

# Strategic Planning for In-House Counsel – Updating/Creating a 1-Year and a 3-Year Plan for Success

First Thursday CLE Program

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# Introduction

- **Legal Departments are so often buried in work that it's hard, if not impossible, to pause and contemplate strategic projects. Indeed, in a FindLaw Corporate Counsel survey, more than 40% of in-house counsel said they were typically too busy “fighting fires” to achieve long-term goals.**
  - **Here are eight steps to create a straightforward but purposeful plan that will fit on one page, so that in the year ahead, you can easily reference and execute it – then measure and report on your success.**
  - **We will review these through the ethical rules and guidelines that apply specifically to corporate and in-house counsel under the ABA Rules of Professional Conduct, the Oklahoma Rules of Professional Conduct and the Texas Disciplinary Rules of Professional Conduct.**
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# Ethics Responsibilities Specific to Corporate and In-House Counsel

- The preparation of an action plan for in-house counsel must be viewed in the context of the ABA Rules of Professional Conduct, the Oklahoma Rules of Professional Conduct and the Texas Disciplinary Rules of Professional Conduct. The rules that are most involved in action planning are:
  - 1. Who is the client? Though you interact daily with senior management and others, an in-house lawyer's client is the company and not any one individual. This can lead to some awkward moments, especially during internal investigations where you must make it clear to the individual that you represent the company not them, usually through an "Upjohn" warning. It's also easier to mix business and legal advice, jeopardizing the attorney-client privilege.
    - Under Rule 1.13, "[a] lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents." Thus, an in-house lawyer's client is typically the organization itself.

# Ethics Responsibilities Specific to Corporate and In-House Counsel

- The rules that are most involved in action planning are (continued):
  - **2. Unauthorized practice of law.** Working in-house means it's sometimes easier to forget to renew your law license, take required continuing legal education courses, or ensure that you have complied with the state licensing requirements (i.e., some just require a valid license from any state, others require some type of license from that state).
    - **Under Rule 5.5**
    - (a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
    - (b) A lawyer who is not admitted to practice in this jurisdiction shall not:
      - (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
      - (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.
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# Ethics Responsibilities Specific to Corporate and In-House Counsel

- The rules that are most involved in action planning are (continued):
  - 3. Outsourcing legal work. Legal departments often hire non-law firms to provide services like document or due diligence review, contract preparation, and legal research.
    - Under Rules 5.1 and 5.3, you are responsible for their work product and for ensuring they comply with the ethical rules.
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# Ethics Responsibilities Specific to Corporate and In-House Counsel

- The rules that are most involved in action planning are (continued):
  - **4. Duty of competence.** In-house lawyers have a duty of competence under Rule 1.1. For example, you must be technologically savvy, e.g., e-discovery or cyber-security and know when you must go to outside counsel to deal with a legal question. Further, malpractice claims against in-house lawyers are on the rise.
    - **Rule 1.1 Competence - A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.**
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# Ethics Responsibilities Specific to Corporate and In-House Counsel

- The rules that are most involved in action planning are (continued):
- **5. Reporting misconduct.** Rule 1.13(b) also causes tension as in, under the right circumstances, you must report to a higher authority when the actions of officers or employees violate a legal obligation to the company, render the company responsible for violating a law, or are likely to result in substantial injury to the company.
  - **Rule 1.13 Client-Lawyer Relationship**
    - (a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.
    - (b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances to the highest authority that can act on behalf of the organization as determined by applicable law.

# 8 Steps to Create a Purposeful Action Plan

## • Step 1 – Gather Intel

### • Look at last year (& the last “typical” year too)

- Where did your team struggle – workload, budget, personnel?
- What problems would you like to solve?
- Are there any activities worth repeating?
- In short, what worked and what did not?

### • Talk to your clients

- Reach out to your business clients to learn their plans and concerns for the upcoming year – from product launches to regulatory changes to major deals.
- Don't forget to speak with the other administrative departments, such as Human Resources and Finance.
  - Where might they need legal support?
  - How can your team best anticipate and address the company's legal needs?

### • Talk to the boss

- Make sure the goals of the department line up with those of the boss.
- It's important to understand what the Board is concerned about heading into the year.

