

Conducting Effective Internal Investigations

Module Four: Writing the Report and Post-Investigation Considerations

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Module Overview

- Key components of a report (recommended)
- Style/audience/tone
- Disclosure of the report
- Best practices for document retention and use of the attorney-client privilege
- Notifications
- Final Decision
- Post-Decision Considerations
- Appeals
- Consultation with In-House Counsel

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Key Components

- Executive Summary
- Allegations/Complaint
- Procedural History
 - Witnesses
 - Evidence
- Applicable Policies/Procedures (attach)

Key Components

- Evidentiary Standard (follow policy)
- Information Considered During the Investigation
 - Summarized by witness
 - What did people report?
- Undisputed Facts (can be resolved succinctly)

Key Components

- Factual Findings
 - Resolve KEY disputed facts
 - Resolve credibility issues
 - Show your work
 - Apply the correct standard of proof



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Key Components: Factual Findings

- Put it together for the reader. Show your work.
- Example:
 - *I find, by a preponderance of the evidence that the door to the laboratory was left unlocked by the Respondent on October 12, 2016 at 6:03 p.m. This was confirmed by Witness A and Witness B, who observed Respondent leaving with both hands full of chemicals at that time. This was further confirmed by the access log. I did not find Respondent's explanation that they have never left a door unlocked to be credible. Moreover, the hall camera corroborated that Respondent's hands were full.*



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Key Components

- Conclusions (if that is your role)
 - Based on the factual findings, was there a policy violation?
- Sanctions (if that is your role)
 - Based on the policy violation, what is the appropriate and consistent sanction?



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Tips When Drafting

- Go back to your investigation plan.
- Remember what you are investigating.
- Look at the elements of each definition.
- Render factual findings that pertain to the elements of each definition.
- Do not make unnecessary factual findings.



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Key Components

- Appeal Process
 - Describe
 - Note use of report in that process.
- Appendix (policy, witness summaries (if required), photos, etc.)

Style, Audience, & Tone

- Write for someone who knows **NOTHING** about the parties, the issues and the situation.
- No typos, spelling errors, assumptions, unexplained jargon.
- Ultimately writing for a reader later in the process.



Case Study Review

- What are the allegations?
- What are the undisputed facts?
 - Which ones are important?
- What are the disputed facts?
 - Which ones are important?



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Disclosure of Report

- Depends on policy, applicable law, etc.
- Possibly redacted when disclosed. Not always!
- Internal (as part of process)
- External
 - Subpoena
 - Other legally required disclosure (state public records request)



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Document Retention

- Follow your institution's policy.
- If the policy is silent, be consistent between investigators.
- If you are the only investigator – be consistent with your own practice.
- If you deviate, document your reasoning.



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Use of Attorney-Client Privilege

- Covers communications sought in furtherance of legal advice.
- Should be marked and maintained separately – not in the investigation file and thus accidentally produced.
- Your attorney can't make the decision for you, but they can help spot holes, ask questions, or advise on process.

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Notification

- Importance of notifying the parties
- How much information to provide?
- Who else should be notified?
- Any legally required notifications?

Final Decision

- What is the next step?
 - Does the report reach a conclusion?
 - Does it recommend sanctions/corrective action (if warranted)?
 - If not, who makes those decisions?
- Avoid a delay in process
 - Who ensures the next steps occur promptly?

Post-Decision Considerations

- Who receives a copy of the report/decision?
- Determining/implementing sanctions/corrective action/remedies
- Continued vigilance to avoid/address retaliation

Appeals

- Check your policy or process
- Notify of right to appeal
- What are the grounds for appeal?
- What is the standard for review?

Appeals

- Benefits of informal review even if no appeal rights
- Who should conduct the informal review?
- Notification of outcome



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Consulting With Legal Counsel

- Understand their role
- Typically do not advise on substance of investigation
- May advise on procedure, notice and related issues



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Course Conclusion

- Re-cap of Module 4
- Where we've been
- Road map for providing fair process

Questions?



Note

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