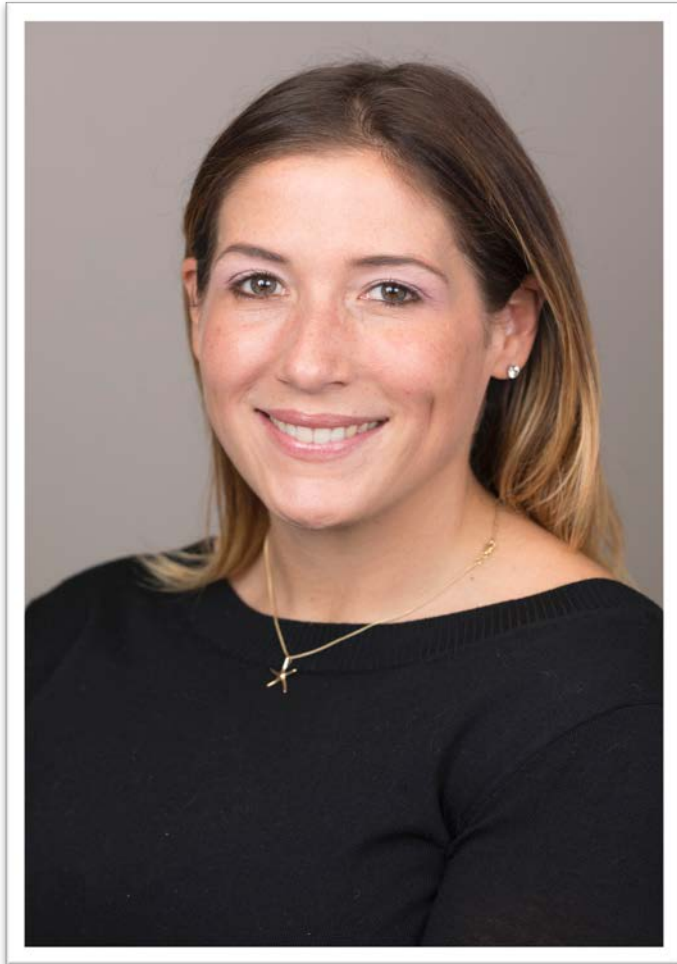


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Hearings in a Post Regulatory World MICA, Day 1

Chantelle Cleary
Director of Strategic Partnerships and
Client Relations
June 2021

Meet Your Facilitator



Chantelle Cleary, J.D.

Director of Strategic Partnerships and
Client Relations

Chantelle Cleary is a nationally-recognized subject-matter expert in Title IX and related fields. She has more than 15 years of experience in the investigation and adjudication of sexual and interpersonal violence. She lectures extensively at universities and conferences throughout the U.S. on Title IX, VAWA, harassment, and implementation of best and emerging practices. Prior to joining Grand River Solutions, Chantelle served as the Director for Institutional Equity and Title IX at Cornell University, and before that as the Assistant Vice President for Equity and Compliance and Title IX Coordinator at the University at Albany. In these roles, she provided direct, hands-on experience in the fields of Title IX, civil rights, employment law, and workplace and academic investigations. Her responsibilities included focusing on diversity efforts, sexual assault prevention and training, affirmative action, and protecting minors on campus.





Vision

We exist to help create safe and equitable work and educational environments.



Mission

Bring systemic change to how school districts and institutions of higher education address their Clery Act & Title IX obligations.



Core Values

- ❖ Responsive Partnership
- ❖ Innovation
- ❖ Accountability
- ❖ Transformation
- ❖ Integrity

