

THE EMERGING ROLE OF ETHICS ADVISORS, GENERAL COUNSEL, AND OTHER COMPLIANCE SPECIALISTS IN LARGE LAW FIRMS

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Anecdotal evidence suggests that large law firms increasingly are turning to in-house ethics advisors, firm general counsel, and other specialists to manage the firm's compliance with professional regulation. According to one account, "most large law firms have their own in-house ethics gurus, people who are expected to set policy and provide ethics advice on internal matters, malpractice claims and similar issues." Moreover, in the past ten years, a number of firms have created formal management positions such as "risk manager" and "general counsel." Robert A. Creamer, Vice President and Loss Prevention Counsel for the Attorneys' Liability Assurance Society (ALAS), a mutual insurance company owned by large law firms, reports that there are over 875 "loss prevention partners" in ALAS member firms alone.

Most commentators attribute firms' increasing reliance on in-house compliance specialists to the increasing complexity of professional regulation and the increasing number of claims against lawyers. "It's a dangerous world that large law firms are in now," says one managing partner. "We are attractive defendants." In addition to managing claims and potential claims against the firm, proponents argue that in-house specialists may play an important preventive role by increasing firm-wide awareness of ethics and regulatory issues. According to a recently-appointed general counsel, "A lot of law firms have a lot of problems they don't know about because there is no central repository for hearing them."

From a regulatory standpoint, the emergence of in-house compliance specialists is a pivotal development. Research in other organizational contexts shows that such specialists tend to promote the development of compliance procedures within firms, and may play a leading role in defining industry standards for compliance. This research suggests that in-house specialists may shape the future of law firm regulation. Except for a few news stories, however, and a description of in-house ethics advising at one Oregon law firm, we know virtually nothing about the work of such specialists or their role within law firms.

This paper investigates the emerging role of compliance specialists in large law firms. The paper is based on focus groups and interviews with ethics advisors, general counsel, and other compliance specialists in a non-random sample of thirty-two law firms ranging in size from seventy-five to 1,000-plus lawyers and headquartered in twelve different cities. Our sample can best be described as a "snowball" (or "reputational") sample, in that we asked a small number of bar leaders and ethics specialists known to us to recommend participants for our study; then asked these participants for more names, and so on; until we felt that we had enough data to present interesting preliminary findings. All but four of the participants in our study spend at least 300-500 hours per year on in-house compliance work, and half spend significantly more (or all) of their time on this function. The research was conducted between May 2001 and March 2002.

Our exploratory analysis is organized around three sets of questions. First, to what extent is "compliance specialist" a coherent unit of analysis? Does it make sense to lump together "ethics advisors," "general counsel," "loss prevention partners," "conflicts committee chairs," and other lawyers whose titles seem to indicate a diverse set of management roles? To what extent do different titles correspond to different roles?

Second, what is the typical structure of the compliance specialist's position? Are most specialists members of committees or are they primarily alternatives to committees? Are most specialists also practicing lawyers; that is, do they also have outside clients? Do firms compensate practicing lawyers for in-house compliance work? To what extent do structural variations affect the scope of the specialists' role? To what extent do structural variations reflect the needs (versus the values) of the firm? What are the strengths and weaknesses of different structural arrangements?

Finally, what are the personal and professional characteristics of in-house compliance specialists? At what stage in their careers do lawyers typically take on this role? Do in-house specialists tend to come from similar practice backgrounds? Do they share a common attitude toward their role(s) within the firm? To what extent do in-house specialists interact with each other professionally?

Our analysis is based on self-reports by specialists and therefore is primarily descriptive rather than evaluative. The chief goals of the paper are to identify questions for more systematic empirical analysis, and to call attention to the potential importance of in-house compliance specialists for law firm regulation. We believe that the profession's current approach to law firm discipline, which relies on case-by-case enforcement by state disciplinary authorities, is out of step with regulatory approaches in other organizational contexts. We want to explore an alternative model of "enforced self-regulation" by firms, which would rely heavily on in-house compliance specialists. By studying the work of such specialists and their emerging role within firms, we hope to contribute to their effectiveness, and to effective self-regulation by firms.