

Welcome



**Adjudicators Training
Conference**

Navigating Work Related Investigations



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Conference**

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What We'll Cover (90-minutes)

- Cultural Competency in Investigations
- Causes of action (types of investigations)
- Compliance with polices and regulations
- The Process + best practices for initiating and managing effective investigations
- How to gather and analyze information and evidence
- Strategies for overcoming common challenges during investigations
- How to document and report findings

Cultural Competency & Sovereignty Considerations

- ❖ Understand tribal sovereignty in investigations
- ❖ Respect cultural norms and communication styles in witness interviews
- ❖ Recognize unique confidentiality considerations in tight-knit tribal communities

Opening Discussion

- ❑ Share an example of how cultural values (e.g., respect for elders, community ties) might influence investigations.
- ❑ Reflect & Share: When has culture played a role in your cases? What worked well, and what was challenging?



Why Investigate?

- Pre-employment background investigations
- Harassment and discrimination allegations
- Bullying
- Accidents and safety concerns
- Theft
- Misconduct
- Noncompliance with organizational policy
- And! Please don't forget about employee morale, motivation, and productivity

Policy & Compliance Considerations



Communications, attorney-client privilege



Documentation, retention



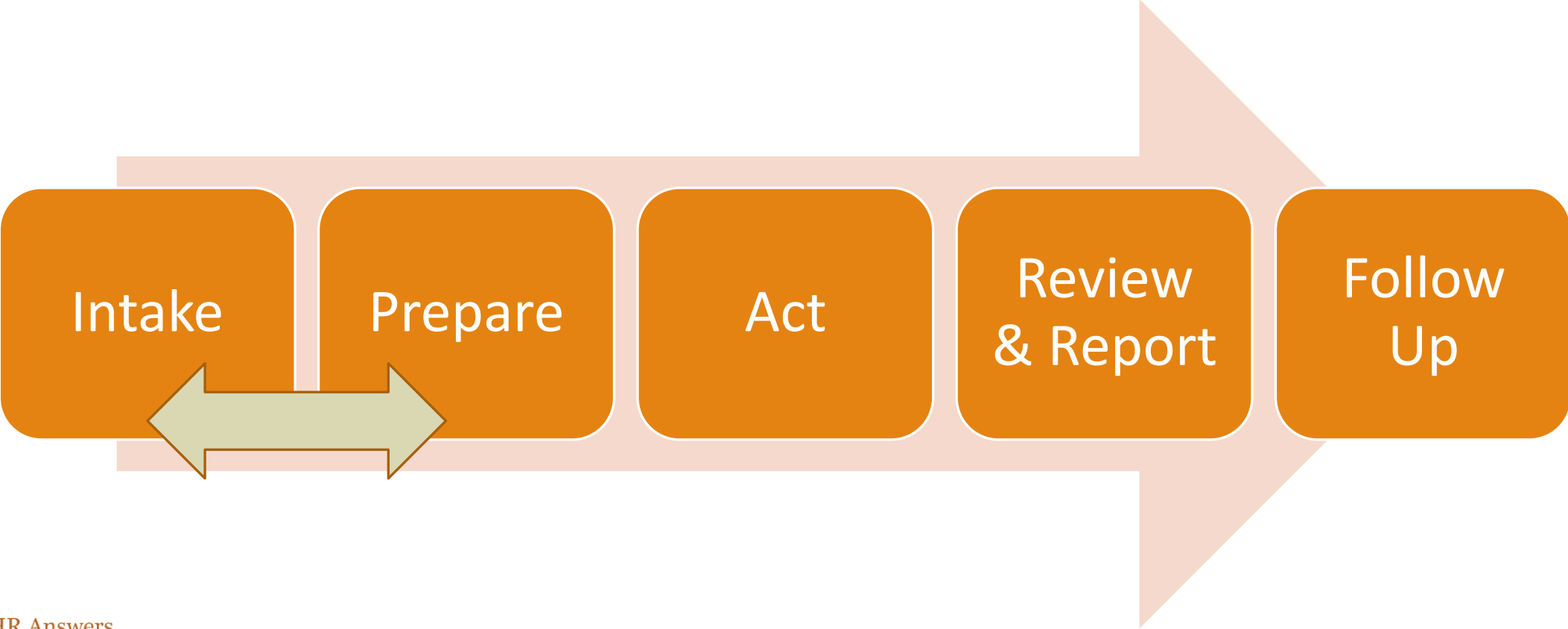
Policies, procedures, Agreements and regulations