### • Talk to your team

- Engage the lawyers and staff.
  - What business issues are piling up?
  - What technology is and isn't working?
  - What changes would they recommend?
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# 8 Steps to Create a Purposeful Action Plan

- **Step 2 – Think Long-Term**
  - **What are the company's major goals for the year ahead? They should be listed front and center on your Legal Department strategic plan. This will keep your team aligned with the overarching objectives for the organization, and it will put your work in the larger context.**
    - **Do not skip this step.**
  - **According to Boardview, 95% of employees do not understand their organization's strategy; perhaps that's why only 2% of leaders are confident they will achieve most of their strategy's objectives. Be proactive and forward-thinking.**
  - **Look externally - what other legal, regulatory, business and political trends might affect your organization in the year ahead?**
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# 8 Steps to Create a Purposeful Action Plan

- **Step 3 – Think Short-Term**
  - **Start your planning by anticipating what your Legal Department will need to address in the year ahead.**
  - **What are the short-term projects your Legal Department should address, or the context within which those projects will be executed?**
  - **Consider your organization's specific position relative to its industry, geography, workforce and more.**
  - **What resources are available?**
    - **Look at underutilized or untapped resources like personnel, technology, new products or services.**
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# 8 Steps to Create a Purposeful Action Plan

- **Step 4 – Determine Your Major Missions**
  - We know that lawyers are cynical creatures, and you may feel the traditional mission and vision statement exercises are a little too close to navel-gazing for your Legal Department. However, **selecting a few – no more than three – major missions** will provide a foundation for your strategic plan and spark ideas for tactics and execution.
  - What makes a compelling major mission? One place to start may be the primary ways in-house lawyers deliver value, as outlined in Altman Weil's recent Chief Legal Officer Survey:
    - Support business objectives
    - Advise company leaders
    - Manage legal risk
    - Control legal spend
    - Manage compliance
  - Highlight the areas where you want to build strength or address weakness in the years ahead.
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# 8 Steps to Create a Purposeful Action Plan

- **Step 5 – Draft Your Strategic Objectives**
  - **Note: Strategic objectives should not look like a to-do list. They provide the overarching direction for your tactics, which we'll get to in a bit. A strategic objective should require one or more tactics to be implemented. "Improve accuracy in budget process" is a strategic objective; "build dashboard to track expenses - actual vs. budget" is a tactic.**
  - **Review your major missions. What are the building blocks that will get you there? These will form your strategic objectives.**
  - **For example, if you have selected "Control legal spend," potential objectives could be:**
    - Improve accuracy in budget process
    - Improve management of law firms and vendors
    - Identify opportunities for cost savings
  - **Focus your firepower: Strategic improvements are important, but those firefighting projects will not go away next year. We recommend starting with no more than three strategic objectives in total; your likelihood of success will be much greater with a shorter list, and you will avoid overwhelming your team.**
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# 8 Steps to Create a Purposeful Action Plan

- **Step 6 – Define Success**
  - **For each of your strategic objectives, what's the ideal result?**
  - **How will you determine and measure your success? Think of quantifiable measures: spend, response time, cycle time, number of matters completed, et cetera.**
  - **Let's continue our hypothetical example. One of our major missions is to control legal spend; one of our strategic objectives is to improve accuracy in the budget process. One potential measure: "To end the year within 5% of budget projections."**
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# 8 Steps to Create a Purposeful Action Plan

- **Step 7 – Commit to Tactics**
- **What will it take to get the success you just imagined?**
- **For each of your strategic objectives, write the tactics you will complete - the steps that will get you there.**
  - These should be achievable, action-oriented and with accountability, so you know who's doing what and when. It's okay to start with a few exploratory steps; sometimes you don't know exactly how you will address a problem until you get started.
- **For our hypothetical strategic objective of improving accuracy in the budget process, your tactics could include activities like:**
  - Perform an audit of the or address last two years budgets to identify areas of waste and opportunities for improvement. (Q1)
  - Determine five areas where alternative fees could bring budget predictability; complete law firm RFP process. (Q1)
  - Meet with top 10 law firms to discuss rate structure and outside counsel guidelines. (Q2)
  - Work with Finance to build a dashboard of department spend for real-time budget monitoring next year. (Q3)
- **Once you have completed tactics for all of your strategic objectives, chart out your timeline.**
  - Make sure your plans are realistic for each month and quarter; you may want to space out non-urgent tasks.
  - You cannot accomplish everything *in January*.

