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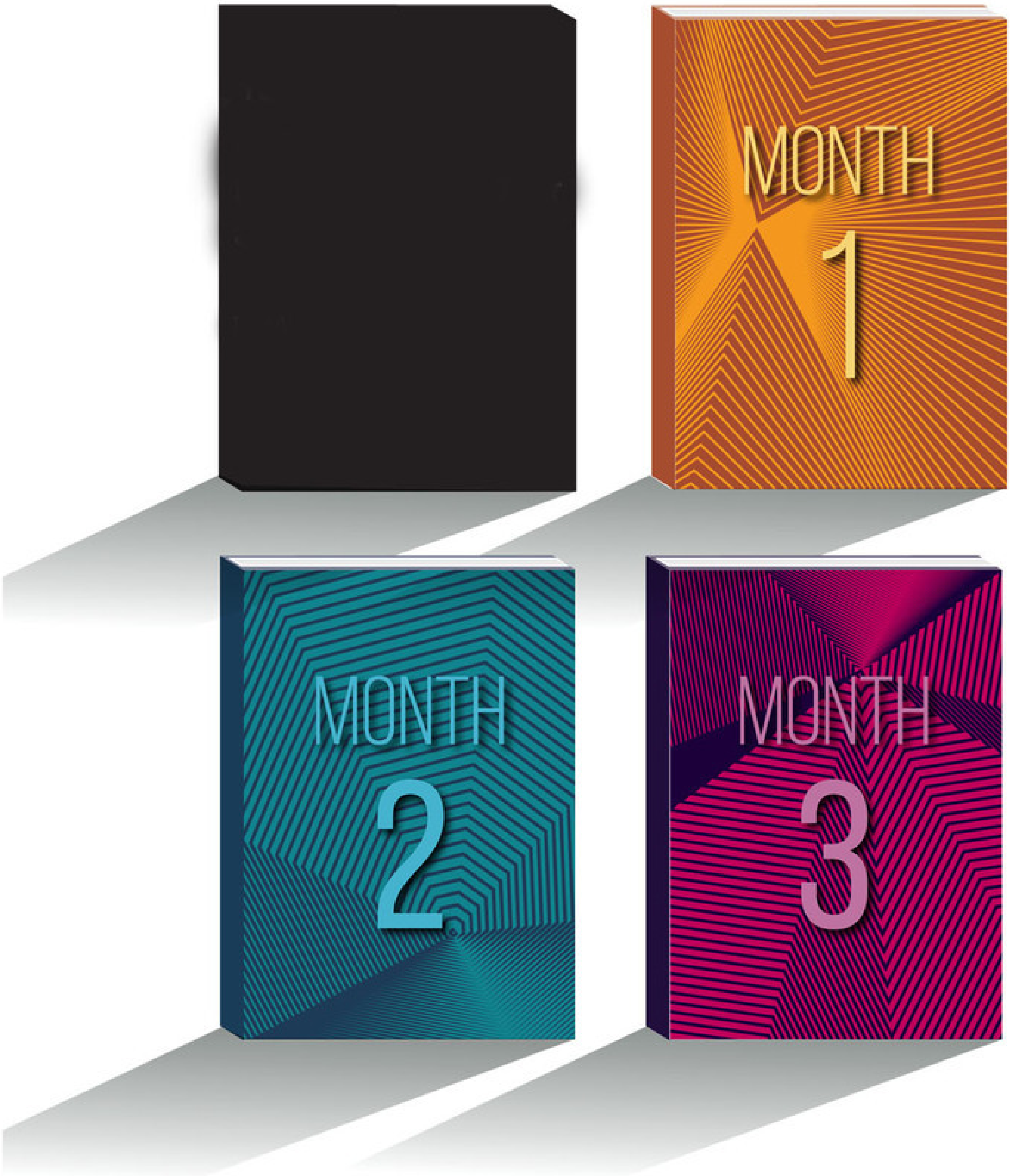
Actions to Take During Your First Year as General Counsel

