

# Wolf at the Door: Balancing Privileges, Cooperation and Other Considerations During Investigations of Corporate Clients

**VERIFICATION CODE**

**MYM25**

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# Model Rule 1.2: Scope of Representation & Allocation of Authority Between Client & Lawyer

- (a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.
- (b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.
- (c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.
- (d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

# *United States v. Coburn*

- Private company forced to produce internal investigation material
- Internal investigation material used against two former employees
- Self-disclosure and cooperation of potential FCPA violations did not render the company a state actor

# Corporate Compliance Programs

- Good corporate citizenship
- Promotes culture of compliance
- Prevents civil and criminal liability
- Potential “Safe Harbor”
- Qualify for Antitrust Division’s Corporate Leniency Policy
- Regularly review DOJ Compliance Guidance
  - Updated in March 2023, September 2024 and November 2024

# Recent Focus on New Technology

- Compliance Programs should address electronic communications
- Risk assessments should account for new and developing technology
- Recent case developments call for fines and sanctions
- DOJ has increased resources and budget for AI-related investigations

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