



## **Department of Justice Targets Corporate Officers in Both Civil and Criminal Enforcement Actions**

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In a September 9, 2015 memo addressed to the Assistant Attorney Generals in charge of all of the Department of Justice (DOJ) enforcement divisions, all the U. S. Attorneys and other high level DOJ officials, Deputy Attorney General Sally Quillan Yates set out strong new policies to hold corporate officers responsible for corporate wrong doing. This policy will apply to association executives as well.

At one time, when representing corporations in DOJ investigations, it was the strategy of defense counsel to negotiate a settlement by offering to have the corporation plead guilty and pay a fine in exchange for the DOJ's agreement not to proceed against corporate officers. That strategy will not work any longer. Deputy Assistant Attorney Gates announced the new rules as follows:

1. In order to qualify for any cooperation credit with the DOJ, the corporations must provide the DOJ all relevant facts relating to the individuals responsible for the misconduct.
2. Criminal and civil corporate investigations should focus on individuals from the inception of the investigation.
3. Civil and criminal DOJ attorneys handling corporate investigations should be in routine communication with one another.
4. Absent extraordinary circumstance or approved departmental policy, The DOJ will not release culpable individuals from civil or criminal liability when resolving a matter with a corporation.
5. DOJ attorneys should not resolve matters with a corporation without a clear plan to resolve related individual cases, and should memorialize any declinations as to individuals in such cases.
6. Civil attorneys should consistently focus on individuals as well as the company and evaluate whether to bring suit against any individual based on considerations beyond that individuals ability to pay.

Association executives should make sure that their associations have a comprehensive antitrust compliance program and the association has implemented the program and educated staff, volunteer leadership and members on the need to comply. In accord with the DOJ's new policies, if the DOJ finds that illegal activities have occurred during an association meeting and the association staff was aware of what was happening, there is a good probability that association staff members will be fined or face jail sentences. For further information contact [sfellman@gkglaw.com](mailto:sfellman@gkglaw.com).