Today's Agenda

01

Title IX Requirements for Hearings

05

The Hearing

02

Process Participants

06

After the Hearing

03

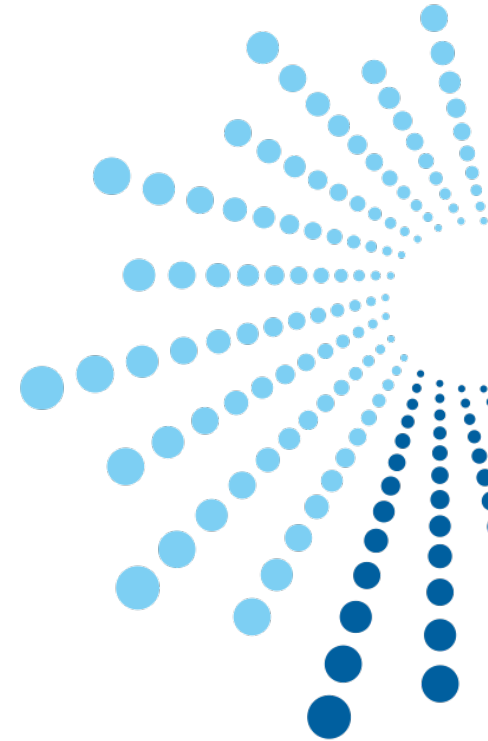
Advisor's First Steps

07

Practical Application

04

Pre-Hearing Tasks





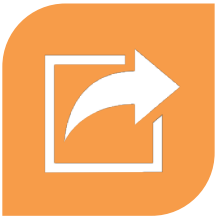
Title IX Requirements For Hearings

01

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Procedural Requirements for Investigations



Notice TO BOTH
PARTIES



Equal opportunity
to present evidence



An advisor of
choice



Written notification
of meetings, etc.,
and sufficient time
to prepare



Opportunity to
review ALL
evidence, and 10
days to submit a
written response to
the evidence prior
to completion of
the report



Report
summarizing
relevant evidence
and 10 day review
of report prior to
hearing



Procedural Requirements for Hearings

Must be live, but can be conducted remotely

No Compelling participation

Standard of proof used may be preponderance of the evidence or clear and convincing; standard must be the same for student and employee matters

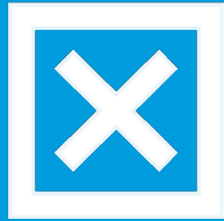
Cross examination must be permitted and must be conducted by advisor of choice or provided by the institution

Decision maker determines relevancy of questions and evidence offered

Exclusion of Evidence if no cross examination

Written decision must be issued that includes finding and sanction

Impact of Not Submitting to Cross Examination



Exclusion of all statements of that party or witness



Cross Examination

Exceptions to the Exclusionary Rule



Statements that consist of or are made in the course of the prohibited conduct



When cross examination is waived or not conducted

When Has a Party Submitted to Cross Examination?



The party or witness has answered all questions deemed relevant on cross



A party or witness appears for cross, but the advisor does not ask any relevant questions



A party or witness refuses to answer one relevant question posed by advisor



A party or witness only answers the decision maker's questions and refuses to answer questions on cross

Hearing Technology: Requirements and Considerations



If hearings cannot be in person, or if someone chooses to participate remotely, must have a remote participation platform available.



All hearings must be recorded.



Participants must be able to communicate during the hearing

The parties with the decision maker(s)
The parties with their advisors

Purpose of the Hearing

Why does it matter?

Review and
Assess
Evidence



Make
Findings of
Fact



Determine
Responsibility
/ Findings of
Responsibility



Determine
Sanction
and
Remedy

Evaluating the Evidence

Is it relevant?

Evidence is relevant if it has a tendency to make a material fact more or less likely to be true.



Is it authentic?

Is the item what it purports to be?



Is it credible?

Is it convincing?



Is it reliable?

Can you trust it or rely on it?



What weight, if any, should it be given?

Weight is determined by the finder of fact!

Trauma-informed practices provide tools/techniques for interviewing and engaging with the Complainant, Respondent, and Witnesses.



Format/Structure of the Interview



Format of Questions



Approach to Clarification



02

Process Participants

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The Participants

The Parties

Complainant	Respondent
<p>“An individual who is alleged to be the victim of conduct that could sexual harassment based on a protected class; or retaliation for engaging in a protected activity; or other violation of this policy.”</p>	<p>“An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment or retaliation for engaging in a protected activity.”</p>