## 8 Steps to Create a Purposeful Action Plan

### • Step 8 – Share Your Plan

- **During Step One, your team was engaged in this process - now it's time to show them the finished product. Create a Plan to fit on one page so it can easily be reproduced and shared.**
  - **Sharing your strategy will do two important things: it will provide focus, and it will drive the team toward specific and important goals.**
  - **People perform best when they have a purpose - when they understand not just what to do, but why it's important.**
  - **Engage as many team members as possible in the process, giving them an opportunity to understand why the strategic goals are important and how the tactics and operational details support those goals.**
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# A Sample Plan Form

- Consider a simple, straightforward plan form like this:

## 1-Year Action Plan

|                                                                                                              |                                                                                                             |                                                            |                                                                 |
|--------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|------------------------------------------------------------|-----------------------------------------------------------------|
| <p><b>Company Goals</b><br/>What are the organization's major goals?<br/>Think short term and long term.</p> | <p><b>CONTEXT</b><br/>Industry, regulatory, technology, geopolitical, economics.</p>                        |                                                            |                                                                 |
| >                                                                                                            | >                                                                                                           |                                                            |                                                                 |
| <p><b>Our Vision</b><br/>What are our legal team aspirations?<br/>What are our core values?</p>              | <p><b>OUR PURPOSE</b><br/>What do we do? How do we do it? For whom do we do it? What value do we bring?</p> |                                                            |                                                                 |
| >                                                                                                            | >                                                                                                           |                                                            |                                                                 |
| <p><b>OBJECTIVES</b><br/>What are our key strategic objectives?</p>                                          | <p><b>IDEAL RESULTS</b><br/>What results are we working toward?</p>                                         | <p><b>METRICS</b><br/>How will we measure our success?</p> | <p><b>TACTICS</b><br/>What steps will we take to get there?</p> |
| >                                                                                                            | >                                                                                                           | >                                                          | >                                                               |
| <p>1</p>                                                                                                     | >                                                                                                           | >                                                          | >                                                               |
| <p>2</p>                                                                                                     | >                                                                                                           | >                                                          | >                                                               |
| <p>3</p>                                                                                                     | >                                                                                                           | >                                                          | >                                                               |



# A Sample Plan Form

- Then broaden the outlook and goals to create a 3-Year Plan:

## 3-Year Action Plan

|                                                                                                                 |                                                                                                                |                                                               |                                                                    |
|-----------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|--------------------------------------------------------------------|
| <p><b>Company Goals</b></p> <p>What are the organization's major goals?<br/>Think short term and long term.</p> | <p><b>CONTEXT</b></p> <p>Industry, regulatory, technology, geopolitical, economics.</p>                        |                                                               |                                                                    |
| >                                                                                                               | >                                                                                                              |                                                               |                                                                    |
| <p><b>Our Vision</b></p> <p>What are our legal team aspirations?<br/>What are our core values?</p>              | <p><b>OUR PURPOSE</b></p> <p>What do we do? How do we do it? For whom do we do it? What value do we bring?</p> |                                                               |                                                                    |
| >                                                                                                               | >                                                                                                              |                                                               |                                                                    |
| <p><b>OBJECTIVES</b></p> <p>What are our key strategic objectives?</p>                                          | <p><b>IDEAL RESULTS</b></p> <p>What results are we working toward?</p>                                         | <p><b>METRICS</b></p> <p>How will we measure our success?</p> | <p><b>TACTICS</b></p> <p>What steps will we take to get there?</p> |
| 1                                                                                                               | >                                                                                                              | >                                                             | >                                                                  |
| 2                                                                                                               | >                                                                                                              | >                                                             | >                                                                  |
| 3                                                                                                               | >                                                                                                              | >                                                             | >                                                                  |

# Closing Comments

- It may seem overwhelming, with the challenges and demands of the day-to-day, to take a pause and reflect on your path forward, but the benefits of creating a plan, regardless of what shape or form that takes, are well-known.
  - You'll discover that the process is just as, if not more important, than the actual plan you create.
  - **Your time invested will return dividends to you and to your organization.**
  - **“An ounce of prevention is worth a pound of cure!”**
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# Thank you!

## Questions to:

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