benefits of law department succession planning is that management and the board of directors have access to a vetted, approved list of successor candidates if the general counsel suddenly departs from the company. This advance planning enables a new general counsel to quickly assume a leadership role in the law department with minimal disruption to the business.

Some argue that if a company identifies a successor general counsel too soon before a planned departure (for example, due to retirement or a terminated contract), the power dynamic within the law department may shift, causing the department's staff to change alliances. However, planned departures by general counsel do not happen in most cases. Any concerns about identifying a successor too soon may be alleviated through open lines of communication between the incumbent general counsel and:

- Successor candidates.
- Management.
- The board of directors.
- Other law department staff.

Succession planning also places a law department in a better position to:

- Anticipate future hiring needs.
- Decide whether a vacancy should be filled internally or externally (see Hiring Internal Versus External Candidates).

Knowing that the general counsel maintains and periodically updates a law department succession plan may:

- Create performance incentives for in-house counsel to work harder for that next promotion.
- Discourage top performers from leaving the law department to advance their careers at other companies.

For information on using metrics to measure attorney performance, see Using Metrics to Measure Law Department Performance Checklist: Measure Attorney Performance.

Start Succession Planning Early

Law department vacancies occur for a variety of reasons, including:

- Voluntary departure after finding a new job.
- Retirement.
- Illness.
- Death.
- Competing family or other personal issues.
- Layoffs.
- Firings.
- Law department or company restructuring.
- Promotions.
- Relocations.
- Company management changes.

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Companies should prioritize early succession planning to minimize the potential disruption a sudden vacancy may cause a law department and the company's business. Early succession planning also allows time to train in-house counsel so that they develop the skills and experience they need to move up the ladder within the law department.

Succession Plan Elements

When developing a law department succession plan, a general counsel should consider:

- The company's short-term and long-term legal needs.
- Whether any in-house attorneys are likely to leave the company within the next one to five years.
- The skills and experience level of all in-house attorneys.
- The criteria for hiring the next general counsel and other key attorneys in the law department (see Criteria for In-House Counsel).
- How to hire the best attorneys at all levels in the law department (see Hire the Best Attorneys).
- Training in-house counsel so that they are prepared to:
  - assume leadership positions within the law department; and
  - fill any substantive legal void created by a departed general counsel or other senior attorney (see In-House Counsel Training and Talent Development).
- Preparing a list of qualified internal and external candidates for a successor general counsel (see General Counsel Succession Planning).

Succession planning is an ongoing process. Once a general counsel develops a law department succession plan, she should periodically review and update it to reflect changes in:

- The law department.
- The company's business strategy.
- The company's legal needs.
- The company's management.

Hire the Best Attorneys

If a law department's strategic mandate is to promote from within then successful succession planning starts with hiring the best attorneys to fill in-house counsel positions. The best candidates should have appropriate educational and professional credentials, the right work experience, and key intangible qualities, including:

- Ambition.
- Business acumen.
- Passion for the law.
- Personality fit for the company.
- Curiosity.
- Maturity.
- Creativity.
- Emotional intelligence.

For an overview of key soft skills that in-house counsel require for career success, see Practice Note, Soft Skills for In-House Counsel.

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Criteria for In-House Counsel

A general counsel should carefully delineate the hiring criteria for each in-house counsel position to ensure that those hired for the law department align with the company's strategic vision and culture. For example, the criteria for a successor general counsel, which may differ depending on a company's size, industry, and needs, as well as the general counsel's responsibilities, may include:

- Prior general counsel and industry experience.
- A client service orientation.
- Excellent management skills.
- Strong leadership skills.
- Communication skills.
- The ability to remain calm during a crisis.
- Business acumen.
- Cost-sensitivity.
- Strategic thinking ability.
- A proactive style.
- Proven negotiation skills.
- Flexibility.
- The right personality.

When filling an open in-house counsel position, including that of the general counsel, a general counsel also should consider whether any current in-house attorneys have the ability to take on greater responsibilities within the law department or have the potential to do so with the appropriate training and development over time. In-house counsel job descriptions should be periodically updated to further assist with the hiring process and to reflect all responsibilities.

Hiring Internal Versus External Candidates

There are many advantages to filling law department vacancies internally, including:

- Lower cost because the company does not need to pay for the services of outside employment search consultants.
- Less time needed to transition an internal candidate into a new role in the law department than train an external candidate.
- The internal candidate presumably has:
  - a better understanding of the company's business;
  - a successful track record advising internal business clients;
  - more credibility within the law department and with internal business clients;
  - relationships with the general counsel, law department staff, and others; and
  - adapted to the company's culture.
- Increased employee morale.

