

Internal Investigations Through a Litigator's Eye: Best Practices to Reduce Risk at the Global, National, and Local Level

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AGENDA

- **Initiating the Investigation**
- **Creating and Executing an Investigation Plan**
- **Results and Reports**

INITIATING THE INVESTIGATION

- **Who is the client?**
- **Who are the “need to know” persons – is there a special committee?**
- **What is the specific mandate and scope of investigation?**
- **What is the expected timing?**
- **Are “litigation holds” in place?**

INITIATING THE INVESTIGATION

- **Is the investigation internally or externally driven?**
- **Should outside counsel be retained?**
- **Have your data privacy and compliance teams been engaged?**
- **How, and to whom, will the results be reported?**

PREPARING THE ENGAGEMENT LETTER

- **Answers to the previous threshold questions are essential**
- **Should there be an indemnification clause?**
- **When does a “qualified privilege” protect the investigator(s)? - *Egbujo v. Jackson Lewis, P.C.***

ESTABLISHING AN INVESTIGATION PLAN

- **Are there any immediate reporting obligations?**
- **Identify documents, records and electronic materials to be reviewed**
- **Identify witnesses to be interviewed**
- **Consider need to protect reporter, whistleblower or complainant from retaliation**
- **Be prepared to protect the attorney-client and work product privileges**

EXECUTING THE INVESTIGATION PLAN

Challenges and Factors to Consider:

- **In-house contact/point person overseeing investigation?**
- **Remote vs. in-person investigation?**
- **Jurisdictional requirements based on witness location(s)?**
- **Consider the final report: primary or secondary audience?**

EXECUTING THE PLAN: GLOBAL WITNESS INTERVIEWS

- **Determine how jurisdictional rules impact the interviews**
- **Prepare for mental health issues raised at interviews**
- **“Dancing with Strangers” – the coworker/stranger phenomenon**
- **“Membership Privileges” – the executive favoritism phenomenon**

EXECUTING THE PLAN: GLOBAL WITNESS INTERVIEWS (CONT'D)

- **“Location, location, location”**
 - **Implications on privilege**
- **Who, What, When, Where, How**
 - **Ability to be present with witnesses**
- **Everything Everywhere All at Once**
 - **Coordination of counsel, collaboration of internal teams and leadership/board support is essential**

EXECUTING THE PLAN: ANALYZING AND DELIVERING FINDINGS

- **“He said/she said” – credibility determination considerations**
- **Corroboration without discrimination; assessments without bias**
- **Findings reporting formats?**
- **Oral read out? Draft reports?**
- **Board presentations**

THE INVESTIGATIVE REPORT

- **Nexus and scope of the investigation drive the nature of reporting**
- **Privilege and purpose go hand-in-hand**
- **Facts**
- **Findings**
- **Future Actions**
- **Objectivity is key**
- **Stand-alone summary is required**

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