



LEGAL DEPARTMENT SUCCESSION MANAGEMENT

Part II: Succession Planning and Talent
Management

by Sterling Miller

PART II: SUCCESSION PLANNING AND TALENT MANAGEMENT

The following is Part II 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.

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](#). In the first article of this series, I discussed how to evaluate succession needs, in particular what legal skills the legal department will need in the short, medium, and long term, along with tracking the most likely departures – the retirement of the baby boomers. Once you know what you need and when you need it, your next task is to figure out how best to develop that talent so it's available to the company at the right time.

There are two sources of talent for your in-house legal department: 1) internal (those people on staff today) and 2)

external (sources of talent external to the department). This paper will focus mostly on how to develop internal talent. That said, I will also discuss several core issues regarding how to develop talent externally. Furthermore, while there are certainly other professionals in the legal department, the focus of this series is on attorneys only.

I view the development of talent in four components: 1) creating a talent/skills chart for each attorney; 2) periodic formal evaluations of each attorney; 3) creation of a development plan for each attorney; and 4) developing sources of talent outside of the legal department.

CREATING A TALENT/SKILLS CHART FOR EACH ATTORNEY

In Part I of this series, we used several tools to formally identify and track the general legal needs of the company and the available skills in the legal department. For example, if the company is going to enter a new product market with data services, does the company have attorneys with the right level of data privacy and data security skills? If not, those are areas that need to be developed on a time frame beneficial to the company. We also discussed developing a profile of skills needed for the next general counsel, i.e., the combination of legal and nonlegal skills necessary to head up the legal department. With respect to developing succession talent to meet these needs, you start with tracking the skills of each individual attorney. Basically, for each attorney in the department, you create a document/chart that identifies that person's legal skill set (e.g., litigation, commercial agreements, IP law, etc.) along with other skills you deem important for all attorneys in the department to have (e.g., business acumen, executive presence), especially if they want to move up the department ladder. You then assign a numerical scale (e.g., 1-10) to rate the person on each particular skill. If using

a 1-10 scale, then anything rated as a 5-7 is a target area for development and anything less than 5 is a red flag that requires more immediate attention. Skills in the 8-10 range can certainly be honed, but there is more to be gained for the company by focusing on the other areas.

What you get is a simple tool that allows you to track legal skills (including new skills you add as part of an overall development plan) along with the nonlegal skills needed to rise in the department, e.g., head of a group or the general counsel. Below is an example of a simple chart to demonstrate what I mean. Your company may have more formal tools already available through HR. If so, utilize those (as working with HR is important to developing a succession program and ensuring consistency in the process to match what the other staff groups and business units are doing for succession planning and talent management). The list of skills is not exhaustive and you can have as many or as few as you think best for your purposes. I am using some of the skills I utilized over the years when I was general counsel and doing similar exercises:

Skill Summary for: Jane Doe, Litigation Group, 2016

Legal Skills	Rating (1-10)	Employee's Own Rating	Comments
Litigation - Simple	8	8	
Litigation - Complex	6	7	Should head up next big litigation case that comes in
Antitrust	6	6	Signed up for CLE program
FCPA/Anti-bribery	4	4	New Development Area – Company needs this skill
Commercial Contracts - Simple	5	5	New Development Area – round out skills
Other Skills	Rating (1-10)	Employee's Own Rating	Comments
Communication - Oral	9	9	
Communication - Written	7	9	Needs work on tighter writing style
Ability to Learn/Adapt	9	7	
Business Acumen	5	5	Goal for 2017 is reading basic financial statements
Project Management	4	5	Needs opportunity to manage large project
Responsiveness	8	8	
Critical Thinking	7	7	Assign mentor to help with this area
“Gets stuff done”	8	10	
People Management	N/A	N/A	Does not manage people yet/Look for cross functional project she can manage
Unique Skills	8	9	Fluent in Italian, manages the department website
Soft Skill – Team Work	6	7	Needs to focus on working more collegially with others
Soft Skill - Leadership	7	7	Willing to take charge. Does so without offending others. Leads by example. Is participating in company's Young Leader Program in February 2017
Soft Skill – Executive Presence	5	7	Needs to be more engaged in meetings/not so passive. Presentation skills can improve. Toastmasters course and present at legal department meetings
“Engagement “	9	8	Highly engaged. Always does more than asks. Eager for more responsibility. Enthusiastic