Skills and Professional Development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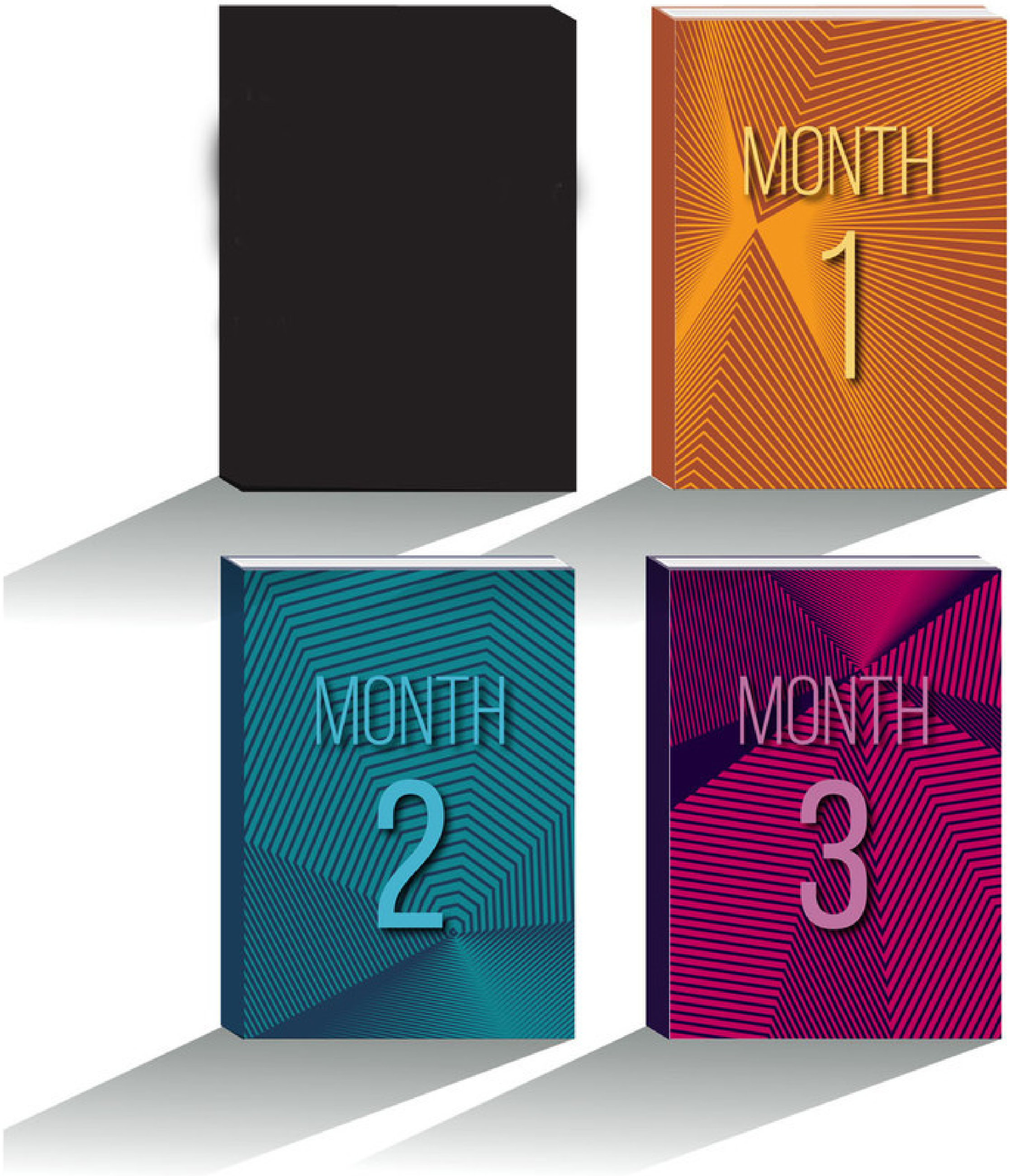

CHEAT SHEET

- ***Develop key relationships.*** Prioritize growing your internal relationships with superiors and peers, along with outside relationships with counsel, independent auditors, and government officials.

- ***Understand your corporate structure.*** Learning about your subsidiaries and why they were created can help you mitigate potential risks and liabilities.
- ***Support proper governance.*** Familiarize yourself with the company's bylaws, insurance coverage, compliance plan, codes of conduct, and more — are they up to date or do they need to be refreshed? Also, get to know the board members to proactively address their concerns.
- ***Make time for personal development.*** Whether it's meeting with other general counsel, attending conferences, or getting involved with an association, develop a network to help you grow and obtain a broad and diverse perspective.

