



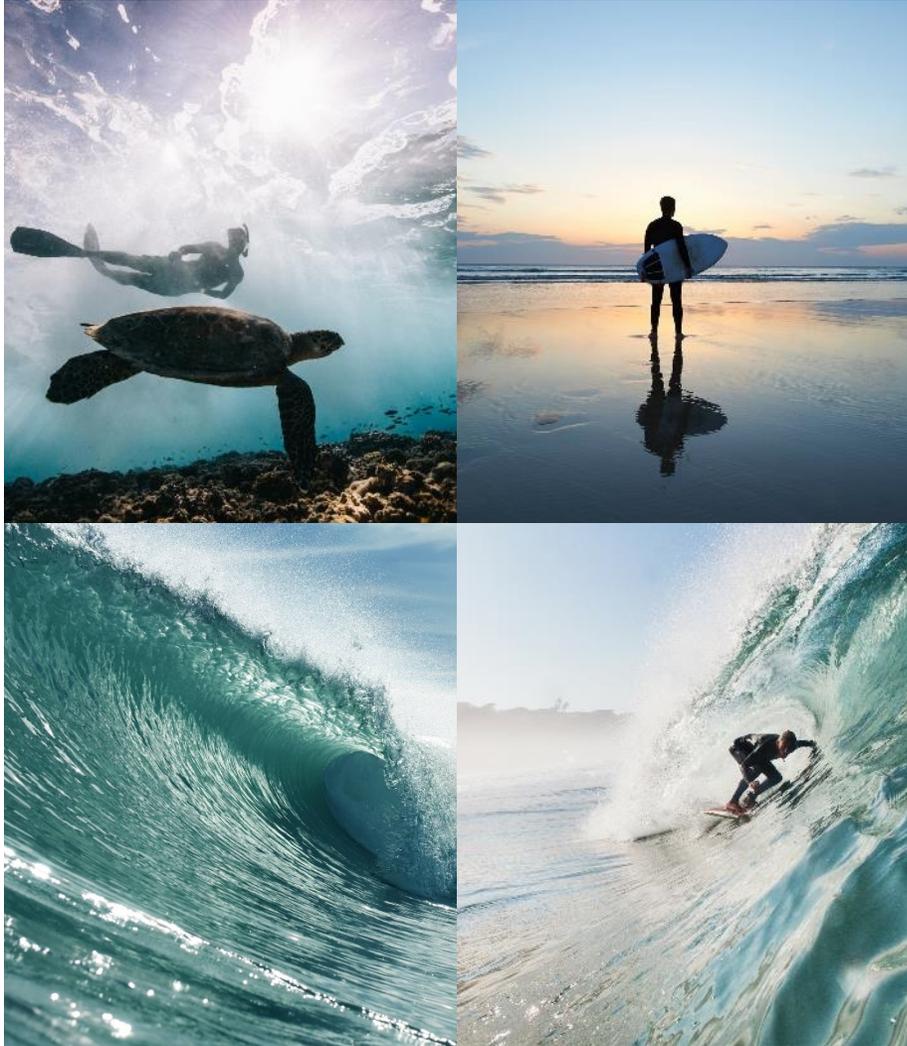
INSPECTOR GENERAL
INSTITUTE®
ASSOCIATION OF INSPECTORS GENERAL

Employee Misconduct Investigations

Certified Inspector General Investigator Institute
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David T. Harper
Association of Inspectors General
National Board Member
CIGI Course Manager



Overview

- **Learning Objectives**
- **What is Misconduct?**
- **Types of Misconduct**
- **Types of Investigations**
- **Referrals, Joints & Flying Solo!**
- **Intake & Assessment**
- **Priorities & Thresholds**
- **Investigation Plans & Considerations**
- **Execution**
- **Proof Analysis**
- **The Conclusion**

Learning Objectives

1. Understand the different types of employee misconduct
2. Understand the different types of investigations
3. Understand the complaint assessment process
4. Understand the importance of investigative planning
5. Understand the proof analysis process
6. Understand the conclusion process



What is Misconduct?

