

CHAPTER 1

WHAT IS THIS BOOK ALL ABOUT AND WHY DO YOU NEED A BOOK LIKE THIS?

This is the second edition of *Conducting Management Inquiries*. The need for such a volume has not lessened with time. Indeed, in the views of these authors, advocates and arbitrators, Agencies continue to take matters to the formal processes without a good understanding of the strengths and weaknesses of their cases. Thus, this volume, as with the first edition, is intended to provide agencies with the tools to better determine whether to pursue actions against employees.

I. PURPOSE OF THIS BOOK

Federal agencies generally respond to serious allegations of misconduct or impropriety, such as someone accessing pornography on their government computer, with an administrative investigation or a misconduct investigation done by a trained agency investigator or contractor. Many federal agencies have written policies and procedures that govern administrative investigations or misconduct investigations.

But what about allegations that appear to be less serious, such as someone who may have signed in at their regularly scheduled time but actually came in 30 minutes later every day last week? Or, what about the two employees who had a shouting match and exchanged some choice words at work?

Some agencies have someone in human resources or EEO, or have a supervisor or some other higher graded employee to look into the matter. Usually this person will conduct an inquiry for management to see what actually happened and what needs to be done.

Often those individuals are provided little guidance in how to do this inquiry. This is a book about how to best conduct these management inquiries. It is designed to help individuals understand how to carry out a management inquiry, and it also will help provide the tools to do them effectively.

II. WHAT ABOUT THE OIG?

Most federal agencies are required to have an independent component that audits and investigates the functioning of the agency and responds to employee complaints of potentially serious misconduct or impropriety. This is defined as “the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety.” 5 U. S. C. Appendix §§ (2) and 7(a). That independent component is the agency Office of Inspector General (OIG). If it receives an allegation of serious misconduct or impropriety, it then decides whether or not to do a formal investigation. The OIG was established as an independent component of federal agencies by the Office of Inspector General Act of 1978, 5 U. S. C. Appendix 3, to conduct audits as well as investigate and prosecute instances of fraud, waste, and abuse. If, as is often the case, OIG declines to investigate, it will refer the case back to the agency where the misconduct took place or the complaint originated. This often results in an administrative investigation or a management inquiry executed by that agency.

III. WILL YOU BE ASKED TO DO A MANAGEMENT INQUIRY?

Federal agencies are increasingly *directing* first line supervisors and other employees to look into an allegation of misconduct or other impropriety to see if there is substance to the allegation.

If you are told to carry out a management inquiry, you will need help. Your first reaction may be to try mightily to avoid the assignment. “I can’t do it because I am too busy” is a good but rarely effective opener. You can also try: “My fortune teller just predicted an imminent famine. I need to take some leave right away to stock up.” Or, “my cousin Benny is having a hair transplant. I need to be by his bedside.” Or, if all else fails, the frequently successful “even *considering* such a task will cause me to get the vapors, and you know what happens when I get the vapors.”

Still did not work? We tried.

With no other excuses, you now know that you will have to look into the workplace problem. Do not worry. In this book we will give you a step-by-step guide on what to do and how to do it. It will provide you with the knowledge and the tools to do an effective management inquiry.

This book was written to leave you with an understanding of the process for obtaining information in a fair, objective, and thorough way that will be used to determine whether there is merit to an allegation and how to recommend what to do next. The management inquiry is intended to address a workplace or incipient problem head-on. It can have a dramatic impact on one or more employees, including you, if you do it poorly. Done well, the management inquiry will determine whether there is smoke or fire and can nip a problematic situation in the bud. Employees will be heard, a fair decision as to how to proceed can be made, the foundation for further action (or inaction) will be created, management will earn the respect of employees, and the issue will be put to bed. Done poorly, you can, and most likely will, make the workplace environment worse, perhaps significantly worse.

IV. EXERCISES IN THIS BOOK

If you have the time, we would like you to do a simple exercise to help you better recognize what you do not know before reading this book.

