
Dear Gentle Reader

A conversation on ethics advice and ethics officer independence

BY JOAN ELISE DUBINSKY

The position of the ethics and compliance officer is a difficult one—rife with ambiguities and unexpressed tensions. Using the gentle conceit of an advice column, this article explores three key professionalism themes that bedevil all chief ethics and compliance officers: navigating new roles, setting expectations, and balancing the demands of independence and leadership. New and experienced ethics and compliance officers may experience these role challenges, as they focus on the giving of confidential and independent advice.



Dear Gentle Reader,

First, thank you for your kind letter seeking advice on how to be the best chief ethics officer your company has ever employed. Tell me more about what you are facing, or the challenges you wish you were facing.

***Best regards,
Aunt Honey***

Dear Aunt Honey,

Where to begin? I should be ecstatic that I'm finally at the top of my organization. I have the carpet on the floor, and a pretty good budget. (OK, my employees are my employees. You take what you can get.) But I can't get my phone calls returned. And I constantly feel that my hands are being slapped. Why don't those other executives realize that I can help them look better than they do, and avoid a few bumps along the way?

***Yours,
Gentle Reader***

Dear Gentle Reader,

OK—breathe. It won't be all better in the morning, but you will live to see the morning. I take it that you are rather new to this job as chief ethics officer, and you are finding that not everyone is as enraptured with your new position and title as you are. Could it be that you are coming across as the authority—when everyone else on the management team needs a colleague?

***Best regards,
Aunt Honey***

Dear Aunt Honey,

But they're supposed to follow my advice! I'm the one who is supposed to know the ethical risks and tell them how to avoid the pitfalls. I know where the alligators lurk in those murky deal-making ponds. I know how this business really operates. Remember, I run the Hotline. I hear everything that happens around here.

***I'm running low on patience,
Gentle Reader***

Dear Gentle,

Of course you know the ethical risks that face your company—or at least the kinds of risks that your company is most likely to encounter. You've gone to all of the conferences. I've seen you on those panels, sharing war stories with your ethics and compliance colleagues. Among your colleagues, you are a rock star.

But it's a fairly twisty road between knowing what might go wrong and working with others to make sure that things go right. Perhaps your idea of what a chief ethics officer does is not what your organization thinks you should do.

Have you tried asking rather than telling?

***Once again,
Aunt Honey***



Dear Honey,

Cut to the chase. Why on earth should I listen to you?

GR

Dear GR,

More than 30 years as a chief ethics and compliance officer. And lest you wonder where...with major non-profit organizations, multi-national corporations, and international organizations. I've been around the block and across the globe.

I'm not sure that my credentials or how you work with other executives is really what's bothering you. Is it knowing too much? Is it fitting in with the executive team? Is it giving advice only when your colleagues think it's convenient?

Or have the silken threads of independence tied you into knots?

Aunt Honey

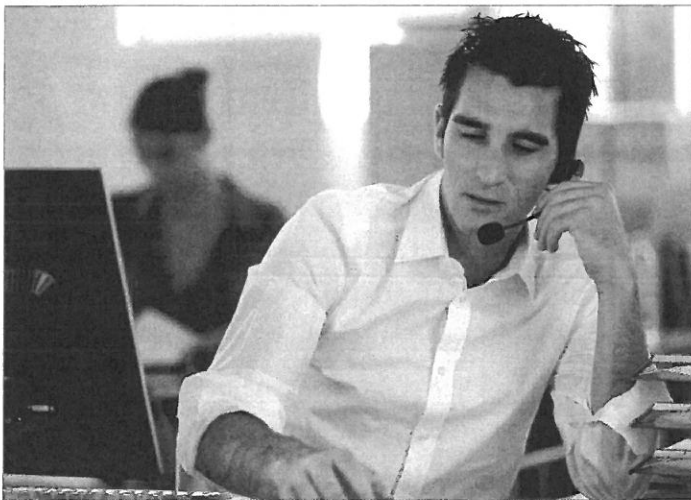
A hotline to Aunt Honey

Wouldn't it be lovely if we all had a direct line to Aunt Honey? A wise and empathetic compatriot, she knows the ins and outs of our profession. She dispenses those pearls of wisdom just when we need them. There's not much she hasn't seen in 30 plus years.