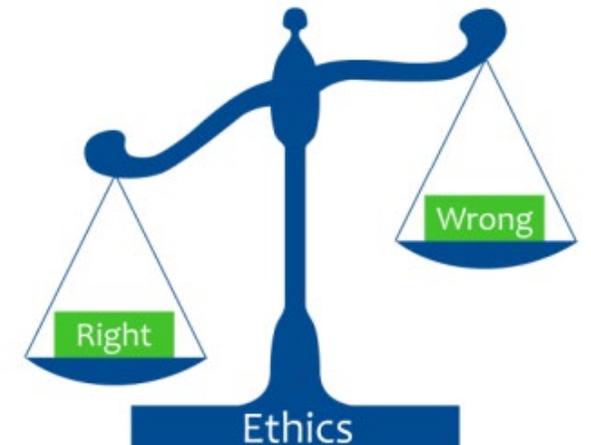
A deliberate violation of an established rule reasonably designed to protect the legitimate employer interests, or an intentionally committed act or omission in disregard of the employer's interests in absence of an allowable reason. (Source FDOT OIG, Paraphrased)

May be an administrative violation, such as failure to abide by policy, or could be a violation of law, such as civil & criminal law.



Types of Misconduct

- Insubordination
- Abuse of Position
- Gross Negligence
- Falsifying Records
- Workplace Violence
- Sexual Harassment
- Bribery
- Conflicts of Interest
- Theft of Government Property
- Law enforcement related: Use of force & Officer involved shootings



Insubordination

Employee's intentional refusal to obey a lawful & reasonable order. The refusal would undermine a supervisor's level of respect & ability to manage; therefore, it is often a reason for disciplinary action, to include termination.

Three factors:

1. The employer gives the order.
2. The employee acknowledges the order.
3. The employee refuses to carry out the order

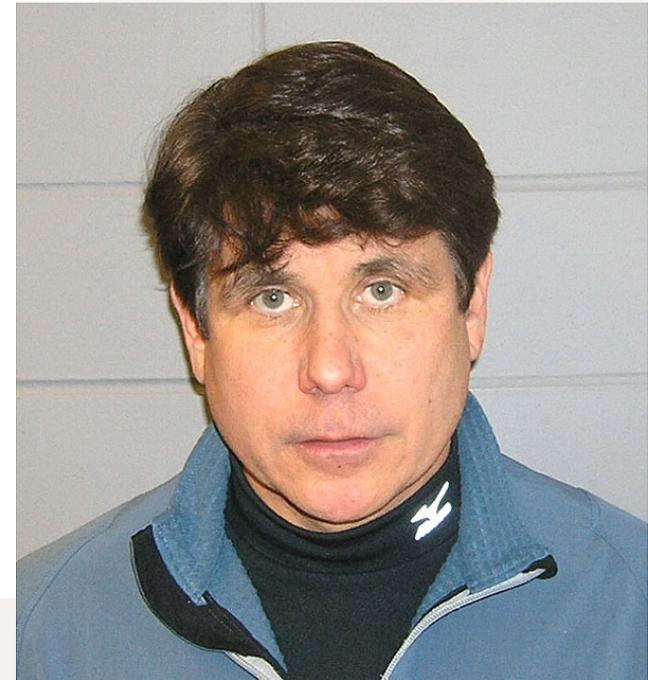
Source: <https://www.shrm.org/resourcesandtools/tools-and-samples/hr-qa/pages/what-constitutes-insubordination.aspx>



Abuse of Position

Misuse of Public Position: No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others.

112.313 (6), F.S.



Tyler Eppes (former OSI)

- Special Agent, Air Force Office of Special Investigations
- He (AFOSI), was a Special Operations counterintelligence officer & traveled extensively to various worldwide locations in support of the Air Force Special Operations Command & US Special Operations Command



Eppes (cont.)

Eppes was tried by a general court-martial in 2015 & conditionally pled guilty to conspiracy, false official statement, larceny of military & non-military property, fraud against the United States & conduct unbecoming an officer & a gentleman, in violation of UCMJ Art 81, 107, 121, 132 & 133.



Eppes (cont.)

Sentenced to:

- Forfeiture of all pay and allowances
- Confined for 10 years
- Fined \$64,000 (If fine is not paid, adjudged additional 3 yrs To be dismissed from the service of the USAF upon release from prison)
- Imprisoned at: Naval Consolidated Brig Charleston, SC

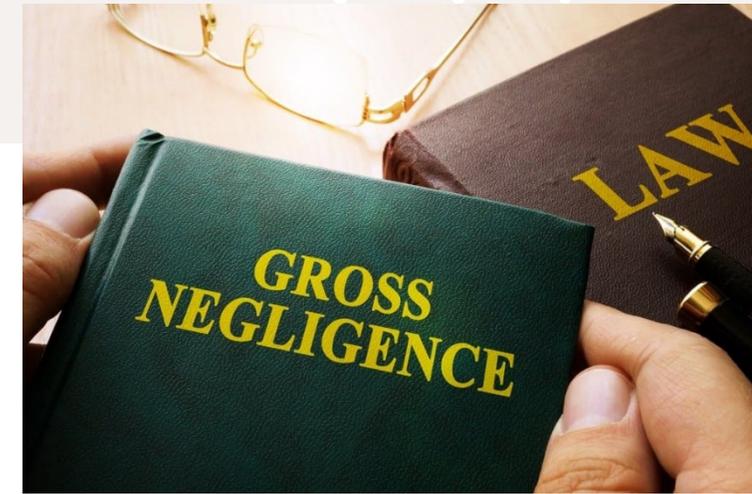


Gross Negligence

Gross negligence is an act or omission, which is more than ordinary negligence, but less than willful or intentional misconduct.

