



# Compliance & Ethics

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*Meet*

**Marjorie Doyle**

Chief Ethics & Compliance  
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# Letter from the CEO

ROY SNELL

## Should the Compliance Officer Invoke the Attorney Client Privilege?

I received an email from someone who said their organization wanted her to become the compliance officer and wanted to know if she could still invoke the attorney client privilege. She is currently in the legal department. I thought I would share the exchange with you.

### Dear Sue:

There are two answers to your question, the legal perspective and the perspective of "compliance as a profession." You should get the legal perspective from someone else. I will share with you some thoughts from the compliance profession.

If you become the compliance officer, the company can still invoke the attorney client privilege. The question is who should do it. It is appropriate for the general counsel or the outside counsel to invoke the attorney client privilege. It may be possible to invoke the attorney client privilege as a compliance officer, but it is probably inappropriate. It goes against all that this profession stands for. The compliance profession, by definition, is not focused on protection but on neutrality, open discussion, investigation and problem resolution. It would be odd to start a whole new profession to help prevent the truck load of legal problems that we are having, and then continue to do the same things that those who came before us did?

If the compliance officer invokes the attorney client privilege, the investigators I have talked to may not take your compliance efforts seriously. Like it or not, the compliance officer is supposed to be neutral. They may think you need to be sent a message. If



you want to irritate the investigators and increase your fines and penalties, I could not think of a better way than having the compliance officer invoke the attorney client privilege. The attorney client privilege is an appropriate tool if invoked by inside or outside counsel. It should be of some interest to note that in nine years of interacting with thousands of compliance officers, I know of no one who has ever personally invoked the privilege. They have however, used outside or inside counsel. Some of the best and brightest I know rarely use it any more because many feel that they will be asked to waive it and the information can be gathered by investigation and interviewing anyway.

If your organization is asking you to remain on as a lawyer in the general counsel's office, or report to the general counsel's office, you are right to be concerned. Although many compliance officers have two jobs, the most difficult other job is the general counsel, (or working for the general counsel for that matter.) Every commentary out of Washington and all guidance ever written suggests otherwise. The most humorous commentary I have ever seen is Senator Grassley's reaction to one company which had the compliance officer reporting to the general counsel. He said, "It doesn't take a pig farmer from Iowa to smell the stench in that conflict." It is not a question of Grassley being correct, the question is: do others share his opinion? ■

## SCCE'S MISSION

*SCCE exists to champion ethical practice and compliance standards in the corporate community and to provide the necessary resources for compliance professionals and others who share these principles.*

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