Consider the following example of Stella and Hank. Review the questions and think about the facts you are given. How you would carry out your management inquiry *before* reading this book? Return to this exercise *after* you read the book and compare your answers. After that, look at the answers in [Appendix 5](#) (don’t peek now!). It hopefully will help you to better understand the incorrect assumptions you made (and would have acted upon) before learning how to do a management inquiry.

What follows is a real life scenario. Note that all of the “hypotheticals” in this book are based on actual cases we have been involved with as administrative judges or arbitrators. With some of the other cases, we have used decisions we have reviewed and summarized for another of our books. We have mixed cases together and otherwise sought to assure the privacy of the real life individuals involved.

Throughout the book, we will present you with questions that are designed to help you think critically on how to do the most thorough and accurate management inquiry while avoiding many of the pitfalls that derail the faint of heart. The answers to the questions we raise will be within the text of the chapter in which the questions are posed. The two main exceptions are with the example here of Stella and Hank, and a review section in the final chapter, [Chapter 21](#). Answers to these sections can be found in [Appendix 5](#) and [Appendix 6](#), respectively.

Read the example below. Take a few minutes to answer the questions that follow. Make sure to take some notes to review after you completed this book. We predict that, in the absence of guidance in this complex area, you will have made some significant mistakes.

Stella and Hank

Stella Crawford, Hank Ballard, and Maria Ortega work close to each other in the Processing Unit as machine operators. Hank trained Stella and Maria when they first arrived six months ago. You supervise them as the production supervisor.

Stella has come to your office to tell you that during training Hank would touch her in a way that made her feel uncomfortable. This occurred, she alleged, four or five times over six months. She described these actions as follows: he would put his hand on her shoulder and sometimes give her “a little, light caress on my back as he’s working.” He would “lean so close to me that I can feel his beard on my neck.” She also claimed that during training Hank made several inappropriate remarks but that she was uncomfortable repeating them.

Then, Stella said, last week Hank did several things that really bothered her. He sent her a work-related email, and at the end he wrote: “Hey baby, this could be the start of something big.” Stella says that she was telling coworkers that she was happy because her boyfriend was coming home from out of town. Hank was not part of the conversation but chimed in, “Why is he coming home? You have me.” Hank also supposedly said something about Stella and Maria “waiting in line to be my girlfriend.” Stella told you that just 15 minutes ago, in Maria’s presence, Hank asked her “where she was taking him to dinner that night.”

Stella strongly insisted that she can take care of the situation and does not want you to do anything at this time. She said she has not exactly told Hank to back off but intends to do so today.

Stella said that she is just giving you a “heads up” in case Hank takes it the wrong way, or, for whatever reason, does not back off. If that becomes the case, she plans to come back to see you.



Questions

(Answers at [Appendix 5](#))

1. Stella has told you that she really has not told Hank to back off, and that she will handle the situation. What, if anything, will you say to Stella? Would it make sense to hold off and ask her later how things are going?
2. What will you do to decide whether or not to begin an inquiry?
3. Now assume that you decide that you have to inquire about what is going on. Based upon what you know now (before you have read this book), sketch out a plan for the inquiry.
4. What witnesses will you speak with? How will you (or someone else) notify them that they are required to speak with you?
5. Will you speak with Hank first or last? Will you speak with him more than once?
6. What, if any, involvement will there be on the part of the union?
7. How will you capture any information the witnesses provide?

Stella and Hank (continued)

(Answers at [Appendix 5](#))

8. What documents will you review?
9. Will you write a report? If you decide to write something up, will you include documents?
10. How long do you think it will take you to complete your management inquiry?

CHAPTER 2

WHAT IS A “MANAGEMENT INQUIRY” (AND HOW IS IT DIFFERENT FROM AN “ADMINISTRATIVE INVESTIGATION”)?

