

# The Second Annual National Institute on Internal Corporate Investigations and Forum for In-House Counsel

**May  
5-7, 2010**

St. Regis Hotel  
Washington, DC



Presented by

**The American Bar Association  
Business Law Section,  
Criminal Justice Section,  
and the ABA Center for  
Continuing Legal Education  
in cooperation with the  
Section of International Law**

# National Institute on Internal Corporate Investigations and Forum for In-House Counsel

May 5-7, 2010 | St. Regis Hotel | Washington, DC

Don't miss this comprehensive program! To register, please call 800.285.2221 or visit [www.abacle.org/programs/n10ici1.html](http://www.abacle.org/programs/n10ici1.html)

## National Institute Planning Committee

**Michael E. Clark**, *Duane Morris LLP*, Houston, TX  
**David U. Gourevitch**, *Law Office of David U. Gourevitch, P.C.*, New York, NY  
**Nicholas C. Harbist**, *Blank Rome LLP*, Princeton, NJ  
**Tamika Langley Tremaglio**, *Huron Consulting Group*, Washington, DC

## Program Description

Now, more than ever, corporate investigations are a centerpiece of corporate compliance, risk management, government investigations defense, and litigation strategy. Evolving government agency standards and guidance concerning voluntary disclosure are only a small part of public and privately-held corporations' needs to assess the conduct of officers, directors, employees and contractors and their impact on corporate liability. Whether the issue involves whistleblowers, audits, financial integrity, immigration, employee activities or international commerce, corporate internal investigations are a critical tool used by in-house and outside counsel for guiding difficult business and legal decisions.

This National Institute is unparalleled in its dissection of the pressing issues that comprise corporate internal investigations. Preeminent in-house and outside counsel, government lawyers, and other experts, including auditors and investigators, will share their valuable insights into the issues to consider in conducting corporate investigations. This National Institute brings together leading practitioners and in-house counsel to address the legal, ethical, marketing, strategic, and managerial considerations to guide your advice and decision-making.

The Internal Corporate Investigations National Institute Steering Committee, the Criminal Justice Section White Collar Crime Committee and the Business Law Section have collaborated to create an insightful and valuable program for in-house and outside counsel, as well as other professionals involved in corporate investigations. Two pre-conference workshops – a corporate investigations primer and a case studies program – will offer additional intensive instruction.

## Program Agenda

### Day One ■ Wednesday ■ May 5, 2010

- 11:30 a.m. Registration**
- 1:45 p.m. Welcome/Introduction**
- 2:00 p.m. Nuts & Bolts: How to Conduct an Effective Ethical Internal Investigation**
  - What Allegations Should Trigger an Investigation**
  - Structuring the Investigation**
    - Who Should Conduct the Investigation
    - To Whom Should They Report
    - Defining the Issue
    - Identifying and Preserving Documents
  - Conducting the Investigation**
  - Interviewing Officers and Employees**
  - Electronic Information Gathering**
  - Finalizing the Investigation**
    - Recording the Results: From Draft to Final
    - Communicating with the Government
    - Remediation/Corrective Action

Identifying who is your client under the rules—the board of directors, a special litigation committee, officers and directors, others?

What should be explained to interviewees about their possible legal risks in light of the likelihood that a company's full cooperation may involve building a case against one or more of them which could be turned over to the government

**Moderator:** Shawn M. Wright, *Blank Rome LLP*, Washington, DC  
Meredith S. Auten, *Morgan, Lewis & Bockius LLP*, Philadelphia, PA  
Robert M. Stephenson, *Locke Lord Bissell & Liddell LLP*, Chicago, IL  
Tamika Langley Tremaglio, *Huron Consulting Group*, Washington, DC  
Edward J. Westerman, *LECG*, San Francisco, CA

3:30 p.m. **Break**

3:45 p.m. **Case Studies: The Good, the Bad and the Ugly**

A Hands on Review of Recent Cases and Recent Developments

**Moderator:** David M. Rosenfield, *Herrick Feinstein LLP*, New York, NY  
Kirby D. Behre, *Paul Hastings*, Washington, DC  
David L. Douglass, *Shook, Hardy & Bacon LLP*, Washington, DC  
Yvette Ostolaza, *Weil Gotshal & Manges LLP*, Dallas, TX