Outside candidates have their own advantages, including:

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- Fresh ideas.
- New, different, or complementary skills and experiences.
- A larger candidate pool from which to choose the right candidate.
- During times of company transition, no expectation of business as usual.

Even if a company is committed to hiring internally, filling law department vacancies with an outside candidate may be unavoidable if:

- An in-house attorney position is newly created.
- There is no in-house attorney capable of filling the vacancy.
- No in-house attorney wants the position.

With law firms hiring fewer attorneys, and the allure of becoming an in-house attorney increasing, the pool of in-house counsel job candidates has widened. As a result, when evaluating candidates, a general counsel should not limit consideration of outside candidates to those with only prior in-house experience. Outside candidates with experience only in private practice or a combination of in-house and private practice experience may bring different skill sets or perspectives to the job that complement those of the attorneys and other professionals already working in the law department. Casting a wider net when hiring in-house counsel can ensure that the company considers the most talented attorneys when filling key law department vacancies.

For ethical issues to consider when hiring in-house counsel, see Practice Note, Ethical Issues for In-House Counsel: Hiring In-House Counsel. For a sample employment agreement, see Standard Document, Executive Employment Agreement.

In-House Counsel Training and Talent Development

While hiring the best attorneys to fill vacancies is a critical part of a law department succession plan, in-house counsel training and talent development play an equally important role in creating the trusted legal advisors and business partners who may one day lead the law department. Given their importance, attorney training and talent development programs should:

- Focus on business as well as legal topics.
- Develop attorney management and leadership skills.
- Evolve to meet changes in:
  - the company's business objectives;
  - the law;
  - technology; and
  - attorney needs.
- Consider both short-term and long-term attorney development.

In small law departments, a general counsel should consider meeting with each attorney to jointly create a customized training and talent development program to help that attorney reach the next career level. If a law department's size makes this untenable, a general counsel should ensure that the annual law department budget covers the cost of:

- Self-directed attorney training and development.

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- Hiring outside consultants to coach attorneys and plan attorney training programs.
- Attending educational courses both at the company and outside of the company. For example, to develop their business and management skills, some companies agree to pay for in-house counsel to attend MBA or mini-MBA programs.
- Belonging to trade and professional associations and attending their programs and events.

Learning the Company's Business

The best in-house counsel proactively learn their companies' businesses. To assist with attorney development in this key area, some law departments create exchange programs in which high potential attorneys are placed in company business units in different functional areas and sometimes different countries.

Other law departments, such as those in consumer products companies with large brand portfolios, may assign individual attorneys to work closely with a dedicated team of internal business clients responsible for one or more brands.

Under both scenarios, in-house attorneys work with different business units or brand teams over time to thoroughly learn all aspects of a company's business. Building this broad experience helps to prepare in-house counsel to become a future general counsel or other law department leader.

Another approach to expanding in-house counsel's knowledge of the company is to invite senior business executives from different parts of the company to speak to the law department on a monthly basis about the day-to-day operations of their divisions and the business and legal challenges they face. A speaker program has a significant cost advantage over more formal attorney rotation programs while effectively expanding in-house counsel's knowledge.

For additional ways in-house counsel can learn about a company's business, see Practice Note, Practical Tips for New In-House Counsel: Learn the Business and Operations.

Continuing Legal Education

To maintain their attorney licenses, in-house counsel in most states must take continuing legal education (CLE) classes, the number of which varies by state bar admission. A general counsel should encourage all attorneys in the law department to take a wide variety of educational courses and not just those in an attorney's practice area. This exposes potential successors to a variety of legal issues and areas of law. A general counsel should also encourage in-house counsel to take courses that contribute to their development as future law department managers and leaders.

General Counsel Succession Planning

Today's general counsel is not only a seasoned company attorney but also a key advisor and member of a company's management team. Given the importance of the general counsel position in many companies, a general counsel should periodically present a successor list to senior management and the board of directors for their consideration and acceptance. A pre-approved successor list ensures a smooth transition when the general counsel departs from the company.

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Before preparing a successor list, the general counsel should consider creating a selection committee to:

- Define the hiring criteria for candidates.
- Identify and vet potential candidates. The committee may already know internal candidates' strengths and weaknesses.
- Rank candidates.
- Prepare a short list of the top three to five candidates.

The successor list should include high potential senior attorneys from the law department as well as notable outside candidates with proven track records. To identify internal candidates, a general counsel may gauge an in-house attorney's interest during annual law department performance reviews. Hiring an executive search consultant can assist a general counsel in identifying qualified outside candidates.

Although it may be less expensive to hire from within, if a general counsel's strategic role at a company is evolving due to business or legal changes, it may make more sense to hire the next general counsel from the outside, especially if:

- The candidate has already successfully demonstrated excellence in a similar role or situation at another company.
- The company is restructuring and the law department must make cost-cutting changes. For resources to help employers comply with legal requirements when planning a **layoff** or a **reduction in force**, see Reductions in Force Toolkit.

