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The 12th Teammate — The Role of the Sports GC

Sports and Entertainment





CHEAT SHEET

- ***More than just the guardian of the corporation.*** The general counsel is capable of reviewing contracts and providing risk-management oversight, but their most critical function is trusted business advisor.

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- **Walk the talk.** Lawyers need to showcase their solid understanding of the sports industry, and then talk, think and act like a true business person in meetings.
 - **Think for the future.** While the CEO and CFO may never feel it is the right time to bring a lawyer in-house, it will ultimately be prudent and more cost effective to do so.

Throughout the past decade, most professional sports teams and franchises have hired and retained a general counsel to oversee their legal and business affairs. In fact, in the world of major professional sports, many CEOs and team presidents are realizing that those legal needs are increasing substantially, and many franchises now have multiple lawyers on the payroll to handle team, league, facility and other related issues. In the smaller leagues/teams, and in many small/mid-sized companies across a variety of industries, those legal roles rarely exist. It is a scene that is constantly played out by CEOs of smaller public and private corporations (not just in sports), as CEOs evaluate the merits of adding a lawyer to the management team of their organization or look to outside counsel on an as-needed basis while attempting to handle matters internally.

Typical Scenario: A mid-sized company is experiencing significant revenue growth. It is poised for more growth, including the possibility of international expansion and/or acquisition opportunities. The legal function is overseen by a combination of the CFO and/or outside counsel on an as-needed basis to review contracts or the occasional pressing issue. While the legal spend continues to increase, the CEO still feels that there is no need for a general counsel (GC) and cannot cognitively justify the return on investment. After all, the company does not have litigation, the intellectual property needs are minimal, and there will always seem to be a need for hiring outside counsel. This way, the CEO or CFO figures that she can continue to manage the organization's fixed legal costs down and maintain maximum flexibility.

A good GC, however, is more than just the “Guardian of the Corporation.” While typical GCs do things like draft, review and negotiate strategic transactions and contracts (creating efficient processes, procedures and consistency along the way); deal with employment issues; handle corporate and board governance matters; monitor and protect IP assets; and ensure compliance with federal, state and local laws and regulations, a critical function of the GC is to serve as a trusted business advisor to the management team. Since the GC is not deeply involved in the primary business areas, they have the ability to look at matters objectively and can provide an unbiased opinion on the particular business strategy, which is extremely valuable. This serves as an effective check and balance for the senior leadership team. According to David Cohen, the general counsel of the Tampa Bay Buccaneers of the National Football League (NFL), “a good general counsel is the proverbial 12th man in every department of the organization. A GC is one of the few executives that touches every primary area of the business. As such, a good GC can provide advice that fits within the big picture of an organization.”

The GC's job is to make the CEO see them in a different light — a more business-oriented light — much like the CFO who is perceived as capable of reviewing contracts and providing risk-management oversight in addition to finance management. If the perception remains that the lawyer will prevent sales, stifle creativity and drown the organization in policies, procedures and unnecessary details, then it is easy to see why the CEO's view seems justified.

Cohen sees the general counsel “as a flagperson — detouring their clients around risk, not as a stop sign.” Larry Silverman, the former general counsel for the Pittsburgh Pirates of Major League

Baseball, shares this view and explains, “a good GC rarely, if ever, says ‘No.’ Rather, he or she attempts to modify the program in ways that allow the business people to meet their goals while minimizing the organization’s legal risks at the same time.” In fact, since a good GC typically has a firm understanding of the business objectives, they can creatively find ways to legally navigate any potential impediments to these business objectives.

Bill Heller, the general counsel for the NFL’s New York Giants states that, “the goal of an in-house general counsel is best characterized as ‘how to get to yes’ while minimizing legal risk. As someone who served the Giants for 10 years as outside counsel before joining the Giants as its general counsel, the leap in understanding this client from the inside also has increased the value of the legal insight that makes deals work while protecting the team from unnecessary risk.” Silverman further adds that, “more often than not, the marketing officer or CEO agrees that the ‘changes’ made by the GC are workable and, in some cases, actually improve the overall program.” Once these business people realize that they can accomplish their business objectives and reduce their legal risks at the same time, they begin to have a greater appreciation of the GC’s value so that the next time they engage the GC in the initial process.