Gross negligence refers to a person's conduct where an act or failure to act creates an unreasonable risk of harm to another because of the person's failure to exercise slight care or diligence.

Source: NJ Supreme Court



Falsifying Documents

False Statement to a Federal Agency (18 U.S.C. 1001):

- The Defendant [made the statement] [made or used the document], as charged;
- The [statement] [document] was false;
- The falsity concerned a material matter;
- The Defendant acted willfully, knowing that the [statement] [document] was false; and
- The [false statement] [false document] was made or used for a matter within the jurisdiction of a department or agency of the United States.

FALSE STATEMENT



STATE OF HAWAII		CERTIFICATE OF LIVE BIRTH		DEPARTMENT OF HEALTH	
FILE NUMBER 151		61 10641			
1. Child's First Name (Type or print)	2. Middle Name	3. Last Name			
BARACK	HUSSEIN	OBAMA			
4. Sex	5. This Birth	6. If Twin or Triplet	7a. Month	7b. Year	7c. Day
Male	Single <input checked="" type="checkbox"/> Twin <input type="checkbox"/> Triplet <input type="checkbox"/>	Was Child Born	August	8	1961
8. Place of Birth: City, Town or Rural Location					
Honolulu					
9. Name of Hospital or Institution (If not in hospital or institution, give street address, telephone number, and name of attending physician)					
Kapiolani Maternity & Gynecological Hospital					
10. Usual Residence of Mother: City, Town or Rural Location					
Honolulu					
11. Street Address					
6085 Kalaniana'ole Highway					
12. Mother's Mailing Address					
Honolulu					
13. Full Name of Father					
BARACK OBAMA					
14. Race of Father					
African					
15. Age of Father					
25					
16. Kind of Business or Industry					
Student					
17. Name of Mother					
STAN DUNHAM					
18. Race of Mother					
Caucasian					
19. Signature of Father					
Barack Obama					
20. Signature of Mother					
Stan Dunham					
21. Date Accepted by Local Registrar					
AUG - 8 1961					
22. Date Accepted by Reg. General					
AUG - 8 1961					

Sexual Harassment



Unwelcome sexual advances, requests for sexual favors, & other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.



Source: <https://www.eeoc.gov/fact-sheet/facts-about-sexual-harassment>



EEOC
**U.S. Equal Employment
Opportunity Commission**

Bribery

Bribery: Act of taking a bribe, which is a sum of money or something valuable that you give or offer to somebody to persuade them to help you, especially by doing something dishonest.

Source: Oxford Dictionary

Collusion: secret agreement or cooperation especially for an illegal or deceitful purpose.

Source: Merriam-Webster



Bribery (cont.)

Receipt of a Bribe by a Public Official (18 U.S.C. 201):

- The subject was a public official;
- The subject [demanded or sought] [received or accepted][agreed to receive or accept] either personally or for another person or entity, something of value; and
- The subject did so knowingly and corruptly in return for being influenced in the performance of an official act.



"The Dragon Lady"

DARLENE DRUYUN



Darleen Druyun

- Top AF career civilian acquisition official from 1993-2002
- Gave Boeing preferential treatment on numerous contracts
- Controversial \$20 billion lease program for Boeing KC-767 aerial tankers
- Confessed she performed the favors to in return for getting a high-paying executive position & jobs for her daughter & son-in-law.
- She failed a polygraph during the investigation & then admitted she had lied about the facts
- She admitted fabricating diaries to support her original version of the story
- She got a \$250K job with Boeing after leaving the AF & a \$50K bonus
- Sentencing: 9 mo's in prison, followed by house arrest, & 3 yr's probation
- Boeing COO also convicted & sentenced to prison
- \$650 Million Boeing settlement



Conflicts of Interest

- The person is an employee;
- The employee has a personal (outside) interest;
- The outside interest is in connection with a business transaction;
- The outside interest interferes (or appears to interfere) with the employee's ability to make independent decisions in connection with their official actions.
- The employee acted willfully, knowing that their personal interest conflicted with (or appeared to conflict with) their official actions; and
- The conflict (or appearance) was not disclosed to agency officials.



