

**PUTTING HEAT ON FRAUDSTERS: USING
CIVIL AND CRIMINAL PROCESS OFFENSIVELY**

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A. INVESTIGATION USING COUNSEL

Once decision made to conduct investigation, define scope of investigation.

- Clear articulation of engagement
- Investigative team made up of counsel and SIU. Attorney should be in the loop because extra protection
 1. Enables company to protect entire investigation under attorney/client privilege and work product doctrine
 2. Attorneys could advise on company's legal rights, obligations and potential liabilities

ATTORNEY/CLIENT PRIVILEGE

ELEMENTS

1. Relationship between client and attorney
 2. Attorney retained for the purpose of rendering legal advice
 3. Communications with intent that they are confidential
- Purpose of attorney/client privilege encourages full disclosure between attorney/client by guaranteeing confidential communications

WORK PRODUCT PRIVILEGE

- Preserves confidences of work done under the attorney's review
- Protection attaches if done "in anticipation of litigation".

TYPES OF WORK PRODUCT

- Strategy memos
- Witness lists
- Oral statements and interviews
- Memorandum / Notes of interviews
- Questionnaires
- Report of investigation
- Compilation of documents
- Internal investigation
- Memorializing witness interviews for use with expert witnesses, accountants and investigators
- Investigative reports
- Public records research
- Research

CIVIL

STATE COURT INVESTIGATION PROCESS

- Rule 202 Order authorizing depositions or written questions to obtain testimony:
 - Anticipated suit
or
 - Investigate potential claim

CRIMINAL

PRESENTATION TO GOVERNMENT

- Potential defendant
- Complainant
- Type of offense
- Description of offense
- Date of offense
- Location of offense
- Details of offense
- Methods and means of offense including exhibits
- Witnesses
- Affidavits
- Relationship of parties
- Conclusion

RESTITUTION

- Victim made whole