

Investigative Triggers and Internal Investigations

Panelists: Kelly Vickers, Kimberly-Clark (Irving, Texas)
 Associate General Counsel

Sergio V. Leal, Ericsson (Houston, Texas)
 Head of Compliance, MANA and M&A

Tim Newman, Haynes Boone LLP (Dallas, TX)
 Partner

Moderator: Jay Dewald, Norton Rose Fulbright (Dallas, TX)
 Partner

1

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

2

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

3

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

4

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

5

5

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

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Investigative Triggers and Internal Investigations

Also available as part of the eCourse

[Answer Bar: Handling Employee Investigations in Today's Workplace](#)

First appeared as part of the conference materials for the

44th Annual Corporate Counsel Institute session

"Investigative Triggers and Internal Investigations"