

Q&A with Christine Parise Cordes and Neal Splaine, Co-Chairs of the Corporate, Business & Tax Practice at Rubin Rudman, on Hiring Outside General Counsel

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In this series, [Rubin Rudman](#) attorneys will discuss the wide-ranging and unique issues faced by family-owned and closely held businesses. These companies, which are a major part of the New England economy, grapple with challenges related to family dynamics and succession – issues that other types of businesses often do not have to deal with. In this installment, the authors explore hiring the right outside general counsel and expectations for a successful partnership.

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Why does your closely held business need an outside general counsel?

An outside general counsel typically has an ongoing relationship with a business and its owners, providing advice as questions arise and helping anticipate issues before they become urgent. An outside general counsel is usually the right fit for a company that is too small to hire in-house counsel but too large to handle their legal issues on an ad hoc basis. The relationship is more proactive than reactive. In closely held companies, legal matters are rarely isolated. Ownership, governance, and personal relationships often intersect, and a trusted outside general counsel who knows your business and leadership style from the inside-out can bring structure, clarity, and stability to navigating these complex dynamics.

We have many examples of second and third-generation closely held businesses that we have worked with for over a decade. One of those, an asphalt services business, had to navigate the sudden death of the founder where we were involved in structuring a 10-year long transition plan that provided financial stability for the deceased founder's family while transitioning the business to its key employees. We played a pivotal role in establishing and advising an independent Board that guided the business throughout the transition, which was successfully completed this past October. Over that 10-year period, we handled a variety of matters in addition to fundamental corporate governance, including acquisitions, financings, executive compensation and employment matters, contract disputes, organizing and funding an affiliated non-profit and participating in additional long-term succession planning for the second generation.

What types of legal issues come up most often in family and closely held businesses?

As outside general counsel to many companies across diverse industries, we regularly see a host of issues relating to contract formation and dispute, employment matters, acquisitions and divestitures, debt and equity financings, and regulatory compliance. While every company and situation is different, some of the hot-button issues include structuring shareholder agreements and operating agreements, ownership succession planning, governance and disputes involving family members in management.

In family businesses in particular, decisions about leadership, compensation, or ownership transitions can be deeply personal. It's not uncommon for expectations to have been shaped over many years through informal "understandings" rather than written agreements. As the business evolves, those understandings may no longer be enough. Having the right outside general counsel to advise your management team is a critical piece of the puzzle if you want your business to thrive and survive beyond the first generation.

For example, we recently handled a matter where two brothers had built a very successful and valuable commercial plumbing and heating business from the ground up without even "a napkin" between them as far as written agreements go. They always operated with the understanding that the business would be passed on to their children who were all actively involved in operations.

Unfortunately, as is often the case, the children did not have the same vision for the business and their working relations became untenable. One of the children even went as far as to open a competitive business down the street that was funded by his father. We intervened and were able to successfully negotiate a buyout between the brothers that avoided protracted litigation. After experiencing first-hand the benefits of having written agreements in place to manage the expectations of all parties involved, the second generation is now working with us to put a shareholder's agreement in place and to otherwise guide them on a variety of governance matters to pave the way for the second generation of siblings to build on their father's success.

Why is succession planning often difficult, and how should businesses approach it?

Succession planning can be one of the most challenging topics for business owners because it encompasses both business continuity and personal legacy. In family-owned businesses, it often involves emotionally complicated family dynamics.

Effective planning should start early while the founder or current leadership is still actively involved. Outside general counsel can facilitate candid conversations about the future, who is prepared to lead, ownership options, and family members' roles before the legal documents (i.e. buy-sell agreements and governance documents) are executed. These can be difficult discussions and skilled outside counsel can make sure that decisions reflect shared expectations and realistic goals.

