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Why law firms need dedicated compliance officers

an interview with Jennifer Quillen and Jerry Myers

Compliance Officer at Smith Debnam
Narron Drake Saintsing & Myers, LLP

Managing Attorney at Smith Debnam
Narron Drake Saintsing & Myers, LLP

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Narron Drake Saintsing & Myers, LLP

an interview by Donna Boehme

Meet Jerry Myers and Jennifer Quillen

Donna Boehme (dboehme@compliancestrategists.com), SCCE Board Member, interviewed **Jerry Myers** (jmyers@smithdebnamlaw.com) and **Jennifer Quillen** (jqullen@smithdebnamlaw.com) in the fall of 2013.

DB: The news that Smith Debnam had hired a full-time, experienced professional with 19 years of risk management and FDIC bank examiner experience seems to have created quite a stir in the legal world. Many companies hire their first chief compliance officer (CCO) after a scandal or near-miss.

Sometimes the decision is driven by regulators, investors, or other stakeholders. Can you describe briefly what led to Smith Debnam's decision to create a full-time CCO position?

JM: Our firm represents a number of financial services companies. That makes us vendors, at least in the eyes of regulators. Lawyers do not like to think of ourselves as vendors, but we have to face the reality that regulators do not care what we think! Many of the regulations that apply to financial service companies also apply to their vendors,

so compliance is not a choice. Like most law firms, we initially tried to handle training, testing, and monitoring of regulatory compliance through the efforts of our smart, talented, existing staff. The problem, of course, is that all of those people already had full-time jobs. We determined more than a year ago that we needed someone among our staff whose only job was compliance. I can assure you that our other talented, existing staff were delighted to have to some of that load removed from their backs!

DB: Smith Debnam is certainly at the forefront in its approach to compliance. Why do you think law firms in general have not hired CCOs before?

JM: There are at least two reasons. First, attorneys are confident that they are perfectly capable of understanding regulations. They see no need to have a compliance officer telling them what to do. Second, law firm bottom lines have been hit hard by the recession. No firm wants to add overhead that they do not absolutely need.

DB: Some of the arguments we have heard from the law firm industry are that somehow a law firm is “special” or alternatively, that (1) professional ethics rules already address ethical and compliance issues or (2) lawyers are all subject matter experts on compliance and therefore a program is not necessary. What is your response to these arguments?

JM: (1) Professional ethics rules may overlap with some of the regulations we face, but the overlap is slight. Our ethics rules do not come close to matching the granularity found in federal regulations. (2) There probably are some law firms who specialize in compliance work and therefore have resident subject matter experts. For those firms, I worry about the old tale of the cobblers’ children who have no shoes!

DB: Jennifer, you have an impressive background in financial and regulatory compliance. Can you tell us a little about your experiences, and how they have prepared you to take on the Smith Debnam CCO position?

JQ: Financial industry rules and regulations are the same across the board. They apply in the same way to a law firm that they do to a bank or other financial services company. Having worked both as a bank examiner with the FDIC and with banks as a risk officer, I have enjoyed the opportunity to view the regulations from both points of view. I have a good idea of what needs to be done to assure compliance by the law firm.

DB: Still, this new position certainly must present new challenges, because it stretches beyond the financial services industry into a broader scope of risk areas. There don’t appear to be any other full-time law firm CCOs for you to network with in deciding to take on this law firm compliance officer role. Can you tell our readers briefly of your thoughts and due diligence process in transitioning into this new territory?

JQ: It’s exciting to think about creating a new path in the legal world, and that’s actually what led me to want to pursue this opportunity. I have experience in banking and regulation with the FDIC, but this was something that allowed me to use my expertise in a new challenging environment. Compliance is a growing field, and it is simply because regulation is critical today. I hope our firm will look to use our strong compliance program as a highly competitive differentiator within our field.

DB: Jerry, how have Smith Debnam’s lawyers and clients reacted to the news of the firm’s first CCO? Or alternatively, have any other firms called you to say “You’re making us look bad?”

JM: The attorneys at my firm recognize that compliance is necessary and that having a full-time compliance professional is the only way to go. I have not yet heard anyone at another firm say that we are making them look bad, but I have seen concern on some of their faces when they realize the commitment we are making to compliance.

DB: Many corporations establishing their first CCO position give the role to an existing mid-level manager, with the joke being that whoever called in sick that day got the job. But you decided to go for outside expertise and at a very senior level. This is a serious hire. That's pretty impressive to folks in the Compliance field. How did you come to that decision?

JM: We initially tried breaking compliance down into small pieces and spreading the tasks among our existing staff. That approach proved untenable. No one staff member had a grasp on the big picture, and while they did not complain too loudly, they all already had full-time assignments.

