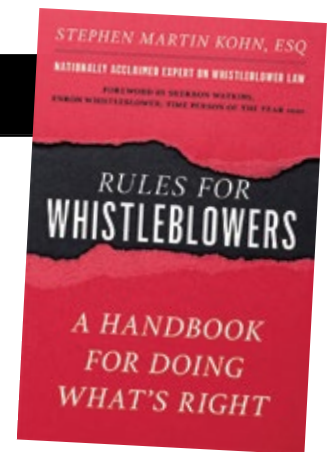


Rules for Whistleblowers: A Handbook for Doing What's Right

by Stephen Kohn

Reviewed by Mark Pugsley



I began filing whistleblower tips with the Securities and Exchange Commission (SEC) about twelve years ago when Congress passed the Dodd-Frank Act, which established the SEC's whistleblower award program. I have since learned that practicing whistleblower law is a lonely business – not many people in the country do what I do – so I was interested in reading about the experiences of Stephen M. Kohn, who is a fellow member of the national whistleblower bar (The Anti-Fraud Coalition TAF.Org). His new book is titled *Rules for Whistleblowers: A Handbook for Doing What's Right*.

Stephen Kohn is an experienced whistleblower attorney who practices in Washington D.C. He is a named partner at the firm Kohn, Kohn & Colapinto LLP and has represented clients who obtained significant awards, including the largest ever Internal Revenue Service (IRS) whistleblower reward of \$104 million. In this book, Kohn delves into the world of whistleblowers, shedding light on the challenges they face and providing guidance on how to navigate the complex landscape whistleblowers and their lawyers assume in exposing wrongdoing while protecting the rights of their clients.

The book begins with an overview of whistleblowing, explaining its importance in promoting transparency and accountability in both the public and private sectors. Kohn emphasizes the moral imperative for individuals to step forward and blow the whistle on corporate fraud, corruption, and other illicit activities that harm society at large, and in the process qualify for a substantial award.

Kohn offers a step-by-step guide on how to become a whistleblower – providing essential tips on gathering evidence, maintaining anonymity, and ensuring protection from retaliation. The book contains thirty-seven rules for whistleblowers, including the following nuggets:

- Don't Leave Money on the Table (Rule 4);
- Protect Yourself (Rule 7);
- Should You Tape [Your Conversations]? (Rule 9);
- Know the Limits of [Company Whistleblower] Hotlines (Rule 10);
- Don't Let the Lawyers Throw You Under the Bus (Rule 11);
- Don't Fear NDA's (Rule 14); and
- How to Afford a Lawyer (Rule 37).

The book highlights the common traps and challenges facing whistleblowers today and provides practical legal guidance to help would-be whistleblowers navigate the murky waters and bumpy roads that make it difficult and risky to do the right thing, including how to file cases anonymously through an attorney.

Kohn also provides a full-throated defense of the various governmental programs that use taxpayer money to provide significant financial incentives to people who provide information to the government.

In June of this year, the SEC announced it had issued the largest ever whistleblower award of \$279 million to an anonymous whistleblower relating to an unidentified enforcement case. This historic award payment underscored the remarkable success of the SEC's whistleblower program, but it also led to some criticism

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of the program both generally and in particular about the lack of transparency surrounding these awards.

But as Kohn and others (including me) have pointed out, the success of the SEC's whistleblower program has led to significant recoveries that benefit both investors and taxpayers. To date, the program has paid approximately \$1.5 billion in awards for tips that have required bad actors to disgorge more than \$4 billion in ill-gotten gains and interest.

Whistleblower awards provide a weighty incentive for whistleblowers to risk their careers and reputations to come forward with previously unknown information about potential securities-law violations. As Kohn points out, the whistleblower statutes "align the interests of the whistleblower, the prosecutor, and the public, all of whom want to bring the fraudsters to justice ... a perfect alliance for achieving accountability."

Kohn also covers numerous controversial issues, such as surreptitiously taping telephone calls, removing confidential documents and data from the company, and handling NDAs. These are difficult issues I deal with every day in my whistleblower practice and Kohn's guidance is valuable.

One of the key points Kohn and I agree on is that some of the best whistleblowers are insiders; individuals who are currently employed at a large company where they observe fraud or corporate financial misconduct. Instead of reporting the conduct internally and risking their employment, insiders can access documents and data about the crime and report the conduct to the SEC or other relevant agency anonymously, while in some cases continuing to work at the company. In many cases our brave whistleblower clients face extreme risks to their personal safety when they decide to become a whistleblower. This is precisely why the SEC, the Commodity Futures Trading Commission, and the IRS take whistleblower confidentiality so seriously. Whistleblowers are technically protected from retaliation by the company, but those legal protections are not easily accessed so the most effective protection is usually anonymity. In many of our cases federal agencies are not given the identity of our clients until the very end of the process to protect them from potential disclosure and retaliation.

Throughout the book, Kohn provides interesting details about cases he has handled in his long career and uses these anecdotes to highlight the impact of whistleblowers on exposing fraud and corruption. These stories underscore the significance of whistleblowing in safeguarding the public interest and upholding legal and ethical standards for public companies.

Kohn also addresses the complicated nuances of Foreign Corrupt Practices Act (FCPA) cases, highlighting the importance of whistleblower laws in helping the SEC and Department of Justice (DOJ) to enforce violations of the FCPA, which are notoriously difficult to detect:

Corporate insiders play a critical role in enabling the government to obtain proof of a bribe, proof that a company's books are inaccurate, or proof that a company lacks internal controls over some of its business activities. This point was driven home in a joint publication authored by the DOJ and the SEC. In their *Resource Guide*, these agencies described whistleblowers as "among the most powerful weapons in the law enforcement arsenal."

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Finally, Kohn's book provides invaluable advice on how to work effectively with governmental regulatory bodies to report misconduct and how to navigate the complex rules of these various award programs to ensure that the whistleblower receives the reward he or she is entitled to. Whistleblowers and their counsel need to understand all the applicable rules and regulations when disclosing information to authorities, and throughout the lengthy process that follows.

"Rules for Whistleblowers: A Handbook for Doing What's Right" is a great resource for anyone considering blowing the whistle on corporate misconduct or lawyers looking to understand the process. Kohn's extensive expertise in this area makes him an authoritative resource on the subject. With its practical insights and discussion of the key legal decisions in this area, Kohn's book serves as a practical guide for those who seek to expose wrongdoing while safeguarding their rights and contributing to a more accountable and just society.

***Rules for Whistleblowers:
A Handbook for Doing What's Right***

by Stephen Kohn

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