

Interview

15 Minutes With Ascendant Compliance's General Counsel

By Benjamin Horney

Law360 (October 22, 2018, 2:58 PM EDT) -- Since co-founding Ascendant Compliance Management more than a decade ago, former employment litigator Keith Marks has worked as the compliance consulting firm's general counsel and executive director, and his story shows that there are alternate paths lawyers can take to a successful career.



Keith Marks

Currently: General counsel and executive director, Ascendant Compliance

Previously: Director, National Regulatory Services

Law school: Western New England University School of Law

After graduating from the Western New England University School of Law in 1995 and doing clerkships at the Connecticut Supreme Court and the Connecticut Appellate Court, Marks landed at Day Berry & Howard LLP. He was an employment litigation associate at Day Berry — which has since been renamed Day Pitney LLP — when he decided the demands that would come with working his way up to partner were likely to disrupt other parts of his life, including his ability to live where he wanted and the amount of time he would be able to spend with family.

That epiphany led to Marks taking a job with a compliance consultant called National Regulatory Services, and after a few years, in 2007, he teamed up with some colleagues to chart their own course in the world of compliance consulting through the formation of

Ascendant.

Marks, 47, recently spoke to Law360 about his career, the differences between working at a law firm and striking out on your own and more.

How did you first become interested in pursuing a legal career of some kind?

My interest in a legal career came from Washington, D.C., trips my mom took me on when I was a child. She had an uncle who was a master sergeant with a top security clearance, and he gave me pretty incredible tours through D.C. From there, I kind of always sought out a legal career.

When I first got out of law school I did two clerkships, and from there I found my way to Day Berry as an employment litigator. I came to call it "commercial divorce law" not too long after starting it, and always held on to that description.

What led to the decision to take a career path other than continuing as a rank-and-file attorney and working your way up at a law firm? Can you detail the reasons why you left Day Berry after a couple of years working there as an associate?

I made the decision to get away from the litigation environment because of my observation about the senior partners who were full-time litigators. The demands of their careers didn't fit with where I was planning on being geographically in my life and familywise. Those were personal decisions, looking at the strains of litigation.

I really enjoyed it while I did it, and I could have easily seen myself becoming fully ensconced and dedicated, but I made the decision not to put both feet in, so to speak. Meanwhile, I was working in Hartford when I was at Day Berry, and from the northwest corner of Connecticut it was a substantial hour-and-20-minute commute each day. On top of doing litigation and trials, it's just not what I was looking for.

At that time, I identified that in the northwest corner of Connecticut there was a company called National Regulatory Services that was doing compliance consulting. It turned out to be a great opportunity, and it was the start of what is now an almost 20-year career in the

compliance industry.

What are some of the major differences between working at a law firm like Day Berry and working as the head of legal for a company that isn't a law firm, like Ascendant?

When you become the general counsel of a company, you're always thinking about the best interests of the company. Your primary work is to translate goals projected by the CEO and management team and come up with ways to help the business. When you're litigating, you're pitting yourself on every decision against another side, so it's a little different. The point of being a general counsel is more about always thinking in the best interests of the company.

What is the most rewarding part of your job? And has the answer to that question changed at all over the course of your career?

The most rewarding thing is when we establish relationships with our clients that last for years and years, because when you have that trust role with clients, they come back to you more and more. We serve in a role where our primary contacts are chief compliance officers of firms that are inside a box at the companies they work at; we are their eyes and ears in the field, we bring back observations of what's going on out in the field.

During the course of developing a relationship with a client, you're always looking to strengthen their firm's compliance and risk management programs. It's particularly rewarding when you help a firm find something they truly need to change, because without change they might be in regulatory jeopardy. When you can effect that kind of change with a firm, now you've made a huge difference in terms of how that company's going to survive.

With the increased emphasis on companies' responsibilities when it comes to cybersecurity and data protection, how do you view your role in helping make sure that Ascendant is prepared for all aspects of a potential cyberthreat?

We have a great team led by our director of tech, and as we've grown we've become more and more formal about our policies and procedures associated with cyber and data protection. It's particularly important for us, because we are conveying information to our

customers about what they should be doing. I'm involved more in making sure [our policies and procedures] are regularly reviewed by experts in our [information technology] division.

How did Ascendant come to be formed?

After I was at National Regulatory Services for about seven years, the firm had changed over through a couple of different private equity owners, and there were a number of us who decided it was time to go make our own new company. In 2007, eight of us joined forces and we started Ascendant Compliance from there. We've grown it now to a place where we're back to being owned by private equity, as a part of Compliance Solutions Strategies. [Ascendant was acquired in January of 2017 by CSS, which is backed by private equity firm CIP Capital.]

What was your experience with the private equity industry prior to changing gears on your career from employment litigation to compliance consulting?

Private equity wasn't something I had a background in until I got into the compliance field. When I got in, it was before [the Dodd-Frank Act of 2010], so it was before private equity firms had to be registered [as investment advisers with the [U.S. Securities and Exchange Commission](#)]. My first experience was with some private equity firms who were already registered prior to Dodd-Frank, which generally reflects how they were larger firms. What you learned quickly was that their registration reflected good operating practices.

As we grew Ascendant, we received a lot of interest from private equity firms about what our business was doing, how they could invest in us and help us to do what we were doing but even further. So we actually ended up on both sides of the coin: Through the compliance work I got unfettered information about the operations of private equity firms and how they were doing their work so we could develop and implement sound compliance programs, and on the other side we got buying interest from private equity firms wanting to be invested in the company.

How did things change for Ascendant after Dodd-Frank was enacted?

One of the biggest challenges for private equity firms is that as a result of Dodd-Frank they were crammed into [the Investment Advisers Act of 1940], which has language all of its own

and really wasn't built for private equity firms. So a big thing we had to do was try to show these firms how something that didn't seem to match their business at all could be managed appropriately for regulatory purposes. Generally, the private equity firms that are successful have disciplined diligence and operating processes that align well with good compliance programs.

Can you detail a few of the most significant legal issues you've had to face as GC of Ascendant?

From a client point of view, we've been fortunate in that we haven't had any legal issues that weren't resolved between us and the client. We've never had anything that had to go to any form of litigation or arbitration. That's a success in and of itself.

One of my actual biggest challenges was when our company, after being in operation for a few years, launched a tech product. That called for inventing a whole new set of legal documents, for things like licensing with clients and gaining the acceptance of our clients for necessary terms of those agreements.

Going way back, one of the challenges with being part of a small company is helping to manage issues among a small group of partners. There were eight of us starting out, and we always wanted a consensus.

What are some specific ways that private equity firms and other investment-related businesses should be ensuring they are being totally compliant?

Firms need to build systematic processes that are repeatable, but they can't be effected in a manner where new issues and ideas and conflicts of interest aren't being covered. You have to keep learning about the entire industry, and the whole economy, to try and see conflicts of interest before they have negative consequences.

How do you unwind outside of work?

I've got a great family and a beautiful wife, we just had our 20th wedding anniversary. We've got two smart girls, 11 and 14 [years old]. I'm mediocre at best at golf and basketball, but I keep trying.

--Editing by Alanna Weissman.