This same scenario is not unique to sports organizations, and actually plays out in offices of many small and mid-sized businesses across the United States. In-house lawyers can understand and help their organization’s sales force and suppliers, or work together with marketing and e-commerce department leaders to move the organization in a positive direction. While having a lawyer present in these discussions doesn’t seem to initially make sense to CEOs, there is little doubt that added value is provided.

Convincing the CEO or team president, however, that a GC can be a valued business advisor, and that the organization would benefit by having a GC immediately on the payroll has been a challenge. For that reason, lawyers need to showcase their broader business and legal backgrounds, their solid foundation in the industry (in this case, sports), and then talk, think and act like a true business person when they sit in those meetings. The chief marketing officer, or other business/sales folks or operational team leaders are charged with bringing in the revenue, but the GC can still be an important part of that process, especially if they truly understand things like digital media, and how to market to the core demographic (whether it be through promotions and/or e-commerce initiatives). These are the characteristics that CEOs just don’t see in lawyers. A practical way of doing this is by creating relationships with different business unit owners and actually investing time in understanding their departmental priorities and what it is that the department actually does, be it human resources, marketing or something else. Secondly, lawyers need to get a “seat” around the table where important business decisions are being discussed and decisions are taken. According to Heller, in the NFL, its teams are facing increasing demands to grow fan satisfaction through in-game experiences, which usually focus on digital media. “Understanding the issues arising from the use of digital media to enhance fan engagement while also addressing the issues of data privacy and compliance with FTC and state privacy laws is a balance that only an in-house GC can understand from the client perspective.”

General counsel tend to be active in their communities. Many sit on boards and dispense strategic advice to various volunteer organizations. They are clearly capable of being business-minded and strategic. Plus, they know how to multitask, prioritize, execute and just get things done for the benefit of their respective organizations.

The 10 Top Traits of an In-house Sports Lawyer

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1. **Know your business** — It is extremely important for you to become an expert on all facets of your organization's business. It is one of the biggest advantages the in-house lawyer has over their outside peers — their unlimited access. By truly understanding the business, an in-house lawyer can become a more effective and insightful problem-solver and sought-out advisor.
 2. **Connect with people** — There are many benefits to regular meetings or lunches with your coworkers where you really get to know them, and show them that you are a team player who understands their daily trials and tribulations. These internal connections will enable you to enter key conversations within your organization much earlier in the process (where you can still impact the direction the organization will ultimately take on a particular issue). Often, no one invites legal to a meeting unless they feel compelled to do so, but with the equity built up from these business relationships, the possibilities for you to otherwise be engaged in these meetings increases, giving you the chance to learn about and proactively influence these new business initiatives while they are still developing.
 3. **Find the metrics that matter** — CEOs and CFOs measure their overall success by such things as revenues and expenses. There are tangible and objective results they can use to measure success (e.g., ticket sales, attendance figures, digital media values and memberships). As the head of a cost center within your organization, there is a need to speak to leadership in their own currency. Constantly measuring and defining the value of your legal department in terms they can easily understand and appreciate should be one of the core principles you bring to the position.
 4. **Use your network of resources** — Being able to know where and how to get answers to pressing issues quickly and efficiently is so important. Typically, the wheel has already been invented, so it's just a matter of finding which of your colleagues in similar positions in other organizations (even those that have nothing to do with sports or entertainment) have ever dealt with the particular issue, and more importantly, can give you good, useful guidance on how to best address it. Just like a CEO touts the value of their rolodex, so should the organization's legal personnel.
 5. **Diversify your knowledge** — Okay, so while you don't need to know everything, it really does help if you know a lot, and that you continue learning and evolving as you develop professionally. In this position, a diverse range of legal disciplines will come across your desk. From real estate to employment, from IP to immigration, from drug testing to governance, together with all sorts of agreements and litigation management, there really does need to be a strong foundation of general business/legal knowledge in these diverse areas of the law so that you are able to spot the issues and have an intelligent gut reaction as to how the analysis will ultimately turn out.
 6. **Remain flexible** — Being able to adapt to different demands and expectations (whether through leadership changes or otherwise) is extremely important. There is also so much pressure for everyone to perform and evolve on a daily basis. Given such a dynamic environment, there will be a constant need for openness to alternative solutions to risk mitigation and management. There are many ways to peel a banana, and sometimes, doing it the exact same way might not always create the ideal outcome.
 7. **Manage people and expectations** — If you manage an entire department, or if you only have a few direct reports, it is important to set the right tone, create some clear goals and expectations, and then manage the results in accordance with those goals and expectations. By engaging your team, and getting their buy-in on department objectives, they are more likely to have increased job satisfaction and performance. It is also important to manage expectations (both internal and external).
 8. **Creativity** — in everything! More specifically, creativity in engaging with outside counsel, or

