

When the Legal Department Is Under Investigation, In-House Lawyers Must 'Step Aside'

[LAW | law.com/corpcounsel/2020/11/02/when-the-legal-department-is-under-investigation-in-house-lawyers-must-step-aside](https://www.law.com/corpcounsel/2020/11/02/when-the-legal-department-is-under-investigation-in-house-lawyers-must-step-aside)

By Dan Clark

In-house legal departments are often tasked with quarterbacking internal investigations. However, when there are questions over the behavior of someone in the legal department, experts say there must be a different approach to how those investigations are handled.

In these situations, corporate lawyers said, it's best for the in-house leadership, and even their usual roster of outside lawyers, to take a back seat.

On Monday, a former in-house attorney at Goldman Sachs filed a retaliation suit against the company claiming she was fired for wanting to bring information to internal investigators about an inappropriate relationship between the company's head of litigation and a junior attorney. The lawyer, Marla Crawford, claimed she was given a poor performance review following the investigation and that she was ultimately fired in retaliation for trying to give internal investigators information about the alleged relationship. She also alleges that an attorney in the employment group of the legal department worked alongside Weil, Gotshal & Manges during the internal investigation.

The complaint goes on to say that general counsel Karen Seymour referred to the investigation as a sticky situation and asked to have the "genie put back into the bottle."

"Protecting the company is not the same as sweeping something under the rug," Robert Chesnut, who previously served as the chief legal officer and chief ethics officer of Airbnb in San Francisco, said.

Transparency is critically important in these circumstances, Chesnut said. These kinds of allegations can damage a brand, he said, recalling the incident with former Google chief legal officer David Drummond.

Drummond retired from his role as chief legal officer earlier this year following an internal investigation finding that he had an inappropriate relationship with a subordinate.

Patrick Egan, a partner at Fox Rothschild in Philadelphia, said sweeping issues under the rug is not in the best interest of the internal client.

"A lot of times it is in-house counsel's job to tell the company that they need to take some action against a successful executive or take action against any employee who is useful to the company," Egan said.

A spokesperson for Goldman Sachs, reached Monday, declined to comment on the alleged relationship but did say the company's general counsel, Seymour, took the appropriate steps to make sure the HR function spearheaded the investigation. The spokesperson also said Crawford was offered her same position in a different division and declined the change as part of a restructuring—rather than being fired in retaliation for attempting to speak up.

In instances where someone from the legal department is the focus on an internal investigation, experts say the legal department should have minimal involvement to diminish the appearance of impropriety.

“The general counsel has to step aside and let a third party run the investigation,” Chesnut said.

Brendan Johnson, a partner at Robins Kaplan in Minneapolis, said from the outset, there should be a special committee formed on the board of directors to oversee the investigation and select a law firm to conduct it. It is also best practice in these situations to not hire law firms that have worked with the company before.

Johnson said the legal department should not even present a list of firms the company worked with before.

“When the actions and the judgment of a legal department are being reviewed or considered, it's best to go truly outside,” Johnson said.

If the investigator is truly independent, the investigation cannot be scrutinized.

“Of all the people in the company, those in the legal department have to be the role models for these sorts of issues,” Chesnut said.