Important Considerations

- Safety and security
- How severe is/was the issue



The Process...



Investigation Documentation

What is your investigation documentation policy?

- How will you record your findings?
 - Hand-written notes
 - Video recordings
 - Audio recordings

Gather & Review Necessary Documentation



- Initial notice to investigation participants
- Electronic Documentation
 - *Email and chat messages (e.g., Slack, Teams, Google Chat, etc.)*
 - *Social Media Postings and internet comments*
- Policies and procedures
- Written/hard-copy files and information
- Recordings of surveillance videos

Communication & Confidentiality



With whom will you communicate?

- Inside the organization
- Outside the organization
- Confidentiality
- What about “protected” communications
- Considerations when someone wants to remain anonymous

Confidentiality Statement

“Before we begin, I’d like to explain how confidentiality works in this process.

This conversation is part of an internal investigation, and the information you share is important to helping us understand the situation fully and fairly.

I want to assure you that I will treat the information you provide with as much confidentiality as possible. This means that the details of our conversation will only be shared with individuals who have a legitimate need to know, such as decision-makers involved in resolving this matter or legal advisors if necessary.

However, it’s also important for you to know that confidentiality does have limits. For example, if information you share points to a broader risk to the organization or to others in the workplace, we may need to act on that information appropriately. Also, please be aware that while I will not disclose your identity unnecessarily, in some cases, others may be able to deduce who participated based on the circumstances discussed.

Finally, to help protect the integrity of this process, I ask that you also maintain confidentiality about this conversation and avoid discussing it with others, unless you’re seeking personal support. This helps ensure a fair process for everyone involved.

Do you have any questions about confidentiality before we continue?”



Anonymity Requests



- Considerations when someone wants to remain anonymous
 - “Standard” response
 - “Trauma-informed” response

The Interview Plan

Investigation / Interview Plan

- Order of interviews
- Questions
- Time of day
- Location
- Will anyone else participate in interview(s)



Order of Interviews

1. Complainant
2. Witnesses
3. Respondent





Logistics

Everything “means” something.

- Time of day
- Location
- Which chair to choose

Interview Techniques & Considerations



Setting the Stage

Investigator's Mindset

Curious, not confrontational.

- Understanding that emotional responses are adaptive, not deceptive
 - Staying neutral without being cold
- Empowering the interviewee by giving them some control: pacing, breaks, even choosing the seat

Opening Statement

“Before we begin, I’d like to explain my role and what to expect from this process. My role as the investigator is to gather information in a fair, neutral, and thorough way. I haven’t made any conclusions, and I’m here to listen to what you have to share.

Our conversation is confidential within the investigation process, meaning I will only share what you provide with people who need to know to help address this matter. I’ll also ask that you keep this conversation confidential to help protect the integrity of the process.

If you have any questions as we go, please feel free to let me know. And if you need a break at any time, just say so — we can go at a pace that feels comfortable for you.

Are you ready to begin?”



Foundational Questions: The Complainant

- “Can you please walk me through, in your own words, what happened?”
- “When did you first (experience or become aware of) (the behavior or situation) that you’re reporting?”
- “Can you describe where the incident(s) took place and who was present?”
- “Have you shared what happened with anyone else, either inside or outside of the workplace?”
- How has this situation affected you at work and outside of work, if you’re comfortable sharing?”



