Conducting Effective Internal Investigations

Online Course Forum
Wednesday, May 26, 2021

Katherine M. Allen,  
Associate General Counsel, The Pennsylvania State University

Natasha Baker,  
Managing Attorney, Novus Law Firm

Pamela Heatlie,  
Director, Office for Institutional Equity, University of Michigan - Dearborn

Agenda

• Investigative Steps
• Reaching a Conclusion
• Evaluating Evidence
• Credibility Determinations
• Elements of a Report
• Best Practices
• Post Investigation Considerations
• Q&A
First, a question...

What are some of the particular challenges you are currently facing as an investigator?

Purpose of the Interview

- Establish a narrative and timelines of events – get the facts!
- Gather information to answer key questions
- Clarify conflicting information
- Understand how all parties perceived events
Interviews – General Considerations

• Details of the incident/circumstances at issue
• Ask for other sources of relevant evidence – witnesses, documents, etc.
  • Who would have more information about…
  • Is there anything else?

• Your fourth message is about Dr. Minaj.
• Her application for tenure was approved by the review committee but rejected by the department chair.
• Dr. Minaj has filed an internal grievance claiming the denial was because she is African American.
Conducting the Interviews

Do:
• Remain impartial and keep an open mind
• Ask relevant questions that are specific to the incident

Don’t:
• Make premature conclusions
• Allow personal biases, belief systems, stereotypes to guide your questioning
• Ask accusatory questions/blame the victim
• React to what the witness is saying

Types of Questions

• “What” questions ask for facts and details
• “How” questions ask about the process, sequence of events, or focus on emotions
• Closed “Who/When/Where” questions ask for the specifics of the situation
• Avoid “Why” questions
• Avoid multiple choice questions
• Avoid asking for conclusions
**Avoid Leading Questions – Which of these are leading?**

- Were you disappointed with Dr. Minaj’s publication record?
- What did you think of Dr. Minaj’s publication record?
- Do you think the department chair’s decision was fair?
- Did you disagree with the department chair’s decision?
- What did you think of the department chair’s decision?

**Post-Interview**

- Review interview notes/recording/transcript.
- What do you know to be true? Are there undisputed facts?
- What do you not know?
- How can you find this information out? Another witness? More evidence?
- Circle back to give each party a chance to respond to new information.
Gather Documentary Information

- Email
- Book
- SMS
- Camera

NACUA
National Association of College and University Attorneys

Reaching a Conclusion

- Apply the applicable standard of proof.
- Evaluate the evidence. (How to on next slide)
- Determine if there is anything else that you need. (If so, WHY?)
  Check the investigation plan.

Remember: reasonable minds can disagree.
Evaluating Evidence

• Weigh the evidence.
• Consider corroborating evidence.
• Assess credibility.

Poll Question: Demeanor

• When interviewing someone, do you assess their physical demeanor/affect when evaluating their credibility?
  • Always
  • Never
  • I heard that I am not supposed to but sometimes it is hard not to…
FAQ: Credibility Determinations

• Do you use demeanor to evaluate credibility?

Investigation Reports

• Practice makes perfect!
• Techniques for improving.
• Form of the report will be dictated by purpose, policy & audience.
Best Practices

- Document retention
- Versioning
- Redlining
- Attorney-client review

FAQ: When to Use Counsel?
Post-Investigation Considerations

• Receipt of report?
  • Polling question: does the investigation procedure that you primarily operate under permit disclosure of the report to the parties?
    • Yes – receive full report
    • Yes – receive redacted report
    • Yes – view (but not receive) full report
    • Yes – view (but not receive) redacted report
    • No – summary only
    • No – outcome only

Other Post-Investigation Considerations

• Notification
• Appeals
Questions?

NOTE

The content of this presentation is to provide news and information on legal issues and all content is provided for informational purposes only and should not be considered legal advice.

The transmission of information in this presentation does not establish an attorney-client relationship with the recipient. The recipient should not act on the information contained in this presentation without first consulting retained legal counsel.

If you desire legal advice for a particular situation, you should consult an attorney.