The Participants

The Investigator

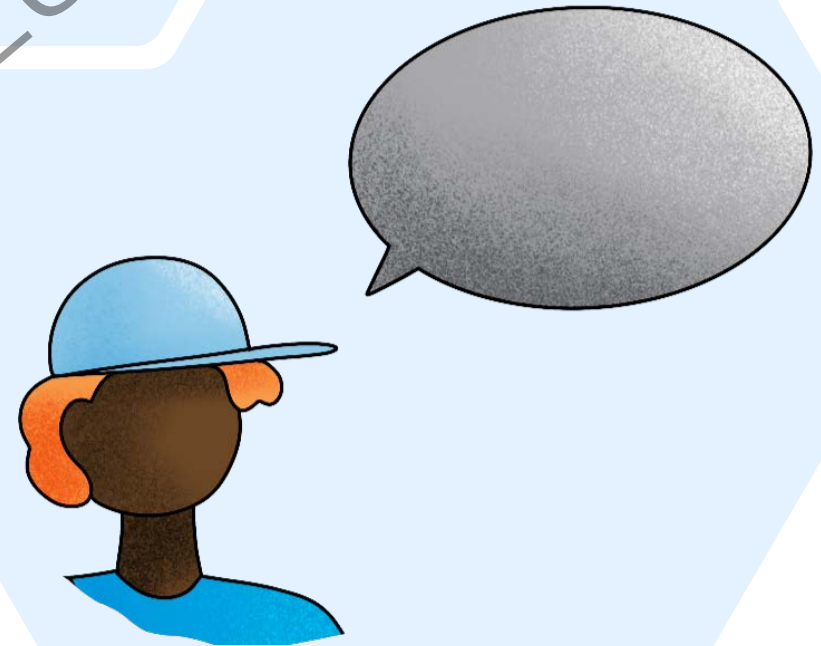
- Presents a summary of the final investigation report, including items that are contested and those that are not;
- Submits to questioning by the Decisionmaker(s) and the parties (through their Advisors).
- Present during the entire hearing process, but not during deliberations.
- Questions about their opinions on credibility, recommended findings, or determinations, are prohibited. If such information is introduced, the Chair will direct that it be disregarded.



- Can be anyone, including a lawyer, a parent, a friend, and a witness
- No particular training or experience required (College appointed advisors will be trained)
- Can accompany their advisees at all meetings, interviews, and the hearing
- Advisors should help the Parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith
- May not speak on behalf of their advisee or otherwise participate, except that the advisor will conduct cross examination at the hearing.
- Advisors are expected to advise their advisees without disrupting proceedings
- Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

The Participants

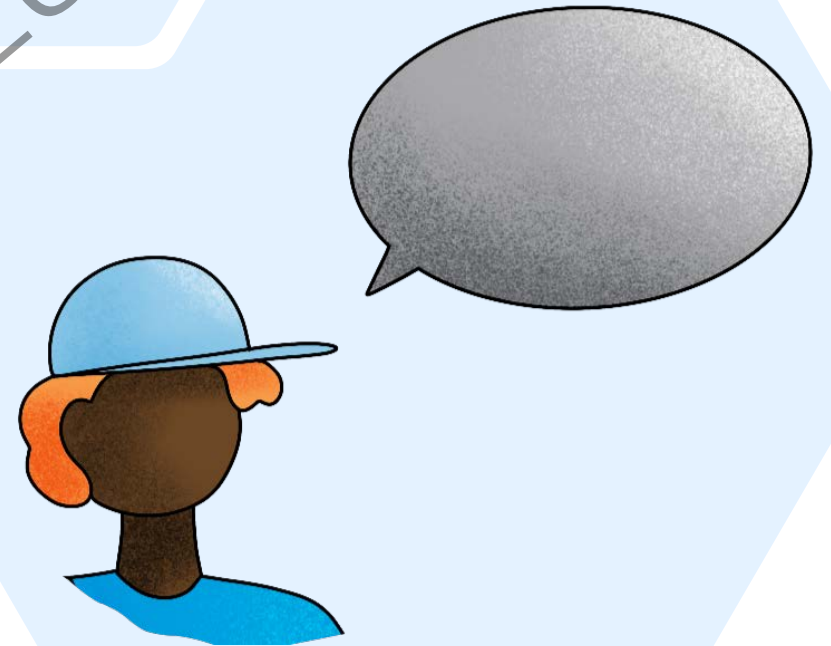
Advisors



The Participants

Advisors: Prohibited Behavior

Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.