5:15 p.m. **Adjourn**

## Day Two ■ Thursday ■ May 6, 2010

8:15 a.m. **Registration**

8:45 a.m. **Co-Chairs' Opening Remarks**

9:00 a.m. **Regulators' Roundtable**

From Holder to Philip: The Government's Evolving Expectations of Corporations

Joint Defense Agreements

Payment of Legal Fees

Use of Inside vs. Outside Counsel

Paper and Electronic Preservation of Evidence

Disclosure of Investigative Results

Emerging Trends in Government Investigations

Attorney Client and Work Product Privileges

Extra-Jurisdictional Misconduct

Recent Legislative Proposals and Regulatory Changes

**Moderator:** Don J. DeGabrielle, *Fulbright & Jaworski L.L.P.*, Houston, TX  
Honorable Joseph P. Borg, Director, *Alabama Securities Commission*, Montgomery, AL  
J. Kevin Edmundson, Division of Enforcement, *U.S. Securities and Exchange Commission*, Fort Worth, TX  
Honorable Paul J. Fishman, U.S. Attorney for the *District of New Jersey*, Newark, NJ  
Greg Andres, Acting Deputy Assistant Attorney General, Criminal Division, *U. S. Department of Justice*, Washington, DC

10:30 a.m. **Break**

10:45 a.m. **Defense Counsel's Perspective**

How Much Credit Do Companies Really Get for Cooperating

The Filip Memorandum: Does It Go Far Enough; How Does It Really Work in Practice

- Navigating the Fine Line Between Disclosing Facts and Privileged Information
- The Pros and Cons of Voluntary Disclosure
- Which Problems Can Be Resolved in House and Which Should Be Disclosed
- Different Approaches among Agencies and Offices to Cooperation: Should Your Approach Differ Depending on Who Is Conducting the Investigation

Cooperating with and Responding to Investigations by Multiple Agencies

**Moderator:** David U. Gourevitch, *Law Office of David U. Gourevitch, P.C.*, New York, NY  
David R. Chase, *David R. Chase Law Firm*, Ft. Lauderdale, FL  
Robert J. Cleary, *Proskauer Rose LLP*, New York, NY  
Ivan B. Knauer, *Pepper Hamilton LLP*, Washington, DC  
Seth T. Taube, *Baker Botts L.L.P.*, New York, NY

**12:15 p.m. Networking Luncheon**

**1:30 p.m. International Investigations**

Challenges in Conducting Cross-Border Internal Investigations  
How to Approach Different Rules, Regulators, and Government Policies  
Clash of Culture Offenses: Conduct That is Illegal in the United States But Not Elsewhere  
Dealing with Different Privilege and Ethical Standards  
Pushback from Foreign Governments  
Recent Developments in International Investigations

**Moderator:** Michael C. Miller, *Steptoe & Johnson LLP*, New York, NY  
Michael J. Barta, *Baker Botts L.L.P.*, Washington, DC  
David M. Howard, *Dechert LLP*, Philadelphia, PA  
Michael B. Schwartz, *KPMG, LLP*, Houston, TX

**3:00 p.m. Break**

**3:30 p.m. Ethical Issues in Internal Investigations**

The Government's Focus on Attorneys: *Computer Associates, Tyco, in re Altman*  
Sorting out Conflicts of Interest  
Safeguarding Against Claims of Whistleblower Retaliation and Wrongful Termination  
Mistakes in Investigations: Avoiding Questions About How the Investigation Was Conducted  
Privacy Issues: Workplace Searches, Surveillance and Monitoring

**Moderator:** Michael E. Clark, *Duane Morris LLP*, Houston, TX  
Jacob S. Frenkel, *Shulman Rogers Gandal Pordy & Ecker, P.A.*, Potomac, MD  
Jason R. Pickholz, *Duane Morris LLP*, New York, NY  
Steven P. Solow, *Katten Muchin & Rosenman LLP*, Washington, DC

**5:00 p.m. Adjourn**

**5:00 p.m. Reception**

**Day Three ■ Friday ■ May 7, 2010**

**8:00 a.m. Registration**

**8:30 a.m. Co-Chairs' Opening Remarks**

**8:45 a.m. Establishing and Managing an In-House Investigative Function**

Design and Implementation of In-House Investigative Functions  
Global and Cultural Challenges  
Handling Whistleblower Complaints  
Maintaining the Privilege and Reporting

**Moderator:** David F. Taylor, *Perkins Coie LLP*, Seattle, WA  
Valli F. Baldassano, *Cephalon, Inc.*, Frazer, PA  
Gary H. Collins, *General Electric Energy Financial Services*, Stamford, CT  
Odell Guyton, *Microsoft*, Redmond, WA

**10:00 a.m. Break**

**10:15 a.m. Working with In-House Counsel**

Who Should Advise the General Counsel  
Counseling the In-House Counsel When They Are Under Scrutiny  
Retaining Outside and In-House Experts