DB: Sounds like you came to the conclusion that many in the profession refer to as "When everyone is responsible for feeding the dog, the dog starves!" Now, this question is for both of you. In the Compliance field we advocate that compliance risk areas should not be managed in "silos" – and that the mandate of a CCO must be broad, including all major compliance and ethics risks of the organization. For a law firm that includes not only typical law firm risks such as conflicts of interest, billing, management of client funds,

internal financial controls, and professional responsibility risks, but also more general risk areas such as employment discrimination, sexual harassment, social media, fraud, money laundering, embezzlement, and insider trading, to name a few, how would you describe the mandate of Jennifer's position?

JM: Our most immediate need has been addressing the regulatory compliance requirements we face with our work for financial services clients. Once we are satisfied with our compliance management program for that segment of our work, we will look to expand the breadth of the compliance officer's reach to include many of the areas you listed above.

JQ: As Jerry suggested, I think once we have a compliance management system established in the financial services area of the firm, my role will evolve. I anticipate being challenged to address other areas, including the ones you suggest are high risk areas for a law firm.

DB: Again, for both Jerry and Jennifer, in the field we consider the hallmarks of an effective CCO position to be independence, empowerment, seat at the table, line of sight, and resources. How would you say that the new CCO position at Smith Debnam compares in these areas?

JM: I am the firm's managing partner. Jennifer reports directly to me. The managers in our financial services practice group meet on a weekly basis. Jennifer participates in those meetings. I meet regularly with Jennifer to make sure she has access to the resources she needs to do her job.

JQ: I think the firm's hiring of a compliance officer speaks to their willingness to empower

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me to implement a compliance management system. I think they view me as an asset, not just an overhead expense.

DB: Jennifer, you're in a groundbreaking role. What are the main challenges that you have confronted/are confronting in the job, and how are you and the firm addressing those?

JQ: I think the biggest challenge is communicating what my role is to employees, as most people are initially wary when they hear "compliance." I want to change the culture so compliance is embedded in every process we have, without it being viewed negatively. I want people to realize that they can be compliant by simply doing their job the right way. Compliance should not be viewed as a burdensome checklist to complete or an added process viewed as wasted time. A change in culture will take time, but I certainly have the support from Jerry and the firm to accomplish this.

DB: Jennifer, along those same lines, some advice we have given new CCOs is never to be isolated, and to develop your networks of other compliance professionals and mentors early on to provide perspective, encouragement, and support. Do you have any plans to join any professional industry associations to develop your networks, or to otherwise form associations that keep you connected to best practices?

JQ: As you mentioned, I seem to be alone in the industry for now. As important as it is to be able to reach out to others, I'm truly focused on developing an internal culture of compliance and values. Once we start to

achieve internal goals, I think that will allow me to be better positioned to reach out to those in other law practices and communicate openly with other CCOs. Ultimately, the goal would be to join some key associations so that fundamental compliance concerns

can be shared and overcome as an entire group. If we are going to change the culture, or how the profession is viewed, we cannot wait until something goes awry. We have to be strategically focused on the future, to build the firm so that each individual owns

compliance in their own department, and to have solutions to potential issues.

DB: And now the million dollar question for both of you: At this stage in Smith Debnam's compliance program, what keeps you up at night?

JM: While I do not always sleep well, nothing about our compliance management program keeps me up at night.

JQ: I constantly think about what is coming down the pipeline and how it will affect our current business processes, policies, procedures, security, and technology. It's in my nature to worry. This is what keeps me motivated!

DB: Jerry, given the dearth of law firm activity in this area, it has been argued that firms with strong compliance programs would find that to be a competitive advantage in the marketplace. Would you agree, and if so, why?

JM: It depends on the markets the law firms serve. For firms that work with financial services companies or other business clients with their own engrained compliance culture,

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having a strong compliance management program will be essential to establishing or maintaining a competitive edge. For firms handling work for individuals or small businesses, the clients are not likely to be overly impressed that the law firm has a compliance manager.

DB: Jennifer, you're a bit of a pioneer in the world of law firm compliance programs (as in, there aren't any!). Would you consider speaking at an upcoming meeting of the SCCE, or maybe to some of the legal associations, such as the Association of Corporate Counsel, to provide your peers with some perspective and lessons learned from your experiences?

JQ: Yes, I'd be honored to take part in an event like this, once I'm established in my

role at the firm. I think anytime leaders get together, it is imperative that they hear new ways of addressing issues. As CCOs face challenges, like the ones we see here at Smith Debnam, we have the responsibility to suggest and implement changes to existing policies and procedures. Change frightens most people, but the most successful companies are ones that find new and creative ways to overcome the challenges they face.

DB: Thank you both for agreeing to share your thoughts with our readers. We certainly would like to check in on you later to hear more about your progress. But for now, congratulations on Jennifer's appointment and Smith Debnam's commitment to being on the forefront of a proactive, serious approach to law firm compliance programs. *

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