

March 22, 2010

Judge William K. Sessions III
Commissioners Chair
Office of Public Affairs
U.S. Sentencing Commission
One Columbus Circle N.E.
Washington, D.C. 20002

Dear Judge Sessions:

Re: Proposed Amendments to the Sentencing Guidelines and Issues for Comment

Enclosed please find my comments on the Proposed Amendments to the Organizational Guidelines.

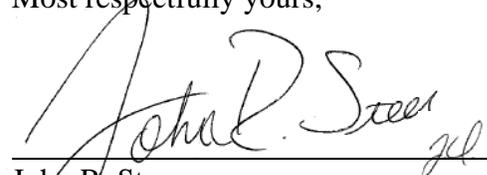
Comments on Proposed Amendments to Chapter 8

1. The new application note 6 under 8B2.1 provides helpful guidance on remediation efforts consistent with the central purposes of the Organizational Sentencing Guidelines and relevant DOJ advice to prosecutors. The emphasis on an independent monitor is timely and appropriate whether viewed in the context of a deferred/non-prosecution agreement or probation imposed by the court. We recommend adoption of this commentary change. In view of past questions raised about the qualifications and independence of some monitors, the Commission might wish to set forth its view of appropriate qualifications. At a minimum, fluency with the composition and implementation of effective ethics and compliance programs as outlined in Chapter 8 should be required.
2. Consolidating the conditions of probation is a useful simplification and appears non-objectionable. The addition of conditions regarding an independent monitor and examinations of facilities is helpful. We recommend adoption of this consolidation and augmentation of conditions.
3. We have strong reservations regarding the proposed bracketed language regarding document retention policies, for several reasons. First, the Commission has made no case for singling out these particular policies for special emphasis. Second, the specificity of these particular policies is inconsistent with the more generalized, broadly applicable requirements and guidance in Chapter 8. Adopting this kind of specific regulatory policy will likely start the Commission down a “slippery slope” of

prescribing other policies that some in the compliance field or policymakers deem important at the time. Third, this kind of detailed guidance seems overly prescriptive for small organizations and would make it more difficult to sell this audience on the need and value of adopting compliance programs.

4. Regarding the issue for comment, we favor allowing organizations greater latitude in qualifying for the three level reduction for an effective compliance and ethics program. If the Commission feels it must impose prerequisites, conditions (B) and (C) are more appropriate. (A) seems overly prescriptive for small, closely held organizations in which the compliance officer will often also be an owner and director. The intent of having a close working and reporting relationship between compliance operations and the board of directors is laudable, but the proposed formulation may prove problematic in some situations. The desired goal is to have the board exercise proper responsibility vis-à-vis compliance operations, including regular supervisory involvement and sufficient resource support, not to mandate a particular structural relationship.

Most respectfully yours,



John R. Steer
Senior Partner
Allenbaugh Nami Shabahangi LLP