The above is a rough chart for demonstration purposes. You can see, however, that it tells you several things. There are number of places where the lawyer and the evaluator disagree about the skill level. This is an opportunity for a candid and constructive conversation. There is a good mix of strong areas and areas for development. The areas with the lowest scores have realistic goals and projects for her in the coming year to help develop the skill (or at least recognize that opportunities are needed). In the legal skills area, her background is litigation but she is being given some simple general corporate contract responsibilities to round out her skill set, and she is being groomed to handle a new area where the department lacks someone with those skills today. She is highly thought of generally.

The other interesting part about the chart is the last entry – [Engagement](#). Engagement is a key marker for any employee group. Employees that are engaged are far more valuable than those that are not engaged and especially versus those that are

actively disengaged. They are also rare, which makes spotting engaged employees extremely important to succession planning. In short, these people, if they have the right skills, are keepers and ones you want to develop and promote. Engagement in this context means those employees who use discretionary effort at work, i.e., they go the extra mile without being asked, they work with passion, they care about more than a paycheck, and they demonstrate an emotional commitment to the company/legal department. They are the ones who will drive innovation and move things forward in the years to come. Two things to note: 1) You'll want to [measure employee engagement](#) in the legal department (which is different than employee satisfaction), and 2) You'll want to put into place plans to develop or enhance engagement among your team particularly through aligning and explaining goals, the work and projects you assign, the amount of freedom and creativity you allow, and the managers you put in place. The more engaged attorneys you have, the better the department.

FORMAL EVALUATIONS

Formal evaluations and feedback are core to developing in-house talent. It needs to be regular, candid, and constructive. The feedback should be about things the attorney does well, things they need to work on/improve, and whether there are any potential roadblocks to them advancing in the company/legal department – if that is their goal. It requires managers who are capable and well-trained. Weak managers mean weak results. Consequently, a key component of succession planning is the constant need to evaluate and train the managers. In most companies, there are training program for managers. Unfortunately, in many companies, training managers in the legal department is an afterthought and sometimes you will need to be the squeaky wheel to ensure that your managers (including yourself) get the training they need. Don't assume that just because someone is a good lawyer they are a good manager. Managing people is a difficult task and not everyone can do it. But, everyone can get better at it and that, at a minimum, should be one of your goals each year.

Useful evaluations will consider a number of different viewpoints, i.e., if the evaluation is based on one person's input alone, it is not very useful in terms of development. A multi-view

evaluation is often called a "360 review" meaning it gathers input from the lawyer, their manager, their subordinates, their peers, and their internal clients. Some evaluations also seek input from people outside the company, e.g., outside counsel. The 360 process can be very formal and tied to a process run by the HR department (which is ideally what you want) or it can be informal, i.e., do the best you can with the resources you have on hand to get as complete a picture of the lawyer as possible. Its purpose is to gather insights and useful information about how best to develop the lawyer into the type of employee the company needs for its next generation of leaders. It can and does play into the performance review process. More importantly, it helps the manager and those in charge of succession planning see the strengths and weakness of the lawyer and begin to focus on what can be done to further enhance the strengths and begin to chip away at the weaknesses. I sum up the difference as follows: a performance review focuses on how well the lawyer did vs. specific goals set at the beginning of the year; a 360 evaluation focuses on behaviors and attributes that the legal department (and the company) wish to develop in its leaders. One is more operational, the other more strategic.

CREATING A DEVELOPMENT PLAN

We now arrive at the most important part of the development of succession talent – the development plan. This is the culmination of the talent/skills chart and the results of the formal evaluation process. In its simplest terms, the development plan is the road map for the how the lawyer will develop the skills and attributes needed to become a senior leader in the legal department and, potentially, the next general counsel of the company. Essentially, you will identify areas for development and, hopefully, things the employee can do to work on developing any particular skill or attribute. For example, you might want a litigation lawyer to develop basic commercial contracting skills in order to round out their experience. It's also important not to try to do everything at once in the development plan. You should focus on three or four things you think are the most important/critical for the lawyer to

work on first. Too many goals in the plan likely means nothing gets done or nothing gets done well. Be thoughtful and selective.

