

# The Relationship Between In-House Counsel & the Compliance Officer

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## Introduction

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## Poll: What is Your Role?

1. How many of you are Compliance Officers or Compliance Professionals?
2. How many of you are In-House Counsel (Chief Legal Officers, Associate General Counsel, etc.)?
3. Anyone have both titles?

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## Role of In-House Counsel

- ❖ Legal advisors responsible for advocating the fiduciary, statutory and ethical concerns raised in a corporation.
- ❖ In house counsel affects the entire range of corporate law. Practice areas involve health care regulatory, antitrust law, tax, government contracts, real estate, corporate securities, privacy, intellectual property, ethics as well as the employment law issues and standard contracts. Serve as trusted counselors in areas that may expand beyond a typical legal role.
- ❖ Responsible for directing the organization's response to actual or potential violations

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## Why is In-House Counsel Vital to the Organization

- ❖ In-House Counsel often serve as legal counsel to the organization's Board of Directors and helps the organization comply with applicable laws and regulations, as well as identify and evaluate business concerns related to those legal risks.

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## Role of Compliance Officer

- ❖ Responsible for planning, designing, and implementing compliance and internal audit programs, policies and procedures that promote a culture that fosters ethical and compliant behavior and provides the basis for ensuring adequate internal controls and compliance with all laws and regulatory requirements
- ❖ Identifies compliance risk areas through a risk assessment process and other means, and implements plans to resolve compliance issues;
- ❖ Conducts investigations of alleged violations of laws, regulations, policies/procedures, and the organization's Code of Conduct or Compliance Manual;
- ❖ Changes drastically depending on the day ☺

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## What Does the BEST Compliance Officer Look Like – in 2020 and Beyond?

The BEST Compliance Officer must be:

- ❖ ETHICAL and act with INTEGRITY, always motivated to do the right thing;
- ❖ Reactive & Proactive;
- ❖ Innovative & Rational;
- ❖ Strong in Emotional Intelligence;
- ❖ A Subject Matter Expert;
- ❖ An Educator;
- ❖ A Great Listener;
- ❖ Able to Promptly and Independently Provide Advice on Potential Compliance Issues;
- ❖ Afforded the Appropriate Level of Seniority in the Organization;
- ❖ "Mobile" and on the frontline
- ❖ A "People Person"

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- ❖ Compliance Officers are critical when it comes to strategic decisions made for the health of the organization – reducing risk and creating a great culture where all feel welcome, safe, valuable, and heard.

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## Internal Relationship Between the In-House Counsel & Compliance Officer

*In-House Counsel and Compliance Officers have distinct roles.*

*The Compliance Officer is responsible for preventing, detecting, and disclosing potential violations and In-House Counsel is responsible for defending the organization in relation to those matters.*

*...but in health care, those roles can overlap and this is related to the complex regulatory environment in which health care organizations operate in.*

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## Internal Relationship Between the In-House Counsel & Compliance Officer

*In today's complex health care environment, it is vital that the two work collaboratively.*

- ❖ The more familiar in-house lawyers are with the compliance program, the better advocates and advisors they are to the organization
- ❖ Both in-house counsel and compliance officers make business decisions; both need to understand risks and protect organization

It is important for both in-house counsel and compliance officers to understand and appreciate their differing roles within the organization.

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## How the Roles Have Evolved & Expanded

### In-House Counsel

Member of Sr. Management;  
Deep Understanding of  
Organization's Operations;  
Critical to advising the  
Business on making Business  
Decisions

### Compliance Officer

Part of Executive Team;  
Identifies Risks; Assists in  
Making Business Decisions

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## Should this Role be One in the Same?

There are some advantages to having the compliance and legal responsibilities in the same person (particularly in small organizations).

- ❖ Can save money & promote efficiency (since many compliance issues have legal overtones and ramifications);
- ❖ Both roles serve the organization's need to comply with the law;
- ❖ In-house counsel's compliance work may be protected under the attorney-client privilege

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## Potential Conflicts

Defensive role of In-House Counsel may squash the transparency required to design an effective compliance program.

Compliance goals may be at odds with legal objectives:

- In-House Counsel obligated to protect;
- Compliance Officers are obligated to identify the issue and implement preventative procedures

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## OIG Guidance

OIG has provided guidance and made expectations rather clear regarding the role of a compliance officer:

*Designation of a Chief Compliance Officer with emphasis that the compliance officer have direct access to the President/CEO and governing body.*

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Ideally...

The legal and compliance departments should be separated.

In organization's where the role is separated, some compliance officers report to the general counsel and others report to the CEO or directly to the Board.

**Critical point: The compliance officer must have unfettered access to the Board.**

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Where Does  
the Balance  
Lie?

- ▶ Differs among organizations
- ▶ Depends on how departments are structured
- ▶ Neither is right or wrong. The best arrangement is dependent upon the nature of the business, regulatory environment, and capability of the individuals in the organization

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## What is the Ultimate Goal?

- ❖ The organization has all information and guidance to make well-informed decisions that are in the best interests of the organization.

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## How is This Accomplished?

- ❖ Synergy
- ❖ Parallel Reporting Relationship
- ❖ Level of Separation to Avoid Potential Conflicts
- ❖ Mutual Respect, Trust, & Teamwork

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