

# Scratching a NICHE

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TwinCities  
BUSINESS



Five Twin Cities attorneys tell us about their highly specialized practices.

By Katie Westfall

## EXILING CORRUPT PRACTICES

**DULCE FOSTER,  
FREDRIKSON & BYRON**

**Years practicing:** 12

**Clients:** U.S. companies doing business in foreign countries

**Why I do this:** "I enjoy criminal and regulatory defense because what I do deeply matters to my clients. I help guide them through the most challenging experiences of their lives."

Dulce Foster, a shareholder at the Fredrikson & Byron law firm in Minneapolis, got her first taste of the Foreign Corrupt Practices Act (FCPA) when, as a midlevel associate, a case that her supervisor couldn't take landed on her desk. Under the FCPA, it is unlawful for people from American companies to pay officials working for foreign governments in order to secure or retain business. The law covers bribery and corruption activities, which can result in fines from the U.S. Department of Justice.

Foster's first FCPA case involved a Chinese distributor for her client, a small Minnesota-based medical device company. The distributor was paying Chinese doctors to buy the company's products. Most Chinese hospitals are state-owned, so their employees are considered foreign officials under the FCPA.

"We found evidence of [the payments] looking through e-mails and documents," Foster says. Some e-mails sent by the Chinese distributor to an American coworker actually said, "How much of a kickback should I pay?",

proving that employees of the medical device company were aware of the issue.



Dulce Foster

Foster went to China to interview the distributor, accompanied by a translator. "We spent the first half of the week being obstructed and stonewalled by the lawyer for the distributor," Foster says. But finally, the distributor's lawyer said he would talk.

"Ultimately, the [client] company ended up self-reporting to the Department of Justice," Foster says. "There was a deferred prosecution agreement and a large penalty that the company paid." She adds that now the medical device company has one of the best FCPA compliance policies around.

In addition to investigating suspected FCPA violations—some of which are reported anonymously by employees on fraud hotlines set up by her client companies—Foster works on preventing problems. Part of her practice includes reviewing FCPA compliance plans and implementing internal controls. Foster also trains employees on the law. She uses slideshows and "what-if" scenarios to help employees understand how to react to complaints and stay compliant.

Her services are also called upon occasionally for mergers and acquisitions. "I do due diligence with the acquisition target to assess whether or not the target has FCPA violations," she says.

The investigative work involves digging through documents, e-mails, and accounting records. Foster looks for warning signs that include repeated transactions in whole dollar amounts; unusual payment patterns, such as a big uptick in money flowing through the petty cash account; or payments that don't have proper documentation, such as travel expense reports without accompanying receipts.

Increased global trade has brought bribery issues to the fore. "There have been cultures of corruption for millennia," Foster says. "It's just the way business is done and always has been done in certain parts of the world."

But there is also more enforcement now. A report by Trace International, a Maryland-based nonprofit that provides anti-bribery research, found that the U.S. more than doubled its formal foreign anti-bribery enforcement activity between 2009 and 2010. Foster's services are in greater demand than ever.

## CREATIVES SERVING CREATIVES

**A one-stop legal shop for marketers and advertising agencies.**

John Pickerill, chair of Fredrikson & Byron's advertising, marketing, and trademark practice and a former advertising executive, says his group of eight attorneys—former ad professionals, marketers, and other creative types—are what make the practice stand out. "Our focus on creativity isn't just lip service," Pickerill says. "We hire people who are creative to work in this area of law."

"Creative people and marketers tend to approach things from a different perspective than bankers, real estate investors, and most lawyers," he adds. "Marketers deal in gray areas of balancing risk under tight deadlines, so I think it would be difficult to provide user-friendly legal service in this area without having some background in the creative world. I generally know what marketers need, how fast they need it, and how to fit within tight ad budgets."

The group provides a range of legal services, including false advertising analysis, trademark and copyright protection and enforcement, Federal Trade Commission and Federal Drug Administration regulation clearance, and sweepstakes and promotions structures and rules.

Pickerill says Fredrikson has invested heavily in infrastructure for the practice. For instance, his team has access to a library dedicated to advertising law and trademark issues. Participation in industry associations, such as the National Advertising Review Board and local Advertising Federation, keeps them abreast of trends affecting their clients.

"Midwest businesses would have to go somewhere like New York, L.A., or Washington, D.C., and pay coastal prices, to find what Fredrikson offers," Pickerill says. —K. W.