



LEGAL DEPARTMENT SUCCESSION MANAGEMENT

Part I: Evaluation of legal department succession planning needs

by Sterling Miller

PART I: EVALUATION OF LEGAL DEPARTMENT SUCCESSION PLANNING NEEDS

The following is Part I of a three-part series on legal department succession management. The series is designed to give the in-house practitioner a practical set of tools to evaluate, develop, and plan for succession within the in-house legal department.

It's no secret that the population is getting older. Here in the United States, the baby boomer generation is starting to retire. As they do so, many businesses are finding themselves caught short with respect to succession management, i.e., failing to properly prepare for the leaving or retirement of a senior executive. In fact, [a recent report from Thomson Reuters](#) shared that only a quarter of departments are planning for the generational shift. Most company plans tend to focus on succession of the CEO or CFO. Other key C-Suite positions are not receiving the same level of attention. In particular, the succession of the General Counsel is often relegated to also-ran status (or no status at all). As for succession planning in the legal department, there is usually little to no formal planning going on around succession management for senior or other key roles. This lack of planning can lead to big problems down the road.

This failure to plan arises from two things: 1) Succession planning in the legal department is a low priority given everything else going on (and to do it correctly requires a significant investment of time); and 2) It's hard to get started because it is not a task that most lawyers have a natural affinity for, and it can seem overwhelming – meaning an early onset of planning paralysis. Neither of these is a valid reason to fail to properly plan for succession within the legal department. In fact, I would argue that you are not properly serving your client if you are not undertaking a serious succession-planning process every year.

Regardless of where you sit on the continuum of planning – from “We’re good” to “We’ve done nothing” – it’s never too late to get started or improve existing processes. And once you get started, you’ll find that it’s actually much easier than you thought to properly plan, and that it has additional benefits for the department and your team. In other words, the Baby Boom does not have to mean Doom and Gloom.

Succession planning can be broken down into three parts: 1) evaluation of succession needs; 2) [development of succession talent](#); and 3) [putting a succession plan into place](#). This discussion will focus on Part I – how to evaluate succession planning needs. This evaluation comes down to four factors:

- Evaluation of the short- and long-term legal needs of the company
- Evaluation of the short- and long-term needs of the legal department
- An honest evaluation of the likely turnover in the legal department over the next one, three, and five years, along with a continual working knowledge of who is getting to retirement age
- Working with human resources department professionals (to raise the profile of the issue)

EVALUATION OF THE SHORT- AND LONG-TERM LEGAL NEEDS OF THE COMPANY

The very first step of succession planning begins with evaluating what the company will need in terms of legal services over the short term (the next one to two years) and over the long term (within five years). This is true because you cannot properly plan staffing needs until you understand what types of legal services are needed. You must go into this process without any preconceived notions of what the company will need, i.e., you cannot focus only on what has happened and how the legal department is structured today. Instead, you need to start digging and figure out where the company is going and whether there are legal issues on the horizon that you need to plan for (even if they do not come directly from the plans of the company).

The place to start is with the strategic plans of the company.

Virtually all companies have some type of three-year plan and/or five-year plan. These plans generally set out the strategic direction of the company and where it hopes to invest, grow, and expand. The legal department should already be part of the strategic-planning process at the company. If not, you need to be, as this is where you will get the best information about what’s coming down the pike for the company.

In addition to the higher-level strategic plans, you need to talk to the leaders of the various business units and staff groups to gain a more granular understanding of what’s coming. In addition to simply asking them about their short-term and long-term plans, ask them specifically about any legal or regulatory issues they see developing with respect to their business/group. Don’t be

surprised if you find that these leaders are fairly well-versed in legal and regulatory issues. Odds are good that they are well-read in industry publications, trade group presentations, and other sources that discuss legal issues relevant to them. Ask them if they can share any business intelligence, third-party reports, or other studies that discuss the competitive landscape or issues faced by their particular business. These will give you critical insights into what's coming. While you are interviewing the business/staff group leaders, you can also ask them about how they see Legal fitting in and what they believe they need from the department in the short term and looking out several years.

Additionally, talk to the lawyers in the legal department about what they see or think about the future legal needs of the company based on their interactions with the business, their

day-to-day work, and their reading and thinking about the future. This is not a task you need to undertake alone. You will find that your team has a lot of valuable information to share and, most likely, some good ideas on what to plan for (and how to plan for it).

