

Former Allianz Executive's Legal Battle Challenges DOJ's Approach to White-Collar Crime

The Department of Justice's (DOJ) new leniency toward self-disclosing companies has raised complex ethical questions regarding the legal representation of individuals and their employers. As prosecutors strive to deter white-collar crime, conflicts can arise as corporate counsel attempts to turn on one client to save another.

Nina Marino, a 30-year veteran of white-collar law, says prosecutors will typically request all necessary waivers to represent both sides when conflicts of interest arise. But this could become more difficult under the DOJ's new policy, she said, and it is up to attorneys on both sides to figure out an ethical solution.

Many more common complications involve companies cooperating with their counsel and interviewing employees. In these cases, the company may disclose all communications to the government provided they inform the employee in advance. It is up to prosecutors and corporate attorneys to ensure sufficient separation between their investigations; otherwise, defendants may claim that the company lawyers are an arm of the government and that their constitutional rights were violated.

This separation is significant because company-sponsored investigations are not subject to the same rules that bind public prosecutors, such as protecting a defendant's right against self-incrimination. This can lead to ethical dilemmas for DOJ lawyers since they must keep a distance from the corporate investigation while not interfering too much in representation issues.

Jennifer Arlen, a law professor specializing in corporate crime enforcement at New York University, claims that private investigations can be advantageous for the government since individuals are more likely to be imprisoned than their companies fined. But such investigations must remain independent and free from any influence from prosecutors to avoid constitutional violations.

The DOJ's leniency toward self-disclosing companies has presented a complex ethical problem for attorneys. It is up to prosecutors and corporate counsel alike to make sure that investigations remain separate while still allowing defendants necessary access to proper legal representation. This way, justice can be served in the new age of corporate leniency.

REFERENCES:

Ex-Allianz Manager's Legal Fight Tests DOJ White-Collar Strategy

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