Congratulations, you've survived your first three months as general counsel! So, what do you focus on next? You can already tackle the important legal issues *du jour*, but how do you advance the entire department — and your career?

Several years ago, I wrote an article for the *ACC* Docket on suggestions to consider during your first 90 days as a general counsel. Many folks have read and forwarded that piece to others, which is great news. The bad news is, I have had several new GCs ask me, "What should we be thinking about after the first three months?" I have responded to many, realized I forgot items, and responded again. So, I started keeping a list.

Simplistically, I believe you can categorize your first year into five areas. The first year should focus on (1) developing key relationships, (2) evaluating the corporation's overall structure, (3) ensuring good governance, (4) creating the foundation for the department to drive efficiency, and (5) continuing to personally learn and develop. Focusing more on EQ than IQ, here are several suggestions on what you can do to be effective and successful in your first year and beyond. In the current world, intelligence (IQ — intelligence quotient) and "knowledge" are becoming much more of a commodity. All can be found on the internet. With this leveling, the value of "judgment" and emotion or empathy (EQ or emotional intelligence) has increased in relative value.

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Key relationships to develop

With your superiors

Internal and external relationships need to be developed. Don't wait until an issue arises before you make your introduction. You want to meet with the key players well before that. High on the list are your directors. But right up there with them is the relationship with your boss, the CEO.

You want to understand the key priorities of the CEO. Together with the board, the CEO establishes foundational documents, such as compensation targets or measures. Review these. Likely, there is a strategy presentation that has been shared with the board. Often this is a PowerPoint, outline, or summary developed by the strategy team, the leadership of the company. and potentially outside consultants and experts. This "deck" is a document you and your leadership team need to carefully review and discuss with whomever is responsible for corporate strategy, along with understanding any key strategic priorities. This becomes the basis for all your proactive legal strategies. It is beneficial to map the strategy deck to the legal department's Strategic Long-Range Plan. Identify and address any gaps.

Then on a personal basis, what does the CEO expect out of you and when? Alignment on objectives is a top priority. There's no downside in documenting these objectives and discussing them with the CEO. I have often found that just doing "good work" will not meet your CEO's expectations — their definition of "good work" will likely be very different than yours.

You should clearly understand how best to communicate with your CEO. Don't assume anything in this regard. What do they want to hear and when? How do you best connect — in person, voice, email, text? What degree of detail? I have found most executives and CEOs communicate in "bullet points." Long legal memos or emails will likely never be read — they can be attached, but the issue and recommendation need to be upfront, not at the "conclusion" like you were taught in law school. For the first year, regularly scheduled meetings (at least once a month) are critical. Create a running list of the items you want to discuss that are not time-sensitive. Providing the list or agenda to the CEO at your meetings can have value. And don't forget the CEO's assistant or chief of staff who often have invaluable information about the CEO (and sometimes about the former CEOs too). Despite any organization charts, they actually may be the first person to rank in your relationship's priority list (i.e., just before the CEO). They can be an invaluable resource on how best to interact with the CEO, the board, and other executives.

Finally, since the CEO is likely your boss, work to develop a relationship. What are their long-term goals in career or life, what are their key values, and what are their interests? Send them notes to show you care about their interests and them as a person/family. But this must be genuine interest, otherwise it can backfire. If no genuine interest is possible, it's better to keep relationships at the professional level. Work to develop that relationship.

With your peers

Below the CEO, you need to develop relationships with your executive peers or other key clients. High on the list is the CFO. Since generally both of you never have a "dog in the fight" on business issues, you can become good allies. Again, do not wait until there is an issue to meet. Scheduling dinner with each can be valuable. I generally prefer dinners to lunch, since unlike a lunch, where the executive is likely time-bound and thinking about their afternoon, dinners tend to have a more flexible ending. You want them to know you as a person before any legal problems arise. Similar to your relationship with the CEO, you need to understand the CFO's key objectives, long-term goals, values, and interests.

Set up regular meetings with all these key peers and internal clients. Key clients must include human resources and public and investor relations. These interactions should be separate from other meetings you may have with them as part of the business. These meetings are more general and personal. Hopefully, they will provide advice on how best to navigate working with your boss, the business culture, your job performance, and issues of concern.

