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Professional Snoops Band Together Workplace Investigators Form Group

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After 14 years as a workplace investigator looking into employee complaints of sexual harassment, discrimination and other sorts of illegal workplace behavior, Berkeley attorney Amy Oppenheimer got sick of working alone.

The former litigator and author of "Investigating Workplace Harassment: How to be Fair, Thorough and Legal" wanted a group of colleagues to network and share ideas with, so last year she decided to start what may be the country's first professional organization for workplace investigators. "There are lots of us, but there's no place for us to network or improve our skills," she said. "A lot of people put their practices together on their own."

Just three months after Oppenheimer launched the nonprofit Sacramento-based California Association of Workplace Investigators, the group has attracted more than 100 members.

"Once the idea was out there, people just jumped on the opportunity," said Stephen P. Angelides, executive director. "This field is evolving, but there's been no discipline, no center to the profession. It's not a field that's had a home."

Thirty years ago, employers didn't typically call outside investigators to check the facts of employees' harassment reports, Angelides said. But as companies began looking for neutral sources to step in and provide assessments, employment attorneys added investigations to their practices and private investigators and human resource professionals started considering the field a specialty.

The mish-mash of professionals who have carved out this new niche of workplace investigation could find themselves with questions about the ethical and procedural guidelines they should be following. However, they tend to be sole practitioners without access to the same sorts of brainstorming and mingling opportunities available to litigators, said Oppenheimer, whose group is aimed at connecting these professionals through roundtables, newsletters and forums analyzing and sharing a comprehensive list of best practices.

Within its first year, the organization plans to put on its first annual conference, create a listserv for its members to share information, sponsor two training seminars, provide a forum for

publishing articles and raise the profession's profile, according to the CAOWI Web site.

Oppenheimer gave up litigation altogether 14 years ago to become an investigator.

"I got frustrated with issues coming to me that couldn't be put back together again," she said. "I really felt like most employees just wanted their jobs back. I got interested in fixing these things before they got to litigation."

For Oakland attorney Cynthia L Remmers, a former Orrick, Herrington & Sutcliffe partner who started her own neutral practice, a big draw to the field was the multidisciplinary nature of the work, which meant it attracted people from a range of backgrounds.

But that diversity can also create divides between professionals from differing fields, said Remmers, vice president of the CAOWI board and head of its Best Practices Committee.

"One of the things I've found is that people from different disciplines don't always talk well to each other," she said. "But they do the same work. We have this opportunity now to collect perspectives from all the different people who do this work and meld them into a group of core principles."

A number of ethical questions - many focusing on the issue of privilege - often come into play, according to Remmers. One common query is: Should an investigator take advice from a client?

"That comes up a lot," she said. "You are being hired as an independent. If a client is trying to direct what you are doing, you are stepping outside of bringing a totally neutral view."

That's one of the concerns plaintiffs' attorneys have about workplace investigators hired by an employer to check the facts of an employee's claim, said Karine Bohbot, of Bohbot & Riles in Oakland, who represents employees in litigation. She and her colleagues worry that workplace investigators will tend to side with whoever pays their bills.

But she also recognized their new organization as a positive development.

"As a plaintiffs' attorney, I like the concept of having an organization working together to share ideas and establish clear guidelines on how investigations should be conducted and how investigators should conduct themselves," she said.

Mary Wright, a shareholder with Ogletree, Deakins, Nash, Smoak & Stewart in San Francisco who defends employers, said clients want to hire an outside source to eliminate impropriety. "Even though it's paid for by the company, their job isn't beholden," said Wright, who often works with investigators.

Until now, workplace investigators haven't had a body to set standards for them, she said, noting that although case law and general guidelines do exist, a formal consensus on how best

to implement the rules hasn't been publicly introduced.

"There are cases that talk about the adequacy of investigation, if a procedure was followed," Wright said. "And there are guidelines for most of the various HR associations. But all they do is publish guidelines. No one makes an investigator adhere to them."

One source of confusion that she's seen arise frequently among investigators has to do with the conclusions they are allowed to assert.

A workplace investigator may be called in, for example, to interview the workmates of an employee who has accused a manager of sexually harassing him or her. The investigator is supposed to determine whether the reported conduct occurred or if certain statements were actually made. Did the manager actually say "You're looking mighty fine today" to the employee?

But the investigator isn't supposed to decide what that statement might mean, Wright said, adding that many investigators form their conclusions by leaping over the issue of fact to make a determination regarding whether a law was violated.

"If you are going to have people specialize in conducting investigations, they should probably have some notion of what they should or should not do," she said. "Because a bad investigator can really screw up your case."