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Meet Thomas Topolski, CCEP-I

Executive Vice President,
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by Joe Murphy, CCEP, CCEP-I

Investigating judicial misconduct? Oh, never mind!

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Here is the situation you confront. Allegations of misconduct are made about a senior official. The allegations go back to conduct over the course of four decades. You schedule an investigation. The official then resigns, because they cannot do their job and still "fight this battle." As a compliance and ethics professional, what do you do?



Murphy

- (A) Say, "Oh, they resigned, so there is nothing left to do"? or
(B) Continue with the investigation?

Apparently, the answer depends on whether you work in a company or in the federal judiciary. If you follow the Sentencing Guidelines standards, you know that you need to do a root cause analysis. You need to take steps to "prevent further similar...conduct," and you can only do this if you know what happened.

You also need to know who knew what, and who failed to act or report misconduct. Did others know but fail to act? Were there any threats or actual retaliation to protect the senior person? Of course, you need to talk with those who reported misconduct and also those who may have witnessed it. You will at least ask to talk to the alleged perpetrator, even if the person has "retired." You know that it is never sufficient simply to say, "He was in such a high position; it is enough that

his legacy is now tainted." At least not in the world of business.

But we have just witnessed what happens in the federal judiciary. A Ninth Circuit judge is subject to numerous accusations about sexual harassment going back decades. A judicial inquiry is started, but because he resigns (with full retirement benefits), there is nothing they can do, so they discontinue any investigation. Instead, the Administrative Office of the United States Courts begins a general inquiry about what should be done going forward throughout the judiciary.

This is wrong. The judiciary as an organization should apply the same standards for compliance work that the judiciary's own Sentencing Commission has wisely provided for all organizations. The Sentencing Guidelines for Organizations provide a strong suite of management tools that need to be applied in this area. (Yes, the Guidelines speak to criminal conduct, but the points apply just as readily to any form of misconduct in organizations.)

Clearly, when a top official does wrong, merely having him bail out should never be the end of an inquiry. We need to know how this could have happened, who knew what and when did they know it, and what we have learned from this failure.

And what about the overall administrative policy review? Will they simply recommend a policy and have training (which many judges will be "just too busy to attend"), or will they do something that actually works? *