With independent auditors

You will likely have quarterly meetings with independent auditors who will question you about the company's risks, including fraud or other potentially illegal or inappropriate actions. In fact, you will probably be giving them a signed certification of your awareness of any such issues. So it's clearly beneficial to establish a relationship before your first formal meeting. Outline your background and focus on ethics and integrity with transparent and direct communications. They will also be a great resource — they can point out where the company has had challenges in the past and where to focus now.

With outside counsel

Meet with the key outside counsel the corporation has used in the past. At the top of this list are counsel the company has used for board or governance issues. Unless directed by your board or CEO, or if you see an issue, there is no reason to make any immediate changes. Outside counsel can be a wealth of knowledge and will have every incentive to help make you successful (because they will want to maintain the business relationship). Keep in mind there are a lot of excellent law firms. Do not assume just because you liked or worked with a firm in the past, it is the best fit for your new issues and challenges. The knowledge current outside counsel possess — of the company, board, executives, and culture — can be invaluable.

With officials

Don't forget your federal or state politicians, judges, or key regulators. Most attorneys general are running for governor and have become de facto state regulators. Reach out, have a coffee, and develop a relationship before an issue arises. Often there are legal or social projects you can work on together, including with your local judiciary. Better to have them all know you as a reasonable, helpful "person" early. Make sure you are aware of any past or pending or legal or public policy matters that may involve them or their agency. First, it may not be appropriate or even legal to hold such a meeting. And, second, if they are looking for information to build a case or a claim on some issue, it may turn out to be more of a deposition than a friendly coffee. But I have found huge value in getting to know the attorney general and key regulators on a personal basis. If issues do arise, you can contact them first, before they or their team head off on their own, with no context or input from you.

Corporate structure can protect the company

I remember so well when I got the call about a significant scandal that rocked corporate America. My initial reaction was that the good news is we weren't involved. But a subsidiary, of a subsidiary, of a subsidiary, was.

You need to take the time to fully understand your corporate structure. What subsidiaries are there? Are they created for geographical, regulatory, tax, or other reasons? Are they truly operating subsidiaries? If they are operating subsidiaries, they can potentially create liability for the parent company.

The first questions are, what is the risk, and do the board, CEO or you care? Maybe not. But if you do, you need to evaluate the actions you can take to ensure they are truly separate from the parent and the appropriate corporate formalities are in place.

Do they have separate books and records, boards and committees? Do the boards and committees meet? Are the meetings documented? Is separate branding used with no connection to the parent? Are transactions for shared services and spaces between the entities conducted under a contract that is documented with costs flowing and accounted for and who establishes the executive compensation?

Investigate these questions, and other items, based upon the laws and regulations impacting your business. You sure do not want to get the surprise, three years into the job, that a subsidiary has a significant problem and you took no steps to protect the parent.

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Good governance is essential

Ensuring proper governance is in place is critical to protecting the company. Usually, the bylaws need to be refreshed. Are the board and all the committees regularly covering their core duties? Do you have the proper committees? Are the corporate governance guidelines and committee charters all up to date? Are regular board and director evaluations taking place? Are all these actions being properly documented and noted in the minutes?

Read all these core documents, and I would argue, the minutes of all for the past three years, to evaluate whether they meet current best practices. I would be shocked if they could not be improved. Times change; new ideas and protections are available, and we may fail to see and improve them. You could improve mine!

After being the general counsel of three companies, when I took the job at the fourth, I thought it wasn't efficient to teach a new team and new team members that joined us. So, I documented my views on all of these issues. The attached link provides my view on how best to meet the foregoing obligations and some "practice tips" you may want to employ.

As mentioned previously, develop relationships with your directors. Individual meetings are best, asking for their input and suggestions is incredibly valuable. You want to know in advance any concerns they have, which is much preferred to being surprised. Meetings with the chairperson (if non-executive), lead director, and committee chairs are critical. In particular, the chair of the governance committee is a key initial meeting.

> **Do not forget about the risks of data breaches and the impact it can have on the company's reputation. From a governance perspective, make sure the appropriate committees or board members are informed of information breaches.**

For any of your "active" board members who are currently an executive at another entity, I cannot recommend highly enough to personally meet with the general counsel of those entities. First, it is a good relationship to have before you need it. So, when a director says, "At my company, we handle it this way," you have a contact to obtain more details. I clearly remember when one of our board members outlined how his company dealt with evaluating risks and presented them to the board, our chief risk officer and I went and met with his company's general counsel. What we learned became the foundation for our risk program. Second, these GCs can advise you of "hot buttons" their executives focus on or possess. Ensure you proactively address their areas of concern and communicate what is being done.