Lastly, you need to understand what the company wants and needs from the general counsel position over the next five years (i.e., if the current general counsel left today, what type of lawyer does the company want to replace her or him?). It's not enough to plan just for skills throughout the department generally. There needs to be an open and honest discussion about what skills the next leader of the department will need to have.

EVALUATION OF THE SHORT- AND LONG-TERM NEEDS OF THE LEGAL DEPARTMENT

Once you have gathered the strategic information from the business, you need to look at it in terms of legal needs. For example, if you see an uptick in mergers and acquisitions, this means your department's M&A skills will be needed and potentially expanded or enhanced. Likewise, if you see the company set to expand into data mining, it's likely that you'll need to enhance not only the department's data privacy and data security skills, but also its knowledge of foreign laws as there is a good chance you will need to evaluate the laws and regulations of other countries. The key is to do an exhaustive look at the most likely legal skills your department will need over the next five years.

After you have a list of needed skills, you will set them out by category, e.g., Commercial Agreements, Data Privacy, Antitrust, etc. Then you will need to assess how the current skill set in the department matches up with the list of needed skills. Most likely, you'll find that some areas are well covered and some will need to be bolstered. In Part II of this series, we'll discuss how best to develop these skills internally, if possible. But, for now, it's important to have a tool to help you map and plan for the future. I suggest that you develop a simple matrix similar to the one below to help you plan:

SIMPLE LEGAL SKILLS MATRIX

	Commercial Agreements	Strategic Agreements/ Deals	Commercial Agreements				
	Short Long	Short Long	Short Long	Short Long	Short Long	Short Long	Short Long
Partial							
"Got"							
Need							

Key:

Short = need currently to two years out

Long = "need" three to five years out

Partial = have some skills, need more

Got = have skills needed, hone

Need = do not have skills, must acquire

Across the top you have the different legal skills your department has or will need over the next five years. You then divide that into short term and long term. On the side, you list partial, got, and need. Using this matrix, you can plot out the different legal skills you need for your department along with whether they are skills you have (or have but must enhance) or whether you need to acquire them (either internally or by purchasing them from a law firm). It's not very sophisticated but it is effective in giving you a visual of what you need and when you need it. This, in turn, will help you figure out development needs (Part II) along with formal planning (Part III) of the succession process.

You will need to create a skill matrix for the general counsel succession plan as well. Here, working with HR and the CEO, you simply need to list the skills and attributes the company wants in its top legal officer. Here are some examples:

- Business/industry acumen (knows the business)
- Litigation experience
- Mergers and acquisitions experience

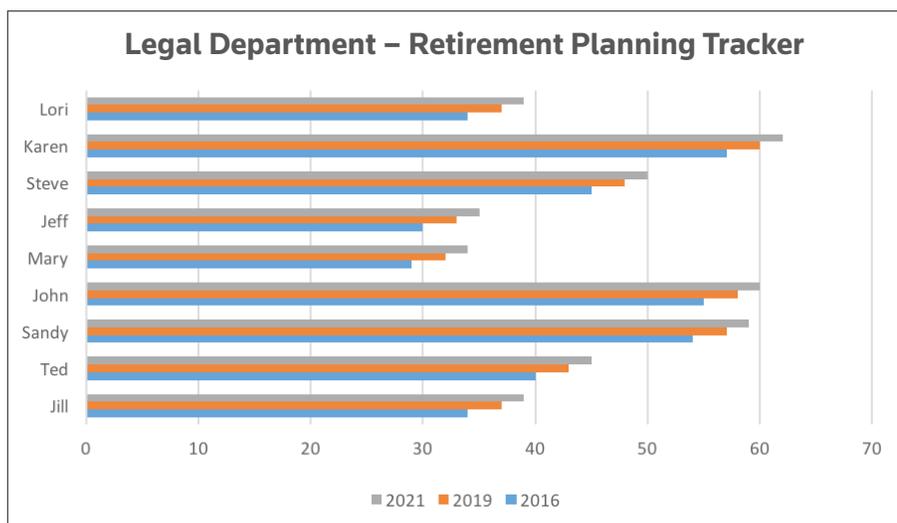
- Securities law/governance
- Data privacy and security
- Focuses on big picture
- Delegates/develops team, good manager
- Communicates well (oral and in writing)
- Humble/"plays well with others"
- Financial knowledge (e.g., budgets, forecasting, metrics)
- Calm in face of crisis/shows good judgment
- Technology savvy
- Makes complex legal issues understandable

Of course, there are more and each company will want to focus on different things (and those priorities may change over time as well). As you evaluate what the business needs in a general counsel then, like the broader legal skills matrix, this analysis folds into Part II (development) and Part III (formal plan) of the succession process.

