

Rules Of Evidence/Fraud Unit Memo

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Head Of DOJ, Martha Miller,

It is imperative that the U.S. Department of Justice understand the entire process involved in fraud detection as well as litigation. The aim of this memo is to illustrate types of fraud, department coordinators, federal rules of evidence as well as the importance of the evidence chart. The paper centers primarily on civil fraud.

Types Of Frauds

Tax Evasion Fraud

Tax evasion is the criminal practice in which a corporation, organization or person intentionally avoids paying the required state or federal taxes. Evasion of tax applies to both when there are illegal underpayments as well as illegal nonpayment of taxes. Every step of the taxation process is vulnerable to fraud. For instance, failure to file tax returns makes it difficult for the IRS to audit the finances of an individual. Underreporting income is the most common method people use to evade taxation. Employees and businesses that mostly deal in cash, such as retail store owners, hairdressers and wait staff, at times underreport their income because there is little paper documentation of the transactions involved. Also, some businesses can inflate their expenses to reduce tax deductions.

Identity Theft

It is a type of fraud where a fraudster obtains the financial and personal information of another person to use it in assuming the identity of the person. The assumed identity is used in making purchases and transactions. Many ways are used in committing identity theft. Identity thieves can use high-tech methods, such as gaining access to a corporate database to steal customer information. Some identity thieves look for a credit card or bank statement in trash bins where the target individual has discarded it. Credit card fraud involves taking another person's credit card information without their authorization to remove funds from their accounts or charge purchases to the account (Albrecht, W. S., & Searcy, D. J., 2001).

There are four types of identity theft: child, financial, medical and criminal identity theft. Child identity theft involves the misuse of the Social Security number of a child to apply for bank accounts, government benefits, and other services. Most criminals often prefer children's information since the damage may take more time to notice. Financial identity theft is where a criminal uses the

information or the identity of another person to obtain benefits, services, and food. Criminal identity theft involves a criminal using another person to misrepresent himself or herself to avoid arrest or summons. Medical identity theft happens when someone obtains free medical care as a result of identifying himself or herself as another person.

Securities Fraud

It occurs when someone prepares a false statement about the stock value or financial information of a company to persuade others to use the false information in making financial decisions. A knowledge of security regulation is required to understand the securities. There are various forms of securities fraud. A company can participate in securities fraud. This type of fraud happens when a company's director of corporate reports financial information to the shareholders inaccurately. As a result, the worth of the company's stocks rises artificially, and investors become encouraged to buy shares from such companies. The people who use false information to buy bought shares will completely lose their investment when the firm goes bankrupt (Krambia-Kapardis, 2002). An example is the Enron scandal, where the corporate office did not report the expenses of the company, hence making the profit seem larger than the real profit.

Another form of securities fraud is insider trading. It occurs when someone within a company who has access to the company's confidential financial information uses the information in making decisions on whether to sell or buy the stock before public disclosure of the information. For instance, a company accountant may decide to sell his or her stock without noticing the board after realizing that the firm is becoming bankrupt. Third-party misrepresentation can also contribute to fraud. A third party may decide to give the public false stock market information firm, a scheme known as "pump and dump." To accomplish the pump and dump scheme, an individual looks for a small, usually unknown company that has cheap stock and then buys a large number of shares. The perpetrator then encourages other people to buy the stock through the use of false information. After some time, the stock will be high, and the perpetrator will make a profit after selling his or her shares.

Department Coordinators And Their Functions

Specialists in the field of fraud detection and investigation are essential in fraud detection firms. The first coordinator is a fraud analyst. The fraud analyst monitors millions of the online transactions of a particular corporation to establish potential fraud. The fraud analyst detects individuals who use deceptive practices or stolen information to launder money. Also, they detect criminal trends during the investigation.

The second coordinators are the forensic accountants. They intervene in any fraud fact through account analysis to make sure a specific dispute will be relevant to the lawsuit or court process. The principal role of the forensic accountant is to simplify complex financial issues so that the client, solicitor, and court will understand. They also assist the solicitors in gathering substantial information

during investigation and data mining. Moreover, during fraud detection, they can establish a mismatch between a business story (income tax returns and financial statements) and other business information. Lastly, they are mandated to present expert evidence. The evidence must be oral and written (Digabriele, 2008). Cross-examination is a strategy that utilizes both opinion and calculation to provide evidence in a court of law.

The third group involves fraud intelligence and referral officers. They receive fraud allegations from different sources and carry out a risk assessment. They also ensure the reported assertion is correct and aligns with the client's statement by conducting a simple background check. The officers are mandated to decide on a specific case that is worth investigating. Finally, they avail all the relevant files to the investigator. The files contain evidence documents and claims of a particular case (Wesley Lane, 2010).

Furthermore, intelligence gathering is another role of the group. It is an integral stage since enhancement of the original referral is conducted during this step. They have a responsibility to gather information from service providers or data holders like communication providers, service/utility companies, banks or employers since they have authority from their office. The collected and organized information is only relevant if it accords with the policies and legislation of the council.

The fraud detection supervisor is the last coordinator in the department. The supervisor must ensure the entire fraud detection process runs smoothly. The decision and implementation made by the supervisor should be firm (Krambia-Kapardis, 2002). They must monitor the whole activities and ensure an excellent interpersonal relationship between the clients and the associates. Their ability to solve incidents and irregularities that relate to fraud activities relies on their creative skills.

The team leader of the fraud detection team is the supervisor. The supervisor often conveys information regarding the new approaches that simplify incidents of fraud to other associates. The cooperation between the members enables them to detect fraud in companies easily. Evaluation of the duties carried out by other associates and assigning of the tasks is carried out by the supervisors. The fraud supervisor makes sure the team member finish their assigned work.