Major Topics

- The usual meaning of a management inquiry
- The usual meaning of an administrative investigation
- The steps of a management inquiry
- Agencies that have inquiry processes
- What is addressed by a management inquiry

A *management inquiry* is a routine investigation of an allegation that, if founded, could result in minor disciplinary or corrective action. It is a process for determining facts and documenting evidence concerning possible employee misconduct or some other impropriety that has come to the attention of agency management, either directly through observation or otherwise, or indirectly by the allegation of an employee or other individual such as another employee, a contractor, or member of the public. It is done to develop timely, thorough, and well documented findings on matters involving possible employee misconduct or other improprieties. It is often done by the supervisor in the affected work unit but can be done by other supervisors or managers. Some agencies will have someone in the human resources office do a management inquiry (we think this is a good idea), someone from the EEO office, such as an EEO counselor (we think this is a bad idea), or a contractor (depending on who this is, it can be a good or bad idea).

For example, if an employee tells her supervisor that a coworker raised her voice and used obscenities in a discussion in the workplace, the supervisor should immediately report this. Someone will most likely be directed to conduct a management inquiry in response. Using the [Stella and Hank](#) example, it would most likely be the immediate supervisor of the employee allegedly engaging in the misconduct who would be told to do the inquiry.

A management inquiry may also be required if a supervisor discovered that one of her employees appeared to have spent two hours of government time shopping on the Internet.

In contrast, an *administrative investigation* is a formal inquiry into allegations of serious employee impropriety or employment-related events, incidents, or issues. It is a more formal response to possible employee misconduct or impropriety, and should only be done by individuals with the requisite training, qualifications and, to the extent possible, experience. This book deals with management inquiries, but we do offer some suggestions in how to determine whether an administrative investigation is needed in place of an inquiry.

We will discuss this in detail later, but the typical management inquiry involves the following stages:

1. The allegation is brought to the agency’s attention

2. An individual is assigned to do the management inquiry
3. Work to understand and define the issue(s)
4. Identify witnesses and other individuals for interviews
5. Prepare for the inquiry
6. Gather the necessary documents
7. Perform the interview
8. Prepare witness statements; get them to the witnesses and get them returned
9. Analyze the information
10. Write the concluding memo
11. Monitor post report activity

Each of these steps is discussed throughout this book.

I. AGENCY SPECIFIC MANAGEMENT INQUIRY POLICIES

Before you do anything inquiry-related, check to see if your agency has a management inquiry policy. Every agency conducts inquiries into misconduct, but few federal agencies have management inquiry policies and procedures in place. For example, the Mint, a part of the Department of the Treasury, has a management inquiry policy [[Appendix 1](#)]. The Postal Service also has a policy in place, but it is limited to allegations of sexual harassment brought to a supervisor's attention [[Appendix 3](#)].

The Mint management inquiry policies and procedures set parameters and provide excellent guidance for agency supervisors and managers tasked with conducting a management inquiry. The *Mint Management Inquiry Policy* may be found in [Appendix 1](#). The Mint also has a written policy for how its trained, higher graded employees are to conduct more formal administrative investigations that are required for the really dreadful allegations. The Mint Administrative Investigations Policy is in [Appendix 2](#).

The Mint draws the line as follows: supervisors are required to do a management inquiry into all less serious allegations. These are defined as misconduct that, if proven, would result in a penalty of a 14 day suspension or less. The seemingly more egregious misconduct or impropriety must be addressed by a formal administrative investigation. These include issues that, if proven to be true, would result a penalty of a 15-day suspension, or a more severe penalty. Sometimes a supervisor can begin a management inquiry and quickly discover that the problem is more serious than initially thought. When that is the case, the supervisor should stop his or her management inquiry and have the agency begin a more formal administrative investigation. Make sure to take a look at the Mint policy. It is pretty good.

