Bearden
INVESTIGATIVE AGENCY

DALLAS   HOUSTON   NEW ORLEANS   NEW YORK

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CLIENT RELATIONSHIPS; TIPS ON SUCCESSFUL ENGAGEMENTS

HOW THE FOREIGN AGENT REGISTRATION ACT CAN AFFECT YOUR INTERNATIONAL BUSINESS

WHY ARE WE DOING THIS?

- FARA – Foreign Agent Registration Act.

- Very specific set of circumstances that recently raised its head in the State.

- But, a real problem worldwide with more implications given the crisis in Ukraine.

- Who is your client and what duties do you owe them v. your Country or law.

WHO IS YOUR CLIENT?

- Client? – Fiduciary relationship. Zealous Advocacy.
  - "The one whose bottom is on the line"
  - The one you generally owe a fiduciary duty to.
  - May owe other duties to them as well,
  - Truthfulness, confidentiality, reporting.
  - Those duties may conflict with state law.
  - i.e. The Party, The Company, The Defendant, The Insurer?, The Lawyer?

WHO IS YOUR CLIENT'S LEGAL REPRESENTATIVE?

- CLR = Clients Legal Representative?

  - The brains of the client?

  - You get certain rights and privileges that the client may not have.

  - Attorney Client Privilege?

  - Attorney Client Work Product?

  - Duty to report?

  - Great way to discharge your duties. Like the crime provisions.

WHO IS YOUR BILLING PARTY

- Billing Party – The person who pays the bill. What rights do they have?
  - Not usually a fiduciary duty under the Attorney Ethics rules.
  - Not usually a person in the know.
  - Duty to account for monies. Receive and report back.
  - Conflicts of Interest when BP has paid and wants knowledge.
  - What happens when the BP and the Client no longer talk?

EXAMPLES

- Divorce / Custody Case – Family Law Cases

  - CLR – Usually the Divorce lawyer

  - BP – Usually Daddy Warbucks.

  - Client – The wife / husband.

- Court Appointed Criminal Defendant

  - CLR – Court Appointed Lawyer

  - BP – Usually the court.

  - Client – The defendant.

CORPORATE WORLD?

- Who is the Client?
  - The Board?
  - The CEO?
  - The Company? Shareholders?

- Who pays the bills?
  - The Company? Insurer?

- Who do you report to?
  - Inside Counsel?
  - Outside Counsel?

SO, TRY TO PEG IN THE EXACT SPOTS…

- CLIENT

- CLIENT'S LEGAL REPRESENTATIVE

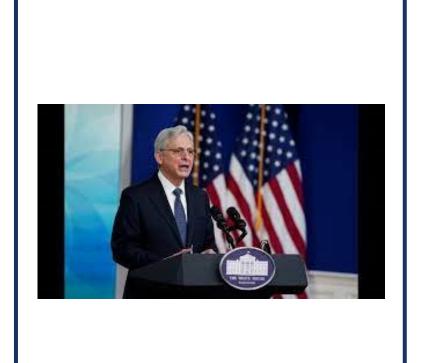- BILLING PARTY

WHY YOU NEED TO BE AWARE OF FARA

- FARA = The Foreign Agent Registration Act in US, law that requires registration of those who are working on behalf of a government or quasi government agency.

- But, there are comparables in other countries.

  - i.e. Official Secrets Act and an anticipated UK Espionage Act that would address the issue of "individuals acting on behalf of a foreign power and seeking to obfuscate the link"

FARA HISTORY

- Originally enacted in 1938 following a congressional investigation into Nazi propaganda finding that representatives of foreign governments and foreign political groups in the U.S. were supplied by foreign agencies with funds and other materials to foster un-American activities and influence both internal and external policies.

- Traditionally viewed as a registration process with almost no enforcement. Originally under Dept. of State now DOJ.

- Between 1996 -2017, DOJ brought 7 cases. Three convictions (2 pleas and a trial).

- In 2016, (amongst other issues) the DOJ began pulling together a true strategy.

- Recently, we have seen foreign intelligence agencies attempt to hire Private Investigators to conduct investigations under pretext in several countries. United States, Canada, United Kingdom and Germany.

RECENT FARA ENFORCEMENT

- The U.S. Justice Department in 2018 ordered the Chinese state-run China Global Television Network to register as a foreign agent.

- The Overseas Friends of the BJP of India, after 29 years in operation in the United States, formally registered as a "foreign agent" on 27 August 2020.

- Elliott Broidy pled guilty in October 2020 to acting as an unregistered foreign agent, admitting taking $9 million to secretly lobby the Trump administration on behalf of Malaysian and Chinese government interests.

- "Operation Fox Hunt" - Allegedly acting at the direction and under the control of PRC government officials, defendants conducted surveillance of and engaged in a campaign to harass, stalk and coerce certain residents of the United States to return to the PRC as part of a global, concerted and extralegal repatriation effort. Current Prosecution.

  - USED PRIVATE INVESTIGATORS TO LOCATE THEM AND SURVEIL THEM.

WHAT ARE SHOULD WE LOOK FOR?

- Client, a foreign principal ("person or entity"), contacts you to engage you in a matter in the United States.
  - Family Law or Relationship Investigation.
  - Pre-Judgment or Civil Suit Investigation.
  - Pre-Judgment Asset Check.
- You, knowingly or unknowingly, obtain information for the foreign principal and become his agent.
- Because the ruse was a lie, you have no exemptions from FARA with which to rely.

RULE #1

- Always know your client!

- In old days, we worried about the single male issue.

- <u>DPPA</u> - Rebecca Schaeffer was murdered in 1989 by Robert John Bardo who found her address by a private detective agency's use of DMV records, the easy availability of personal information from the DMV was called into question. NCISS has an agreed protocol for this now.

HELL, ANY OF THEM COULD HAVE DONE IT.

MITIGATE DISASTERS !

- Investigate your clients. Understand where they came from.

- Contract your way to limited liability.

  - Make the sign and confirm who they are?

  - Limited Liability? Can you limit liability? Indemnification?

  - Conditions of Employment? Won't tell you where, but will find them for you.

- Push towards Counsel?

  - FARA Exemption – Practice of law before court or agency in civil or criminal judicial proceedings. Find a good lawyer to bounce this off of.

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