Once a successor general counsel is selected, other changes may need to occur within the law department to:

- Accommodate differences between the skill sets of the new and departing general counsel.
- Replace one or more attorneys in the law department, if the successor is selected internally.

Mentoring a Successor

If a company selects an internal candidate to become its next general counsel, the incumbent general counsel should actively mentor that attorney and create opportunities for him to develop a relationship with management, the board of directors, shareholders, analysts, and other key company constituents. In addition, a general counsel should allow her successor to shadow her as she performs her daily responsibilities to ease the transition of the new general counsel at the appropriate time.

Transitioning in a New General Counsel

A new general counsel may transition in over a period of time or suddenly, depending on why and under what circumstances the prior general counsel is departing from the company. Ideally, the incumbent general counsel has sufficient time before departure to:

- Impart institutional memory to a successor. This process is eased if a law department uses technology to record legal matter history, status, and outcome on an ongoing basis.
- Groom a successor in a manner that is consistent with the company's strategic vision.

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One way a general counsel may begin the transitioning process is by inviting her successor to help prepare for meetings with the board and senior management. For additional strategies and tips for counsel to consider when becoming the new general counsel at a company, see Practice Note, Practical Tips for New General Counsel.

A departing general counsel's goal in creating a law department succession plan, despite the difficulty of planning for one's own replacement, should be to leave the law department and the company better prepared to address future business and legal challenges. That accomplishment not only enhances the departing general counsel's reputation, but also may present her with unexpected opportunities once she leaves the company.

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NAVIGATING A "CHALLENGE-RICH" ENVIRONMENT

Government attorneys work in a "challenge-rich" environment – workloads continue to increase, the complexity and range of issues they must deal with can be daunting, and the pressure to keep current on the new laws and regulations is constant. Furthermore, a generation of institutional knowledge is disappearing as boomer-era civil servants retire, depriving legal departments of valuable expertise that is often difficult to replace. Throw in tight budgets and a continuous refrain to "do more with less," and the status quo at all levels of government – federal, state, and local – is becoming more difficult to sustain.

A recent Thomson Reuters survey of 238 government attorneys sheds some light on the obstacles and pressures facing today's government attorneys. According to the survey, 79% of government attorneys expect their workload to increase in the next few years, and to add further complexity – 67% say scarce resources and tight budgets add pressure to their workload. These are not intractable problems, but it will take innovative vision to reshape the way government law departments approach processes for maximizing efficiencies, capturing institutional knowledge, and creating a more dynamic approach to governmental law.

"I might be in county court one morning arguing a zoning code enforcement, and a couple hours later be working on a federal housing grant or drafting a contract to purchase a sheriff's helicopter."

INCREASINGLY DIVERSE AND COMPLEX ISSUES

To appreciate the challenges facing government attorneys, it's helpful to understand the extent to which their work differs from that of private-practice attorneys. While private-practice attorneys tend to be specialists, government lawyers do not have the luxury of focusing on a single practice area. They tend to be a "jack of all trades" – and let's not forget that while they're asked to work across a wide variety of legal disciplines, they are also responsible for everything from drafting new laws on emerging issues (such as driverless cars, data privacy, cybersecurity, drone regulation, etc.) to adjudicating civil complaints and enforcing compliance on thousands of regulations.

"It's soup to nuts," says a former county attorney from Florida. "I might be in county court one morning arguing a zoning code enforcement, and a couple hours later be working on a federal housing grant or drafting a contract to purchase a sheriff's helicopter."

Unlike most private attorneys, a government lawyer's work is also done in the public eye, where mistakes are magnified. Media scrutiny and public criticism come with the territory.

"We are expected to be generalists, but we are also expected to do everything and know everything." According to the Thomson Reuters survey, the average government attorney works on 32 different matters every week.



The average government attorney works on 32 different matters every week.

"There are always questions or issues we've never seen or that don't repeat enough to get a sense of mastery of knowledge," explained one attorney. "We're always playing catch-up to learn new things."

KEEPING UP WITH THE LAW

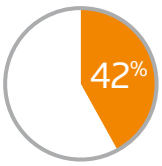
In most government offices, this pressure to stay current in so many different areas is exacerbated by tight budgets and limited resources. Unlike private attorneys who can defer work outside of their practice area, or corporate counsel who can farm work to outside experts, government lawyers can't turn down matters outside their area of expertise. Young attorneys (or even experienced lawyers new to government work) often get caught in sink-or-swim scenarios where they have limited experience, simply because there is no one else available to do the work.