Law Enforcement Oversight

- Bill of Rights
 - Approximately 20 states: “Police Officers Bill of Rights” (LEOBR) (<https://www.pbs.org/newshour/show/what-it-will-take-to-reform-policing-according-to-3-experts>)
- Special exceptions & requirements
 - Notifications, representation, time constraints & contracts
- Use of force matters
- Officer involved shootings
- National Association for Civilian Oversight of Law Enforcement (NACOLE) (training/networking)



Types of Investigations

- Administrative: Focuses on policy violations
- Civil: Focuses on civil law violations
- Criminal: Focuses on criminal law violations

What type does your office investigate?

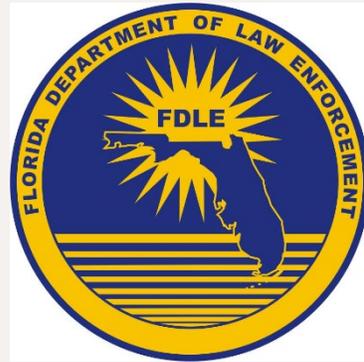


Referrals, Joints & Flying Solo!

- Referrals
- Joint Investigations
- Flying Solo – handling the investigation alone

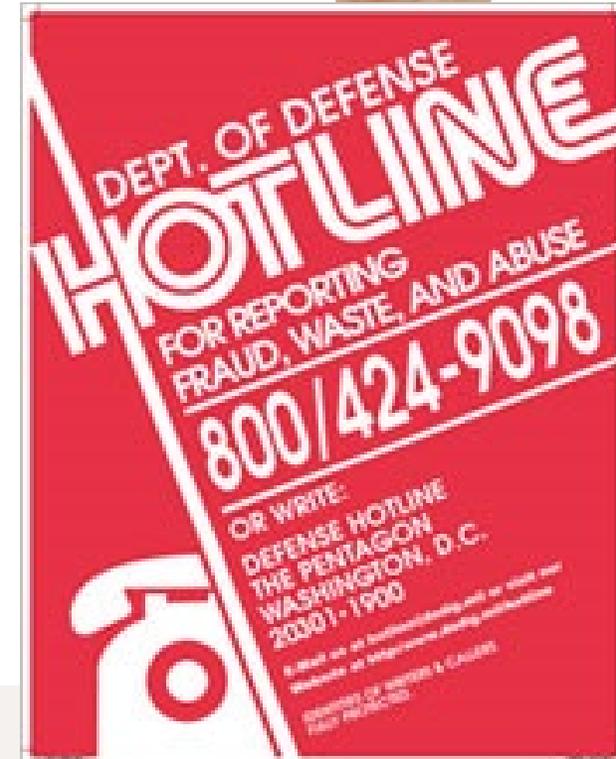
Does your office investigate criminal cases or are you required to refer to a law enforcement agency?

Can you work a case jointly?



Intake & Assessment

- Triaging your complaints...
- Is there a violation?
- Does your agency have a nexus & requisite authority?
- Is it worth the investment of your time?



Assessing the Complaint

COMPLAINT



What is indicated?

- What does your agency do?
- What is the level of misconduct?
 - Allegation, if proven, punished by a suspension or more?
 - Perhaps typically punished by a reprimand or less?

Assessing the Complaint (Cont.)

- How many allegations are there in a complaint?
- Each allegation will need to be separated.
- Every separate allegation must be matched to related criteria.
- What was violated? Laws, Policies, Rules, Ethics, etc.

Assessing the Complaint (Cont.)

- Each actionable criteria contains elements of the offense that must be identified
- Each element must be addressed in the investigation
- No actionable criteria?
 - Then no Investigation

Priorities & Thresholds

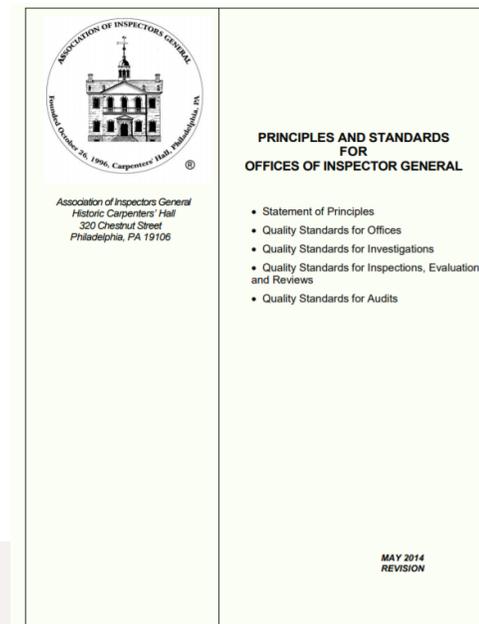
- Precious resources
- Experience levels & capabilities
- Supports agency goals and mission?
- Egregious enough?
- Policy violation v. criminal violation – does this matter?
- Disposition driven?

