

Investigative Triggers and Internal Investigations

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TOPICS

1. Investigation Triggers

- Focus Point – Whistleblowers
- Focus Point – Attorney Obligation to Investigate Misconduct

2. The Investigation

- Focus Point – First Steps, Data Collection, Pre-Interview Considerations
- Focus Point – Clarity of Client Representation
- Focus Point – Maintaining Confidentiality, Privilege

3. Conclusion of the Investigation

- Focus Point – Duty to Report
- Focus Point – Waiver

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WHY DOES THIS MATTER? ATTORNEYS AS GATEKEEPERS

- What duties are owed by attorneys to ensure client compliance? Potentially to proactively disclose client info?
 - Legislation
 - Professional Responsibility Rules
- Will a gatekeeper (ie. attorney) who fails end up as a co-defendant in a civil and/or criminal case?
- ABA Statement on “Gatekeeper Regulation and the Legal Profession”
 - Focused on money laundering
 - Seeks to deputize attorneys

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Investigation Triggers

- Formal complaint from whistleblower or victim
- Anonymous complaint
- Reports to supervisor or management
- Government agency complaint or inquiry
- Civil lawsuit or criminal complaint
- Accident or injury
- Media reports or inquiries

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SEC Whistleblower Program Overview

- More than \$1 billion awarded to more than 200 individuals since 2012
- More than \$500 million awarded to 108 individuals in FY 2021
- 12,200 tips received in FY 2021 (76% increase)
- Corporate Disclosures and Financials among most common topics
 - Cryptocurrency, ESG, and Covid-related tips are on the rise
 - Attempts to use pandemic to sweep longstanding issues under the rug
- 75% of “insider” award recipients reported to their companies first
- SEC continues to bring cases for impeding and retaliating against whistleblowers

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Other Whistleblower Programs

- 2021 False Claims Act Stats and Trends:
 - Over \$2 billion in non-Purdue Pharma FCA recoveries
 - Just under 600 new qui tam lawsuits filed by relators
 - 30 new CIAs with HHS-OIG
 - Majority of unsealed qui tam cases brought by former employees
 - Notable number of proactive referrals from data analytics
- Other Programs
 - FINCEN
 - OSHA

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