

Playing the Part

Corporate counsel often faces tough choices

By JACK ZEMLIKA,

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A CEO is implicated in a kickback scandal and the company's corporate counsel has some options to consider.

One of them is not to "stick your head in the sand," according to attorney Charles E. Reis of Brown & James, P.C., in St. Louis.

Reis and fellow attorneys Gail Perry of Baylor, Evnen, Curtiss, Grit & Witt, LLP in Lincoln, Neb.; Harvey J. Cohen of Dinsmore & Shohl, LLP in Cincinnati; and Bruce J. Lindl, general counsel for Regal Ware Worldwide in Kewaskum spoke on the roles and responsibilities of in-house counsel when dealing with such a crisis.

The session wrapped up the ALFA Midwest Regional Seminar on Sept. 7. ALFA is an international network of independent law firms that was founded in 1980.

Working through a role-playing scenario where the head of a company is caught in a scandal, the panel outlined several tips for general counsel to help manage the situation from start to finish.

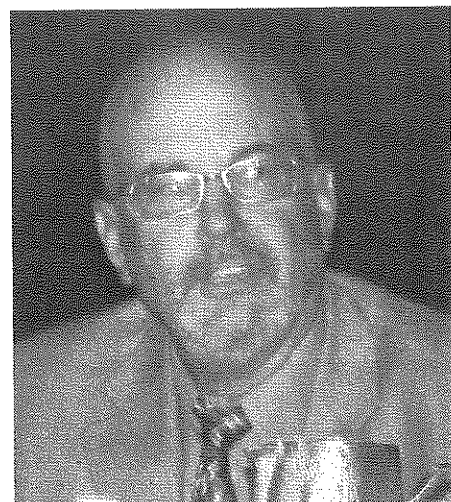
"I think one of the big things to remember is that you work for the company and not necessarily the boss," said Lindl. "Your primary responsibility lies with the best interests of the business."

Because of that fact, the panel suggested that in a delicate situation where in-house counsel may have a friendly relationship with the CEO, such as in small business, the best recommendation is for the boss to seek private representation.

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General Counsel, Regal Ware Worldwide



"A mistake would be not telling that CEO that, 'Hey, I'm in a tough spot too and you need to think about outside counsel,'" said Cohen.

The same is true of the company that may seek an outside firm for a more objective approach in handling the situation.

Not reporting the allegations to a higher authority in the company, such as an audit board, would be a mistake, Cohen said, noting that counsel should encourage the CEO to get an independent perspective by hiring an outside firm.

That aspect may well serve as a public relations tool for the company and help avoid conflict for the corporate counsel.

"Do you use your regular alpha firm or hire someone in particular who is going to be well-respected and have knowledge in this area, with the thought from a public relations standpoint that we've cleaned up, straightened it and taken the proper steps," said Lindl.

Smaller firms with limited budget or no public relations department may struggle with those options, in which case in-house counsel may have to assume the role of media manager.

Easier said than done, according to Reis, who noted that most attorneys did not take a public relations course in law school. Nevertheless, corporate counsel may be responsible for publicly representing the company's stance on the investigation.

The diverse roles corporate counsel play can blur ethical lines as well, but Lindl noted the first question an in-house attorney should ask themselves is "am I doing the right thing?"

"The bottom line is that general counsel needs to look at the higher ethical issues," said Lindl. "I always say that I'd much rather be able to look at myself in the mirror than keep my job."

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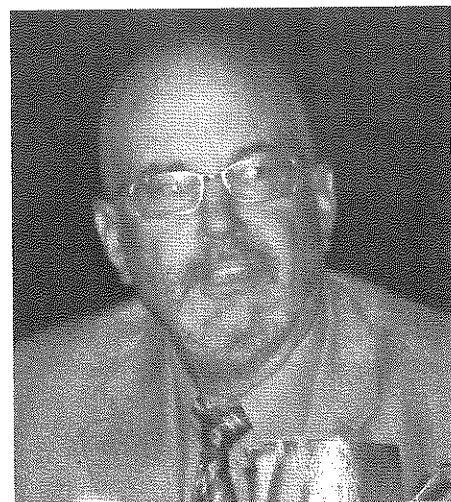
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