

Compliance TODAY

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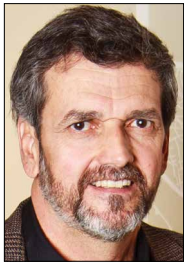
Rebecca L. Frigy

by Roy Snell, CHC, CCEP-F

Compliance professionals struggle for independence

*Please don't hesitate to call me about anything any time.
612 709-6012 Cell • 952 933-8009 Direct
roy.snell@corporatecompliance.org*

SCCE and HCCA conducted a survey of its members regarding their relationship to other departments. The survey showed the Compliance Officer's most important partner is the Legal department and the General Counsel. SCCE and HCCA also surveyed its



Snell

11,000 compliance professionals for their perspective on whether the CO should report to the GC. Of over 800 respondents, 80% felt they should not report to the Legal department. The same survey showed that 88.5% rejected the idea that the GC should also be the Compliance Officer. Although Legal is its greatest partner, the compliance profession is struggling for independence.

Some advocates for having the CO report to the GC indicate that the CO should report to the GC because compliance is all about the law. Others believe compliance is not about the law but rather putting systems and procedures in place to ensure the law is followed. Some believe compliance should report to the GC for attorney-client privilege protection. It's highly unlikely they could protect most of the work the Compliance Officer does—policy development, education, general audits, etc. When a CO conducts investigations, that investigation can be protected without forcing the CO to report to the GC. The mere idea of wanting to block the release of information to leadership is one of the reasons compliance programs were established in the first place. If you

are implementing a compliance program to receive a break in the fines and penalty phase, as the Federal Sentencing Guidelines suggest, you can render it ineffective if you continue to do things as you have in the past.

The people surveyed were asked why the CO should be independent from the GC's office. Many cited the inherent conflict of interest. Compliance professionals are often asked to follow-up on legal issues. Most legal decisions were made under the purview of the GC. You cannot report to the person you are investigating and remain independent. The other conflict most often cited was the Legal department's role in defending the company. Defending the company is an important role. But if the Compliance Officer reports to the person responsible for defending the company, his independence is rendered ineffective.

The very nature of a compliance program requires independence.

The very nature of a compliance program requires independence. Many have suggested that you can overcome the independence problem by having COs who report to GCs have access to the audit committee of the Board. If the decision to hire/fire and the performance review of the CO is controlled by the GC, there is no independence and no dotted line will fix that. The Compliance Officer should not report to the GC or be the GC. By doing so, you are putting your company at risk. ☹