



Helpful  
tips

# TIPS FROM A GENERAL COUNSEL: WHAT I WISH I HAD KNOWN AND WHAT I'M GLAD I KNOW NOW

SHAWNTE M. MITCHELL

In 2016, I was given the wonderful opportunity to serve as general counsel (GC) of a newly formed publicly traded company. I had been dreaming about becoming a GC for several years and thus had been actively preparing myself for the moment when the opportunity would present itself. In addition to volunteering for various assignments that would give me legal experiences that would qualify me for the job and ensure that I would get exposure to those who might be in the position to give me a shot, I also engaged a great executive coach who prepared me for the intangible aspects of the job. Now that I have been in the job almost three years, there are a number of things I learned (or confirmed) that I believe help make for a successful GC.

## It's All About Relationships

As my career has progressed, the importance of relationships and relationship building has become increasingly prominent. The first relationship that **MUST** be cultivated is the one with your CEO. As the GC, you want your CEO to think of you as his *consigliere*—when he (or she, although my CEO is a he) has a pressing question (whether legal or not), you want your CEO to think of you—at least within the top three!—when looking for someone to turn to for advice. Being part of the CEO's brain trust will give you the best opportunity to shape the direction of the company and help the company avoid legal mistakes before they happen. Your next important relationship is with the CFO. The finance and legal functions are critical to the operations of an organization. The initiatives can either be substantially promoted or hindered by each. Not only do they collaborate on basic activities like securities filings, but both functions touch every aspect of the business. I am finding that I can be much more effective at my job by having a close relationship with the CFO—a relationship that includes regular discussions seeking input on various topics, such as

transaction terms, strategic opportunities, and next steps. Having these regular discussions further solidifies your ability to opine on matters before final decisions are made and to help guide the strategic direction of the organization. This same philosophy extends to other members of the executive team and even members of the board of directors.

These relationships are built by sharing your thoughts and opinions about the business as well as by sharing personal details about yourself. You will need to get out of your office and have conversations about nonlegal topics. Instead of eating your lunch or drinking the office coffee at your desk, invite your CEO or CFO (or other executive team teammate) out for lunch or for coffee. Make yourself a bit vulnerable by sharing details about your family, your friends, your dreams, and your goals. I'll admit that this can be difficult. It has definitely been difficult for me because I am a private person by nature. I must be very intentional to open myself up in this way. I should also caveat my previous comment by acknowledging that this type of vulnerability might be difficult because the culture of your organization

or the personalities of the individuals involved may make these types of disclosures feel dangerous. You have to assess all these factors to determine the type and level of vulnerability that will work for you in developing the personal and professional relationships you want.

While you are getting out of your office to build relationships with your teammates at your company, don't neglect the relationships that need to be built and maintained out in the community. I know that we have all been to an obscene number of seminars and conferences that have stressed the importance of networking, so I won't belabor the point. All I will say is that success and growth in your career will depend on the external networks that you cultivate over time, and this can only be done by getting out of your office and connecting with people.

### **Be Decisive and Honest About Your Personnel**

An important lesson that I have learned is to quickly assess the skills of the senior talent within your organization and be ready to make any tough personnel decisions as soon as possible. Our days are very busy, and the business and legal needs of your organization are likely moving very fast and changing rapidly. You need to have a legal team full of all-stars, whether they are all-star role players or highly ambitious individuals who ultimately want to be GC themselves someday. You don't have the time to be monitoring the work of senior lawyers to ensure that the business is receiving the best legal advice. If senior members of your team aren't getting it done, let them go as soon as possible. I know you might be inclined to give individuals the benefit of the doubt or to take the position that you will just train the individual in the areas of weakness. More often than not, it is best to simply cut your losses and try to replace the individual with someone who is a better fit with the needs of your organization.