The Participants

The Hearing Facilitator

- Manages the recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process
- Non-Voting



The Participants

The Decision Maker(s)

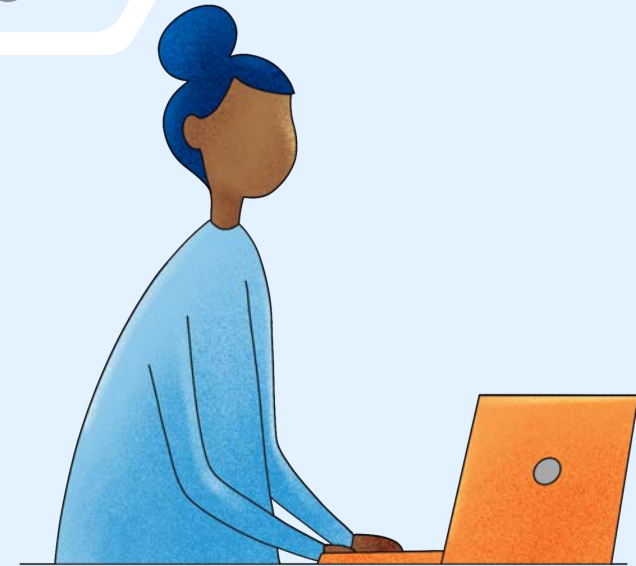
- One person or a panel of three
- Questions the parties and witnesses at the hearing
- Determines responsibility
- Determines sanction, where appropriate



The Participants

The Hearing Chair

- Is a decision maker
- Answers all procedural questions
- Makes rulings regarding relevancy of evidence, questions posed during cross examination
- Maintains Decorum
- Prepares the written deliberation statement
- Assists in preparing the Notice of Outcome





Advisor's First Steps

03

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After you are assigned a case...