Foundational Questions: Witnesses

- "Can you tell me, in your own words, what you understand about the situation we're discussing today?"
- For a witness: "How did you first become aware of this situation?"
- "Were you present at the time of the incident, or did you learn about it afterward?"
- "Who else might have seen or heard what happened?"
- "Have you discussed this situation with anyone else?"

Foundational Questions: The Respondent

- “Can you tell me, in your own words, what you understand about the concerns that have been raised?”
- “Were you aware of any concerns or complaints about (your behavior) before this interview?”
- “What can you share about the events or circumstances that you believe is important for me to understand fully?”
- “Have you spoken with anyone else about this situation, inside or outside of the workplace, since becoming aware?”

Follow-Up Interviews

- Additional conversations and follow up questions are almost always necessary.
- At the beginning of the interview, inform participants that you may need to contact them for a follow-up conversation.
- To reduce surprise and build rapport, get their agreement in advance.
- Confirm their best contact information.



Trauma-Informed Interviewing Techniques



1

Build trust and reducing re-traumatization

2

Approach sensitive topics (e.g., harassment, assault) with care

3

Recognize signs of trauma and adjusting tone and/or pacing

Recognizing Signs of Trauma



Disorganized or fragmented storytelling – Avoid pressuring.

“It’s ok if you don’t remember the exact order of events. Please just share what you remember.”



Flat affect or emotional numbing – Don’t assume lack of visible emotion means lack of harm.

“Thank you for sharing that. It’s ok to share as openly as you’d like, including what you felt while all of this was happening.”

Recognizing Signs of Trauma, continued



Visible physical or emotional distress
– Take a break and offer choices.

“Would you like a moment before we continue?” “Would you prefer to keep going or come back to this question later?”



Distrust – Reinforce confidentiality and process boundaries.

*“Here is how the information will be used ...”
“In most cases, my investigation report is used to... / shared with ...”*

Anti-Retaliation Statement

“I want to remind you that the organization strictly prohibits any form of retaliation against anyone who participates in an investigation. This includes actions like intimidation, threats, exclusion, or any negative treatment because someone has reported a concern or provided information.

If you experience or become aware of any behavior that feels like retaliation, please report it immediately. We take these concerns seriously and will address them promptly.”



Closing Statement – Option 1

“Thank you for taking the time to speak with me today. I appreciate the information you’ve shared.

Before we finish, I want to remind you that this conversation is confidential within the investigation process, and I ask that you continue to maintain confidentiality as well. This helps protect the fairness of the process.

If you have any additional information after today, or if you remember anything else you’d like to share, please feel free to reach out to me directly. I also want to remind you that retaliation of any kind is not permitted, and if you have concerns about that, please let me know immediately.

Do you have any questions before we finish?”



Closing Statement – Trauma Informed



“Thank you for sharing with me today. I know it’s not always easy to talk about these kinds of situations, and I really appreciate your willingness to provide information.

I want to remind you that this conversation is confidential within the investigation process. I’ll only be sharing what’s necessary with people who are directly involved in helping to address the situation. Also, retaliation of any kind is not allowed, and if you ever feel uncomfortable or concerned after today, please reach out to me right away.

If you remember anything else later on, or if you have any concerns that come up, please don’t hesitate to contact me. I want to make sure you feel as supported and safe as possible throughout this process.

Do you have any questions before we finish? And is there anything else you’d like to share before we close for today?”



Strategies for Overcoming Common Challenges

Common Challenges

Balancing neutrality with cultural context

Determining Credibility

Uncooperative witnesses

Interference by someone outside of the investigation

Balancing Neutrality with Cultural Context

Avoid assumptions while honoring tribal values and expectations



Maintain impartiality; community relationships are tight-knit



Consider consistency, plausibility, motive, and corroboration



Use corroboration, consistency, and documentation to assess credibility



Understand biases and avoiding common credibility assessment pitfalls



Weigh the evidence when there's limited documentation

Evaluating Credibility (beyond “he said/she said”)