Don't get me wrong—I believe that an organization should have training available for all of its lawyers and should provide junior team members with sufficient guidance and supervision as they learn the organization. I am also highly supportive of hiring people with potential who can grow into a position. But a sitting GC does not have the time for hand-holding and definitely should not have to babysit individuals in senior roles within the department. The senior lawyers within your organization either should be subject matter experts or should be able to figure out how to learn a new topic and execute on objectives without a great deal of oversight. If you recognize that a senior person on your team has difficulty in this area and requires a great deal of supervision and guidance, you should determine whether this person can actually meet the organization's needs or whether it makes sense to exit them (which should then be done as quickly as possible).

### **Even Though You Are a Lawyer, You Still Need to Understand Numbers**

Once you sit in the GC chair, you no longer have the luxury of just being an expert in the law. You must also care about and become intimately aware of all aspect of the business. This means that a good portion of your time should be spent thinking about ways that the business can be improved, ways that you can save money for the organization, and even ways that you can make money for the organization. With respect to business improvements, you shouldn't be afraid to think outside of your lane—meaning, you should not shy away from offering your thoughts and participating in the discussions that have nothing to do with legal affairs. If you are at a tech

company, you should be thinking about software design. If you are at a pharma company, you should be thinking about the R&D projects underway and whether the scientific methodology makes sense. I am not suggesting that your opinions should supplant those of the experts in the room. However, your opinion is a valuable one, and more importantly, you are expected to contribute in the consideration of these matters. You are no longer just a lawyer but now a business lead and strategist.

In addition, you should *always* be looking for opportunities to save money. This might take some creative thinking, particularly because major initiatives that the company undertakes often will require outside counsel assistance that can be extremely expensive. However, it is a must if you would like to be taken seriously. You should look for ways to lower your outside counsel spend using all the tools at your disposal, including asking counsel for creative fee structures like flat fee billing, expense caps, and discounts. And for those of you at small companies and startups, don't let the size of your company deter you. You don't have to be Walmart to get advantageous fee arrangements, but you might have to be open to getting legal services from smaller firms based in smaller markets or be open to utilizing alternative legal services providers. These options will give you access to seasoned and experienced legal professionals at a fraction of the price.

While looking for savings, it is worthwhile to contemplate how you make money for the business as well. This is a tough thing for a cost center to do but if you identify opportunities to make money for the business through your legal work and can clearly demonstrate that the credit for the revenue belongs to the legal function, you will be highly valued.

### **Now the Legal Stuff**

Having said all of that, I would be remiss if I didn't share some thoughts about the legal aspects of the job. First, for every major transaction completed, always have handy (at your fingertips) a copy of the full transaction document and a two- to three-page summary of the key terms. Your business colleagues will ask about the documents at random times, and for efficiency, being able to quickly grab the contract will be helpful. Having a copy of the full document will mean that you are likely referencing the same document all the time, therefore lending itself to your personal annotations that will make future referencing easier and easier. Having a cheat sheet of key terms will allow you to answer easy questions quickly and apply the terms of the agreement to various discussions in real time.

As GC, you are also going to want to keep it brief—you are there to sift through all the details and provide *concise* advice. Your business colleagues do not want to hear all the details of every legal option and they do not want a long and drawn-out discussion of the various laws and regulations that led to your recommendation. They want a summary of the best options and then a recommendation. Sometimes the lawyer will provide all this detail in an attempt to help our business colleagues understand the issues and the risks, but more often, attorneys provide this information simply to show off their intelligence or to cover themselves from the possibility of making a mistake. When this happens, it can backfire because their business partners get lost in all this extra information and are still unequipped to make a decision. The CEO needs a GC who can take all the laws and regulations, apply them to the facts, and then

*continued on page 54*

ingful, long-lasting relationship with not only your contact in legal, but also other key stakeholders. Once your contact is ready to “move the work,” it is an easier sell. By taking the steps outlined above, you would have become a known quantity.

