

Charles L. Howard
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October 25, 2001

United States Sentencing Commission
One Columbus Circle N.E.
Suite 2-500, South Lobby
Washington, DC 20002-8002

RE: Federal Register Notice of September 19, 2001

Dear Chair Murphy and Commissioners:

I am writing in response to the Commission's Federal Register Notice of September 19, 2001 requesting comment on issues relating to the Organizational Guidelines.

I think that the Commission should appoint an ad hoc advisory group to study possible revisions to the Organizational Guidelines and Commentary. I would suggest that such a group have no more than 15 members and include federal prosecutors and judges, business ethics officers, private practitioners (both criminal defense counsel and counsel experienced in business ethics and related matters), and academicians. Despite the broad scope of Chapter 8 of the Guidelines, I think that this ad hoc advisory group should be asked to concentrate on business ethics and compliance issues. If there are other areas in Chapter 8 of concern to the Commission, another ad hoc group could be appointed with a membership related to those issues. The ethics and compliance ad hoc group should be asked to report back to the Commission within 18 months of its appointment.

I would like to express my desire to serve on such an advisory group. I practice law with a large Connecticut firm and have a broad civil litigation practice that includes substantial experience in ERISA and intellectual property litigation matters and appeals in a variety of areas. I also have for many years represented public clients such as the City of Hartford and the State of Connecticut in various matters. In addition, for over ten years, I have been independent counsel for organizational ombuds programs, including several at national and international corporations. This experience has given me insight into the operation of corporate ethics programs and the dynamics of

employee reporting and dispute resolution at major organizations. I have been a co-author of booklets published by The Ombudsman Association (TOA) on both the ombudsman confidentiality privilege and on the impact of the Commission's Organizational Guidelines on corporations and how ombuds programs can be of assistance in creating an "effective program to prevent and detect violations of law." As a frequent presenter at annual conferences of The Ombudsmen Association and as an author of articles for the TOA newsletter, I have had many opportunities to become familiar with the role of ombuds programs in a variety of institutions. The TOA is the nation's leading trade association for corporate and organizational ombuds programs, and I believe that I would be able to draw upon the collective experience of its members as well as my own experience in serving on such an ad hoc advisory group.

My experience in representing corporate ombuds offices lead to my being asked to assist in an Ethics Resource Center (ERC) Fellows Program, where I was a contributor and a draftsman of a legislative model contained in the ERC's Resolution and Report: Employee Confidentiality and Non-Retaliating Reporting Systems, dated May 7, 1999. In the course of my representation of corporate ombuds offices and my participation in the ERC Fellows Program, I developed an idea for possible revisions of the Commentary to the Guidelines that I presented in the enclosed letter to Judge Murphy this past April.

While my principal experience is in civil litigation, I have long been familiar with criminal law issues. I began my career as an assistant attorney general in Missouri handling state court criminal appeals. In the course of my practice in Connecticut, I have handled corporate internal investigations in matters involving alleged federal procurement fraud and State Ethics Commission violations. In addition, I have served since 1995 as a Commissioner on the Connecticut Criminal Justice Commission, which is responsible for hiring all state prosecutors in Connecticut. A copy of my resume is attached. If any Commissioners have questions concerning my background or experience, I would be happy to furnish whatever additional information is necessary.

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I hope that the Commission appoints an ad hoc advisory group on possible revisions to the business ethics and compliance issues. I would be honored to be appointed to such a group and would devote whatever time is necessary to its work.

Very truly yours,

A handwritten signature in black ink, appearing to read "C. L. Howard", with a stylized flourish at the end.

Charles L. Howard

CLH:trb
Enclosures

CHARLES L. HOWARD

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EDUCATION: University of Virginia School of Law, J.D. (1975)
Princeton University, A.B. (cum laude) (1972)
(Woodrow Wilson School for Public and International Affairs)

EMPLOYMENT: Shipman & Goodwin, Partner (1984-present)
Chair, Litigation Department (1985-2000)
Member, Management Committee (1990-96), (1998-2000)
Chair, Practice Committee (1994-95) and Practice Oversight
Committee (1995-97); Member (1997-98, 1999-present)
Practice areas: General civil litigation in state and federal courts,
with significant experience in appeals; ERISA, municipal, and
intellectual property litigation; and representation of corporate
ombuds.

Associate, Robinson, Robinson & Cole (1977-81)

Assistant Attorney General of Missouri for Attorney General John C.
Danforth (1975-76)

ADMITTED TO BAR: Connecticut, 1977; Missouri, 1975; United States District Courts for
the Western District of Missouri, District of Connecticut, District
of Vermont, and District of Arizona; United States Courts of
Appeals for the Second, Eleventh, and Federal Circuits; United
States Tax Court; United States Supreme Court.

**PROFESSIONAL
ACTIVITIES:**

Present: Commissioner, Connecticut Criminal Justice Commission
(1995 to present); Guest Lecturer on ERISA Litigation, University of
Connecticut School of Law; Trustee appointed pursuant to Practice
Book §2-64 by the Connecticut Superior Court as attorney to protect
clients' interests in connection with disbarment of an attorney;
Lawyers for Children America. **Prior:** Commissioner, Connecticut
Judicial Selection Commission (1992-95); Commissioner,
Connecticut Commission on the Compensation of Elected State
Officials and Judges (1983-91); Chair, Hartford County Bar
Association Ethics Committee; Board of Directors, Connecticut
Association of Municipal Attorneys; Member, Civil Action Victims

Task Force (appointed by General Assembly pursuant to Special Act 87-52); Special Public Defender for pro bono criminal appeals; Connecticut Bar Association Executive Committees: Sections on Administrative Law, Civil Justice, Municipal Law, and Professional Ethics. Speaker: numerous bar association and professional seminars.