For example, we have served as outside general counsel to a family-owned heavy equipment dealer for over 15 years. The path for succession of this business has not always been clear as the founder's child as well as other extended family has demonstrated excellence in managing the business over the years and that made choosing the successor very challenging. In the midst of this, the founder fell ill and knew that his capacity to continue to lead the business had diminished to the point that he needed to plan appropriately. Together with the founder's estate planning attorney, we crafted a succession plan designed to ensure the success of the business for decades. With a strong independent board in place, we have assisted the business in navigating the incapacity of the founder, the selection of the leader of the business, multiple financings, a sale of a division and, among other matters, a large acquisition, including additional dealerships in New York as well as related real estate. We also have had to navigate establishing long-term affiliate leasing arrangements for the benefit of family members that stand to inherit the business as well as its related real estate assets.

What role does governance play in preventing conflict in family firms?

Governance provides clarity about how decisions are made, who has authority, and what happens when disagreements arise. This can prevent disputes from escalating because expectations are defined in advance rather than negotiated in tense moments.

In many closely held businesses, governance begins informally. Over time, as ownership expands, new generations join the business, or family members step into different roles, informal decision-making can lead to perceived inequities. Formalizing roles, responsibilities, and processes helps maintain trust and stability.

Effective governance structures may include updated voting rules, advisory boards, buy-sell provisions, defined management roles, and family councils. These mechanisms promote transparency, create accountability, and establish agreed-upon paths for resolving internal disputes.

In fact, just last week we were working with a long-time family-owned excavating business (whose sibling owners often branch out into other ventures together) to organize a New Hampshire-based general contractor. In the discussions regarding the new business, one of the siblings made it a point to explain to his new incoming partners how important transparency is in establishing governance and long-term succession planning. This very client was hesitant to embrace the formal planning we put into place for his excavating business years ago when we prepared their first buy-sell agreement. But now, he feels differently. He has experienced the benefit first-hand of openly discussing expectations and roles and sorting through in advance the sticky issues that can arise in the event of a sudden and unexpected death, for example. There is comfort in having a plan for when things don't go as planned.

What do clients tend to value most in an outside general counsel relationship?

Practical guidance, responsiveness, and clear communication is the foundation of a strong outside general counsel relationship. Clients need legal counsel who understands the company's values, history, ownership dynamics, risk tolerance, and long-term goals to provide perspective that goes beyond the issue of the moment. That institutional knowledge allows advice to be tailored and aligned with key business goals.

Above all, clients value having a trusted advisor who can help them work through complex decisions with focus and discretion – particularly during periods of transition, growth, or internal change. Owners want to know their options, the tradeoffs involved, and how a decision will affect both the business and the people connected to it.

We cannot stress enough the value of practical guidance for our clients. Whether it be our second-generation sporting goods business, third-generation literary agent, second-generation heavy construction business, first-generation behavioral health business or any other number of clients, they don't want us to give them a dissertation on the law and 10 options for what they should do, they want guidance. They want us to tell them what option they should pick. We consider it our responsibility to give our clients the practical advice that they always seek.

Recently, one of our clients – two brothers who own and operate a behavioral health business – told us the difference between working with Rubin Rudman versus other competent alternatives is that we not only get the deal done but we help our clients understand what they agreed to.

How does Rubin Rudman support closely held and family-owned businesses in this work?

Rubin Rudman's Corporate, Business & Tax Practice has long advised closely held and family-run businesses across a wide range of industries, including consumer products, professional services, construction, technology, real estate, manufacturing, life sciences, and clean energy, among others.

Our approach is relationship-driven and interdisciplinary. In addition to corporate, business, and tax counsel, clients often draw on the firm's practices in trusts and estates, labor and employment, commercial real estate, and litigation to address the full spectrum of issues that arise in closely held and family-owned businesses – particularly where ownership, governance, and family dynamics intersect.

Our work often involves supporting businesses through major transitions, whether that means planning for the next generation, structuring governance, navigating acquisitions and divestitures, or addressing ownership questions. Our goal is to help businesses remain strong, stable, and positioned for long-term success.

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