



# LEGAL DEPARTMENT SUCCESSION MANAGEMENT

Part III: Putting a succession plan in place

by Sterling Miller

# PART III: PUTTING A SUCCESSION PLAN IN PLACE

*The following is Part III 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.*

In the first two articles of this series, we learned that succession planning can be broken down into three parts: 1) [evaluation of succession needs](#); 2) [development of succession talent](#); and 3) succession plan implementation. In the first and second articles, I discussed how to evaluate succession needs in terms of what legal skills the legal department will need in the short, medium and long term and, once this is known, ways to develop that talent so it's available to the company at the right time. This discussion focuses on how to put a succession plan in place for the legal department.

Creating a succession plan is all about identifying the critical jobs for which planning is needed (e.g., general counsel succession

planning) and then identifying those individuals (inside or outside the company) that could step into each role (in the short term or down the road). Additionally, you need to account for the knowledge transfer that must occur during any succession.

To make this happen, you must do the following: 1) identify what jobs in the legal department require succession planning; 2) identify the people who are potential successors in those roles (in the short term or in the longer term); 3) create a knowledge management/transfer program; and 4) keep everything current going forward.

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## IDENTIFY THE JOBS IN THE LEGAL DEPARTMENT THAT REQUIRE FORMAL SUCCESSION PLANNING

Not every lawyer job in the legal department requires a formal succession plan. Resist the urge to “over plan.” Focus on the critical ones. The most important job will be that of the general counsel. So, this one goes on the list for sure. After that, it is likely (but not always the case) that the heads of different groups (deputy general counsel for corporate, securities law, litigation, employment, key subsidiaries, etc.) should have a plan. Beyond that, it simply depends. The test to use is whether the person or position has some unique and critical skill. For example, if your company is heavily into data, then the person in charge of legal issues around data privacy and data security is probably someone for whom you need to have a plan in place.

For each position you identify, you need a thorough and current job description ready to go, i.e., what document would you give to the HR recruiter or outside recruiter describing the position and the attributes/skills needed to be successful in the position? If you haven't reviewed and updated the job descriptions for all of the legal department on a yearly basis, now is the time to dust off that project. I saw firsthand that if the legal department is not heavily involved in creating and maintaining job descriptions for the department, you will get stuck with fairly generic and (in all honesty) useless job descriptions cobbled together by someone outside of the department who has no idea what is needed. If this is the case, the minute you need to start the recruiting process, you will be wasting valuable time trying to fix the job description on the fly.

When creating job descriptions, keep these steps in mind:

1. A good job description is a map. It describes the skills and attributes needed to perform the role. It defines where the job

fits within the overall hierarchy (of the company and the legal department). And, a good job description is a tool that can be used for things like performance reviews, development plans, and – of course – succession management.

2. At a minimum, a job description should contain the following:
  - a. Job title
  - b. Job objective
  - c. Summary of the general nature and level of the job
  - d. Description of the job function and scope of the position
  - e. Detailed list of duties or tasks performed that are critical to success
  - f. Description of the relationships and roles within the company, including supervisory positions, subordinating roles, and other working relationships
  - g. Legal skills and attributes needed to be successful in the role
3. Be sure the incumbent is heavily involved in drafting the job description, along with their manager. Of course, your HR partner will be able to help here too. If this is the job description for the general counsel, it is likely the CEO and the board of directors will get involved as well.
4. Lastly, when preparing the job description, always be thinking of what the job will require in the future, i.e., don't base it solely on what is needed today. Use your work from [Part I of this series](#) to ensure you're thinking several moves ahead and preparing for what the company/legal department needs down the road.

# IDENTIFY THOSE INDIVIDUALS THAT COULD STEP INTO THE ROLE

I previously discussed how to evaluate what [legal skills the company needed](#) from its lawyers and, when mapped to those needs, [which lawyers had which skills](#) – along with development plans for each lawyer to enhance or develop any needed skills. Now take that work and map it to the legal department’s succession needs; i.e., for each critical position, how do the lawyers already part of the organization line up as potential successors? There are two tools to use here that are fairly common if you have been involved in managing people. The first

is the nine-box matrix and the second is a succession planning work sheet.