Investigative Tools For Fraud Detection And Prove

Anti-fraud Data Analytics Tests: It is a compelling investigation, detection and prevention tool used to establish and uncover fraud crimes. Also, it is a core, holistic and useful tool in the management program of fraud risk. Companies that use non-data analytics tools to control fraud have a higher incidence of fraud than organizations that utilize data analytics tools that are proactive, according to the report 2016 ACFE report. The ACFE's Fraud Tree forms the basis for the analytics tool during fraud detection. The tool is useful in detecting fraud in microfinance firms (Akhilomen, 2013).

Guidance Software and AccessData produce Encase and Forensic ToolKit tools, respectively, that are used to examine and process forensic images during fraud detection. They are essential since

retrieval of deleted and hidden data is possible. The investigator can present the image content to the court. Also, missing chat logs and various artifacts in social media can be recovered through the use of tools. The tools are used mainly when social media platforms such as Twitter or Facebook are a means of communication between the offenders. Additionally, internet history is a source of evidence that can be provided during the lawsuits. For instance, a fraudster's computer indicates various banking websites; it can be deduced that the primary interest of the perpetrator is banks. However, the rights of the defendants should be protected during the search and presentation of the information (Brodsky, 2013). The third-party should never share retrieved information. During data mining of the information from the defendants, a search warrant must be produced.

Evidence Chart In Fraud Proceeding

An evidence chart is an important tool used in the analysis of fraud; hence, it is necessary for a fraud proceeding. It presents various vital advantages. First, it makes it possible to organize all the potentially relevant and relevant data of a complex fraud case into a single structure that is clear and coherent to help in an argument. Secondly, precise identification and articulation of each proposition considered to be essential in the case's argument are required. Therefore, precision is the value being achieved. Finally, the person doing analysis using the method is required to specify each step in every argument being advanced precisely. Fraud cases usually have three distinct information layers: a hypothesis (proposition) layer, a law layer and finally, an evidence layer (Digabriele, 2008). Therefore, any fraud case will have a case theory or hypothesis; for instance, Y defrauds X, a law layer that provides specific law elements that require stratification for proving a fraud case and evidence material facts that serve as facts of a case.

Fraud Case In An Evidence Chart

The fraud involved illegal online solicitation that happened in the financial market of Italy that CONSOB regulates. The Smallxchange Company, whose headquarters was British Virgin Islands, aimed to provide an unauthorized 24-hour stock exchange. The company asked the investors to tender shares to get a stake in the venture in exchange. The trade of the shares was to occur between partners. A WWW page that advertises financial investment services solicited investors. The consideration of the appropriateness of CONSOB's jurisdiction is required to establish the internet fraud regulation efficacy. Smallxchange's target was the Italian national investment market; thus jurisdiction of CONSOB was affirmed. The soliciting agent did not have the license for trade, and the web page had false statements (Digabriele, 2008). The evidence chart is shown below:

Important Aspects Of The Evidence Chart

1. Smallxchange.Com Ltd
2. Targets the national market

3. Investors unauthorized solicitation
4. Unauthorized alternative trading system
5. Unauthorized funds placement
6. Italian as most advertised
7. Payment in euro
8. Nonfulfillment
9. Mutual fund shares
10. Public offerings that are unauthorized
11. The stock exchange
12. Companies that are quoted
13. House for clearing
14. The book of trading
15. Fund Placement
16. The management assessment

Role Of Expert Witness In Court Proceedings

The central role of the expert witness is to present a view on matters revolving around their specialism during court proceedings. An example of an expert witness is the accountant. They can give their expert statements depending on the findings as well as testify about the financial matters of the client. State and Federal laws, Civil Procedure, Federal Rules, and the Federal Rules of Evidence are the binding regulations when accountants testify in a State or Federal court. Each state has specific rules that govern a forensic accountant when presenting an expert opinion; therefore, an accountant should adhere to each state's regulations. The accountant is an expert witness needed during fraud detection in financial institutions.

Admission of the expert testimony is under Evidence 702 Federal Rule. Initially, accountants were not eligible to present an expert testimony when The Frye standards controlled rule 702. Currently, only the state courts use the Frye standard. At this level, the decision regarding whether the expert should present an opinion relies on the "expert" peer's opinion according to the Frye standard requirement. Rule 702 has opened doors to any person with specialized, technical or scientific knowledge to qualify as an expert witness (Brodsky, 2013).

Issues During Fraud Litigation

Legal evidence concept is an important law aspect when presenting evidence in a court of law. Fraud evidence in the federal or state court only remains viable if the retrieval and mining were legal. The rules governing evidence dates from the legal tradition to the Anglo-American law. Below are essential Federal regulations.

The Legal Significance of Relevance: It is a core concept in legal fact-finding. There are two important evidence laws articulated under this rule. First is that the court will not accept any irrelevant evidence and the second is that the court receives anything that is relevant as evidence. The two fundamental principles link with Rule 402. However, States and Federal courts now appreciate the existence of relevant evidence in fraud that lacks concepts of legal.

Concepts of Logical Relevance: State and Federal courts only accept evidence if the facts in proceedings are relevant. A relevant fact exists when it relates to another. The relationship is described as “probable.” The evidence that exhibits more facts on its own is what the federal rule of Evidence 401 defines as relevant evidence. For instance, the evidence presented on money laundering with proven documents is pertinent in a court of law.

Thank you,

The Expert Witness

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