Almost every entity has a clear schedule of approvals. Who can approve what, at what level in the corporation, and what items are reserved for the board or committees? Are these documented? Is the board making all the decisions it has to make? Have times changed; do the limits on spend or transactions need to be revisited? Review and update them as necessary.

Necessary board protections

The first key protection for the board is the foundational documents. As mentioned previously, evaluate if the bylaws are up to date with the best company protections. Are the indemnification provisions current and broad? I have also found indemnification agreements with individual directors incredibly valuable to protect them. This also assists in recruiting new directors because they know they will be protected. Remember, unless the bylaws have perpetual coverage upon sale when your entity is sold, a new director team may have the chance to determine the indemnification of the former directors. And if you and your board maximized value in such a transaction, the new board may be less inclined to protect them. A contractual agreement that survives any change of control can address these concerns. Your board will be very pleased you are taking steps to protect them in such scenarios.

In the first year, you should conduct a review of the current directors' and officers' insurance coverage. Are the limits and coverage appropriate? Are you covered? What about cyber coverage? Often you will find that over time addendum after addendum is added to your policies. Upon review, they may not be consistent with each other nor use the same definitions and have gaps in the coverage. You don't need to be an expert, but a good independent broker and legal counsel with expertise can assist in this project. (don't rely on the broker aligned with your insurer). Again, your new board will be pleased this is one of your initial actions. For more detail and suggestions on how to do this see the *Docket* article.

Two other areas to focus on before your company needs them: (1) Poison pill, a defensive tactic used against takeover bids, and (2) change of control agreements. If you choose to have these, you need them in place well before they are ever needed. To the extent they already exist, you want to review them carefully with expert counsel. The rules continue to evolve and change in this area. Are they legal? Are they up to date? Do you need a "gross-up" for any payments?

The overall compliance plan needs a careful review. Are the directors' and employees' code of conduct up to date? Often you see entities use the same code for both. Yet much that might apply to employees has no application to directors and therefore they may follow it. It is a mess if the directors have a code they are supposed to follow and they don't.

> **With the GC position comes the potential to add huge value to your company and to individuals with whom you work, sponsor, and mentor. It takes a lot of work and there are many moving pieces.**

Also, are the company's policies up to date? Do they use similar terminology and definitions? Many codes of conduct have been jammed into the new policies that are based upon legal problems and issues the company recently addressed. They have become a "string of pearls," a series of nice standalone policies, with inconsistent application, definitions, and interrelationship. And what about the other policies? If they are not in there, are they not as important?

Do not forget about the risks of data breaches and the impact it can have on the company's reputation. From a governance perspective, make sure the appropriate committees or board members are informed of information breaches. We have even conducted “tabletop” practices with our board, so they are aware of, and have input into, how such issues are handled. Many leadership teams have failed to loop in their boards in early, only to their later chagrin.

I have found one of the best ways to structure an overall compliance plan is similar to our country’s format — a constitution, statutes, and regulations. The code of conduct reflects the high-level principles of the company, without the details of all the key policies (e.g., competitive practices, antitrust, FCPA, insider trading, non-discrimination, etc.). Separate policies, which apply to specific entities and employees, and detail key definitions, examples, and additional information make up a secondary layer. Rules on bar memberships or how to retain outside counsel are departmental policies. All three layers need to be consistent, available, and work together.

Your leadership team

Schedule regular meetings with your leadership team, including at least two “off-site” meetings in the first year to have uninterrupted time to address entire team issues. Clarity should be established on why you meet and reach and document what is owned as an entire leadership team. Items the entire team may “own” together can include:

1. Legal strategies and the Strategic Long-Range Plan;
2. Certain large critical projects;
3. Talent and hiring;
4. Performance ratings, and compensation levels;
5. Bonuses at the higher levels, but below the leadership team;
6. Diversity and inclusion; and
7. Budget.

Also, you want to discuss, agree to, and establish the “team norms” or the governing rules for the team. In your first off-site meeting, it is valued to do a shared Myers-Briggs, Hogan, or other personality profile exercise. The purpose is to better understand how all of you are different and each best think and make decisions.

