



Davis Wright  
Tremaine LLP

DEFINING SUCCESS TOGETHER

# TIPS & STRATEGIES FOR PERFORMING HR INVESTIGATIONS

Presented by Chrys A. Martin

[chrismartin@dwt.com](mailto:chrismartin@dwt.com)

503-778-5357

Anchorage  
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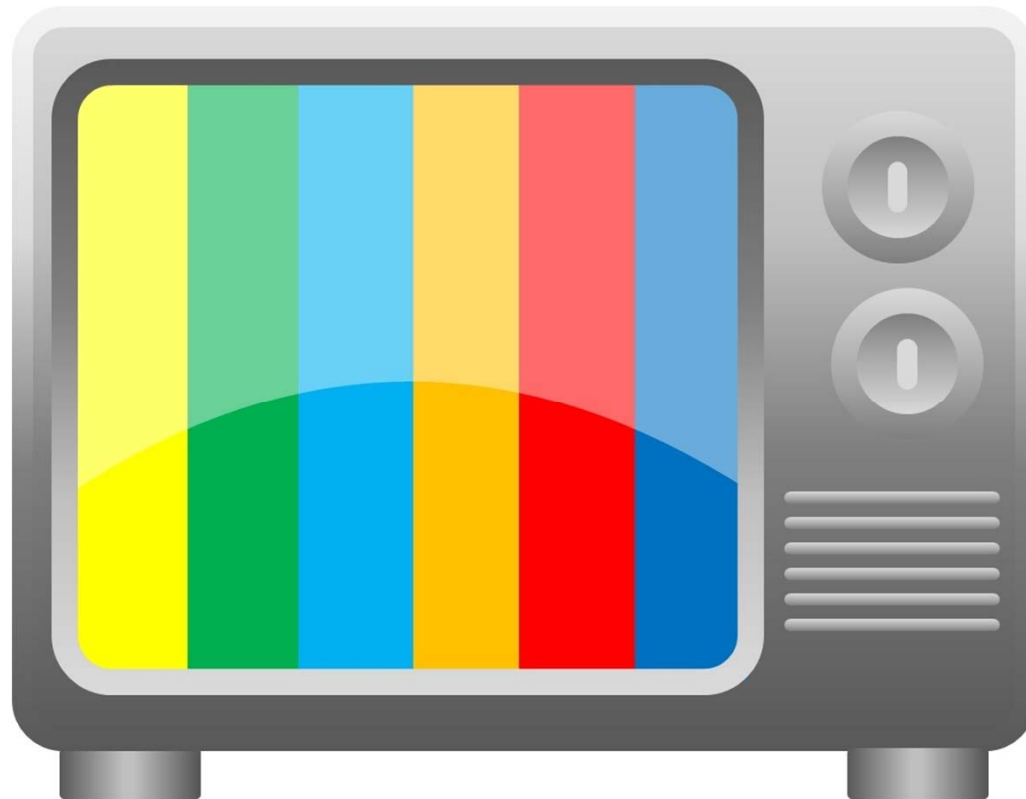
# Investigation Triggers

- Harassment/discrimination;
- Violence;
- Theft;
- Drug or Alcohol Abuse;
- Misuse of E-mail and/or the Internet;
- Breach of Confidentiality;
- Ethical Violations/conflict of interest; and
- SEC or other state or federal laws.

# When to Conduct an Investigation

- You receive a formal complaint about an employee's misconduct
- You suspect that an employee has engaged in misconduct

# The Office: Toby Investigates



# Step One: PLAN BEFORE YOU START

## FIRST AND FOREMOST --

- IS THE ACCUSED DANGEROUS?
- SHOULD HE OR SHE BE PUT ON ADMINISTRATIVE LEAVE?