A former federal attorney recalls his first year as one continuous trial by fire: "I was a seasoned litigator before I went into government work. One of my first cases involved an employee who had been overpaid several hundred-thousand dollars, and we had to get it back. The team that normally handled these cases was down a couple people, so I got assigned. It was a nightmare. Suddenly I was navigating this labyrinth of statutes in an area of law that was totally Greek to me."

For attorneys caught in unfamiliar legal territory, getting up to speed is often hampered by having to "start from scratch." 42% of government attorneys listed keeping up with new or emerging areas of law as a major challenge, while 46% say they have their hands full just keeping up with changes to existing law. To keep pace, they spend an average of six hours per week studying areas outside their expertise, often without guidance or help of any kind.

RETIRING WORKFORCE, LESS EXPERIENCED STAFF

In the past, one of the most efficient shortcuts for an attorney trying to get a running start on a case would be to consult an older, more experienced attorney familiar with that area of the law. However, with so many boomer-era attorneys retiring – people who may have served in government for 30 years or more are taking their knowledge base along with them. In full, recent market briefings have reported upwards of 50% of the state and local government workforce will be eligible for retirement by 2019[1], and 33% of federal workers are eligible for retirement this year alone[2].



42% of government attorneys listed keeping up with new or emerging areas of law as a major challenge.

"It's a huge problem," says a former county litigator. "When one of these attorneys retires, it can throw a major wrench into things. For a lot of them, it was their lifelong mission to work in one area of government – utilities, law enforcement, land management, or whatever. When they leave, it's not just the legal expertise that goes, it's everything: file management, statutes involved, negotiating parameters, affected parties, knowledge of regulations – everything."

"In our office, we had one guy who had been around forever," one federal attorney said. "He was my go-to guy for everything. I have no idea what I would have done if he wasn't there."

TAKING BACK YOUR TIME

Regardless of the causes, the common denominator that all government attorneys share is a creeping loss of control over their time.

One way government agencies can help attorneys regain control over their time is to adopt technologies designed to automate the sort of routine, day-to-day tasks that make up approximately 60% of a government attorney's daily workload. For instance, on average, 45% of a government attorney's time is spent drafting, reviewing, and proofing legal documents. Cutting that time significantly could save valuable time per attorney, per week. Drafting software that automates redundant parts of the document-management process does just that, and significantly reduces the time it takes to finish routine drafting tasks.

45% of a government attorney's time is spent drafting, reviewing, and proofing legal documents.

Getting up to speed in unfamiliar areas of the law is another time-consuming activity, especially if an attorney has to start from scratch. More efficient research methods and processes for retaining institutional knowledge can give less-experienced attorneys the head start they need to keep up. In the legal marketplace, solutions focused on "knowledge management" and "legal know-how" are revolutionizing the way legal departments grapple with the problems, by providing tools that give attorneys a valuable head start when researching legal territory beyond their expertise.

In the long run, technologies like these have the potential to significantly restructure how government attorneys allocate their time and how work flows through their departments. Reducing the amount of time attorneys spend on routine tasks, and getting up to speed faster on unfamiliar areas of law means they can invest extra time on the more substantive parts of their job – and ultimately, carry out the larger mission of serving their community and its citizens.

1 2014 Market Briefing, *GOVERNING*

2 https://www.washingtonpost.com/news/federal-eye/wp/2014/01/30/fed-worker-retirement-eligibility-to-skyrocket-by-2017-report-says/?utm_term=.245ec381ae8e

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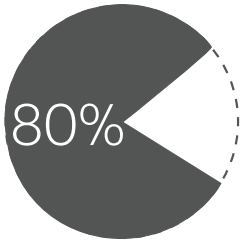
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WHAT ARE THE BIGGEST challenges facing government attorneys?

Fewer resources and tighter budgets are making it more difficult for government attorneys to manage an ever-increasing and more diverse workload.

LIMITED RESOURCES



80% of government attorneys report budgets staying flat or decreasing over the past two years.

WORKLOADS ARE INCREASING



79% of your peers anticipate their workloads will increase over the next few years.

0 10 20 30 40 50 60 70 80 90 100

MORE DIVERSE MATTERS



On average, government attorneys report working on **32** unique legal matters per week.



MORE COMPLEX ISSUES

6 hours per week getting up to speed on unfamiliar areas of law.

THREE REASONS WHY the status quo is unsustainable:

1. **continually being pushed** outside of your comfort zone
2. **required** to be a "jack of all trades"
3. **increased fear** of missed deadlines and not catching inaccuracies

HOW MUCH TIME COULD YOU SAVE WITH THE RIGHT RESOURCES?



Automate routine tasks that make up 60% of your daily workload



Find a better starting point on new or unfamiliar areas of law



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