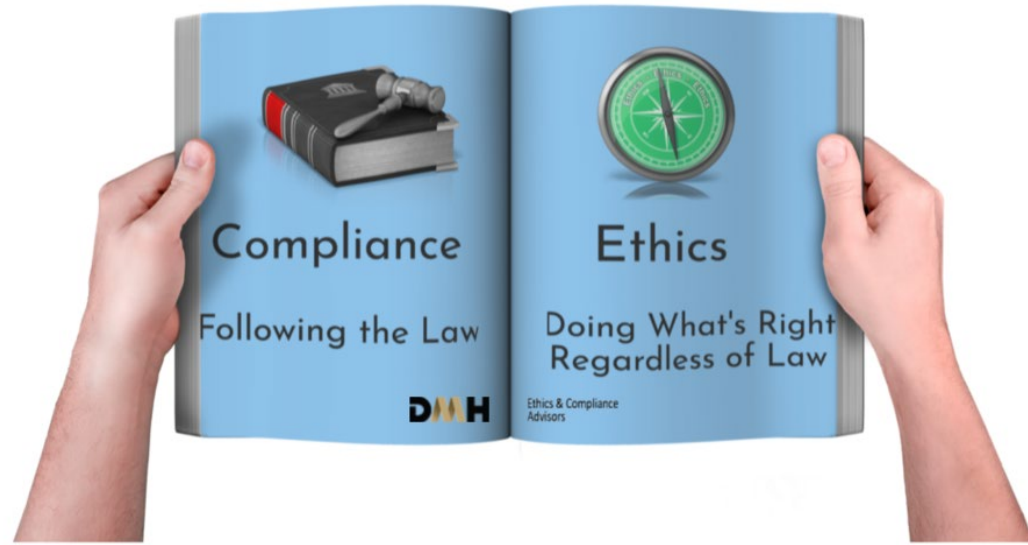


# Ounce of Prevention and Pound of Cure



**In-House Ethics and Compliance in the Real World and How Outside Counsel Can Support Emerging Needs**

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# Ounce of Prevention and Pound of Cure: In-House Ethics and Compliance in the Real World and How Outside Counsel Can Support Emerging Needs

**VERIFICATION CODE**

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"It takes less time to do things *right* than to explain why you did it *wrong*."

- Henry Wadworth Longfellow

# The Takeaways

- Corporate Compliance and Ethics for In-House Counsel
- Investigation Processes and Strategies
- Impactful Navigation of Compliance/Ethics Issues in Business Cultures
- Spaces For Outside Counsel to Assist and Lead In-House Efforts

# The Framework

- ABA Model Rule 1.13(a)

A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

# The Framework

- ABA Model Rule 1.6 (a)

A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

# The Landscape

Ethics and compliance in the corporate environment are not presented the same as the professional responsibility we are used to seeing in law firm environments.

different from  
vs.  
different than

Ethics and compliance in the corporate environment are more likened to the expectations of behavior and accountability amongst a diverse group of people.



# The Issue



**How Many Ounces Does It Take to Get to Compliance?**

# An Ounce of Prevention: Best In Practice

- ❖ Is the company's compliance program well designed?
- ❖ Is the program being applied earnestly and in good faith? Is the program adequately resourced and empowered to function effectively?
- ❖ Does the corporate compliance program work in practice?

## Compliance Program Management



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# An Ounce of Prevention: Best In Practice



# An Ounce of Prevention: Best In Practice



**1% always corrupt**  
**1% always integer**  
**98% acts situational**

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# An Ounce of Prevention: Excuses, Excuses

“We have always  
done it...”

“We can only  
compete if...”

“We had no clue our  
business partner was  
paying...”

“That’s just the way things  
work there...”

# An Effective Compliance Program: Key Considerations

- The ability to effectively identify and evaluate risk is largely dependent on the quality of information that decision makers are able to collect and compile
- A fluid risk assessment allows for consistent feedback from various touchpoints throughout the corporation

# An Effective Compliance Program: Key Considerations

**Effective  
Policies and  
Procedures**

**Right size  
the issue**

**Complaint/  
Investigation  
monitoring**

**Culture of  
transparency**



# An Effective Compliance Program: Key Considerations





# An Ounce of Prevention: Ethics

- Obtaining management buy-in and tone at the top.
- Generational and Cultural Awareness

**BE BRAVE**  
**ENOUGH TO START**  
**A CONVERSATION**  
**THAT MATTERS.**

TINA ROTH EISENBERG

# An Ounce of Prevention: Ethics

## Incentivize your values

- Real and observable consequences for leaders that violate those values

- Demotion
- Clawbacks of compensation

## •Effective compliance processes include:

- Seamless communication between Investigative, Quality Assurance, HR and Hotline groups to aggregate trends
- Data Mining of hotline complaints to identify trends
- Clear and timely communication to key internal stakeholders related
- Clear and consistent training related to values and policies

# An Ounce of Prevention: Reasons Matter

## Mirror Test



# An Ounce of Prevention: Remediation





# An Ounce of Prevention: Remediation



debarment

# An Ounce of Prevention: Auditing

- Legal protection may exist if audit is voluntary and violations are self-disclosed
- Can play a role in penalty reduction, criminal prosecution, inadmissibility of evidence
- Must structure carefully
- Follow up is key
- Useful tool for tracking emerging issues

# An Ounce of Prevention: Environmental

- In the environmental space, under U.S. law criminal liability can be imposed based on “willful” or “knowing” violations of law.
- Despite significant reluctance to share institutional knowledge about past environmental compliance issues or potential areas of risk, knowledge (and privilege) is power.

# An Ounce of Prevention: Environmental

- The best defense to an unexpected Section 104(e) request or other inquiry from an environmental regulator is prior knowledge and understanding of the issue.
- When an environmental incident occurs, bring outside counsel in as early as possible, and certainly before the reporting determination is made.



# An Ounce of Prevention: IRL



# An Ounce of Prevention: ESG

- Obligations of Publicly Traded Companies
- Component of Culture Compliance

# An Ounce of Prevention: Outside Counsel

- Managing individual interests while balancing and fulfilling obligations.
- Maintaining the integrity of an investigation.
- Dynamics of interaction



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# Fun Facts About Ounces (128 oz./ gallon)

				
<b>Beer</b> 1.96 gallons of water per fl. oz.	<b>Sparkling wine</b> 4.28 gallons	<b>Wine</b> 3.48 gallons	<b>Milk</b> 5.31 gallons	<b>Soymilk</b> 2.05 gallons
				
<b>Apple juice</b> 4.23 gallons	<b>Grape juice</b> 3.74 gallons	<b>Grapefruit juice</b> 2.78 gallons	<b>Orange juice</b> 4.11 gallons	<b>Pineapple juice</b> 6.36 gallons