innovation when it comes to cultivating the tools you will need to succeed (especially when you are dealing with limited resources). Finding new ways to relate to your coworkers or report to your superiors, and the creation of a trust where everyone is encouraged to think outside the box and truly explore creative and collaborative means towards accomplishing organizational success.

9. *Brevity goes a long way* — Lawyers tend to overanalyze the issue, explain the possibilities, and show everyone that they have done their due diligence. However, this generally does not resonate with your non-lawyer colleagues. Mostly, they just want a yes/no, stop/go, right/left legal response to the issue they are facing on that particular day, and not some long-winded email carefully detailing all of the possible disclaimers.

10. *Bring the passion* — As mentioned above, these jobs are typically where one's personal passion and professional pursuits come together. The positions are limited and the competition for them is relatively fierce. Let your colleagues see that you truly care and want to see the organization succeed as much as they do. Inspire them! It is a privilege to work for these organizations, and they are typically led by very passionate and emotional leaders who like to surround themselves with intelligent and confident advisors.

Let's look at it from another perspective. The GC needs to show the CEO that she should be considered part of the organization's foundation. Every organization or home has a foundation. If one were to purchase a home, one would need to do their due diligence to ensure that the home is fundamentally sound. While the frills (or bells and whistles) of the property initially generate all the attention, if the foundation of the home is not solid, those issues or problems will eventually come to the surface. One may not visibly see the cracks in the foundation (e.g., a toxic corporate culture, poor business practices or uncalculated risks), or be willing to incur the costs and expense to make the necessary repairs at that time. At some point, however, those recurring issues will need to be handled at a significant expense. General counsel that are completely embedded in the fabric of the organization are ultimately vested in its success and will deal with an issue proactively before it becomes an expensive issue that causes damage to the company's reputation.

In fact, general counsel are often intertwined with driving revenue, and are integral in the sales process by structuring deals smartly and efficiently. Because they are in-house, they are more likely to be comfortable taking on risks that are necessary to propel the organization forward in a calculated manner, or at least bring them to the attention of the CEO or CFO so they can prepare and plan accordingly.

The GC can do this effectively because the organization is the only client. As a result, there is an understanding and appreciation for the corporate culture and an awareness about institutional knowledge and history. Further, the GC has a global view of the organization and understands how each department is interconnected. Frank Pulice, general counsel for the Indiana Pacers of the National Basketball Association (NBA) relates to these roles. Like Heller, he initially served as outside counsel for the Pacers for several years before being brought in-house. At first, he thought he had a grasp of the legal issues impacting the organization, but the more integrated he became in the corporate culture, the more opportunities he realized were available for his input, and the more the work and job responsibilities began to pile up.

Part of the GC's value is the synergy and personal relationships developed with the internal teams to understand their respective business goals and concerns, and how they fit within the organization's

overall strategic goals to ensure a stronger alignment. By engaging with each of the various departments, they can bridge gaps, eliminate redundancies, enhance efficiencies and add value to the overall bottom line. Further bolstering these shared objectives is the fact that the GC's compensation is typically tied to the overall success of the organization through the alignment of personal compensation incentives. Outside counsel and outsourced legal models just cannot achieve the same results because they may have different incentives, multiple clients, billable hour restrictions, limited relationships and limited influence with internal personnel and different access to the management team. The value discrepancies are enormous.