In my first meeting I have also, with no knowledge to the group indicating it is coming, left early, leaving a facilitator (such as your human resources partner) to have your team “blackboard” four lists: (1) what do you know about me, (2) what would you like to know about me, (3) what do we want you to know about us, and (4) what are you afraid you will do. This makes for a great discussion over dinner that evening (with a few glasses of wine, it gets even more interesting) or the first agenda item in the morning. Finally, there can be real value in each developing and sharing their Leadership Philosophies (indicating what you believe, what you expect, what you will do, and what you will not tolerate).

For each of your direct reports, you will want to create clear written objectives for the next year. Several of the objectives will be uniform for everyone, but others will be unique to certain specific legal projects. It is also good for them to have a career development plan with their near-term and long-term career goals. Have your direct reports do the first draft since it is important for you to understand their goals. Finally, you should discuss and have clarity on the communication expectations and methodology from direct reports.

Focus on the department

Within the first week on the job, you should have provided everyone in the department your Personal Leadership Philosophy. You will want to continue to emphasize and establish clarity on the culture you expect. There are probably at least four committees you want to establish. These should be staffed with a cross-functional group of attorneys and legal professionals and are opportunities for high-potential individuals to display their leadership abilities:

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1. A Strategic Long-Range Plan committee to draft a plan for the entire department;
2. A standing diversity committee to establish a departmental diversity policy and be the sounding board to the general counsel and the leadership team on diversity issues, events, and opportunities;
3. A pro bono committee to establish a departmental pro bono policy and provide recommendations to the general counsel and leadership team on pro bono opportunities; and
4. A technology and knowledge sharing committee to make recommendations to the general counsel and the leadership team on how technology can be used to share information and drive efficiency in the department. This committee, or another, can rationalize department memberships (GC Roundtable, PLI, ACC, etc.) and evaluate appropriate bar memberships for lawyers.

Conduct two surveys: (1) an overall engagement survey and (2) a client survey.

Most corporations have engagement surveys, and, if so, the leadership team should review, identify themes, and look for ways to improve engagement. There is also significant value in requesting input from your clients. A client satisfaction survey can be distributed to show your clients you value their input and even at this point, is a baseline for future improvements.

> **Make sure to “wander around.” You need to be present with all levels of your team, take an interest in what they are working on and thank them for all their great work. Meet with them, have coffees, and ask for their input and suggestions (often, I would have four “coffees” a day).**

Finally, in the first year, you want to establish at least quarterly meetings with the entire department to outline key initiatives, the work of the various committees, significant accomplishments, and take questions.

Make sure to “wander around.” You need to be present with all levels of your team, take an interest in what they are working on, and thank them for all their great work. Meet with them, have coffees, and ask for their input and suggestions (often, I would have four “coffees” a day). Attend events or meetings when requested by your team. If your company provides a program for “spot bonuses” — everyone who receives one, at any level, should get a personal handwritten card from you thanking them. And no “form” notes or cards, you need to recognize what they did, why it is valued, thank them, and indicate you need their continued help. I spent many hours in the evening writing these cards. My wife would ask me, “What are you doing???” Never, ever, underestimate the value of positive reinforcement. I had one entry-level employee tell me when I met her that she always carried my card in her folio to remind her of that value she had added to the company.

Efficiency and budget

As a service organization, the ratio is often 10 to one. For every dollar we spend, the business has to go out and find 10 more! Our obligation is to continue to reduce all administrative costs. I would argue the legal team's spend, once appropriate, should be flat, year over year over year. If your team likes pay increases, we need to find between three percent and five percent in efficiency improvements, year over year over year. And outside counsel wants pay increases too. So, we need to find ways to use new creative approaches, processes, and distributions of work to meet all these challenges. You clearly want to understand the percentage of spend in various areas such as inside/outside, training/development, memberships, etc., and compare them to benchmarks. I have always tried to hit a target of inside expense to outside counsel of about 60 to 40 percent and one year got close to 70 percent. But these broad averages depend upon the legal needs, your responsibilities, and any particular high cost issues.

The entire legal team should regularly review (probably monthly) the annual budget, spend against the budget (annualized), and work proactively to address any gaps. Key metrics should include the aggregate legal expenses of the company, outside counsel spend, diversity spend, and the spend with the major law firms retained.