# Step One: PLAN BEFORE YOU START

## DETERMINE ---

- WHO WILL INVESTIGATE
- WHOM YOU WILL INTERVIEW
- WHAT DOCUMENTS YOU WILL REVIEW
- HOW AND WHEN TO USE OUTSIDE COUNSEL

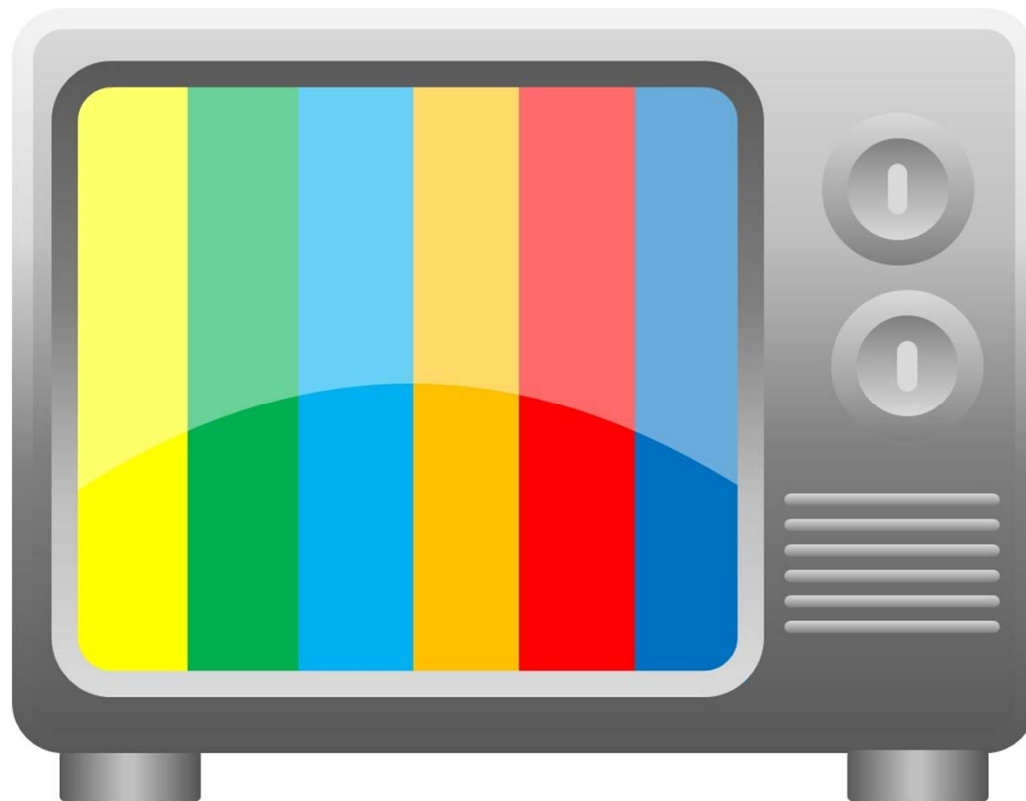
# Step Two: CREATE AN INVESTIGATION PLAN

## DETERMINE ---

- Consider Strategy
- Consider Questions to Ask
- Who to Interview and Where



# Dilbert's Confession





# Step Two: CREATE AN INVESTIGATION PLAN

## PLAN SHOULD INCLUDE ---

- An Interview Schedule
- Preserve and Gather Documents



# Step Two: CREATE AN INVESTIGATION PLAN

## PLAN SHOULD INCLUDE ---



- A Procedure for a Possible Search
- Remember Rights to Privacy

# Step Three: INTERVIEW THE COMPLAINANT

## FIND OUT WHAT HAPPENED ---

- WHO, WHAT, WHEN, WHERE, AND WHY
- REVIEW DOCUMENTS, INCLUDING PERSONNEL FILES
- GET NAMES OF ANY WITNESSES

# Step Three: INTERVIEW THE COMPLAINANT

## FIND OUT WHAT HAPPENED ---

- STICK TO THE FACTS
- ASSESS CREDIBILITY
- TAKE CONTEMPORANEOUS NOTES
- SIGN AND DATE NOTES

## Step Three: INTERVIEW THE COMPLAINANT

- HAVE NOTES TYPED UP
- HAVE COMPLAINANT REVIEW FOR COMPLETENESS AND ACCURACY
- HAVE COMPLAINANT SIGN AND DATE THE STATEMENT

# Step Three: INTERVIEW THE COMPLAINANT

## IF COMPLAINANT WILL NOT SIGN THE INTERVIEW STATEMENT ---



DOCUMENT THAT YOU HAVE SHOWN THE  
STATEMENT TO COMPLAINANT

# Step Four: INTERVIEW THE WITNESSES

- DO NOT INTERVIEW MORE THAN ONE WITNESS AT A TIME
- DO NOT PROMISE COMPLETE CONFIDENTIALITY
- ASSESS CREDIBILITY
- ASSURE WITNESSES THERE WILL BE NO REPRISALS

## Step Four: INTERVIEW THE WITNESSES

- ASK WITNESSES NOT TO DISCLOSE INTERVIEW TO ANYONE ELSE TO AVOID JEOPARDIZING THE INVESTIGATION





# Step Five: INTERVIEW THE ACCUSED

## PRESENT AT THE INTERVIEW ---

- ACCUSED
- HANDLING REQUESTS FOR ACCUSED'S ATTORNEY OR WITNESS
- CONSIDER HAVING TWO COMPANY REPRESENTATIVES



# Step Five: INTERVIEW THE ACCUSED

## PRESENT AT THE INTERVIEW ---

- ACCUSED'S WITNESS, WHO LISTENS AND OBSERVES, BUT CANNOT SPEAK FOR ACCUSED



# Step Five: INTERVIEW THE ACCUSED

- ASK FOR THE FACTS, NOTHING BUT THE FACTS
- TELL WHAT YOU KNOW – ASK ACCUSED'S OPINION
- ASK IF ACCUSED HAS ANYTHING TO SAY
- REVIEW ACCUSED'S PERSONNEL FILE