Unlike most of the colleagues we know and work with, Aunt Honey has timely reflection and leisure on her side. She is just a figment of the author's imagination, patterned after the "Agony Aunts" of newspaper advice columnist fame. You know of whom I speak: the Dear Abby, Dear Prudence, Ms. Manners, and Ask Carolyn crowd. And those perfectly constructed and syndicated columns reap the benefit of hours of thought, great editors, and a focus group or two.

In just a few words, this imaginary exchange between Gentle Reader and Aunt Honey reveals some of the unspoken realities of this young profession we call ethics and compliance. Let's take a look at some of the tensions and ambiguities that accompany these new roles, and see what we can learn about ourselves, our organizations, and the societies in which we operate.

Being an ethics officer is one of the loneliest jobs on the planet. No one ever calls the ethics office to say that everything is going well and that there are no problems on the horizon. Our phones ring when there are problems that our internal clients cannot or will not solve. Some employees will call to make sure they are following the rules, or at least following the rules in ways that they won't get caught if a few corners are inadvertently cut. Some will call for ethics advice to test whether they have interpreted the rules so that they can do what they always wanted to do, anyway. Our callers are human, with the predictable foibles, fallacies, and fancies that we all share.



Giving advice is not the *totality* of ethics and compliance office practice. It is just one of the more visible and essential mandates that we have been given. Giving advice is also one of the few undertakings that can be easily measured, and in ways that reflect the value of the activity itself.¹ We can track the number of callers or office visitors. We can record the nature of the advice we provide and the

recommendations we offer. We can (but rarely do so) follow up with our visitors to determine whether our advice was actually followed. We can identify significant, recurring, and emerging trends that surface from the advisory service records that we maintain.

In our imagined exchange, Gentle Reader, who has just accepted the role of chief ethics officer, turns the tables on the typical advisory services exchange. An ethics officer reaches out to Aunt Honey for advice, rather than dispensing it. An ethics officer admits that the job is tough. An ethics officer speaks indirectly and almost circuitously, before getting close to the real issue at hand.

Just like the “Agony Aunts” and modern advice columnists, ethics office callers can squeeze several issues into just a few sentences. What is Gentle Reader really saying? And how does Aunt Honey clarify those concerns and then provide suggestions on moving forward?

At first, Gentle Reader seems to need reassurance about taking on a chief ethics and compliance role in his or her company. Perhaps Gentle Reader writes Aunt Honey to validate those initial experiences, and to compare them to others who have reached a career pinnacle job. Then, Gentle Reader—our “everyman” and “everywoman” chief ethics officer—describes chafing under some unexpected restrictions on this new role: phone calls not returned; position and authority not respected; her proverbial “wings” clipped by the executive client group that she believes she ought to help.

As Aunt Honey probes a bit deeper, the core issues emerge. Our Gentle Reader suffers

from ailments that can beset any new executive—whether or not they operate within the fields of ethics and compliance. First, he is undergoing a period of intense role negotiation that will eventually establish key working relationships across the organization. He encounters an established executive hierarchy, to which he is the newcomer and, we assume, the one least experienced at navigating the ins and outs of existing corporate structures and politics. He struggles with his own organization's culture, one that he believes he "owns" in order to integrate an enduring commitment to ethics and integrity.²

Ultimately, Gentle Reader describes a struggle over ethics office independence. On the one hand, our Gentle Reader is a key part of senior management of her organization.

And yet, she also must maintain professional and personal independence to ensure the objectivity of her advice. The chief ethics officer wants to have a positive impact on culture and behavior. To do so, she must be at that proverbial leadership table, commenting, observing, participating and (when necessary) objecting to management decisions. To have such an impact, the ethics officer needs to create collegial and trusting relationships with others on the management team. Yet, once admitted to that the management team, how can our Gentle Reader preserve independence of thought and judgment? Our Gentle Reader must still protect her opinions from "group think." And of equal importance, how does she ensure that employees see the ethics office as different from senior management,



so that individuals are comfortable seeking ethics advice from a dispassionate, unbiased, and impartial resource? Employees may consciously or unconsciously avoid the Ethics Office if they believe—or even suspect—that the office is a cheerleader for management.

Aunt Honey knows of what she speaks. There really are silken threads of independence that tie ethics and compliance officers into knots.

