



The Byzantine Complexities: Strategies for Lawyers to Join a Board of Directors

Skills and Professional Development



While many lawyers may be interested in joining a board of directors of a for-profit public or private company, reaching this goal can entail a degree of complexity that even the Byzantine Emperors would have envied. Consequently many lawyers are puzzled by the process and give up well before

they even begin. Likewise, companies and many current board members do not often project a lot of enthusiasm when it comes to adding lawyers to the board.

Current statistics can also be discouraging to lawyers, especially those who are also women, minorities, or under a certain age. Lonergan Partners recently published a report that studied and summarized the current state of boards of directors in Silicon Valley, focused primarily on the top 150 Silicon Valley companies (the "SV150 Report"). Lonergan's SV150 Report explains that, not surprisingly, for the SV150, 87 percent of directors are men and the average age is 59 years old. 38 percent of SV150 directors have an MBA, another 38 percent have a non-MBA masters degree. Only 4.9 percent of SV150 directors have a JD or LLM degree.

Mark Lonergan, the founder and managing partner of Lonergan Partners, who specializes in CEO and board placements in technology companies, is convinced that lawyers give up too easily. "In fact, lawyers are well-equipped to deal with the complexities of getting and serving on boards," he says. Lonergan shared a few tips for lawyers to help them navigate the Byzantine complexities of board service.

Don't count yourself out just because you don't fit the average profile. Companies are increasingly recognizing the value of, or responding to a call for, diversity on the board — in areas such as gender, age, national origin, or areas of expertise — to better reflect their consumers, the evolving marketplace, and an increased need for compliance and governance experts. As Lonergan's SV150 Report states, "tech boards facing the swiftly changing marketplaces of today should systematically refresh the membership of their boards in order to prevent the entrenchment of old ideas and business models." Larger companies, and companies outside of Silicon Valley, have done a better job recognizing the value of diversity on the board. For example, women fill only 13 percent of board seats across the SV150. But that number jumps to 19 percent at SV150 companies with revenues over \$4 billion. Women also fill 19 percent of board seats on the S&P 500.

Securing a first board position is a challenge for everyone, and lawyers are no exception. "The first board position invitation is a challenge for everyone, not just in-house attorneys," according to Lonergan. It is highly unusual for recruiters to be helpful for in-house attorneys or anyone else in securing their first board appointment. Instead, you must generally start your own, individual journey to improve your chances. And this journey takes time, often years of planning, strategy, and networking.

When pursuing a board position, Lonergan emphasizes that one must choose wisely in accepting a first board position. Companies and recruiters prefer a board candidate with prior board experience, but they will evaluate carefully and judge critically that prior board experience. "Just like with real estate, the location and quality matter," Lonergan jokes. Board positions with a company that has a good reputation, has enjoyed financial and investment successes, and is located in a more prestigious or competitive location are strongly favored. Lonergan advises, "You don't want to jump at just any board opportunity. Choosing the wrong board for your first position can be more detrimental than no board experience at all. So be patient and make sure you get the right first experience."

You are enough. No additional certification or education is needed. The journey toward a board position does not need to start with further certification or tests. According to Lonergan, "Lawyers are enough, at least when it comes to credentials." Lonergan observed that "attorneys solve many problems by studying or obtaining additional credentials or certifications. However, obtaining a first public board seat has nothing to do with additional credentials or certifications. Attorneys can't just study and test their way onto a public board." This reality can be confusing for most attorneys who

have succeeded by studying hard in college, for the LSAT, in law school, and for the bar exam. Instead, attorneys should consider other efforts and areas for development.

Experience, not credentials, matter. A JD degree is rarely a requirement for board service. Instead, a proven track record including business responsibilities and judgment, or outside expertise are often the key factors when lawyers are invited to join a public board. According to Lonergan, "being an in-house attorney or having a JD degree will likely not be sufficient or differentiate a candidate enough to secure a board seat without any other factors. Governance expertise is a great starting point for lawyers but it is generally not enough to secure a board appointment. Good judgment and the ability to contribute to all aspects of the board are crucial." Lonergan explained, "Of the JDs we discovered on SV150 boards after combing through the data, most are former partners of law firms and only a handful have experience as a general counsel. The general counsel who do become public company board members are usually from some of the largest corporations in America. Alternatively, lawyers often find more success in joining a board when they have successfully redirected their career to include other experiences, including as an investor or venture capitalist, or a member of the FCC, for example."

A significant management experience is often a must. Instead, most candidates who are considered for board positions have significant management experience or CEO experience. Currently seated CEOs are especially preferred. Lonergan therefore observes, "if an in-house attorney wants to be considered seriously for board service, he or she should try to move to a lateral management position at least as part of his or her responsibilities. This might include leading a business division and increasing management experiences. It is increasingly difficult to join a public board without widening your experience in this way."

Network with chairs and board members of various boards. A board's current directors, and especially the chair, are often the most important decision makers when considering and nominating prospective board members. Most board vacancies do not require a public search, but are instead filled through the network of the board members. Therefore, being in the right networks is key. As Lonergan says, "the first step toward hunting a duck is to go where the ducks live." An in-house attorney who wants to be considered for a public board position must realize that networking only with other in-house attorneys will not result in much progress toward securing a board position. Instead, start expanding your network to include current board members.

Beyond simply networking, establishing a meaningful relationship with chairs and board members is particularly important. The board chair "feels responsible for the overall wellbeing of the board. Therefore developing a connection and level of trust with the chair will help improve your chances of securing a board position in the future," Lonergan explains. In this way, general counsel and senior attorneys at public companies do have an edge. They spend significant time with board members over time, and this improves the chances of securing a board appointment.

Securing subsequent board positions will be easier, if you secure the right first position. According to Lonergan, "the good news is that after securing your first board appointment, assuming it is a respectable one, securing subsequent ones will become easier." Lonergan's SV150 Report illustrates this: "One-in-five SV150 board seats is filled by someone who fills another SV150 board seat. This is true across all industry sectors, company sizes, and company ages. Some boards are so well-connected that more than half of their members sit on another SV150 board."

In sum, securing a position on a board of directors can be a challenging process, but it is a journey worth beginning. With a few strategic moves that Lonergan suggests, lawyers — who make a living

solving complex problems for their clients — can certainly tackle the Byzantine complexities of the board nomination and service processes.



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Mack is also an award-winning (such as the prestigious ACC 2018 Top 10 30-Somethings and ABA 2022 Women of Legal Tech) general counsel, operations professional, startup advisor, public speaker, adjunct professor, and entrepreneur. She co-founded SunLaw, an organization dedicated to preparing women in-house attorneys to become general counsels and legal leaders, and WISE to help female law firm partners become rainmakers.

She has authored numerous books, including *Get on Board: Earning Your Ticket to a Corporate Board Seat*, *Fundamentals of Smart Contract Security* and *Blockchain Value: Transforming Business Models, Society, and Communities*. She is working on her next books: *Visual IQ for Lawyers* (ABA 2024), *The Rise of Product Lawyers: An Analytical Framework to Systematically Advise Your Clients Throughout the Product Lifecycle* (Globe Law and Business 2024), and *Legal Operations in the Age of AI and Data* (Globe Law and Business 2024).

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