

Building Integrity into the Infrastructure

More and more large public works projects are hiring monitors

Kelly Donovan joined KPMG in November as a managing director in the forensic practice. An accomplished criminal prosecutor for more than 20 years, she held roles with the New York County (Manhattan) District Attorney's Office, the New York State Office of Inspector General and the New York Attorney General's (AG) Office. Most recently, she supervised the AG Criminal Division's five main bureaus: financial crimes, public integrity, organized crime task force, taxpayer protection and the medicaid fraud control unit. Donovan also served as counsel to the high-profile Moreland Commission on Public Corruption and as chief of investigations for the AG's medicaid fraud control unit. The common thread, she said, is that much of her time was spent uncovering fraud, waste and abuse in agencies and businesses, and making recommendations for tighter internal controls. After 24 years, she was ready for a change. "I want to help our clients avoid the problems that I saw as a prosecutor, to assist in their efforts to uncover misconduct – not just when a crisis hits, but preemptively. I think I can uniquely help our clients understand what regulators are concerned with, what the repercussions will be and how to develop an effective compliance program based on a culture of integrity – helping to keep them out of trouble." She sat down with MCC to discuss what she hopes to accomplish in this new phase of her career. The interview was edited for length and style.

MCC: You have had an impressive career prosecuting criminals ranging from violent offenders to white collar crime in government. What attracted you to KPMG and what specific areas will you be working on?

Donovan: I started my career at the New York County DA's office. I spent the first five years in the trials bureau and then served for close to 10 years in the labor racketeering unit (LRU), where I was deputy chief. In the LRU I had my first exposure to large construction contracts, agency contract letting, unions, pension benefits, coalitions and political corruption. I was fortunate enough to work on a matter involving corruption arising out of the bridge painting on the George Washington Bridge and then the Verrazano Bridge. Over the course of several years, the investigation involved wiretapping and informants, financial reviews of jobs and union payrolls and benefit programs, and kickbacks to government officials. And it ultimately led to the indictment and conviction of a state senator.

Through much of my career I have been uncovering misconduct within agencies and trying to identify and recommend best practices following an investigation. That is what attracted me to KPMG. As a highly regarded firm with a broad platform of services, KPMG is particularly geared towards helping clients prevent, detect and respond to all forms of fraud, waste and abuse. Whatever the problem, we have the resources to uncover and remediate it. I love forensic white-collar investigations, and the skills are the same whether you're investigating misconduct within a government agency or for a private client.

For the most part, I plan to help increase our presence in state and local government work throughout the nation. One focus will be providing integrity oversight services to state agencies on large public works contracts. Another would be assisting agencies through the integration of case management and data analytics, particularly in health care. I'll also be working directly with the legal channel, including law firms, general counsel and chief compliance officers, and assisting them with internal investigations, forensic accounting, due diligence, e-discovery and data analytics.

MCC: What do you expect the bulk of your time will be devoted to at KPMG?

Donovan: I anticipate that the bulk of my time will be servicing either government (local and state) or law firms, and those are not two separate paths. I believe there will be a great infusion of the public's money into large infrastructure programs. You will see the government implement integrity monitoring programs of their own, or it will be a requirement of contractors and vendors doing business with the government to hire a monitor. There will also be instances where, as a result of a criminal or civil regulatory investigation, there is a deferred-prosecution agreement (DPA) or non-prosecution agreement (NPA) settlement with the government. And, hopefully, we'll be servicing the legal channel and their clients in that regard as either the independent monitor or supporting that monitor's efforts.

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MCC: What would lead a company and its executives to decide they need an integrity monitor, short of finding themselves in trouble?

Donovan: Monitors are often required as the result of a settlement or plea agreement with the government. At KPMG, we have the skills to help companies that are required to engage a monitor. Under certain circumstances, we will serve as the integrity monitor. Under other circumstances, we will help the company prepare for the monitor by helping assess the company's compliance program, identify gaps that require the design and implementation of controls to address the company's risks and to meet the requirements of the agreement with the government. We also work with organizations to assess their culture and to achieve the highest level of integrity by helping them build a strong culture.

MCC: How does a company build a culture of integrity?

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Donovan: A good organizational culture is one in which all decisions are made in support of a set of core values. It starts at the highest level with the right tone set by the board and management and communicating clearly that results will be achieved through adherence to core values. Management needs to encourage employees to raise issues to their supervisors and through internal reporting mechanisms. Employees need to feel safe raising issues without concerns of possible retaliation. Training is key. People at all levels of the organization need to understand what is expected of them and that the organization will treat any allegation of wrong-doing seriously and fairly regardless of the level within the organization. There should be uniformity, and there should be no doubt that the ethics and culture of the company is of the utmost importance. When implemented properly, regularly monitored and improved, then it will work. However, inevitably there will be some sort of integrity breakdown.

But, if you have the right controls and processes in place, the hope is that the issue is caught quickly and will be dealt with before there is significant damage to the organization.

MCC: Has there been a trend in recent years for more and more of these large public works projects to incorporate a compliance component with an integrity monitor from the get-go?

Donovan: I believe there has, certainly in New York. Examples of this can be found in many of the large transit programs – if a vendor has either a negative history, or the contract is of the size and expanse that warrants it, you will find the contractor being required to institute either a very strong compliance program or have an independent monitor on the job. Increasingly you see the independent monitor.

In the early days, you would typically see integrity monitors on a big construction program or project. Now we're seeing monitors used across the board, especially in highly regulated industries, such as financial services and health care. And the trend is increasingly moving beyond state and local, and even national. You're starting to see monitoring imposed globally. There are some recent settlements, including Odebrecht [the engineering and construction company started in Brazil], that requires a monitoring in Brazil, and that's relatively new.

MCC: What changes do you expect under the new administration that may affect your work?

Donovan: The new administration has pledged to create a more business-friendly and less regulated environment. With this, I believe there will be more efforts by some states to fill any perceived vacuum of federal regulation and enforcement. It will be extremely interesting to see how this plays out. I wouldn't be surprised if some attorney generals in some of the more liberal states step up regulation in a variety of areas, including securities, cybersecurity and consumer fraud. I think we'll begin to see some very active AGs throughout the nation.

MCC: Are there any changes in infrastructure that you see having an impact on your work?

Donovan: I hope and believe there's going to be an explosion of infrastructure work. In New York alone, we're looking at the revamping of two of our airports. We're seeing the build out of the Javits Convention Center and the continued construction of the Tappan Zee Bridge. This terrific explosion of work is a good thing, but there is no doubt that it increases the risk of fraud, waste and abuse, and the need for effective compliance programs and internal controls. Integrity monitors will play a large part, and it's a place where KPMG is uniquely capable of making a real difference.