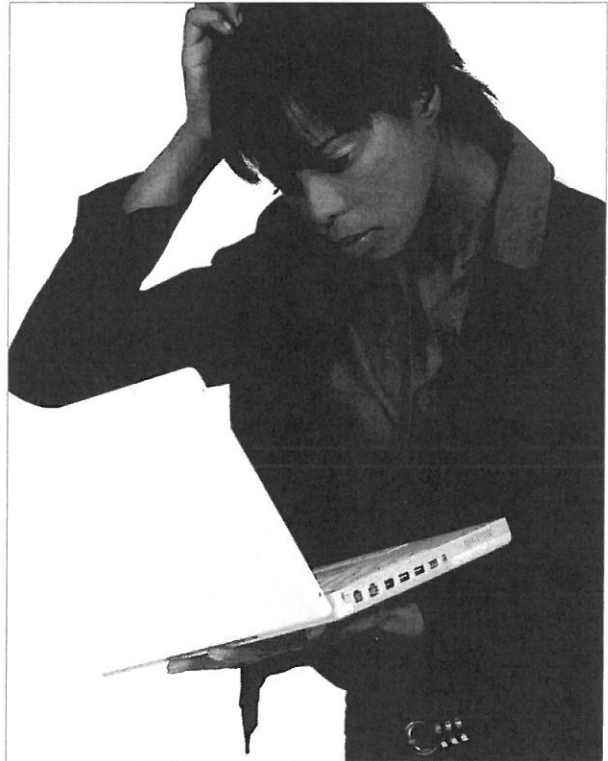
Let's start with the advice-seeking and advice-giving dynamic.

On giving ethics advice

What do we know about the provision of ethics advice? First and foremost, providing ethics advice is iterative. As the exchange with Gentle Reader demonstrates, it's a rare advice seeker who asks the precise question, with the right amount of contextual information, in the very first query. It can take several exchanges—whether in person, by telephone, or email—until the ethics officer has enough information to rationally assess the problem and provide advice. And this requires patience, fortitude, and exceptionally well-developed listening skills on the part of the ethics officer. Sixty minutes per inquiry may seem like a heavy investment of time from the perspective of advice giver. From the shoes of the advice seeker, an hour may only be just enough to get started.

Providing ethics advice requires a foundation of trust. From the advice seeker's perspective, the ethics office is an unknown—and possibly scary—resource provided by the employer. It's hard to develop trust at a

distance, without the benefit of face-to-face conversation. Trust develops through multiple interactions, over time, in an environment that is calm—or at least distraction-free. It is a significant challenge to develop trust virtually and remotely. When we recall how easily email messages can be misunderstood, we should be pleasantly surprised any time that we provide advice via email and it is understood and acted upon by the caller.

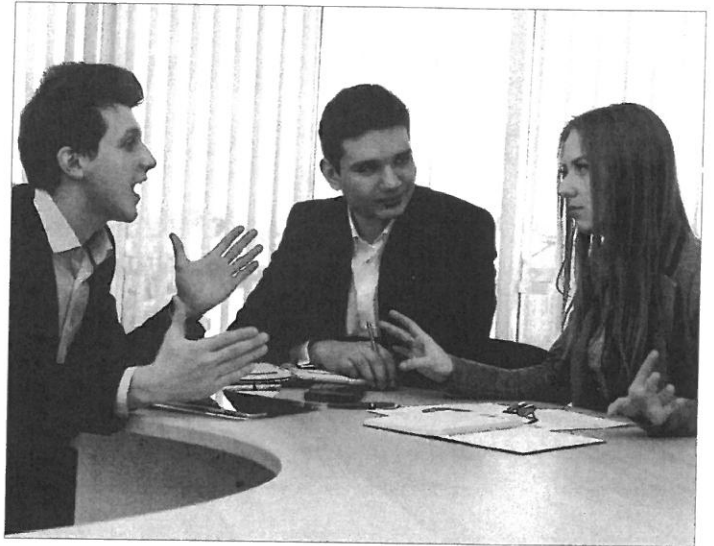


No matter how consistently you talk about ethics office trust, access and independence, most employees firmly believe that the ethics office is part of management and will represent management's interests to the detriment of all others. As an independent office, you cannot be or be seen as the representative of management, or conversely for employee unions, labor, or works councils. Independence

requires the ethics office to occupy the border between management and rank and file, recognizing that the borders between stakeholder groups can be poorly marked.