### **TIP #3: Do Not Send the “You Have Been Sued” Email**

Please don’t send the you-have-been-sued email to your in-house contact. Honestly, nine times out of 10, they have already received this email—repeatedly. In addition, there is a little company called the Corporation Trust Company that probably has already delivered this glorious news. And most times, we aren’t happy about it! Instead, use this as an opportunity to provide value without the expectation that you will get the business. What insight do you have that would be helpful as your client faces this new pending matter? Make sure you are providing insight regarding how you are uniquely qualified to handle the matter, for example: (1) you have faced this plaintiff’s attorney in the past; (2) you have handled a similar matter; (3) you know the judge; (4) you want to refer your contact to another firm or attorney that you believe would be an excellent resource; or (5) you can provide an outline of your initial thoughts about how you would approach the matter. This is certainly an opportunity to potentially get work, but you have to distinguish yourself from the competition.

### **TIP #4: Create the Opportunity**

Even better than waiting for the opportunity, create it. Again, by truly knowing your client, if you have recently recognized that your client is growing in a particular aspect of their business, identify any hot issues where you can assist. Think about how you can cultivate the relationship while providing insight on an issue they may not have analyzed. Opportunities can come in many different forms; you just have to be creative and prepared.

---

### **Tips From a General Counsel** *continued from page 50*

provide a recommendation. The really good GCs will then take this information and assess the impact on the immediate, midterm, and long-term needs of the business (and various stakeholders, such as shareholders and employees) and differentiate between the best legal answer and the answer that works best for the needs of the business.

Lastly, create a list of the top legal resources (individuals and checklists) that you would use for various issues and keep it easily accessible. There will be moments when you need a quick answer about a subject matter with which are you unfamiliar. Most often, those quick questions will have short answers that don’t take much time to address. However, there might be times when those questions present themselves due to a crisis or significant event that will take longer to address. In those moments, you likely will not have time to vet your legal counsel to find those best able to assist with your issue within the allotted timeframe. However, if you have compiled a list of go-to legal counsel to address these types of difficult situations at the last minute, you will minimize your stress and make a great impression on the CEO and the board because you are able to more efficiently and quickly address the issue at hand without any delay.

### **Final Thoughts**

In summary, serving as GC is a rewarding, challenging, and (very importantly) fun role to have. Not only does the role provide intellec-

### **Tip #5: Show Your Creativity—GCs Love Creative Fee Arrangements**

Every GC has had the dreaded conversation with their finance lead regarding fluctuations in the legal budget. Face it, the unpredictability of “bet the company” litigation, class actions, or even estimating the number of state or federal agency charges or investigations from year to year can often be a shot in the dark from a budget perspective. Think about whether there is a creative way you can help the legal department achieve its budgetary goals. Your ability to work with in-house counsel to lend some level of predictability to the legal litigation spend—perhaps by proposing an annual flat fee arrangement or some other creative arrangement—can be a true value add. Oh—and it will definitely help your GC score an invitation to the finance team’s year-end closing party.

At the end of the day, cultivating partnerships in the legal and business world comes down to the value of relationships. It is human nature to want to work with people who care about you personally and your business. Developing true connections takes time and real work—but the rewards professionally and personally can be long-lasting. ☺



*Michaune D. Tillman is general counsel and vice president, human resources and compliance, for WAVE and also serves as secretary to the WAVE Board of Directors. Tillman was previously the deputy general counsel, vice president, and ethics officer for Ricoh Americas Corporation. © 2019 Michaune D. Tillman. All rights reserved.*

tual stimulation, but it also gives you the opportunity to flex different muscles you may not have developed and, sometimes, did not know should be developed. I offer the thoughts above in the hopes that they will provide current and aspiring GCs with more tools to assist them with being successful and provide outside counsel with additional insight into the challenges that GCs face. ☺



*Shawnte M. Mitchell, S.V.P., general counsel and corporate affairs of Aptevo Therapeutics Inc., an exciting publicly traded biotech company based in Seattle, is a seasoned senior executive with over 15 years of experience helping companies increase organizational value. In her role, Mitchell serves as a member of the executive leadership team and as an adviser to the board of directors. She leads a team that provides legal and human resources support for all the offices of the company. She provides strategic legal advice in a variety of areas, including mergers and acquisitions, corporate governance, health care regulations, and product development. © 2019 Shawnte M. Mitchell. All rights reserved.*