Plans & Considerations

- Green Book Qualitative Standards (source)
- Other required standards? (CIGIE for Federal, Florida is CFA, etc.)
- Living Investigative Plan

QUALITY STANDARDS FOR INVESTIGATIONS

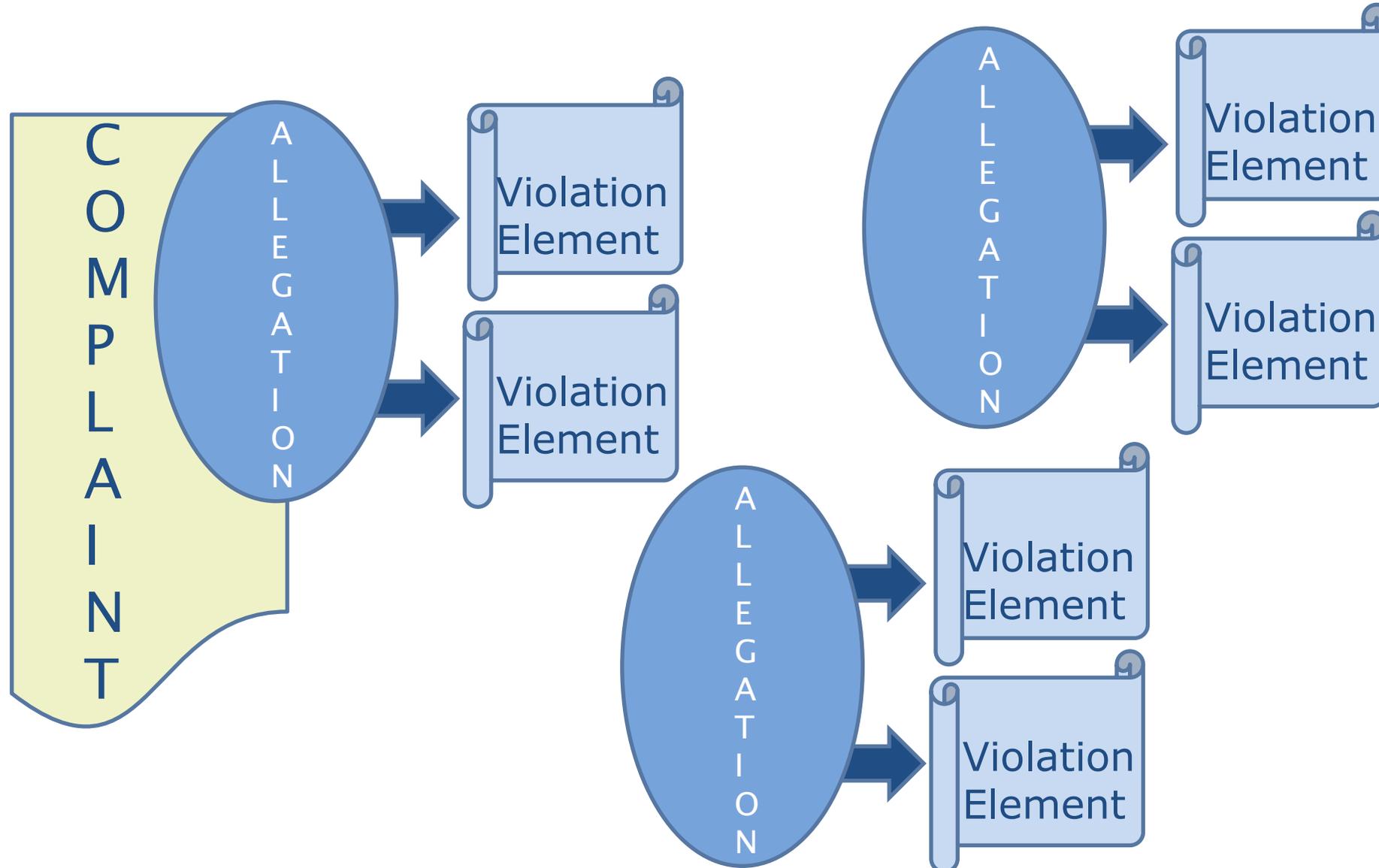
November 15, 2011



The Investigative Plan

- Allegation: distill the violations
- Review the statutes & break out the elements
- Determine evidence needed to support (or refute) the elements
- Outline the investigative steps to obtain the evidence
 - Interviews (complainant, witnesses & subject) (Mark Anderson on methodology & Stephen Street on warnings (Garrity, Kalkines, etc.))
 - Documents, emails, social media, etc.
 - Cyber analysis – cell phones, computers & tablets