Review the policy



Review the materials provided, if any

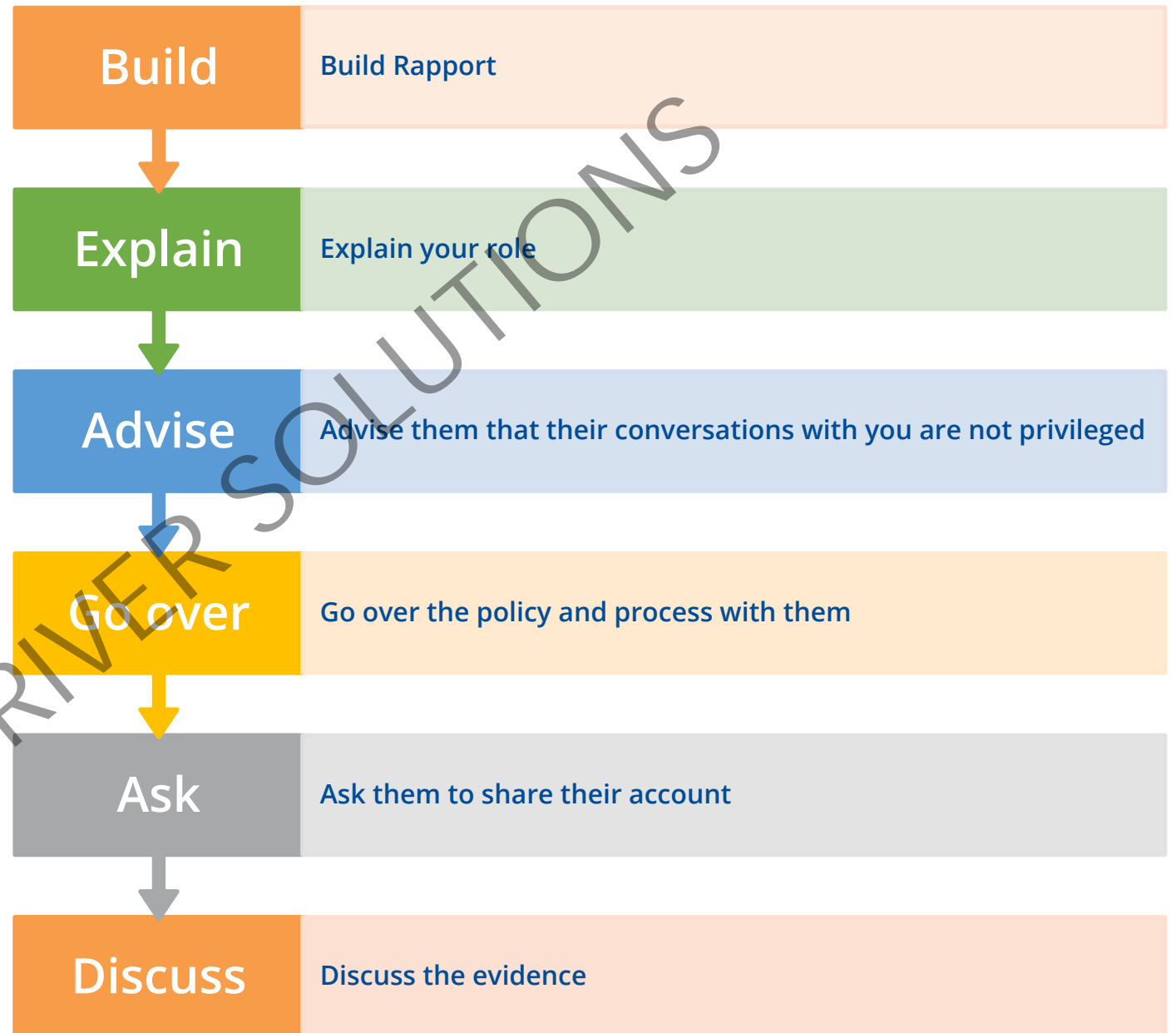


Reach out to your advisee



Schedule a meeting

Meeting with your advisee





Make the Party Aware that ...

You are under no obligation to keep the information confidential

- There is no attorney client relationship nor any other recognized privilege between you and the party
- You are not under an obligation to keep what the party tells you confidential

Were this matter go to a court of law, and you were asked to testify, you would have to do so, truthfully

Do this at the outset



Pre-Hearing Tasks

What should be done in advance of the hearing

04



Pre-Hearing Tasks for the Decision Makers and Chair

4(a)

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Prior to the Hearing

The Chair will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

The Title IX Coordinator will give the Decision-maker(s) a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

The Chair MAY convene a pre-hearing meeting.

Pre-Hearing Meetings

Review the Logistics for the Hearing

Set expectations

- Format
- Roles of the parties
- Participation
- Decorum
- Impact of not following rules

Advance Submission of Questions

Relevancy Arguments and Advance Rulings

The Decision Maker(s)



Review evidence and report



Review applicable policy and procedures



Preliminary analysis of the evidence



Determine areas for further exploration



Develop questions of your own



Anticipate the party's questions



Anticipate challenges or issues



Prepare the script

Common Areas of Exploration



Credibility?



Clarification on timeline?



The thought process?



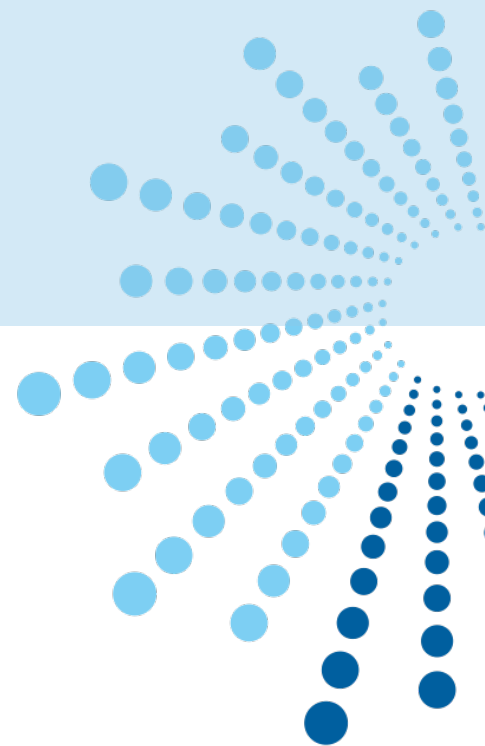
Inconsistencies?



Pre-Hearing Tasks for the Advisor

4(b)

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Pre-Hearing Preparation

Do Your Homework





Exactly, What Type of Homework?