Member: American, Connecticut, and The Hartford County Bar Associations; National Health Lawyers' Association; and Defense Research Institute.

COMMUNITY ACTIVITIES:

Present: Board of Trustees of the Connecticut Policy and Economic Council; Local Government Committee, Hartford Downtown Council; Board of Directors, Terry's Plain Homeowners' Association. **Prior:** President, First Church of Christ, Simsbury; Board of Directors, Connecticut World Trade Association (1983-90); Board of Directors, Simsbury Historical Society; Regional Strategy Implementation/Retreat Committee, Greater Hartford Chamber of Commerce; Member, Connecticut District Export Council; Board of Directors, Bushnell Park Foundation; Treasurer, Jim Fleming for State Representative; Board of Directors, Simsbury Public Library (1981-85; elected); Treasurer, Chair of Personnel and Finance Committees, and Member of Stewardship Committee, First Church of Christ, Simsbury; Transportation Committee, Town of Simsbury (1981-87); Member of task forces of the Greater Hartford Chamber of Commerce for the establishment of Connecticut World Trade Association and for study of water resources for the Greater Hartford area; Board of Directors, Spring Grove Cemetery Association; Board of Trustees, Simsbury Land Conservation Trust; and Volunteer Tutor, Fred D. Wish School, Hartford.

HONORS:

Chosen as one of five men from Central Connecticut and Western Massachusetts in 1979 by the Rotary Foundation International to participate in a five-week cultural exchange program in Hokkaido, Japan.

Invited participant on Connecticut-Shandong Trade Mission to China with Governor William O'Neill in 1987.

Martindale-Hubbell rating - AV

PERSONAL:

Born in Alamogordo, New Mexico; April 15, 1950
Married to Joan Wunderlich Howard; two children
Resident of Simsbury, Connecticut, since 1977

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April 3, 2001

The Honorable Diana E. Murphy
Chair
United States Sentencing Commission
Suite 2-500 South Lobby
One Columbus Circle Northeast
Washington, D.C. 20002

Re: Suggestion for Additional Commentary to the Organizational Sentencing Guidelines

Dear Judge Murphy:

I am writing to urge the Commission to amplify the commentary to Section 8A-1.2 of the Organizational Sentencing Guidelines to articulate criteria that would constitute a presumptive "safe harbor" for a "reporting system whereby employees and other agents could report criminal conduct by others within the organization without fear of retribution," as that phrase is currently used in Commentary §3(k)(5).

The premise of my proposal is that ethics officers, alone, cannot create an environment for reporting wrongdoing without fear of retribution. Since ethics officers must investigate and, if necessary, initiate appropriate action on matters brought to their attention, their position has inherent barriers to alleviating employee reluctance to report wrongdoing or fear of retribution. Consequently, organizations must often look for additional ways to reduce fear of retribution and encourage employee reporting of wrongdoing.

For over ten years, I have represented organizational ombuds offices, including several at national and international corporations. During this time, I have repeatedly seen how organizational ombuds offices work cooperatively with and yet separately from business practice or ethics officers for their organizations to facilitate reporting of wrongdoing by employees while reducing the fear of retribution. My clients have found that enabling an employee first to go to a neutral office with an assurance of confidentiality enables many people to feel comfortable enough to later come forward to

April 3, 2001

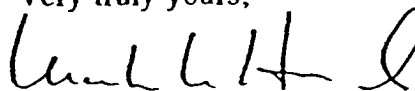
the compliance officer or other official company channels. In many other instances, the ombuds and the employee have found ways of reporting alleged violations while still preserving the confidentiality of the employee's identity. Because these offices attempt to preserve the confidentiality of their communications with reporting employees and are not official reporting channels for the organization (and thus do not "investigate" wrongdoing), they are able to reduce the fear of retribution while fostering reporting of wrongdoing. Indeed, the benefits of such a neutral office, whether called an ombuds office or by some other name, go to the very heart of creating a reporting system that allows wrongdoing to be reported without fear of retribution.

The Commission would provide strong support to organizations that want to comply with the Sentencing Guidelines if it were to identify in further commentary the essential characteristics of a program that presumptively would constitute a "reporting system whereby employees and other agents could report criminal conduct by others within the organization without fear of retribution." Among these characteristics would be the creation of a neutral office within the organization, separate and distinct from the compliance or any formal function, that would encourage and facilitate employee reporting of concerns in the workplace, including violations of law. Such a neutral office must be designed and operated so that it is neutral, independent, and has the ability to assure employees or others within the organization that their communications with the office will remain confidential. Likewise, it would be important both for such an office to have direct access to senior management and compliance officers and for the office to be adequately funded in order to publicize its presence as an alternative channel of communication within the organization.

The initial Commentary in Section 3(k) helped create and standardize the role of organizational ethics officers in a wide variety of organizations. Now that their role is well established, I believe the Commission has the opportunity to address ways that organizations can break down the barriers to reporting. By distilling and articulating the essential characteristics of such a neutral office in a nonexclusive way, the Commission would both promote greater corporate and organizational responsibility for compliance with the law as well as help create more uniform standards.

Thank you for your consideration.

Very truly yours,



Charles L. Howard

CLH:ems

cc: Timothy B. McGrath, Staff Director

Paula J. Desio, Esq., Deputy General Counsel

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