Dealing with Uncooperative & Hesitant Witnesses

Investigator Mindset:
Patience + Transparency + Empowerment

Uncooperative & Hesitant Witnesses

- ❖ **Acknowledge and normalize their fear/concern:**
 - *“I understand why you might feel hesitant. Fear of retaliation is a real and valid concern in situations like this.”*
- ❖ **Review and explain anti-retaliation policies and protections clearly and in plain language**
 - Describe the organization’s anti-retaliation policy and enforcement measures.
 - Clarify: retaliation itself is a separate violation that will be addressed immediately.
 - Avoid vague reassurances. Be specific about how retaliation reports are handled.

Uncooperative & Hesitant Witnesses

❖ Reinforce confidentiality (be honest about limits)

- *“I will take every step to limit the sharing of your identity, but please know there is always some risk of others guessing based on circumstances.”*

❖ Offer empowering choices

- *“Would you prefer to share this in writing? Or would you like to tell me what you feel comfortable with today, and we can check back in later?”*

Uncooperative & Hesitant Witnesses

❖ Use open-ended, gentle questions

- *“What parts of this situation feel most concerning to you?”*
- *“Are there pieces you’d feel comfortable sharing, even if not everything today?”*

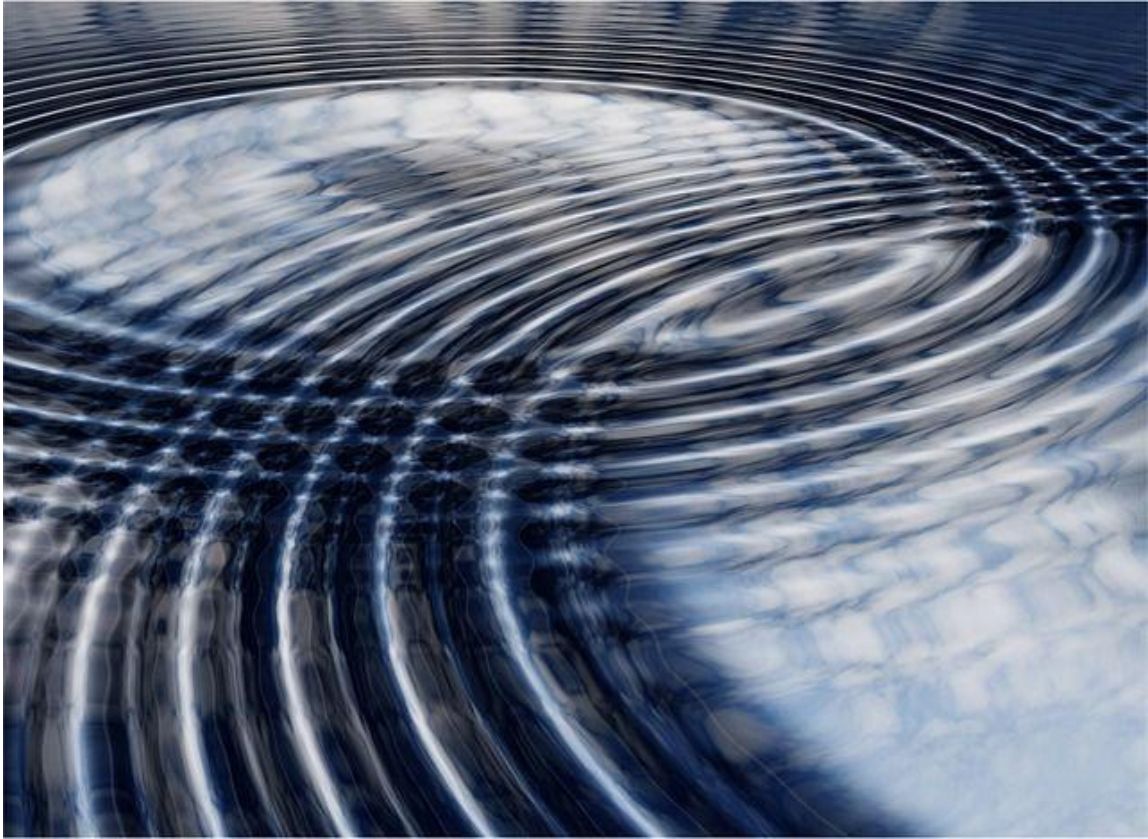
❖ Emphasize their role in protecting the workplace