A common roadblock to development arises in smaller legal departments. Looking at it conventionally, it's difficult, for example, to get people managing skills or rotate through different legal skill sets. There just aren't enough people vs. a large legal department where there may be 20 people in a group and several different groups within the department. It's a challenge to be sure. But, there are ways to get lawyers the needed skills and practice even within small legal departments of just a handful of lawyers. Here is a chart of ideas to help you think creatively about how to get lawyers, especially those just a year or two into their in-house career opportunities, to develop needed skills:

<i>Opportunity</i>	<i>Skill Development</i>
Formal rotation through different parts of the legal department	Gain knowledge of different legal skills through formal rotation through different groups of legal department
"Tag Along"	If formal rotation not available or not desirable, allow the lawyer to "tag along" on a legal project outside their normal area, e.g., corporate lawyer working on a litigation matter
"Rotation" via project assignment	Assign lawyer to work on a project that is outside their usually skill set, e.g., run point on litigation. Tends to work best in a small department of generalists
Department administrative tasks	Gain operational experience by working on different administrative task important to operating the legal department, e.g., the budgeting process, annual reviews of staff members (vs. lawyers), department meetings, policies and procedures (outside counsel policies, knowledge management, etc.)

Opportunity	Skill Development
Put "in charge" of something	Give lawyer responsibility for something of importance to the legal department, e.g., the website, the e-billing tool, off-site, CLE program, volunteer events, pro bono program, knowledge management
Smart use of Continuing Legal Education ("CLE") programs	Instead of treating CLE like a chore, search for quality programs that deliver more advanced training on important legal skills (especially those needed by the company in the future) – usually all day or multi-day courses
Encourage taking leadership role in outside organizations	Local bar association, ABA, Association of Corporate Counsel (ACC), committee leadership re same, etc. Chance to lead and develop numerous skills
Toastmasters	Develop public speaking and presentation skills
Pro Bono work	Opportunity to develop different legal skills in a low pressure and well supervised manner
Move into a business role	Lawyers bring many skills to the table that businesses covet. Some lawyers leave the legal department to take a position in the business and learn valuable business and operational skills. They often return to the legal department but may not
Participate/Lead cross-functional teams	Most companies have cross-functional projects that cut across business units and staff groups. Use these as an opportunity to get attorneys needed experience working in teams, leading large projects, managing groups of people, honing "soft skills"
Company sponsored training programs	Many companies have elaborate training programs available to all their employees focusing on live and on-line learning to develop various business skills, technology skills, managing people, etc. Legal is generally welcome to participate in these. Also watch for opportunities to have lawyers participate in substantive programs where young leaders are spotted and fostered. These programs usually require significant investment of time and effort by the participate and their manager
Mini-MBA programs	There are a number of "mini-MBA" or finance programs available to in-house lawyers. Usually a week long they help lawyers understand how modern corporations are managed and how decisions are made. Plus, it helps in-house lawyers understand the language of business, i.e., numbers
"Job Swaps"	Have attorneys swap jobs for some significant period. Works particularly well if you can swap people doing a similar job but in different geographic locations, e.g., a contract lawyer in London works in the US doing basically the same things, while a contract lawyer from the US heads to London to take that lawyer's place. Usually needs to be at least two weeks and ideal one to two months. Exposure to different employees and managers and legal problems is good. Also, provides an opportunity for lawyers not based at headquarters to get an opportunity to be noticed and maybe cement a place in the succession planning document.
Outside counsel training programs	A number of your outside law firm will have training programs for their associates. Ask if some of your lawyers can participate. Mostly likely they will be thrilled to do this and it will cost you nothing. Your lawyers will get high-end training in a number of different areas, limited only by what the law firms offer.
Assign "new" area of legal work	Needs to focus on working more collegially with others
	The type of legal work done by the legal department is rarely stagnant. If the company branches into new products or geographies opportunities open up for lawyers to handle the new and different legal issues. For example, your company may be facing export or import issue for the first time after entering a new market. Think hard about who to assign the work to as this will be an opportunity for someone to develop new skills important to the company along with the chance to "define" how the company will handle this type of legal work, hire outside counsel (if needed), create new forms or contracts, etc. It's a chance to build something new so don't just assign it to the usual suspects.
Allow attorney to manage a paralegal or admin or other staff person	Gain people management skills
Professional coach	Hire a professional coach to work with the lawyer on specific skills. Requires a large investment generally. Work with HR to determine if this is a viable/good option and whom to utilize

