

SCCE Internal Investigations Workshop San Diego, California



Planning the Investigation

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Deciding on a Course of Action

- Step 1: Understanding the Report – Done
- Step 2: Preliminary Analysis of the Report
- Step 3: Tasking the Report
 - Referring the report to another department
 - Assisting the reporter directly with the concern
 - Dismissing the report
 - Investigating the report

Benefits of Proper Analysis and Tasking

- Keeps the report in the most appropriate resolution channel
- Creates realistic expectations for everyone involved
- Investigates only those reports that warrant an investigation
- Protects the credibility of your ethics and compliance program
- Determines the specific remedy for the report
- Avoids escalation of the report or referral to external agency
- Remember: “justice” and a “formal investigation” are not appropriate remedies. The former is a value, and the latter is a process.

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Preliminary Analysis – What Are the Issues?

- You determine the issues / allegations, not the reporter.
- Look for larger issues that will drive your resolution strategy
 - Possible legal violations
 - High-level people involved
 - Whistleblower retaliation
 - Material impact on business or special sensitivity
- Look for implied allegations
 - Helps answer the intent of the report
 - If the reporter does not articulate it, you still need to account for it

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Preliminary Analysis – What Is the Standard?

- Look for systemic problems
 - Issues affecting the organization, a division or a department (rather than just those people affected by the specific report)
 - Possible root causes can steer you to the places to look
- What was the role of management in the substance of the report?
- Identify the company policies regarding the issue you are dealing with.

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Tasking – Conduct an Investigation?

- The preliminary analysis results in selecting a course of action.
- Is the matter appropriate for another department?
 - Assisting the reporter with the concern
 - Referring the report to another department
 - Dismissing the report
 - Investigating the report
- Is the matter appropriate for an investigation?
 - No, if there is a misunderstanding of company policy
 - No, if the report is a request for assistance
 - No, if the report concerns a management business decision with no allegation of misconduct
 - No, if it is a lack of communication between an employee and others
 - No, if the facts aren't in dispute / the report gives sufficient facts
 - No, if someone feels "wronged" by the "system"
 - No, if the issue can be resolved informally

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Preliminary Analysis – What Is the Standard?

- Essential elements of an allegation
 - **Who:** the subject must always be identified in the allegation
 - **Did what:** the subject improperly did something
 - **In violation of what:** what law, procedure, rule or policy was violated
 - **When and where:** time(s) and places
- You need separate allegations for each subject and allegation.
- Use neutral, non-emotional wording.
- Draft the allegation so that substantiation = impropriety.

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A Quick Fact Pattern

- Larry Green works for your company as the Vice President of Procurement. You receive a hotline call from Steve, an employee in the department. Steve tells you that a large vendor for your company has just engaged Larry as a consultant so they can better serve your company's needs. Steve thinks this is unethical.
- Your company has this Conflict of Interest Policy:

All company employees are prohibited from engaging in any business transaction on behalf of the company with any entity in which the employee or an immediate family member has a personal interest, unless the employee first obtains the approval of the CEO.

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Framing Your Investigation Allegation

Don't Say This	Say This
<ul style="list-style-type: none"> • Did Larry Green violate the company's conflict of interest policy when became a consultant to a company vendor? 	<p>The investigation will seek to determine if:</p> <ul style="list-style-type: none"> • Larry Green is a company employee; • Larry engaged in a business transaction on the company's behalf; • The business transaction was with another entity; • Larry or an immediate family member has a personal interest in that entity; and • Larry failed to obtain the approval of the CEO before engaging in the transaction.

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Planning the Investigation

- Your plan is the key to a proper investigation
- Your plan is your roadmap of how you will conduct the investigation
- Your plan ensures you will cover all necessary points
- Your plan is tailored to the particulars of the case and the shareholder concerns
- Your plan can be formal or informal

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Planning the Investigation

- Who do you interview?
 - How many people do you interview?
 - What interview order do you follow?
 - Where should you conduct the interview?
 - What topics should you cover with that witness?
 - What assistance from colleagues or outside resources do you need?
 - What specific evidence do you need?

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Closing Thoughts

- A poor analysis of the report results in overwork and hurts your credibility.
- A good analysis of the report leads to a timely, focused response that enhances your credibility.
- Analyzing a report is an art. Practice the skill to develop it.
- The end product of a good analysis is a clearly articulated investigation / resolution strategy.

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