

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](#).

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 the 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 their next promotion.
- Encourage top performers to remain with the organization rather than leaving 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.
- Mergers, acquisitions, and divestitures.

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 levels 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](#)).

For more information about in-house attorney training and development, see [Practice Note, In-House Attorney Development](#).

- Preparing a list of qualified internal and external candidates to succeed the 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:

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

- Ambition.

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

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 by the law department align with the company's strategic vision and culture and the department's insistence on high ethical standards. 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;
 - established 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:

- 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.

The pool of in-house counsel job candidates has widened due to:

- Stagnant law firm hiring.
- The increasing allure of becoming an in-house attorney.
- The rise in remote working (see [Practice Note, Remote Work for In-House Counsel](#)).

As a result, when evaluating candidates, a general counsel should not limit consideration of outside candidates to only those with prior in-house experience. Outside candidates with experience only in private practice 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 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, leadership, and communication 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.
- Participation by department attorneys in the company's leadership development programs.
- 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, some companies agree to pay for in-house counsel to attend MBA or mini-MBA programs to develop their business and management skills.
- 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 in-house counsel prepare 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 regular 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 counsels' 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. For more information on in-house CLE programs, see:

- [Practice Note, Adopting an In-House Law Department Continuing Legal Education Policy](#).
- [Standard Document, In-House Law Department Continuing Legal Education Policy](#).

- [Standard Document, Continuing Legal Education \(CLE\) Tracking Spreadsheet](#).

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 (see [Practice Note, Role of the General Counsel in Executive Leadership](#)). 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.

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 law department leaders (see [Practice Notes, Role of the Deputy General Counsel](#) and [Building and Operating a Law Department Leadership Team](#)) 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 or if attorneys passed over for the general counsel role leave the company.

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 that attorney to develop a relationship with management, the board of directors, shareholders, analysts, and other key company constituents. In addition, a general counsel should allow the general counsel's successor to shadow the general counsel to ease the successor's transition 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 law department's company's mission (see [Standard Document, In-House Law Department Mission Statement](#)).

One way a general counsel may begin the transitioning process is by inviting the general counsel's 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 the general with unexpected opportunities upon leaving the company.