- *“What you share could help ensure this doesn’t happen to others.”*

Handling Interference

Investigator Mindset

"Firm, Fair, and Respectful Boundaries Protect Everyone Involved."



Handling Interference

- Have clear ground rules and policies
- Address interference early and directly
- Maintain confidentiality consistently
- Reinforce anti-retaliation policies
- Control the flow of information
- Stay neutral, especially under pressure
- Include attempts at interference in your report
- Seek support

Writing Clear, Defensible Investigation Reports



Clear & Defensible or Not?

Findings Summary:

It is obvious that Manager B was being rude and unprofessional toward Witness A. Witness A is a sensitive person, so it's understandable they felt hurt by Manager B's comments.

Manager B denied saying anything inappropriate, but given their defensive tone in the interview, it is hard to believe they were truthful. Witnesses seemed emotional and appeared to side with Witness A, which shows the situation probably happened.

Therefore, it's clear that Manager B is at fault here.



Clear & Defensible or Not?

Findings Summary:

During the interview on March 15, 2025, Witness A stated that on multiple occasions between January and February 2025, Manager B raised their voice and made comments such as, “You clearly have no idea what you’re doing.”

Three additional employees corroborated witnessing Manager B raising their voice toward Witness A. Two employees specifically recalled hearing the quoted statement on or around February 3, 2025.

Based on the consistency of witness accounts and documentation of prior informal complaints from Witness A, the investigator finds it more likely than not that the reported conduct occurred as described.



Fix the Bias

Biased Statement #1 –

"The complainant is obviously exaggerating since they didn't mention this issue earlier."

Biased Statement #2 –

"The respondent seemed very angry during the interview, so they are likely guilty."



Closing the Investigation

- Conclusions vs. Recommendations
- Who should decide if:
 - A policy was violated
 - Misconduct occurred
 - A law was broken (for attorneys to decide)
 - A contract was breached (consult with an attorney)
- Types of recommendations
 - Discipline, separation, transfer, demotion, training, etc.



Reports – What You May Include

- Table of Contents
- Executive Summary
- Dates/times, locations of the investigation; and who investigated
- List of individuals interviewed
- List of documents reviewed
- Background/Summary of Complaint(s), including policy or regulation violation, if possible
- Summary of Interviews
- Recommendations
- Unresolved Issues
- Name and contact information for investigator
- ... What else?



Findings, Conclusion, Rationale

Findings

Substantiated: There is sufficient and credible evidence to support that the alleged conduct more likely than not occurred.

Unsubstantiated: There is not enough evidence to support that the alleged conduct occurred. This does not necessarily mean the allegation is false, only that the evidence does not support the claim.

Inconclusive: The available information is conflicting or incomplete, making it impossible to determine whether the alleged conduct occurred. The investigator cannot reasonably substantiate or dismiss the allegation.

Also Included In Your Report ...

Conclusion of the Investigation: This term highlights the final judgement or determination made based on the evidence and analysis, clearly stating whether the initial inquiry or allegation is substantiated, unsubstantiated, or inconclusive.

Rationale: The conclusion should always be accompanied by a clear explanation of how the findings lead to the final conclusion, supported by the evidence and reasoning used during the investigation.

Important Considerations for Investigators



Recognize and deal with your own bias and preconceived notions



The ultimate balancing act:
weighing policies, regulations, and
employee rights



It's Showtime: Sample Scenarios





Shared Wisdom & Lessons Learned



Stay Connected and Share Your Thoughts



We Value Your Feedback

Thank You!



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