The nine-box matrix is a tool frequently used to give a snapshot of high-potential employees and those who likely have the tools to be future leaders or take on more responsibility. It also shows employees who potentially do not have what it takes to stick around long term. It does this by measuring potential on one axis and current performance on the other:

## SAMPLE NINE-BOX MATRIX

High	<b>“Diamond in the Rough”</b> (high potential/low performance)	<b>“High Potential”</b> (high potential/moderate performance)	<b>“Star”</b> (high potential/high performance)
Moderate	<b>“Inconsistent”</b> (moderate potential/low performance)	<b>“Core Member”</b> (moderate potential/moderate performance)	<b>“High Performer”</b> (moderate potential/high performance)
Low	<b>“Risk”</b> (low potential/low performance)	<b>“Solid Performer”</b> (low potential/moderate performance)	<b>“High Professional”</b> (low potential/high performance)
↑ Potential Performance →	Low	Moderate	High

As you can see, it’s relatively simple to place different attorneys in the different boxes and create a snapshot of the talent base in the legal department (and who might be ready to step up if needed). The green boxes are your stars, the yellow boxes are your solid middle, and the red boxes tell you that you may not have the right person. A word of caution here, however: While a nine-box matrix is a relatively simple tool, it is plagued by some real limitations. I dealt with a number of nine-box sessions and was always frustrated by two things:

- 1) Whether or not someone has potential is highly subjective. Moreover, it is difficult to forecast whether that potential changes when the circumstances are different. For example, just because you are an excellent contract attorney doesn’t mean you will be an excellent (or even good) manager or deal well with the pressure of administration vs. simply doing good legal work. Saying someone has potential sometimes begs the question – potential for what? It is important, therefore, to describe what you are measuring in terms of potential. Otherwise, it’s just a gut reaction.
- 2) Most nine-box sessions involve a cross-business unit/staff group review meeting where everyone is invited to give their input about the candidates. Yet, when it comes to legal work, I found it difficult to listen to nonlawyers weigh in on whether someone was a good lawyer or not. They just didn’t know, and usually they were biased by whether a) they liked the person personally, and b) whether the lawyer gave them the

answer they wanted on some question or got their project done quickly. Neither are the basis for determining whether someone is a star – or a risk.

One way to fix this nine-box conundrum is to grade people on a range of attributes designed to measure whatever you are hoping the person has potential for (e.g., responsiveness, business acumen, leadership, adaptability, emotional intelligence, etc.). Do this on a scale of 1-10 for each attribute, add up the total score, and then set some type of bell curve measurement whereby a total score of 1-25 is low potential, 26-75 is moderate potential, and 75-100 is high potential (or however you want the scale to read). Doing something like this gets you a more objective measure of potential that is truly helpful (vs. a solely subjective rank that can unfairly cast an otherwise solid performer into a risk situation). As to the performance line, i.e., legal work, I am a keen believer in going with the manager’s most recent performance review of the employee vs. having performance tied to popularity. That said, I do understand that whether or not the business will accept someone as general counsel or as a senior leader in the legal department is somewhat subjective regardless, i.e., they have to like the person and have confidence in their abilities. So, at the end of the day, there must be some flexibility to adjust for these requirements in the overall analysis of the succession candidates. In other words, the opinions and gut reactions of the CEO and other C-Suite members matter.

The key document in the succession process is the succession planning work sheet. By this I mean the document that actually shows the position in question and the potential successors, including whether they are considered immediate-, medium-, or long-term candidates. It should also cover external candidates, if possible, or at least note what process to follow if external candidates are needed.

First, there should be a formal process run by HR to develop a succession document based on a formal company-wide succession policy. A succession policy sets out the timing of succession planning (e.g., yearly, quarterly, etc.), along with who participates, who is responsible, and so forth. You need to tap into this process. Moreover, you need to ensure that you give the process the attention, time, and effort it deserves. If you treat it like a once-a-year checkbox exercise to get HR or whomever off your back, then your plan is not really going to be strategic or effective. And that is a disservice not only to the company (and its owners and employees), but to the legal department and all of the attorneys who deserve a fair shot at moving up the ladder if and when there is an opportunity to do so.

Second, in addition to all of the other information we have discussed so far, from development plans to nine-box grids to tracking the future legal needs of the company, there is one final piece of information you need before you complete the succession plan document: Are the attorneys in question interested in the positions for which you have them slotted? This is probably the most overlooked part of succession planning. But it is critical to know whether someone truly wants the job. If not, or if they are saying “yes” because they are afraid that saying “no” will limit them or otherwise reflect poorly on them, you could end up with a pretty embarrassing situation where the named successor says “no thanks” or is placed into a situation where they are doomed to fail because they really don’t want the

job in the first place. This means you need to have some very honest and open conversations with the lawyers in the legal department about their goals and intentions. This can be (and is typically) done by the managers and the general counsel. I think an even better plan is to work with your HR partner and have them conduct interviews regarding interest in succession (or at least add them to the interviewing process). Generally, you get more honest answers and feedback if someone neutral is asking the questions about interest in being considered for succession roles. I say this because employees are likely prone to telling the boss what they think he/she wants to hear, including someone saying they are up for a bigger job when really they are not that interested or have circumstances at home (a new child, illness in the family, etc.) that could limit their current interest or ability to take on more than they already have on their plate.

