Should Compliance Report to the General Counsel?

Society of Corporate Compliance and Ethics
Health Care Compliance Association
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OBJECTIVE:

Past research indicates compliance professionals’ high level of satisfaction with working with legal; however, compliance overwhelmingly opposed having to report to legal. This subsequent survey was conducted to assess if a strong relationship between legal and compliance officers also means that compliance is comfortable reporting to legal.

METHODS USED:

Survey responses were solicited during January and February of 2013 from compliance and ethics professionals in the database of the Health Care Compliance Association and Society of Corporate Compliance and Ethics. Responses were collected and analyzed using SurveyMonkey. More than 800 responses were received from private and public companies and non-profits.

KEY FINDINGS:

- 88.5% of the surveyed compliance professionals were opposed to the corporate counsel serving as the compliance officer.
  - This response was especially high among the healthcare and not-for-profit sector.
- 15% reported that one individual serves as both the general counsel and the compliance officer.
- A conflict of interest was the main reason the surveyed expressed the need for the two roles to be separate.
  - “Always possible conflict presents between encouraging reports of compliance matters and role of defending the company.”
- 80% of the surveyed oppose having compliance report to the corporate counsel’s office. The main reason being a conflict of interest, with addition to roles being too different and the need for unfiltered access to the CEO and Board.
  - “Compliance officers should have direct line to head of entity to ensure that issues are fully communicated.”
- 88% of those who work for non-profits opposed compliance reporting to legal and 74% opposed the practice at publicly traded companies.

CONCLUSION:

- Collaboration, not cohabitation, seems to be the most effective relationship between compliance and in-house counsel. The two disciplines are complementary to one another, but it is best to keep the roles separate and on equal footing.
- Keeping compliance separate from legal can benefit management. The need to ensure compliance and the need to defend the company can be better guaranteed
by keeping the two roles separate so management can hear from differing viewpoints.

- The combination of compliance and legal likely comes with significant costs. Forcing to combine the two roles could potentially diminish the effectiveness of compliance programs and management’s ability to make well-advised decisions.