**Moderator:** Steven A. Lauer, *Lumen Legal Consulting*, Royal Oak, MI  
Anthony J. Bosco, *Deutsche Bank*, New York, NY  
Michael R. Clarke, *Biomet Spine & Trauma*, Parsippany, NJ  
Margaret Duplantier, *Cameron International Corporation*, Houston, TX

**11:20 a.m. D&O Insurance Coverage**

**Current Issues in D&O Coverage: How Is Coverage Changing**

- Analysis of Key Clauses
- When Does Coverage Kick In: What Is a Claim
- Who Is Insured
- Advancement of Defense Costs
- Cooperating with the Carrier

**Litigating Coverage Claims**

**Moderator:** Andrew Tomback, *Milbank Tweed Hadley & McCloy LLP*, New York, NY  
Jack Cinquegrana, *Choate Hall & Stewart LLP*, Boston, MA  
Barry J. Fleishman, *Kilpatrick Stockton LLP*, Washington, DC  
William A. Schreiner, Jr., *Zuckerman Spaeder LLP*, Washington, DC

**12:30 p.m. Keynote Speaker/Luncheon Sponsored in Part by KPMG**

**2:00 p.m. Pro Active vs. Re Active Compliance Programs  
(Breakout Session A)**

**Proactive vs. Reactive Compliance Programs**

- Designing and Implementing an Effective Compliance Program
- Global and Cultural Challenges
- Rule Based vs. Value Based Training
- Whistleblowing Hotlines

**Moderator:** Phillip H. Hilder, *Hilder & Associates*, Houston, TX  
Sean C. Griffin, *Steptoe & Johnson LLP*, Washington, DC  
Janet I. Levine, *Crowell & Moring LLP*, Los Angeles, CA  
Jeffrey Schwartz, *Moody's Investors Service*, New York, NY

**Best Practices for Whistleblowing Hotlines  
(Breakout Session B)**

**Conflicts of Interests: When Is Separate Counsel Necessary**

**Disclosures by Company Counsel to Employees in Interviews**

**Obligations to Employees Who Incriminate Themselves**

**Advancement, Indemnification and Coverage**

**When the Employee Is the Target**

**Minefields in Cooperating with Internal Investigations**

- Company Cooperation Policies
- Internal Investigations as Government Agents: *Computer Associates & Tyco*
- Deferred Compensation, Options & Other Employment Issues

**Moderator:** Ernest E. Badway, *Fox Rothschild LLP*, Roseland, NJ  
Thomas J. Curran, *Peckar & Abramson*, New York, NY  
Jonathan S. Sack, *Morville Abramowitz*, New York, NY  
Kathleen M. Jennings, *Drinker Biddle & Reath LLP*, Wilmington, DE  
Steven M. Salky, *Zuckerman Spaeder LLP*, Washington, DC

**3:00 p.m. Break**

**3:15 p.m. The Exit Strategy: Negotiating a Settlement & Monitors**

**Developing, Negotiating and Monitoring a Corrective Action Plan**

**Hiring and Establishing an Effective Relationship with a Monitor**

- Choice of Monitor: What to Look for and the Government's Role in Selection
- Negotiating the Scope of the Monitor's Work Plan
- Controlling the Monitor's Cost

**Preventing Collateral Sanctions and Penalties by Other Agencies**

**Employee Training and Other Steps to Prevent Repeated Violations**

**Managing the PR of the Settlement**

**Lessons from Recent Settlements**

**Moderator:** Thomas A. Hanusik, *Crowell & Moring*, Washington, DC  
W. Neil Eggleston, *Debevoise & Plimpton, LLP*, Washington, DC  
Shelly L. Goldklang, *Cadwalader, Wickersham & Taft*, Washington, DC  
George A. Stamboulidis, *Baker Hostetler LLP*, New York, NY

**4:15 p.m. Adjourn**

# Program Information

## REGISTRATION FEES

To register, or for additional information, call 800.285.2221 or 312.988.5522 or visit the ABA-CLE Web site at [www.abacle.org/programs/n10ici1.html](http://www.abacle.org/programs/n10ici1.html).

**\$1,025** for the General Public

**\$900** for ABA Members (\$125 Savings)

**\$850** for Business Law Section, Criminal Justice Section, and Section of International Law Members (\$175 Savings)

**\$395** for Government Employees

Every registrant will receive a copy of the informative course materials book that can be used as a comprehensive resource long after the program is held.

