

Can the Marriage of the GC and Chief Compliance Officer Last?

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The role of the chief compliance officer continues to be a hot, confused, and contested topic, as reflected in Catherine Dunn's March 29 CorpCounsel.com article, "[General Counsel, Chief Compliance Officer . . . or Both?](#)"

What does the CCO do: ensure good process or enforce strict compliance? To whom does she report: GC/CFO, CEO, or the board? What is her role in shaping the corporation's voluntary adoption of ethical standards beyond what the law requires?

There are three broad organizational options:

1. The CCO is independent of the GC and CFO and reports directly to the CEO and the board.
2. The GC is also the CCO (see Dunn's article).
3. The CCO reports directly to the GC and the CFO. She deals primarily with ensuring a robust compliance process across all substantive subject-matter compliance areas.

More than two years ago, I argued in an article in *Corporate Counsel*, "[Don't Divorce the GC and Compliance Officer.](#)" that the third option—CCO as process expert/manager reporting to GC and CFO—was the right model. I still strongly believe in that position, even though some articulate members of the CCO movement, reflected in the growth of the Ethics and Compliance Officers Association, just as strongly disagree.

In a nutshell, I said:

- Compliance is not one single subject: it is following formal rules in many different areas of law and finance. The experts in those areas report to the GC and CFO, and it makes no sense for a CCO to hire separate experts in those areas.
- In a high performance with high integrity company, compliance with formal rules and establishing ethical standards beyond what those rules require is at the absolute core role for the general counsel and CFO. The idea that they are concerned only with performance and not integrity is ludicrous.
- The ultimate leadership for high performance with high integrity must come from the CEO and other business leaders, and the GC and CFO must serve as both partners to those leaders and guardians of the company—and it is their close working relationship with top leaders that stimulates driving performance with integrity from the top.
- The substantive experts who work for the GC and CFO understand core commercial processes where risk occurs, and need to design mitigants appropriate both to those processes and their specialties (i.e., EHS is different than labor and employment is different than bribery).

The chief compliance officer has a central role in ensuring process integration and rigor. It is vital to weave the many substantive threads into a one coherent compliance program. For example, there must be a single code of conduct and uniform policy guides. Education and training across fields should be consistent—and, for many employees, cover several different substantive areas. An overall review of how compliance is working—in conjunction with business reviews, internal and external audits, ombuds processes, etc.—should be handled on the front lines by the CCO, with GC, CFO, and business leader oversight. CCOs should also be at meetings with top business leaders involving corporate integrity matters. They, like the head of internal audit, should report periodically to the audit committee. They should have an understanding that, if they believe the GC or CFO is seriously mishandling an issue, they can report to head of the audit committee or some other designated member of the board.

But, the idea that a CCO is more independent than the GC or CFO is wrong. All serve at will. All have financial benefits that vest in the future. The key in all three jobs is to

maintain that guardian role and the necessary independence to speak out about what is right for the company.

I renew my views on this issue because the debate in the in-house legal profession and in the compliance and ethics officer community has only intensified. I urge those who disagree with me to answer the more detailed points I made in my original *Corporate Counsel* article.

See also: [“General Counsel, Chief Compliance Officer . . . or Both?”](#), *CorpCounsel*, March 2012.

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