

# Should Compliance Report to the General Counsel?

*A survey by the Society of Corporate Compliance and Ethics and the Health Care Compliance Association*



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## **Background**

There has been much discussion over the last few years about the reporting lines of the compliance officer. Driving the conversation have been several settlements in which enforcement authorities have specifically required that compliance report to corporate leadership rather than the general counsel's office. In addition, many perceive there to be a potential conflict of interest with the duty of the general counsel to defend the corporation and that the two functions have very different mandates.

Yet, some continue to argue that the roles are best combined. They argue that since compliance is about following the law, compliance should be a part of the legal department.

Previous research by the Society of Corporate Compliance and Ethics (SCCE) and Health Care Compliance Association (HCCA) has revealed that compliance officers feel their relationship with legal is a very strong one. The survey, which was released in January 2012, found that fully 80% of respondents gave the relationship a 4 or a 5 on a 1 to 5 scale. HR, the next most successful relationship, received 4 or 5 scores from just 66% of respondents.

The question is whether a strong relationship between legal and compliance also means that compliance is comfortable reporting to legal.

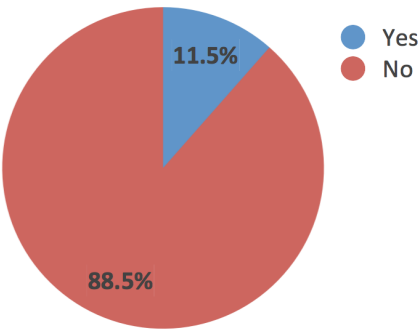
## Executive Summary

Despite past research indicating high levels of satisfaction with working with legal, compliance professionals were overwhelmingly opposed to having compliance report to legal. Of the more than 800 responses, 88% are opposed to the corporate counsel serving as the compliance officer, and 80% oppose having compliance report to the corporate counsel’s office.

## Detailed Findings

- o **Survey respondents were strongly opposed to the idea of corporate counsel also serving as the compliance officer.** An overwhelming majority (88.5%) rejected the idea. This response was particularly high among respondents from healthcare and the not for profit sector. Even among publicly traded companies, 86% of respondents opposed the idea.

Should the GC be the CCO?




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- o **Respondents cited a variety of related reasons why the two roles need to be separate but particularly focused on a conflict of interest.**
  - “Always possible conflict present between encouraging reports of compliance matters and role of defending the company.”
  - “... the ‘vigorous defense’ mission of corporate counsel is, at times, at odds with the ‘detect, disclose, remedy’ mission of a compliance officer.”
  - “Counsel is representing the organization from a legal perspective—doing what is in the best legal interest of the organization... Compliance Officer is actually representing the integrity of the organization—what may be legal may not be ethical!”
  - “...it creates the potential for increased conflicts of interest. Compliance often should audit/monitor practice/policies that Legal itself advised on or drafted.”
  - “CCO is a full time job and when a GC takes on that role the demands on his/her time dilute effectiveness or require a strong lieutenant [sic]. There are also key skills for a CCO that a GC may not necessarily have (project management, presentation) and the advisory role of Counsel doesn’t always mesh well with the CCO role.”
  - “Legal’s role is to protect and defend. Compliance’s role is to uncover weaknesses, develop controls and mitigate risks. Uncovering weaknesses often poses a conflict within legal’s role to protect.”


- o **Respondents were also strongly opposed to having compliance report to the corporate counsel, with 80% opposed to the idea.** As noted above, while previous research indicated compliance officers were very happy working with corporate counsel, they most definitely do not want to report to legal.
- o **Reasons for opposition to having compliance report to the corporate counsel were largely similar to the reasons for having corporate counsel serve as the compliance officer, focusing chiefly on the potential conflict of interests.** Other reasons cited included the need for unfiltered access to the CEO and Board, the need for speed—legal was perceived as taking too much time considering issues—and that the roles are simply too different.
  - “Compliance officer should have direct line to head of entity to ensure that issues are fully communicated.”
  - “CEO and board should be able to receive separate advice. Compliance may consult with Counsel.”
  - “This could create a conflict of interest and could limit the independence of the Compliance Officer. The Compliance Officer should have unrestricted access to the board of directors, CEO, etc.. without having to receive the permission of anyone.”
  - “Legal approach is about controlling information and disclosures, while Compliance approach is more open and less political. Legal tends to move more slowly than Compliance. Legal is about controlling the fallout, while Compliance is about fixing the problem. Compliance should be independent of Legal to ensure that information flow is not interrupted or ‘spun.’”

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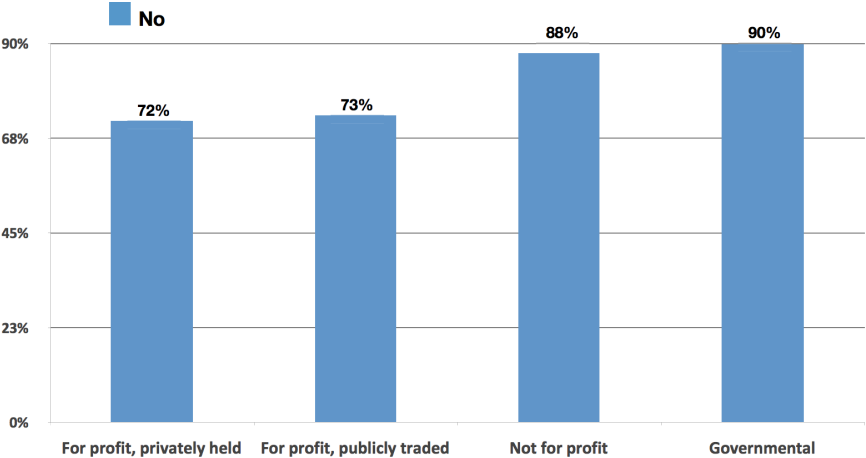
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- o **Notably, ownership structure did affect opinions.** While 88% of those working for non-profits opposed having compliance report to legal, just 74% were opposed to the practice at publicly traded companies. That’s still a large majority of course, but it was notably smaller.

Do you think the Compliance officer should report to the Corporate Counsel?



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- o **Having the general counsel also serve as the compliance officer is already the exception, not the rule.** Just 15% reported that one individual wears both hats in their organization.

## Conclusions/Implications

- o **Collaboration, not cohabitation, seems the most effective relationship between compliance and in-house counsel.** The two disciplines play related and complementary roles, as do many other disciplines in the company. And when they work together there can be tremendous benefits to the organization. Yet, those who do the compliance work see sufficient existing and potential differences between compliance and legal to strongly believe it is better to keep the roles separate and with an equal footing.
- o **Keeping (or making) compliance separate from legal also can benefit management.** The difference between the need to ensure compliance and the need to defend the company is a significant one. By ensuring that the roles are separate, management can hear differing viewpoints and make better decisions, without the risk of having the compliance voice automatically “vetoed” by Legal.
- o **The combination of compliance and legal likely comes with significant costs.** Compliance professionals see significant and compelling reasons why the roles of compliance and legal should be kept separate. Forcing a combination (or keeping the roles combined) has the potential to significantly diminish the effectiveness and independence of compliance programs and management’s ability to make well-advised decisions.



## **Methodology**

Survey responses were solicited during January and February 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, a web-based third party solution. More than 800 responses from private and public companies as well as non-profits were received.