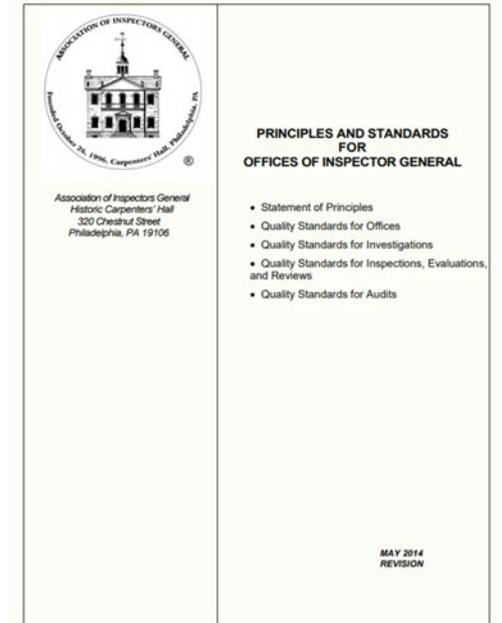
Elements of the Offense



Preparing the Investigative Plan

Planning is a Green Book Qualitative Standard

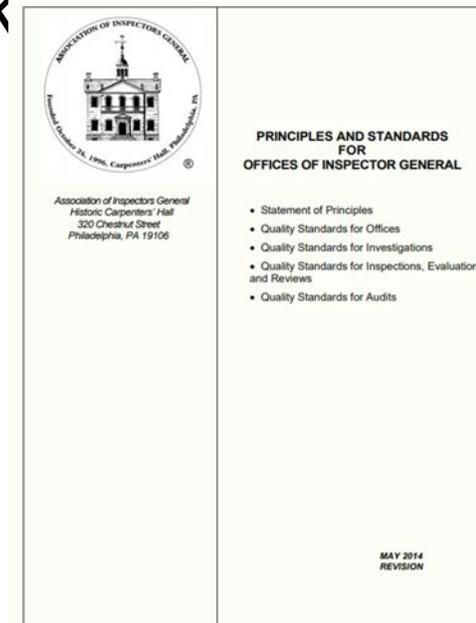
- Investigative work is to be adequately planned
- Guidelines include preparation of a *written plan*
- Identify issues *before* initiating the investigation
- Plan should make a sufficient effort to include objectives, steps and time constraints



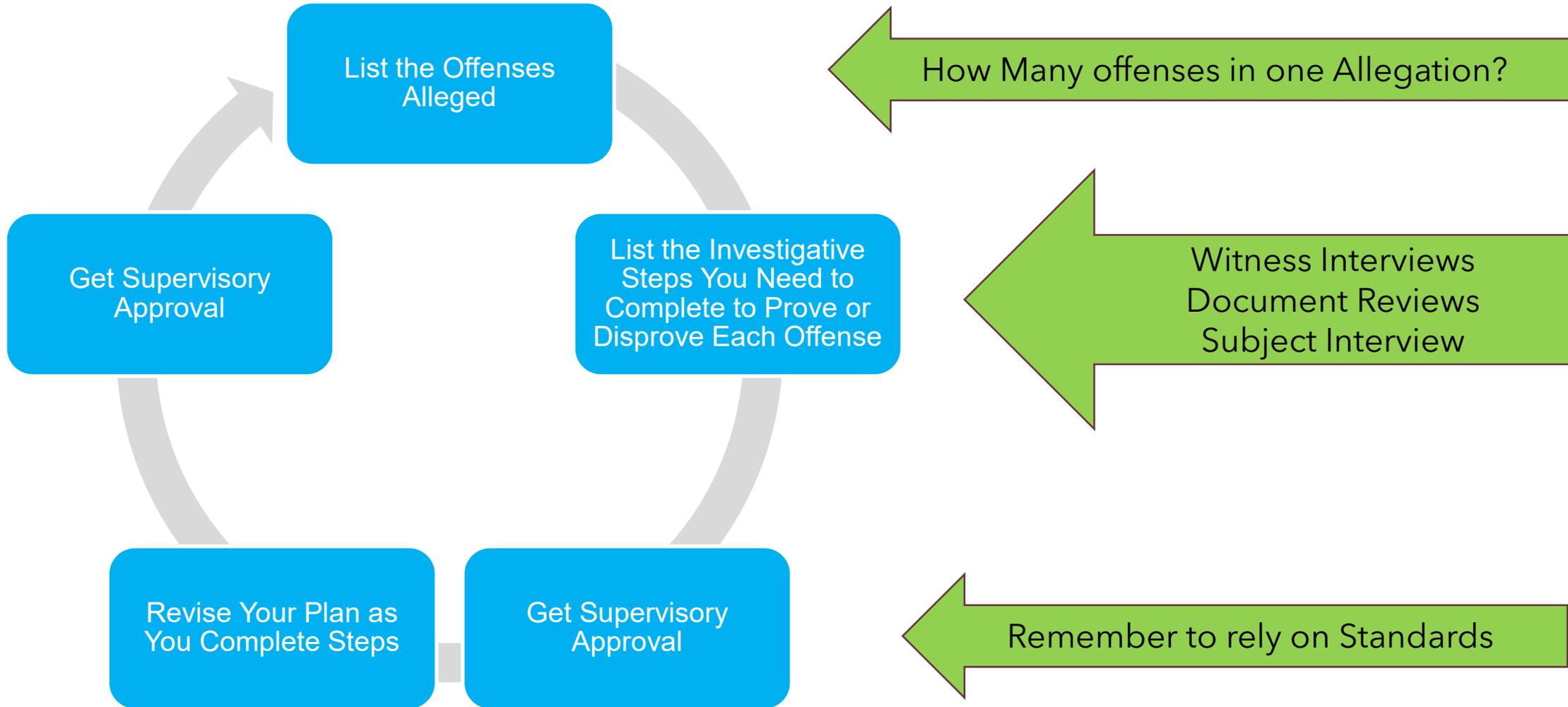
Preparing the Investigative Plan (Cont.)