EVALUATION OF THE LIKELY TURNOVER IN THE LEGAL DEPARTMENT

The next step is to develop an honest evaluation of the likelihood of departures from the department, in particular spotting those baby boomers nearing retirement age, as they are the most likely to depart and will need to be replaced. A simple way to do this is

to chart out the attorneys in the department by age by 1) current year (2016), 2) three years from now (2019), and 3) five years from now (2021):



Based on the chart, you can see that this department will have several attorneys over, at, or near the age of 60 in 2021. This tells the reader that they will need to begin planning on how to fill those positions should any of those persons notify them of an interest in retiring. It is a good idea to work with HR on a chart like this to ensure it is prepared and used properly, i.e., for

forecasting when members of the department will likely begin looking at retirement. You do not want it to be misconstrued as being used as a device to swap out older people for younger people in violation of age-discrimination laws.

Additionally, you need to evaluate those in the department who are highly valued and a retention risk, i.e., who are dissatisfied

for some reason (e.g., lack of promotional opportunities) or who might have skills in high demand and potentially be a good target for another legal department to poach them. Working to recognize who these individuals are will help you plan and take steps around retention and development. On the other hand, and as we'll see when we discuss Part II (development) there may be people who are dissatisfied but not highly valued, i.e., need to be managed out vs. retained.

The takeaway here is that you need a constantly developing process to know at any point in time who are the people in the department who are likely to depart in the near term and over

the next several years – regardless of reason. It's important because you must have a plan in place for what you will do if they tell you they are leaving, i.e., how will you replace that person or, if need be, how will you use that open "head" to fill a different need in the department? Nothing says that you must replace a person leaving with a person with similar skills. For example, you may decide that it is important to add another litigation attorney at the first available opportunity. If someone departs in the IP section, you may decide to hire a litigation lawyer vs. an IP lawyer. Planning in advance for what you will do/ need to do is all part of succession planning.

WORK WITH THE HUMAN RESOURCES TEAM

As mentioned, it can feel a bit overwhelming to focus on succession planning, especially when there are so many other priorities. A great resource is the human resources (HR) department. They will have skilled professionals with access to information and tools to make the evaluation and planning process much easier. Plus, they will help you tie succession planning in the legal department to succession planning for the company overall. This way there will be a consistent set of reports, metrics, and processes. It will also raise the profile of the need and importance for a succession plan for the legal department. Additionally, there may be a formal succession-planning process that you can tie into – or perhaps you've known about it but haven't taken advantage of it yet. Accordingly, before beginning any type of succession planning, sit down with your HR representative and have a conversation about what you want to accomplish and how HR can help. Then work closely with HR as

you develop your plan. Let them help you, do leg work, set up reports and charts, etc. You do not have to do this alone. Finally, if you are the general counsel working with HR, the logical next step is to begin to develop a succession plan for when you depart.

Successful succession planning for the legal department begins with an evaluation of the plans for the business in the short term and over the longer term. From this, you can identify the skills the legal department will need in order to help the business meet those goals and plans. Knowing what skills you need leads to evaluating the skill set of the current members of the team and understanding where there are gaps and how soon those gaps might become an issue. You must also understand which members of the legal team are likely to depart over the next five years and what skills will you need to replace them or what priorities will you meet if you suddenly have an open position.

ABOUT THE AUTHOR

Sterling Miller spent over 20 years as in-house counsel, including as general counsel for Sabre Corporation and Travelocity. He currently serves as Senior Counsel for Hilgers Graben PLLC focusing on litigation, data privacy, compliance, and consulting with in-house legal departments. He is CIPP/US certified in data privacy. You can follow his blog "Ten Things You Need to Know as In-House Counsel" at www.TenThings.net and follow him on Twitter® [@10ThingsLegal](https://twitter.com/10ThingsLegal). The American Bar Association is publishing a book of his blog posts later this year/early 2017. His first book, The Evolution of Professional Football, was published by Mill City Press in December 2015 and is available on Amazon® and at www.SterlingMillerBooks.com.

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