There are, of course, more ideas than those listed. But hopefully, it gives you food for thought as to different and creative ways to get lawyers the opportunities they need and want and prepare a formal development plan. Keeping things fresh can also help increase engagement and retention. The ability to get new and exciting work is one of the highest predictors of retention – more so than just salary. Finally, through all of the efforts to develop,

be sure to engage in [true delegation of work](#). This does not mean simply shove stuff off your plate onto someone else's. Rather, it is a sophisticated process to allow those who have mastered skills or who have higher and better uses for their time to shift useful work to those attorneys who can use the experience and the chance to develop those same skills.

USE OF EXTERNAL RESOURCES

So far our focus has been on internal talent – as it should be. Internally is where you should have your biggest bang for the buck in terms of finding the right fit for your company, both from a skills and personality standpoint. Unfortunately, internal candidates don't always fit the bill in terms of skills (or ability to learn those skills on the timeline needed) or you may be required to manage someone out of the organization who is not up to par or who works in a position that you no longer need as things have developed over time. In these cases, you will need to go external for the hire. There are three ways to find talent externally: 1) a general job posting that invites people to apply for a position; 2) engage a recruiter (head hunter) to find you the right person for the open position; or 3) search your – and your team's – own "Rolodex" of who to call if an opening becomes available.

Posting an open job with a call for applicants will certainly get you a lot of résumés. Unless you are very experienced in how to quickly cull through these resumes (or if not you, your HR team) then you will get a lot of unqualified or unsuitable applicants. It may be that this is the only avenue open to you because of cost or policy. If so, fine. Just be prepared to do a lot of leg work trying to get to the handful of candidates who actually have a chance. And be prepared for an increased likelihood of making a hiring error, as just about anyone can put on a good initial interview. It's not until you've truly seen them in action that you know whether or not you have the right person. At a minimum, be sure to check as many references as possible and lean toward utilizing behavioral interviewing <http://www.applicantstack.com/behavioral-interviewing-vs-traditional-interviewing/> techniques. Using a recruiter will likely get you a smaller pool of very qualified applicants much quicker, though there is always the potential for a bad hire nonetheless. It is expensive, but getting the right person is usually worth considering the cost of this route (along with the tremendous amount of time saved because the recruiter does all the logistical work). One way to make working with a recruiter easier is to establish the relationship before you need them. Introduce the recruiter to your culture and the things you are looking for in candidates. Share your succession plans for the

future with them. All of this will allow the recruiter to keep their eyes open and be on the lookout for lawyers who might be a good fit if and when the need arises at your company, i.e., they will already know who to call when you call.

Finally, in your career you will come across lawyers from your outside law firms who you think might make a good fit. Keep a list of these people. When an opening comes up, these folks should be high on your list to speak with about the job. Most law firms have no problem with their lawyers going to work for clients (or potential clients). Just keep in mind that over the past 7-8 years, law firms have been hit by the same economic forces that hit most business, a deep recession and the same baby boomer retirement problems. Layoffs and retirements mean a shrinking pool of available talent from your outside law firms – reinforcing the value of developing and holding on to your own internal talent. Likewise, over the course of your career, you have probably run into a number of highly skilled lawyers while attending conferences, trade association meetings, lawyer association/bar association meetings, working for your competitors, or on the "other side" during a deal or piece of litigation. Keep note of these people and keep a file on them. They too will be people you'll want to reach out to in the event of an opening in the legal department. And don't forget to ask your own team for similar recommendations in terms of outside counsel or other lawyers they think might be a good fit. Like you, your team will already know what it takes to succeed at your company and candidates they recommend will likely have a high chance of being a good fit.

The proper evaluation of talent (internal and external) is critical to a successful succession plan for the legal department. Understanding which lawyers you can develop into the next generation of leaders gives you the next building block for succession planning. The same is true for understanding those who you cannot develop and whether those lawyers will continue to serve valuable roles or if they need to be managed out to make room for lawyers with the right skills and attributes. Now that you know who's who, you are ready for the creation of the succession plan.

ABOUT THE AUTHOR

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