Especially in organizations where there is a stark divide between management and rank and file, the ethics office cannot permit itself to be boxed out of a difficult situation merely because either side of the dispute asked first for advice. Giving advice should not depend upon who won the race to get to your office. There will be times when both management and employees will ask for ethics help in connection with the same employment-related ethical challenge. When that happens, you must be prepared to hear slightly different versions of the facts and circumstances leading to the dispute. Because your focus is on the organization's values and rules, your advice must be neutral in terms of the ethical question or dilemma. It is not your role, typically, to serve as adjudicator. It is your role to provide consistent, neutral, and actionable guidance.

When we provide advice as ethics practitioners, we must clarify the issues that arise in the facts that are presented. We need to acknowledge the issue that the caller believes he is bringing up, as well as the issues that are foundational yet hidden. This is where an issue classification system can help—or hurt—you. Many employees will call any workplace transaction “unfair” and “unethical,” if they perceive that the outcome did not result in a personal benefit. You may have heard the refrain: “But it’s not fair [to me.]” Not all ethics questions are based in fairness or equity. Justice, compassion, loyalty, respect for life, obedience,



promise keeping and truth telling are at the roots of many workplace ethical concerns.

Your goal, of course, is to provide ethics advice that is confidential, accurate, complete, practical, and appropriate to all of the stakeholders. As an individual, you must ascertain that you have no stake, no personal interest, in the advice you provide. Your ability to detect your own personal conflicts of interest, both real and potential, must be well developed and frequently reexamined for bias. If the facts are otherwise, you must be able to renounce your personal interest, disclose your interest to the relevant parties, and/or recuse yourself from further involvement in the matter at hand.³

On Ethics Officer independence: Untying the knots

The most illusive element of all is independence. Consider the professional obligations of ethics practitioners: we are zealous advocates for truth, integrity, and accountability. Unlike our legal counsel brethren, we are not zealous advocates for our clients.

Our advice must be free of tacit or overt ties to any one person, office, or institution. Unlike the mediator or the ombudsman, we do not abstain from taking a firm position. It is not our role, to bring together two competing parties together, to help them find a mutuality of common interests in order to solve a workplace dispute. Our primary obligation is to help the individual employee see the totality of her circumstances, within the context of the organization and its rules and values, in order to make the best decision she can.

Our role is to provide specific and actionable guidance on tough ethical choices. Ethics officers outline several optional courses of action, explore possible consequences, and then suggest which alternative is optimal. We take a stand on the right course of action. We are empowered specifically to tell our visitors what they ought to do, rather than what they want to do.

Reporting relationships can directly influence ethics office independence. Yet there is far more to this dynamic than playing the “who is my boss?” parlor game. We say that the chief ethics and compliance officer *must* make reports to the Board of Director and/or its Audit Committee on an annual basis, *should* report to a senior executive, preferably the chief executive or managing director, and *should have* unfettered and unfiltered access to a member of the board on an as-needed basis. Many distinguished leaders within our profession argue that to be independent, the chief ethics officer must not only make reports to the Board but should also have a direct line reporting relationship with a member of the Board. This, of course, makes the chief ethics officer a supra-employee, one who enjoys the benefits of regular employment but who suffers none of the personal challenges of being part of a complex hierarchy and dynamic organization.





Clarifying your reporting structure is a valuable and useful exercise. This exercise is necessary, but not sufficient to establish your independence. Independence requires a discrete set of attitudes and behaviors that distinguish the ethics officer from others who hold managerial and leadership duties.⁴ How you do your job, and how you define your role matters just as much as—if not more than—clarifying who your boss is. Independence has many attributes, including role independence, structural independence, independence in decision-making and exercise of authority, as well as independence of judgment.

Should the chief ethics officer provide unsolicited advice to senior management? We typically think of the advisory service dynamic as one in which the ethics office reacts and responds to a specific request from an employee. (And face it. The vast majority of advice seekers are members of the rank and file. Senior leaders are not the most frequent

of visitors to our offices.) Ethics officers wait for the phone to ring, or the email server to ding. If the ethics officer also provides unsolicited advice to senior management, he must be sufficiently integrated into the complex fabric of the organization to know what is happening, to observe risks, and predict issues. By intervening, the ethics officer hopes to prevent ethical risks from either occurring or exploding. Most will agree that preventing ethical risk is an admirable goal. This is a good thing. Yet, by inserting oneself into management decisions, an ethics officer can be seen to compromise independence. When that happens, it may appear that the ethics officer is not just advising about ethical risks in a decision about to be made; the ethics officer is seen as making the decision itself. And as soon as the ethics officer assumes responsibility for making what are essentially management decisions, independence flies out the window.

