

Session 108

Creating a New Law Department: Techniques that Work

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The challenges that greet the attorney who is starting a new corporate law department can be overwhelming. It thus is important to have a plan of action. The following checklist contains key points that should be considered.

The Phase One items are those that merit immediate attention. The time period that covers Phase One is variable, but it is a stage that typically could last for the first year. Phase Two are those objectives that are important to implement after the groundwork has been laid. Phase Three includes matters that are critical to long-term success.

An additional resource is ACCA's "Starting a Law Department" InfoPAK. This compendium of articles is very comprehensive. It is available at the ACCA Website, <http://www.acca.com>, in the Virtual Library section. It can also be ordered by e-mail, legalresources@acca.com, or by calling 202-293-4103, x345.

Phase One: Staying Afloat

- *Establish a clear understanding of the role that you will play as the Company's GC*
 - What is the CEO's expectation/experience in working with a GC?
 - What are the expectations/experience of other members of the senior management team in working with a GC?
 - What role will GC play vis a vis the Company's Executive Management Team?
- *Spend as much time as necessary in getting to know your CEO*
 - Assuming that the CEO is the person to whom you report, this is likely to be a make-or-break relationship
 - Determine how much leeway you will be given and what help the CEO can give you in establishing the GC function throughout the Company

- *Determine what your reporting relationship will be with the CEO*
 - Does the CEO want periodic reports? If not, should you nonetheless encourage the idea?
 - What type of information should be provided in your reports?
 - How can you keep the reports privileged?
- *Learn the “lay of the land” as early as possible*
 - Force yourself, if necessary, to go to lunch or have breakfast meetings with key executives throughout the Company
 - Request a list of key staff and operational meetings. Attend as many as time will allow, even if your role is that of an observer
 - Try to discover, as best you can, the key business practices that are subject to the “this is the way we have always done it” refrain
- *Make it your credo to be responsive and attentive to the Company’s business*
 - Must respond to phone calls and requests for your help as quickly as possible
 - Be proactive—do not just wait for issues to arise Don’t be cast as “Mr. or Ms. No”—be creative and strategic in finding solutions
- *Try to get a good handle on the Company’s pending prospective legal matters*
 - As the Company did not have a GC, the legal matters are likely to be spread throughout the Company. Thus, a lot of checking will be necessary
 - Discussions with the Company’s lead outside counsel should be helpful
- *Assess the relationship with the Company’s lead outside counsel*
 - Try to learn as much as possible, within your Company, about the history of the relationship
 - Respect the relationship, and tread lightly, particularly in the early stages. The outside counsel will likely have a thorough understanding of your Company’s legal history, which could be invaluable for you
- *Make time to review important Company documents, such as:*
 - Policies/procedures manuals
 - Articles/By-Laws
 - Board Minutes
 - Insurance policies

- *If the Company has a Board of Directors, assess/develop a relationship with the Board members*
 - May be prudent to spend time with the CEO to understand Board relationships and preferred means of interactions
 - Consider preparing a book for the Board members (containing items such as Minutes, Articles, information on trading rules, names, addresses, benefit plans)
- *Be prepared to create a new budget or learn how to survive if you inherit one that is already in place*
 - Must closely analyze your needs, to the smallest level of detail. For example, consider items that attorneys need (such as specialized supplies, larger file cabinets, etc.)
 - Establishing a budget
 - determining what they're spending will require detective work
 - look for live items in other departments -- "your bills" -- UCC filings, registered agent fees, etc.
 - check capitalized budget for bills that may be classified there
 - Notify all outside counsel that all bills come to you and require your approval for payment
- *Assess short-term hiring needs*
 - First hire—experienced paralegal—invaluable in straightening out corporate records, etc.
 - Can you live without a secretary?
 - Depending on the Company's size and legal needs, where is the breakpoint for advocating hiring of another attorney?
 - Take 6 months to decide what you need – your ideas may change and will be received more favorably. Present in terms of comparison to outside cost and savings
- *Have a filing system that is ready to go*
 - It is very likely that there is no legal filing system. Must be prepared to institute some numbered system early, otherwise you/your assistant may never catch up
 - Consider the categories that will be important to your Company
 - Use a system that can grow with you and the Company

- *SEC*
 - One of the most important areas to focus on if a public company
 - Form 4 filings
 - Minute books
 - Audit letters
 - Communications with outsiders (analysts, press, customers, shareholders, etc.)
- *Litigation*
 - Important to assume management as quickly as possible
 - Notify mail room that anything they don't know what to do with, goes to you
 - Notify registered agents that all service of process come to you

Phase Two: Catching Your Breath

- *Collect/standardize key contracts*
- *Develop engagement letters/counsel selection procedures*
- *Determine what periodicals/industry publications you should review*
- *Conduct in-depth meetings of key personnel in the company's principal operation groups*
- *Assess to what degree you will become immersed in the business*
 - Must be aware of attorney/client privilege waiver situations
 - Must determine how you can maintain a sense of independence so that appropriate advice can be given
- *Establish management policies for the legal department*
 - Create job descriptions for your staff
 - Establish performance measurement criteria
 - Determine how often staff meetings should be held and their content
- *Network with other in-house counsel through organizations such as ACCA*

Phase Three: Planning for the Future

- *Assess longer-range needs for:*
 - support staff
 - computer needs
 - library/on-line support
- *Consider SEC, antitrust, environmental, employment law “audits”*
- *Review/analyze legal spending patterns*
- *Prepare training/talks for counsel to conduct throughout the Company*