How many CEOs get really excited about risk management initiatives that save the organization money? Not many. The GC can pinpoint why it's important to track that metric and reduce those claims by showing how an average claim translates into a cost to the organization and then going through the analysis of how much revenue needs to be generated in order to cover that cost. It should capture the CEO's attention (and make a friend of the CFO). Even the purely legal metrics showcase the undeniable value of the GC.

If you took the GC's annual compensation (excluding any equity, where applicable) and convert that number to the dreaded billable hour, it will easily amount to the lowest cost the CEO could find in the marketplace. For example, if the GC's total compensation reached \$300k, it would equate to a billable of less than \$150 per hour, which translates into higher quality at a lower cost. If the CEO sought out an experienced lawyer, those same total legal dollars (typically double the \$150 hourly rate) would likely result in only several months of work without any of the benefits noted above. While the private practice lawyer may have heightened industry knowledge or better access to legal resources, especially given their breadth and exposure to many more issues throughout the industry, the GC still provides better value because she has the business mindset and broader knowledge base, and the GC can always seek out this expert knowledge, if necessary, when the circumstances require it.

For another perspective, include the metrics of costs per contract, or costs per claim, or any other applicable metric for the respective organization and the case for the GC becomes clearer. Yes, the legal department is a cost center, and who wants to incur the legal cost of a GC's salary? But if those same fixed dollars come with a myriad of other tangible and intangible benefits, along with the peace of mind of knowing the foundation of the organization is secure, it seems like a safe value proposition.

The flip side is that some contracts do not get reviewed by a lawyer or that certain business initiatives are not properly evaluated from a legal standpoint, which can create catastrophic exposure for the organization.

The most common concern about this analysis assumes that the organization requires yearly legal services costing in excess of the GC's annual salary when, in reality, it may not. Unfortunately, most CEOs don't put a value on their total legal need because they may not always see it. They may view the CFO as a competent enough issue-spotter or risk manager when it comes to all contracts but the general counsel is clearly better trained to identify additional potential areas of exposure than the CFO. The GC will likely have a much more proactive and beneficial impact in other ways that may be difficult to measure. By the time the organization reaches out to find a lawyer for a particular issue, it is likely too late — the organization is either reacting to the issue or the outside lawyer is only focusing on one specific issue. The ramifications of any decision could impact the organization in a variety of other ways that are not being properly contemplated by the senior leadership team. Also, these organizations (like the business sector as a whole) can vary the compensation package for their

general counsel. Typically, the general counsel (and legal departments) of bigger organizations generate greater compensation packages than those of smaller organizations with lesser annual revenues. In the corporate world, CEOs tend to look at the legal cost as a percentage to overall operational revenue, and the analysis for these organizations when contemplating legal costs should not be different. In short, while the CEO and CFO may never feel that it is the right time to bring a lawyer in-house, it will ultimately be prudent and more cost effective for the CEO to have the general counsel at his or her disposal at the onset.

The current trend in the sports industry seems to justify this analysis. The legal departments of more and more sports organizations continue to grow. Only 10 years ago, most sports organizations did not have a general counsel. That trend has completely reversed. More and more CEO and team presidents of professional sports teams are learning the value of having general counsel. The GCs are now fighting for more prominent roles within the leadership of the teams. In many sports organizations, the legal departments are even growing to more than one attorney plus support staff. The focus is for general counsel to find more and more ways to show value to their organizations through program improvements, risk mitigation and finding more organizational efficiencies that will result in maximized revenues.

In the end, it is the decision of the CEO or team president. According to Cohen, “the best team presidents and CEOs know how to use their GC wisely, and the best GCs make things easier for the entire leadership team.” It is the CEO’s decision to communicate with and involve the GC in the strategic management of the organization. Personalities have to mesh, and the CEO needs to understand that good GCs are more than legal issue-spotters and problem-solvers; they truly can and do serve a crucial business purpose and are part of the foundation of any successful organization.

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