Proper supervision is also a Green Book Qualitative Standard

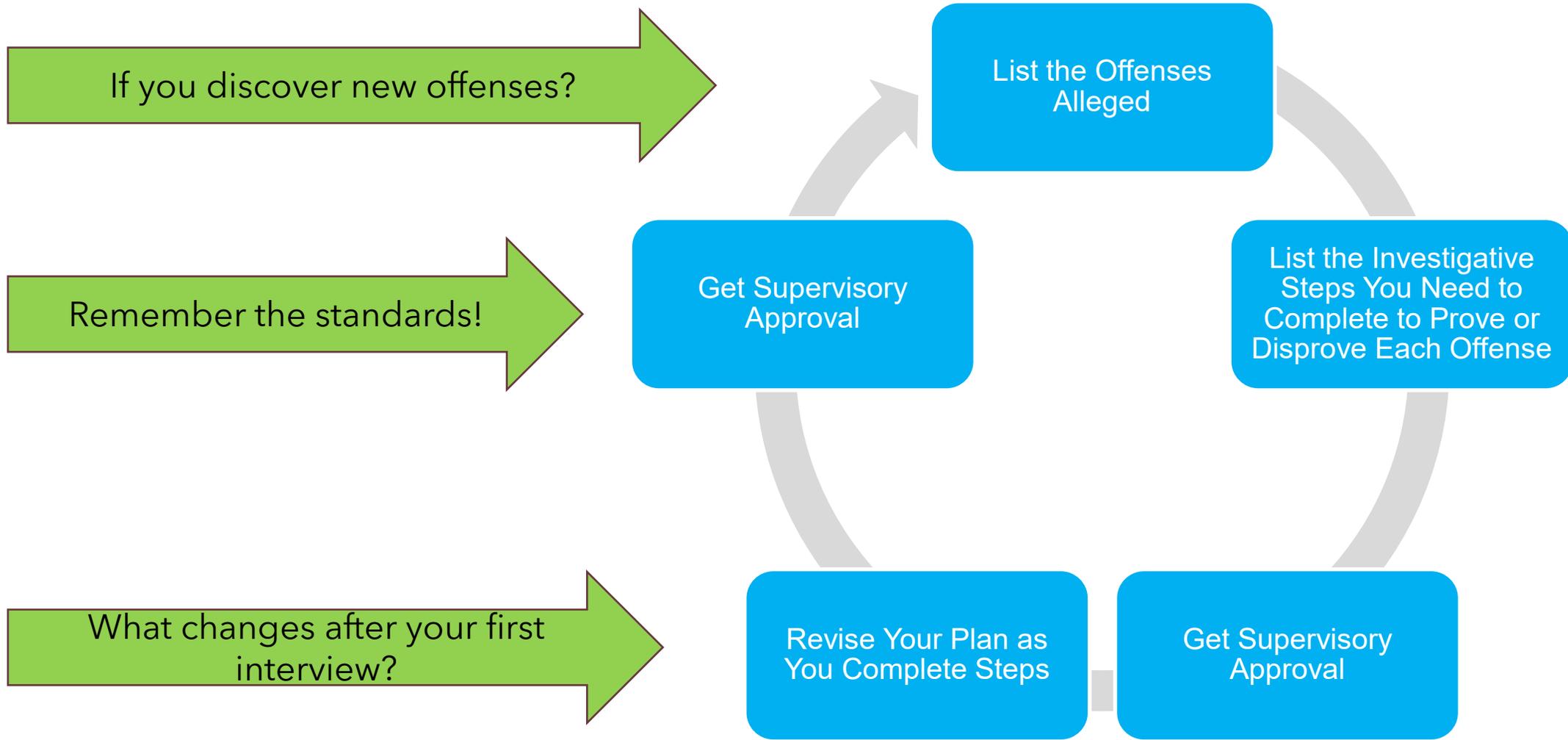
- Supervisors add judgment and provide training.
- Supervisors ensure investigators understand the task
- Supervisory reviews ensure:
 - investigative plans are followed, and
 - investigations meet objectives.