On the flip side, you should also have a conversation with those members of the department who are nearing the age of retirement and get a sense for when they might wish to leave the department. This cannot be viewed as an attempt to push out older workers (which is illegal in the U.S. and elsewhere) but rather an honest conversation about when someone may wish to depart and how much notice can you plan on receiving – and be sure to work with HR before having this conversation. For example, I had a deal with one of my most senior and experienced attorneys that they would give me twelve months’ notice before retiring. This would give me time to locate the right successor and to do a proper transition of knowledge. This might also be a conversation that your HR partner is better suited to have versus the manager or the general counsel. It simply depends on preferences and the feel for which type of conversation would get the most accurate read.

Once you have gotten your data points together, the chart is relatively easy to compile. Here is a sample:

### SUCCESSION PLANNING WORK SHEET

<i>Position</i>	<i>Current</i>	<i>Potential Internal Candidates</i>	<i>Readiness (short term-, medium-, long)</i>	<i>Willingness to take role</i>	<i>Comments</i>	<i>Potential External Candidates</i>	<i>Comments</i>
General Counsel							
Deputy GC – Litigation							
Deputy GC – Corporate							
Deputy GC – Strategic Transactions							
Deputy GC – Government Affairs							
Associate GC – Data Privacy							

With respect to external candidates, if you have people in mind already, this is the time to identify them. If not, you should probably have a relationship with an external recruiter who is versed in the needs of the department, including ensuring they

have copies of the relevant job descriptions so they can create their own file of potential candidates they would call should an opening arise.

After you complete the planning document, the next task is to begin working with the identified successors (internal) to continue to develop skills and attributes necessary to take the next step. This may be the time to assign mentors to hone soft skills and teach the candidates how to maneuver inside the upper ranks of management. Most importantly, you want the candidates to feel valued and know that there is a plan in place for them to grow over time and potentially (no guarantees) move

up into bigger roles. This, like much of succession planning, is a place where your HR partner can add a lot of value and provide a lot of help. The bottom line is that you want to do everything you can to hold onto attorneys identified as successor candidates, especially those identified as “short term,” because they could be needed to step up quickly should there be an unexpected departure.

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## CREATE A KNOWLEDGE MANAGEMENT/TRANSFER PROCESS

While the people part is the most important part of the succession-management process, you also need to spend time on the knowledge management/transfer process. Anyone stepping into a new role will ideally have a number of transition documents to help with the move. For example, a summary of key tasks they are expected to complete and the relevant due dates. While knowledge management is too large of a topic to discuss fully here, the basics are this: You need to capture the critical tasks, processes, timelines, and operations of the legal department on paper so that they can be easily passed on to any successors (or just so someone can fill in for the current person in the event they are out on extended leave for some reason). The simple way to do this is to start a process of creating a series of short documents (1-2 pages) that capture all of the key aspects of the legal department tasks and operations. For example, how

does the e-billing system work and what is the monthly accrual process with finance? Who are the key contacts and what are their phone numbers and email addresses? What are the master passwords to all of the department’s systems and subscriptions? How often are company’s policies reviewed and updated? To get this project underway, ask each attorney and staff person, over the next 30-60 days, to capture and catalog key discrete processes and functions in 1-2 pages each, so they can be collected and available should the need arise. You can then organize the results by category or job function, whichever makes the most sense. The goal is to have core and critical information captured on paper and available so people new to certain roles can simply follow instructions on what needs to be done, by when, how, etc.

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## KEEP IT CURRENT

Finally, succession planning done properly is not something you do and put on the shelf to gather dust. Everything needs to be kept current and constantly updated. You should be well aware of the dates of key deliverables in the succession process every year and anticipate what is needed and when. Nothing should come as a surprise or be rushed because you failed to plan for the time needed to do it properly. Similarly, the knowledge management must be kept fresh and constantly updated. This is a great project to put someone in charge of to gain experience in legal department operations and to see how they do managing a project that will require time, effort, writing, some cajoling, and good management skills.

This concludes our three-part series on succession management. The wave of baby boomer retirements, along with the [influx of millennials into the legal department](#) workforce, means that succession planning needs to be front and center from here on

out. While this series gives you a good basis and understanding of the process and what is needed, you need to start by plugging into your company’s succession process with HR and ensure that 1) the legal department’s needs are part of the company’s regular planning (be the squeaky wheel), and 2) that the legal department uses the tools and resources made available by the company/HR and that you take the process seriously and make it a priority. Even if you have so far done little to nothing regarding succession planning, the good news is that it’s never too late to start and, while time-consuming to do properly, succession planning is a well-established process and you will get the hang of it fairly quickly. The more challenging parts are the conversations you need to have with your team regarding skills, interests, retirement, etc. While difficult at times, you will find that having these conversations and discussing succession planning will actually lead to a better and more dynamic legal department. Good luck!

## 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](http://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](http://www.SterlingMillerBooks.com).

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