# Step Five: INTERVIEW THE ACCUSED

- ASSESS CREDIBILITY
- TELL WHAT YOU ARE GOING TO DO NEXT – ASK ACCUSED'S OPINION
- TAKE CONTEMPORANEOUS NOTES

# Step Six: DECIDE WHAT CORRECTIVE ACTION TO TAKE

## WHAT ARE YOU GOING TO DO?

- TERMINATE
- DEMOTE
- SUSPEND WITHOUT PAY
- REQUIRE WRITTEN OR VERBAL APOLOGY TO COMPLAINANT

# Step Six: DECIDE WHAT CORRECTIVE ACTION TO TAKE

## WHAT ARE YOU GOING TO DO?

- **MEDIATE**
- **COUNSELING**
- **REQUIRE SENSITIVITY OR DIVERSITY TRAINING**
- **REPORT TO POLICE OR OTHER AGENCY**

# Step Six: DECIDE WHAT CORRECTIVE ACTION TO TAKE

## WHAT ARE YOU GOING TO DO?

- REASSIGN OR TRANSFER
- WRITE A REPRIMAND
- MAKE A FINDING OF NO SUBSTANTIATION OF COMPLAINT
- REAFFIRM YOUR COMPANY POLICY

# Step Seven: PREPARE A WRITTEN REPORT OF YOUR FINDINGS AND CONCLUSIONS

- ANALYZE THE RESULTS OF YOUR INVESTIGATION
- PREPARE THE FINAL REPORT
- LIMIT DISTRIBUTION OF REPORT ON A NEED-TO-KNOW BASIS
- WHERE TO FILE?

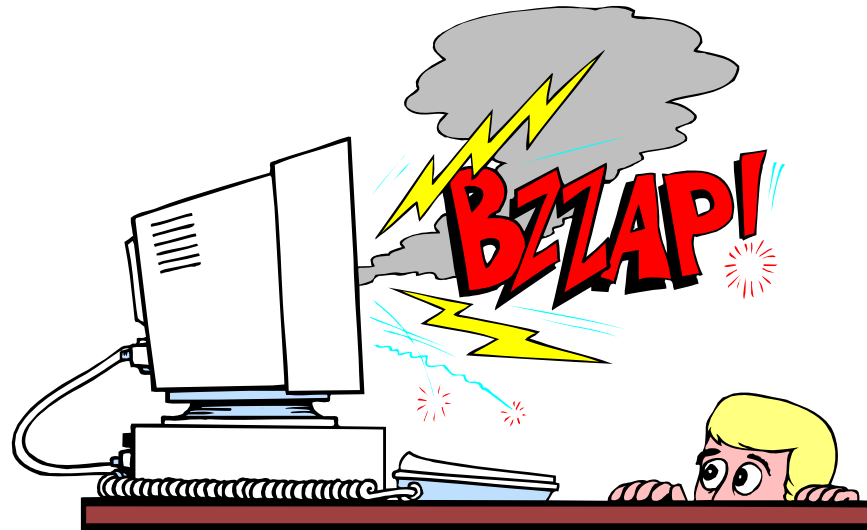


# Step Eight: NOTIFY ACCUSED OF THE ACTION TAKEN

- RESULTS OF THE INVESTIGATION
- WHAT ACTION YOU ARE GOING TO TAKE, IF ANY

# Step Eight: NOTIFY ACCUSED OF THE ACTION TAKEN

- REMIND ACCUSED THAT COMPANY POLICY AND THE LAW PROHIBIT RETALIATION



# Step Nine: ADVISE COMPLAINANT OF THE ACTION TAKEN

## TELL COMPLAINANT WHAT YOU'VE DONE ---

- CARRIED OUT A FAIR AND OBJECTIVE INVESTIGATION
- TAKEN APPROPRIATE ACTION – DECIDE WHETHER TO PROVIDE DETAILS

# Step Nine: ADVISE COMPLAINANT OF THE ACTION TAKEN

## EMPHASIZE TO ALL ---

- RETALIATION AGAINST COMPLAINANT/WITNESSES IS AGAINST COMPANY POLICY
- COMPLAINANT/WITNESSES SHOULD IMMEDIATELY REPORT ANY RETALIATION

# Step Ten: CHECK BACK WITH COMPLAINANT TO MAKE SURE THERE IS NO RETALIATION

- CHECK BACK WITH COMPLAINANT MORE THAN ONCE
- ASK IF ACCUSED IS CAUSING ANY MORE PROBLEMS
- ASK IF CO-WORKERS ARE CAUSING ANY PROBLEMS

THANK YOU

Chrys A. Martin

[chrysmartin@dwt.com](mailto:chrysmartin@dwt.com)

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