A Postal Service policy that has been in place since September, 2001 is also quite good. It states that Postal Service managers, Postmasters and supervisors are required to perform a management inquiry concerning allegations of harassment brought to their attention, and provides detailed guidance on conducting the management inquiry pursuant to the "Initial Management Inquiry Process," or "IMIP." The Postal Service guidance is set forth in a well written policy and procedure manual, the *Manager's Guide to Understanding, Investigating, and Preventing Harassment*, December 2016, Publication 552. It can be found in [Appendix 3](#). It imposes upon Postal Service supervisors, Postmasters and managers the obligation to react promptly to complaints involving harassment and compels them to deal with the problem. The individual doing a management inquiry is required to "[g]ather information from both parties and take detailed notes of facts." There are detailed forms that must be completed as set forth in the IMIP, including questions to ask for: the individual alleging harassment; the individual

alleged to have engaged in the harassment; and other witnesses. The individual making the allegation of harassment should be asked, but not required, to provide a written statement concerning the harassment. During the management inquiry, and after the misconduct inquiry has been concluded, the person doing the inquiry is required to “inform and confer” with a human resources manager, to include providing a report upon completion and conferring to determine any appropriate corrective action. The person conducting the management inquiry is also required to: “[i]nform both the (person alleging harassment) and alleged harasser separately of the determination of the IMIP inquiry, the reason for the conclusion, and the actions to be taken.”

If the Postal Service management inquiry reveals a more serious problem, that the “nature and scope of the complaint warrants outside investigation and/or resolution is not feasible,” then the incident that gave rise to the management inquiry is referred on to human resources.

Interesting aspects of the Postal Service policy, among others, include: the policy requires that the person doing the inquiry “deliver the determination separately to the harasser and harassee,” seemingly ignoring any Privacy Act issues; the manager or supervisor doing the inquiry must “keep the alleging harassee advised of the progress of your inquiry.” (Not a bad idea.); and, the policy specifies that managers who fail to address harassment may “be found to have retaliated against an employee because of the adverse effect of their willful indifference.”

A final policy that provides for a management inquiry, is the U. S. Forest Service’s Anti-Harassment policy (August 7, 2017). It is included here as [Appendix 4](#). The “Inquiry/ Investigation Requirements” are found in [section 1765.09](#) of the policy. It requires, for all reports of harassment, that an initial management inquiry be completed by an appropriate supervisor, manager or line officer having authority over the unit involved. The “Inquiry Official” must “begin the inquiry within 3-duty days and complete it within 14-duty days,” with an extension of up to five-duty days permitted. “At a minimum, management inquiries consist of: conducting interviews and taking written statements; collecting available evidence; and preparing a written report summarizing the findings.” The report can serve as the basis for the identification of corrective/curative action, a proposal for some disciplinary action, or, where the report reveals possible serious misconduct, a request for a Formal Misconduct Investigation, that “must begin within 14-calendar days of receiving the request and must be completed within 45-calendar days of the investigation start date. Complex investigations may take longer...” All of the documents related to the inquiry must be kept for four years after the management inquiry is completed. Additionally, this policy does not provide a time period for making harassment claims; provides that individuals who witness or are aware of harassment are required to immediately report the behavior to a management official, defined an immediate supervisor, second level supervisor, or any other management official within the organizational unit; and, specifies that reports of harassment can also be made to the OIG Hotline or a Forest Service Unit hotline, or the requirement to report acts of sexual assault/violence within 24 hours.

II. THE TYPES OF MISCONDUCT AND SITUATIONS THAT SHOULD BE ADDRESSED BY A MANAGEMENT INQUIRY

Harassment is the most prevalent kind of misconduct in the federal workforce. It is essential that federal agencies have a policy and procedure in place for addressing harassment allegations. We suggest that agencies consider having their supervisors conduct a management inquiry in the majority of harassment cases. Those are the instances in which the harassment allegation is not severe enough that, if proven to be true, it would result in serious disciplinary action. We discuss that more in [Chapter 3](#).

Another category where a management inquiry would be appropriate would be