

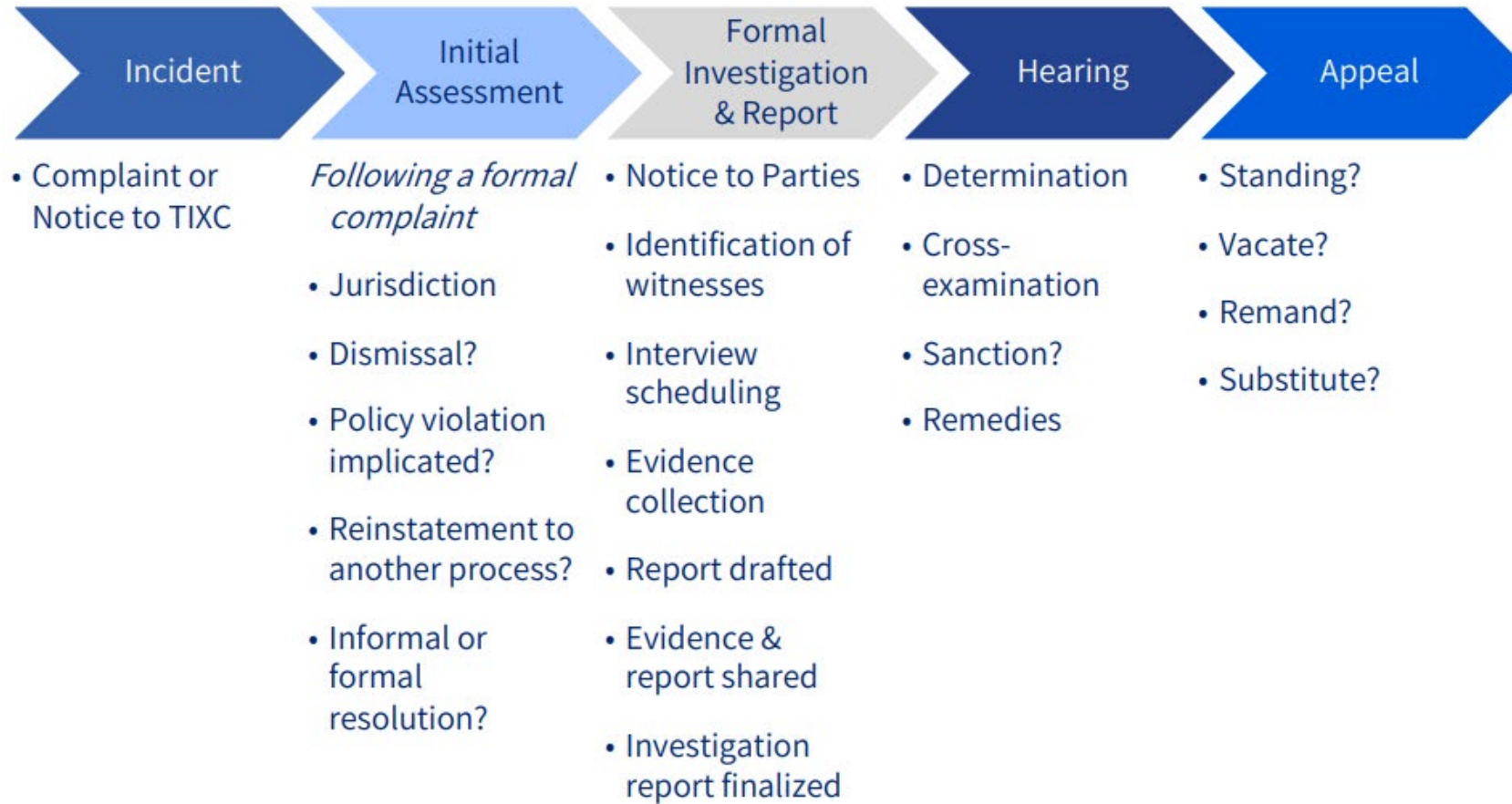


HEARING PREPARATION

October 2021

- Applying definitions (consent, SA, DV)
- Relevance of questions/evidence
- Impact statements
- Cross examination preparation
- MUST attend hearing for statements to be included

THE PROCESS



Ten-Day Reviews

- During the ten-day period when the report is being finalized, the advisee and Advisor may:
 - Suggest new witnesses
 - Suggest additional questions to be asked of parties or witnesses
 - Comment on the evidence
 - Offer new evidence
 - Challenge investigator determinations of what is relevant/directly related

Pre-Hearing Meetings

- Pre-hearing meetings can provide an opportunity to:
 - Answer questions about the hearing and its procedures
 - Clarify expectations regarding logistics, decorum, the role of Advisors, and technology
 - Discern whether parties intend to ask questions of any or all witnesses
 - Invite parties to submit questions in advance (not required)
 - Discern any conflicts of interest/vet recusal requests
 - Consider any questions regarding relevance of evidence or proposed questions and may make pre-hearing rulings

Document Review

- Presumption of non-responsibility
- Written Notice of Allegations (NOIA)
- Policy or policies alleged to have been violated
 - What does it take to establish a policy violation?
 - Identify the elements of each alleged offense
 - Break down the constituent elements of each relevant policy
- All the materials, carefully and thoroughly
- Review and re-review the investigation report
 - Note consistency/inconsistency of information—helps Decision-Makers know what to focus on in a hearing
- Review it a second time and note all areas of consistency of information
 - You don't need additional verification or questioning on these issues, of assuming the accuracy of consistent information (but beware of suspiciously consistent stories)
- Read it a third time to identify inconsistencies in the information
 - This is where you will concentrate your questions

Preparing Questions

Write down the following as a reminder:

- What do I need to know?
- Why do I need to know it?
 - Does the question elicit information relevant to whether a policy violation occurred?
 - What is the best way to ask the question?
 - Who is the best person to get this information from? The investigator? A party? A witness?
- Advisors should prepare with their advisee so that they know what to ask of each witness/what their advisee wants them to ask
- When dealing with conflicting or contested testimony, apply a credibility analysis

Credibility

- Primary factors: corroboration and consistency
- “Credible” is not synonymous with “truthful”
- Memory errors, evasion, misleading may impact credibility
- Avoid too much focus on irrelevant inconsistencies
- Credibility assessment may not be based on a person’s status as a Complainant, Respondent, or Witness

Credibility (EEOC)

- Inherent plausibility
 - “Does this make sense?”
 - Be careful of bias influencing sense of “logical”
- Motive to falsify
 - Do they have a reason to lie?
- Corroboration
 - Aligned testimony and/or physical evidence
 - Strongest indicator of credibility
 - Independent, objective authentication
- Past record
 - Is there a history of similar behavior?
 - Determinations of responsibility?
 - Past violations do not mean current violations
- Demeanor (use caution!)
 - Do they seem to be lying or telling the truth?
 - BE VERY CAREFUL
 - Humans are excellent at picking up non-verbal cues
 - Humans are terrible at spotting liars

Day of the Hearing

- Dress professionally; layer if needed
- Arrive prepared and early
- Bring snacks and water
- Silence or turn off your phone and put it away
- Bring a pen and paper or note-taking device
- Clear your calendar after the hearing—deliberation could take 30 minutes or much longer

Hearing Decorum

- Be professional, but not lawyerly or judge-like
- Be respectful
- Use active listening skills
- Listen carefully to everything that is said
- Nod affirmatively
- Do not fidget, roll your eyes, or give a “knowing” look to another panel member
- Do not look shocked, smug, stunned, or accusing