Conduct the Investigation



Conduct the Investigation (Cont.)



Conduct the Investigation (Cont.)

Interview the complainant

- Get the rest of the relevant information
- Refine your plan
- Does your policy permit anonymous allegations?
 - If so, you can randomly number complainants
 - Ask them to call in a week or two to see if you have questions

Conduct the Investigation (Cont.)

Interview the Subject

- Rights (Covered by Stephen Street)
 - Union Bargaining Agreement (Weingarten)
 - Garrity
 - Kalkines
- Documenting?
 - Notes
 - Sworn statement from the Subject
 - Memorandum of interview
 - Video recording
 - Audio recording

Proof Analysis

- Organize the evidence as it relates to the elements
- Each element needs to be supported ideally with corroborating evidence (ex: testimony & physical)

Proof Analysis

What was the Conduct?

- Witness Interviews
- Subject Interviews
- Document Reviews
- Recordings
- Other Evidence
- or any combination

Proof Analysis (Cont.)

What was the Criteria?

- Laws
- Rules
- Policies
- Conduct Standards
- Documented Expectations
- Contract Standards

Proof Analysis (Cont.)

Analysis

- A succinct comparison of the conduct
- Against the criteria
- With an assessment of the gap
 - ✓ Proved
 - ✓ Disproved
 - ✓ Inconclusive

Proof Analysis (Cont.)

- Writing and analysis are two of the investigator's primary tools.
- They require different skills but are both typically presented in the same written work product.

Proof Analysis *(Cont.)*

Completing a proof analysis requires a clear understanding of the difference between opinion and analysis.

- An opinion is a statement of preference whose grounds are wholly personal.
- The support for a proper proof analysis does not depend on an individual

Proof Analysis *(Cont.)*

A Proof determination rests solely on the evidence that has been presented.

- Requires the ability to logically organize and mentally process the information and evidence gathered.
- Captures the significance of the information to the matter at hand, and
- presents the analysis in clear, concise, and well written English for the reader.

Proof Analysis (Cont.)

Burden of proof

- What is a burden of proof?
- What are the types of burdens?
- What is YOUR burden in the administrative context?
 - ✓ Work with your customers
 - ✓ Write in into your policy

The Conclusion

- Did the evidence support the allegation?
- Did the evidence refute the allegation?
- If supported, to what standard of proof?
 - Preponderance of the evidence?
 - Clear and convincing?
 - Beyond a reasonable doubt?
- What terminology does your agency use?
 - Substantiated? Sustained? Proven? Inconclusive? Exonerated?
- Does your agency use “Findings” and “Recommendations”?

The Conclusion (Cont.)

Assess Your Independence & Objectivity

Independence: The second general standard for OIG investigative organizations is:

The Inspector General and OIG staff involved in performing or supervising any investigative assignment must be free from personal or external impairments to independence and should constantly maintain an independent attitude and appearance.

Objectivity: Objectivity - Evidence should be gathered and reported in a fair, unbiased manner in an effort to determine the validity of alleged improprieties or evaluate the likelihood of violations of statutes, rules, or regulations.

(Principles and Standards for Offices of Inspector General)



Summary

Learning Objectives

What is Misconduct?

Types of Misconduct

Types of Investigations

Referrals, Joints & Flying Solo!

Intake & Assessment

Priorities & Thresholds

Investigation Plans & Considerations

Execution & Proof Analysis

The Conclusion

Questions?

David T. Harper

David.Harper@MyFloridaCFO.com

<https://www.myfloridacfo.com/division/oig>

