



**TOPICS COVERED**  
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**GENERAL COUNSEL AS CRITICAL ALLY**

**Legal Must Be Positioned Correctly to Impact Culture**

Written by Veta T. Richardson

While those focused on ethics and compliance have long known the significance of corporate culture, the concept is receiving renewed attention for the competitive business advantages it offers. This fall, the National Association of Corporate Directors (NACD) released the NACD Blue Ribbon Commission Report on Culture as a Corporate Asset. Framing culture as a core corporate asset, the NACD report encourages boards to be more deliberate and proactive in how they approach culture oversight.



A specific NACD recommendation to the board is that “directors should assess whether the chief legal officer/general counsel and other officers in key risk-management, compliance, and internal-control roles are well positioned within management and in relationship to the board to support an appropriate culture.”

This recommendation, based in part on a white paper submitted by the Association of Corporate Counsel (ACC): Leveraging Legal Leadership: The General Counsel as a Corporate Influencer, is worthy of greater attention, especially as it relates to an organization’s general counsel. While much has been written about the reporting relationship for the compliance function and the need for access to the board of directors, there has not been much critical thought regarding the positioning of the general counsel.

**Lines of Reporting**

Given that the compliance function and the legal function must work as allies in service to the corporation, the question of to whom the general counsel should report and her relationship with the board of directors is one in which corporate ethics and compliance professionals should take greater interest.

Looking at the 12 companies that have made Ethisphere’s list of the “World’s Most Ethical Companies” each year the list has been published, ACC found that the majority of them have general counsel who are well-positioned to influence corporate culture.

In 10 of 11 of those companies (excluding one for which we could not find information), general counsel report to the CEO. In 83 percent, general counsel serve as the corporate secretary, indicating direct access to the board.

But that sort of adherence to best practice is not the case across all companies. Per the 2017 ACC Chief Legal Officers Survey, only 72 percent of general counsel report directly to the CEO. While this is more likely to be the case for general counsel located outside the United States, even isolating the data just for the U.S., the figure is still just 76 percent.

*“If the CEO isn’t listening to the lawyers, neither will anyone else in the organization.”*



While this number has increased over the last decade — only 64 percent of general counsel reported to the CEO according to the 2004 ACC Chief Legal Officers Survey — the movement of less than 10 percentage points is concerning as the challenges facing businesses are now much more global and complex.

**Signaling Priorities**

An organization’s values are reinforced through its structure and systems. When the general counsel has a seat at the chief executive’s leadership table, it sends a signal to the company’s stakeholders that legality, ethics, compliance, and other legal risk considerations are top priorities of the company.

A direct reporting line between the chief legal officer and CEO is a reflection of the “tone at the top.” As Merck CEO Ken Frazier stated in an ACC interview last year, “If the CEO isn’t listening to the lawyers, neither will anyone else in the organization.”

According to ACC’s data, general counsel who report to the CEO are also significantly more likely to report they “almost always” contribute to strategic planning efforts, compared with those who do not

report to the CEO. This is an essential benefit of direct-CEO reporting: the opportunity to counsel on critical business decisions from the beginning.

Companies with a less solid corporate ethical culture generally view the general counsel and members of the legal department as the group to call to “clean up” after a legal or compliance problem arises. Companies with a stronger “tone at the top” look to the legal team as allies whom, if proactive and involved at the onset, can help prevent a mess from happening.

**Legal Working With the Board**

Another powerful signal of a healthy organizational culture is that the general counsel consistently attends board meetings and is able to develop a relationship with the company’s board of directors. The board is the company’s fiduciary representative, and the company is the general counsel’s client — their interests are aligned.

If the general counsel is not a consistent face in the boardroom, and thereby limited in their ability to forge a credible relationship with the company’s board of directors, the directors should be alert to the absence and ask why.

In the ACC Chief Legal Officers 2017 Survey, 18 percent of respondent general counsel reported having a “direct” reporting relationship with the board of directors, and 67 percent reported that they “almost always” attend board meetings. However, a full 21 percent reported that they seldom or never attend board meetings.

Thus, there is room for improvement in the relationship between boards and general counsel. At a minimum, the general counsel must have a mechanism to bring controversial issues to the board — with or

without prior CEO consent. This is best achieved by having an executive session of the board with the general counsel on the agenda for every board meeting.

The general counsel’s connection to the board of directors is critical in maintaining the independence of the general counsel and the legal department as a whole. To do her job properly, the general counsel must be empowered to challenge decisions or actions of others on the executive management team, including the CEO, where those decisions or actions could result in violations of law or policy, or otherwise expose the company to legal liability or risk.

The board should serve as a vital check on the potential conflict a general counsel might feel between her service to executive management, and her professional and fiduciary duty to the company as her client. If a general counsel needs to report concerns to the board, finding a way to do so absent the consistency of formal access or a prior relationship creates an obstacle to fulfilling her ethical duties.

This is not to say that proper general counsel positioning is a panacea to all corporate malfeasance, but proper positioning through a standing seat at the tables of the chief executive and the board of directors supports the ability of general counsel to appropriately influence business decisions, set the tone from the top, and reinforce the right corporate culture.

The connection between corporate culture and the general counsel is not one that is often made. However, failure to make that connection may prove shortsighted on the part of companies and executives looking to solidify an ethical, compliance-focused corporate culture.

**Author Biography**

**Veta T. Richardson** is President and Chief Executive Officer of the Association of Corporate Counsel (ACC), and sets the strategy for the world’s largest network of in-house counsel. With more than 43,000 members employed by over 10,000 organizations spanning 85 countries, ACC connects its members to each other and to the people and resources necessary for personal and professional growth.

To obtain a copy of *Leveraging Legal Leadership: The General Counsel as a Corporate Influencer* and other resources on this model governance practice, please visit [www.acc.com/seatatthetable](http://www.acc.com/seatatthetable).

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