## GROUP AND OTHER DISCOUNTS

Register three or more people at the same time to receive an additional \$50 reduction on each program tuition. Larger group discounts and special rates for full-time law students, academics and government employees also are available. For more information, contact Renee Williams at 312.988.6216.

## MCLE

Mandatory continuing legal education (MCLE) accreditation has been requested from all states that require continuing legal education. 14.25 hours of CLE credit including 3.0 hours of Ethics credit have been requested from those states recognizing a 60-minute credit hour and 17.10 hours of CLE credit including 3.6 hours of Ethics credit have been requested from those states recognizing a 50-minute credit hour. For NY-licensed attorneys: This transitional CLE program has been approved for all NY-licensed attorneys in accordance with the requirements of the New York State CLE Board of New York MCLE (14.50 total NY transitional MCLE credits including 3.0 hours of Ethics credit).

## SCHOLARSHIPS

Scholarships to defray tuition expense for National Institutes are available upon application. Preference will be given to public interest lawyers, government lawyers, law professors and solo or small firm practitioners. For more information on scholarships, go to [www.abacle.org/scholarship](http://www.abacle.org/scholarship).

## SERVICES FOR PERSONS WITH DISABILITIES

If special arrangements are required, please contact Earnestine Murphy at 312.988.6204. Reasonable advance notice is requested.

## SPONSORSHIP OPPORTUNITIES

For information on sponsorship opportunities, please contact Renee Williams at 312.988.6216.

## CANCELLATIONS

Cancellations received 5 business days or more before the program will receive a 100% refund, less a \$50 cancellation fee. No refunds will be provided for cancellations after that date; however, substitute registrants are welcome at any time. To cancel your registration or substitute another individual, please

call the ABA Service Center at 800.285.2221 or fax your request to 312.988.5850. Registrants who do not cancel within the allotted time period and who do not attend the program will receive a copy of the program course materials after the program.

## PROGRAM CONFIRMATION

Written confirmation of your registration will be sent to you upon receipt. Please take it with you to the National Institute as proof of registration. If you do not receive the confirmation notice prior to the presentation, please call the ABA at least 24 hours in advance to confirm that your registration was received and the program is being held as scheduled.

## HOTEL INFORMATION

**St. Regis Hotel**

923 16<sup>th</sup> & K Streets

Washington, DC 20006

Phone: 202.638.2626 Fax: 202.638.4231

Single/Double: \$299

All room rates are subject to city occupancy and sales tax. **Mention this ABA meeting to receive the special discounted rate.**

## AIRLINE INFORMATION

Discounted fares are available from ABA Orbitz for Business including ABA negotiated discounts on American and United. To book online, go to [www.abanet.org/travel](http://www.abanet.org/travel), click under the Orbitz for Business logo at the top of the page, the click on the appropriate link in the Self Paid Travel box. For assistance with online or offline reservations, call toll free 1-877-222-4185.

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## STANDING COMMITTEE ON CONTINUING LEGAL EDUCATION

Under the guidance of the Standing Committee on Continuing Legal Education, the Center for Continuing Legal Education administers and produces National Institutes, teleconferences, other technology-based offerings, and written course materials to assist lawyers with their continuing legal education efforts.

**David W. Hilgers**, Chair

*Brown McCarroll, L.L.P., Austin, TX*

## ABA CENTER FOR CONTINUING LEGAL EDUCATION

**Rick Vittenson**, Director

*Earnestine Murphy, Deputy Director, Programming*

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- ☐ **\$1,025** for the General Public
- ☐ **\$900** for ABA Members (\$125 Savings) ABA # \_\_\_\_\_
- ☐ **\$860** for Business Law Section, Criminal Justice Section, and Section of International Law Members (\$175 Savings)
- ☐ **\$395** for Government Employees

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Illinois residents, add 10.25% sales tax; District of Columbia residents, add 5.75% use tax. Price is subject to change after 5/7/10.

# Register for the Second Annual National Institute on Internal Corporate Investigations and Forum for In-House Counsel

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### National Institutes

20<sup>th</sup> Annual National Institute on  
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Miami Beach, FL

[www.abacle.org/programs/n10hcf1.html](http://www.abacle.org/programs/n10hcf1.html)

Sixth Annual National Institute on  
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May 20-21, 2010

Washington, DC

[www.abacle.org/programs/n10bla1.html](http://www.abacle.org/programs/n10bla1.html)

12<sup>th</sup> Annual National Institute on

Banking Law Basics

June 7-9, 2010

San Francisco, CA

[www.abacle.org/programs/n10blb1.html](http://www.abacle.org/programs/n10blb1.html)

For additional information, see the  
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