



# Practical Tips When Partnering with Outside Investigators

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## Introductions



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## *Hypothetically ...*



## Hypothetical

You wake up and check your news feed. The headline story states, “Our City Deserves Better: Councilmember Has To Go.” You read on and discover through this article:

- Two nights ago, at a retirement event, the Councilmember took pictures with two young female administrative assistants.





## Hypothetical

- The picture, on its face, looks completely fine. They're standing together, smiling. Everyone appears happy.
- The article goes on to state that one of the female administrative assistants posted the picture to her Instagram account. In the caption, she alleged that this Councilmember "grabbed my ass" while taking the picture, and he "reeked of alcohol."



## Hypothetical

- You check your voicemails and see that you have several missed messages from the Councilmember.
- When you call the Councilmember back, he tells you that nothing in the article is true. While he did drink two drinks during the course of the entire evening, he "did not grab anyone's ass."
- Looking at the picture, you cannot tell where his hands are.





# *You need an outside investigator . . . Now what?*



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## Why Investigate?

- Resolve employment disputes
- Make informed decisions
- Prepare for litigation
- Address public inquiries



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# The Engagement Letter

- The attorney-client relationship – *City of Petaluma* (2016)
- Indemnification
- Limited scope engagement



# Initial Logistics Questions

- Who is the client contact for substantive decisions?
- Who is the client contact for logistics issues?
- Are interviews conducted virtually or in person?
- Are interviews recorded?
- How are witnesses told about Confidentiality & Retaliation?
- Documents





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# The Initial Complainant Interview

- Planning for the interview
- Communications between City and Investigator
- Documents?



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# Determining Scope

- The dreaded “scope creep”
- Different kinds of findings:
  - Factual findings
  - Policy findings
  - Legal findings



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## Investigator Independence

- Determining witnesses
- Questions asked during interviews
- Checking in with investigators
- Lack of or slow communication
- Disclosing too much to the investigator (priming)



## Preparing & Serving Notices

- Best practice: a client contact sends notices to witnesses and respondents.
- Cold calls from external attorney-investigators might. . .
  - Be ignored
  - Make employees more uncomfortable
- Failing to notify witnesses properly





## Report Feedback

- DO: make comments on minor errors (e.g., job titles, names).
- DON'T: make changes to the ultimate findings
  - Can ask for clarification if it does not change the ultimate finding



## Unique Considerations

- Police Officers and Firefighters
  - Consider POBOR and FOBOR requirements
- City Attorney in the middle: who is the client? What does that mean for the Councilmember in question?
- Handling inquiries from the media and the public
- Reporting investigation results (written report vs. verbal report in closed session)
- Monitoring for retaliation







## Revisiting the Hypothetical

- Who to interview first? Councilmember or “complainant”?
- Scope: Did the Councilmember touch the administrative assistant’s buttocks while taking a picture? If so, what were the circumstances?
- Witnesses: the other administrative assistant in the picture, others at the retirement event
- Sending notices



## Revisiting the Hypothetical

- Unique consideration: investigation with an elected official
  - Elected official asks for an attorney/representative
  - What is the remedy if the finding is sustained?



# Questions?



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# THANK YOU

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