

Ten Commandments on What NOT to do in a Governmental Investigation

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So... everything is humming along at work. There have been a few ups and downs this year. There have been some things that may have concerned you, but they did not seem like they needed your immediate attention. So you put your “concerns” on the back burner, with a reminder to yourself to take a look at those “issues” when things slow down.

Then one morning, there’s a knock on your door. Your receptionist says there’s a federal (or state) agent with a badge who says (s)he wants to talk with you. So.... what do you do now? Do you tell the receptionist to tell the agent you’re not there? Do you invite her into the office and offer to answer any and all questions? Do you tell the agent you know exactly why she’s there, and come hell or high water, you aren’t speaking to her? Do you run out the back door, buy a ticket to Europe for a month long vacation and hope the agent will forget about you?

During more than 30 years of representing business executives, professionals and companies in civil, regulatory and federal grand jury criminal investigations, the most common first question I hear is, “What do I do now?” Oftentimes what one should do is very dependent on the facts and circumstances of each situation. A better question and an easier one to answer is, “What should I NOT do?”

Over the years, I have seen mistakes that are made early on in a civil regulatory or criminal investigation and that could have been avoided. I recently was asked what are the most common mistakes I’ve seen when a business executive or company receives a subpoena, a notice of deposition or a knock on the door. So what should you NOT do “when the Feds come knocking on the door?” In a summer series, I will outline my “Ten Commandments” on what not to do in a governmental investigation. Below are the “Ten Commandments” and every week I will expand on a Commandment and explain why, in most cases, these are the things a business executive, professional or company should NOT do prior to and during a governmental investigation.

The Ten Commandments on What You Should NOT Do

1. Don't wait - corporate internal investigations
2. Don't panic - be calm...and don't self medicate!
3. Don't delete - collect data
4. Don't delay employee interviews - and memorialize the statements
5. Don't be too nonchalant - take it seriously
6. Don't talk to law enforcement - maybe, maybe not
7. Don't talk to the media - maybe, maybe not
8. Don't lie - tell the truth
9. Don't expect immediate resolution - investigations may last for years
10. Don't hesitate to call an attorney - and choose one with experience

These are some general rules. In the future, I'll expand on each of these "Ten Commandments," and I'd love to hear from you with your comments and whether you agree or disagree with my thoughts. And if you've ever dealt with a governmental investigation, I'd love to hear from you about your experiences and what other "mistakes" can be avoided.

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