

Defining the General Counsel's Role in CEO Succession Planning

Corporate Counsel

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The abrupt [departure of Citigroup CEO Vikram Pandit](#) this week may have come as quite a surprise to those outside the bank's boardroom. But the company's CEO switch provides a timely reminder that while all eyes are on the directors and the chief executive during a high-profile transition, a company's general counsel has a key role to play in succession planning.

Boards have a vital oversight responsibility for succession planning. "That is the board's job," says Donna Dabney, executive director of The Conference Board Governance Center. "They have to choose, select, and evaluate a CEO."

But they are not alone: the general counsel can help facilitate the board's efforts in fulfilling that obligation. "The role of the general counsel in CEO succession planning is to make sure the board has processes in place that are adequate to address it," says Dabney, who previously served as the corporate secretary of Alcoa Inc.

That means making sure that regular evaluation of the CEO's performance is on the board's agenda, and that directors are reviewing potential candidates in the background, too—on at least an annual basis. The other benefit of doing this every year is "that makes it a routine, normal conversation," rather than something that makes executives fear for their jobs, Dabney says.

Facilitating that process isn't always easy. "A good general counsel has to be quite a diplomat at times," says Bill Ide, former general counsel at Monsanto. Now a partner at McKenna, Long & Aldridge in Atlanta, Ide chairs the advisory board at The Conference Board Governance Center, and is a director at Albemarle Corporation and AFC Enterprises as well. Board members may need some guidance on how the process should play out. "They want to know, 'Am I overstepping my boundaries, or is this what I'm supposed to do?'," says Ide.

Likewise, CEOs could also need coaxing as the board develops a list of strong contenders to fill a suddenly vacant seat at the top. "Some CEOs would be not comfortable with that, historically," Ide says.

Nevertheless, says Ide, "the GC needs to surface these issues and say, 'Here's best practice, and here's why.'"

That could be the case, too, if the board tries to exclude the CEO from the succession-planning conversation. "This is not a process that should occur in isolation from the current CEO," says [Wachtell, Lipton, Rosen & Katz](#) partner David Katz, who wrote about the topic earlier this year for CorpCounsel.com sibling publication the [New York Law Journal](#).

"Sometimes the role of the general counsel is to make sure the CEO is playing the appropriate role" in discussions about succession, Katz adds.

That's all of the work that goes on before a leadership change. Once a new CEO is actually taking over, the transition can also be a test of the GC's relationship with the board.

"There are two quite different scenarios," says [Ben Heineman](#), the former general counsel of General Electric Company, who is currently a senior fellow at Harvard's Law and Kennedy Schools and an [occasional contributor to *Corporate Counsel*](#).

If the general counsel doesn't have strong relationships with directors, then the GC's own job "could clearly be at risk" once a new CEO is in place, Heineman says. On the other hand, if the GC does have a good relationship with the board, they can be seen as essential to the transition process. Likewise, the board can tell the CEO that while it's up to him or her to choose their own leadership team, the board thinks highly of the current GC.

At the same time, a general counsel will need to build trust with the CEO during the transition, says Susan Snyder, a senior principal at the management consulting firm Hay Group. So a GC's communication and interpersonal skills will come to bear as the new CEO faces the scrutiny that comes with stepping into the role. "It's really hard emotionally for a CEO," says Snyder, "and a great general counsel will understand what the CEO is going through."