Examples always help.

Dear Aunt Honey,

I followed your advice, and now I ask more than I tell. I counted up all the question marks in your earlier correspondence. You certainly practice what you preach.

So here's my current challenge. There's an incredibly complex internal investigation happening right now. Outside counsel is handling the fact finding. The General Counsel and I serve as liaisons between the board and outside counsel. The press is salivating at our door. Employees are chattering away on blogs and email. The subject of the investigation is an intensely private person—ambitious and well connected politically. The president wants him removed from his position, even before the fact finding is completed. If that happens, no matter what the outcome of the internal investigation, I just know that the subject will file a retaliation complaint.

If I intervene and speak with the president about the optics, do I lose my independence? Does that put me in the role of making a management decision about discipline? Or should I say something to the president about our retaliation policy?

Gentle Reader

Dear Gentle Reader,

Having once lived in Texas, Aunt Honey can rightfully say that you are between a rock and a hard place. If you can keep the president from acting precipitously, no one will ever know. In other words, the situation won't get suddenly worse. If you intercede and, despite your best efforts, the president removes the subject from the workplace, your involvement will become known. And to the outside observer, it will look like you have compromised your objectivity and your independence by making the decision about discipline.

If you intercede and are successful in preventing retaliation, you will reach the best outcome possible. However, there's no guarantee of success. The difficult truth is that there is no easy answer here.

This is one situation where a colleague—perhaps the General Counsel—who is unarguably part of management, could have that necessary discussion with the president. Can you accomplish what needs to be done through an ally?

Tell me what happens.

Aunt Honey

Independence is a state of mind and an attitude that each ethics and compliance officer adopts. It is more nuanced and complex than establishing the right set of reporting relationships. We have to acknowledge that it is personally gratifying to finally become part of the senior management team. Many of us have waited years for that invitation to become part of the Team. Yet, when that invitation does come, it would be wise to navigate slowly as you determine what membership actually means. Observers can stay independent much longer than voting members.

There are critics of our field who will argue that no ethics officer is truly independent if she works for the organization, and—heaven forbid—accepts a salary. Every argument has its absurdities. Being independently wealthy ought not to be a prerequisite for entry into the field of ethics and compliance. There really are advantages to working within the entity before taking on assignments in the ethics office.

Just three lessons

Ultimately, ethics office and ethics officer independence is a balancing act. Reporting relationships by themselves are insufficient to ensure that the role and services our offices provide are seen as valued and valuable. Those silken threads of independence need to be combed and straightened, before the knots can be untied.

So what have we learned? There are just three lessons for new and experienced ethics officers:

- Accept that your role is a lonely one.
- Search for the many layers of meaning, each time you provide ethics advice.
- Master the art of exercising influence without authority. To stay independent, you need to be *apart from* senior management *and a part of* the organization. That is how you will have the greatest potential to influence individual and institutional behavior towards ethics.

As Aunt Honey would say to her Gentle Reader, “Good luck, and tell me what you think.” ■

Joan Elise Dubinsky has over 30 years of professional experience in the fields of organizational development, business ethics and compliance. A global leader in the field, she recently retired from the United Nations as Director, UN Ethics Office/Chief Ethics Officer. Ms. Dubinsky previously served in similar ethics leadership roles with the International Monetary Fund, BAE Systems, Inc., the MITRE Corporation, and the American Red Cross. Aunt Honey, of course, is her alter ego

ENDNOTES

- 1 We are all familiar with hotline/helpline metrics, measuring numbers of calls, categories and types of calls, referrals, outcomes, and disciplinary measures. We may be less adept at the meta analysis of our data, mining for trends and testing for correlations and causation tendencies.
- 2 We will leave for another day Aunt Honey's thoughts about organizational culture and who ultimately owns culture change.
- 3 Some organizations impose strict term limits on their ethics officers and include prohibitions on any further employment at the end of the term to ensure that incumbents have no personal interest that could impede the delivery of confidential and independent advice.
- 4 Ethics and compliance officers are not the only professionals who have adopted independence as a key element of their occupational identity. Other professions also claim role independence, including audit and ombuds offices.