Don't forget your personal development

You may be new to the area and/or the industry. With this in mind, there is great value in reaching out to and meeting with other general counsel in the area and industry. The ACC CLO Club during the ACC Annual Meetings, ACC local chapter events, and the ACC Annual GC Summit are also good opportunities to meet GCs. Almost all will welcome lunch and it is amazing the pointers they can give you based upon their knowledge and experience. They also can become a sounding board and friends for you on challenges you may be facing and can potentially be allies on industry issues or local legal challenges.

I am still close friends with the GCs of The Hartford, CIGNA, Prudential, and Aetna. It is easy to become insular and focus on your company and department but becoming a member of nationwide general counsel groups is valuable. This will give you a broader perspective of legal issues and trends through the country and world faced by all in the legal profession. They also can identify and raise issues you may not have seen so you can proactively develop steps to position your company before they happen there. Ask for advice and input. Stay connected with those you meet.

Remember 80 percent of success is just showing up. There is value in participating with your local bar groups. You are likely to be asked to be a speaker on a panel or at an ACC event. Do it. As should all your direct reports. This is another great way to develop a network and one of the best ways to learn is to teach. To show you value diversity and inclusion, you, and your leadership team, must show up at local and national diversity events. This cannot be delegated and requires personal attention and attendance.

Final thoughts

You have a great job. It is challenging and exciting. You will learn a tremendous amount. It has ups and downs. With the GC position comes the potential to add huge value to your company and to individuals with whom you work, sponsor, and mentor. It takes a lot of work and there are many moving pieces. But be very careful not to get bogged down in the legal issue of the day and not address all of the above — in your first year. I guarantee it will make you extremely successful, open doors for you in the future, and be very rewarding. Send me a note if either you need more detail or have followed the advice and found it successful. And good luck!

Internal governance

For more of Mark Roellig's leadership lessons, read "The Practitioner's Guide to Building Efficient Board and Committee Processes" at *ACC Docke*t's website: accdocket.com/articles/the-practitioners-guide.cfm**.**

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ACC EXTRAS ON… New roles

ACC Docket

What I Needed to Become GC (Nov. 2019).

7 Tips for Women New to In-house Law (March 2019).

How to Transition from In-house Counsel to Startup CEO (Feb. 2019).

ACC HAS MORE MATERIAL ON THIS SUBJECT ON OUR WEBSITE. VISIT WWW.ACC.COM, WHERE YOU CAN BROWSE OUR RESOURCES BY PRACTICE AREA OR SEARCH BY KEYWORD.

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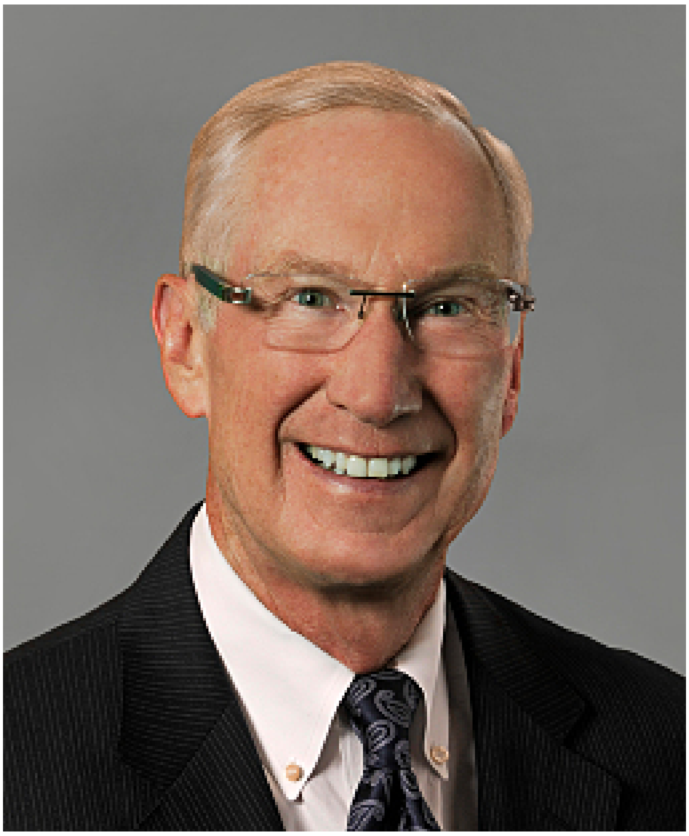

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