- Review applicable policy language/provisions
- Familiarize yourself with investigative report
- Understand the ins and outs of the report
- What is the timeline of events
- Think about what areas you may want to highlight or expand upon
- What type of questions you will ask
- Who are the key witnesses
- Consult with your advisee
- Anticipate questions of others
- Consider impact of your decisions and develop a strategy

Identify the Claims, What Needs to be Proven

- Why are we here?
- What are the elements for the charge?
- What are the definitions of those elements?
 - Consent?
 - Incapacitation?

What Does the Advisor Want to Show?



Credibility?



Clarification on timeline?



The thought process?



Inconsistencies?

Preparing for Cross



Review and evaluate the evidence



Identify your narrative, or the version of events that you want to illustrate



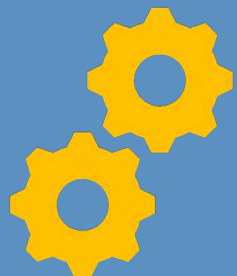
Identify the facts at issue and the findings of fact that you want the decision maker to make



Plan to highlight the evidence that support the narrative and the findings of fact that you want the decision maker to make



Prepare an outline of topics to explore



05

The Hearing

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Order of the Proceedings

01

Opening
introductions and
instructions by the
Chair

02

Investigator
presents a summary
of the final
investigative report
and submits to
questioning by the
decision maker(s)
and the advisors

03

Testimony and
Questioning

04

Deliberations

Opening Instructions by the Chair

- The College has a script for this portion of the proceedings, and it should be used.
- Introduction of the participants.
- Overview of the procedures.
- Be prepared to answer questions.
- Parties are provided on last opportunity to challenge the composition of the Panel for bias or conflict of interest.
 - Chair or TIXC will make ruling.





Testimony

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A man in a yellow jacket is shouting into a megaphone, looking upwards. The image is overlaid with a semi-transparent teal background and a large, diagonal watermark reading "GRAND RIVER SOLUTIONS".

Testimony of the Parties & Witnesses

01

Investigator
will testify
first

02

Complainant
will testify
second

03

The Chair will
determine the
order of
testimony
following
Complainant

04

The Decision
Maker will
question first

05

Advisor
questioning
will occur
next

06

Follow up by
the Decision
Maker

General Questioning Guidelines

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Format of Questioning



The decision maker or the advisor, will remain seated during questioning;



Questions will be posed orally,

Advisors can request permission to ask questions electronically, or in writing



Questions must be relevant

What constitutes a relevant question?

The Department declines to define “relevant”, indicating that term “should be interpreted using [its] plain and ordinary meaning.”

See, e.g., Federal Rule of Evidence 401 Test for Relevant Evidence:

“Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.”

When is evidence relevant?

Logical connection between the evidence and facts at issue

Assists in coming to the conclusion – it is “of consequence”

Tends to make a fact more or less probable than it would be without that evidence



Irrelevant and Impermissible Questions

Questions that seek to illicit irrelevant information

- Complainant's prior sexual history
- Information protected by an un-waived legal privilege
- Medical treatment and care

Duplicative questions

Information that otherwise irrelevant

When Questioning....



Be efficient.



Explore areas where additional information or clarity is needed.



Listen to the answers.



Be prepared to go down a road that you hadn't considered or anticipated exploring.



Take your time. Be thoughtful. Take breaks if you need it.

Foundational Questions to Always Consider Asking

Were you interviewed?

Did you see the interview notes?

Did the notes reflect your recollection at the time?

As you sit here today, has anything changed?

Did you review your notes before coming to this hearing?

Did you speak with any one about your testimony today prior to this hearing?

Common Areas of Where Clarity or Additional Information is Needed

Details about the
alleged
misconduct

Facts related to the
elements of the
alleged policy
violation

Relevancy of
Certain Items of
Evidence

Factual Basis for
Opinions

Credibility

Reliability

Timelines

Inconsistencies

Questioning to Assess Reliability

Inherent plausibility

Logic

Corroboration

Other indicia of reliability

Questioning to Assess Credibility

No formula exists, but consider asking questions about the following:

opportunity to view

ability to recall

motive to fabricate

plausibility

consistency

character, background, experience, and training

coaching



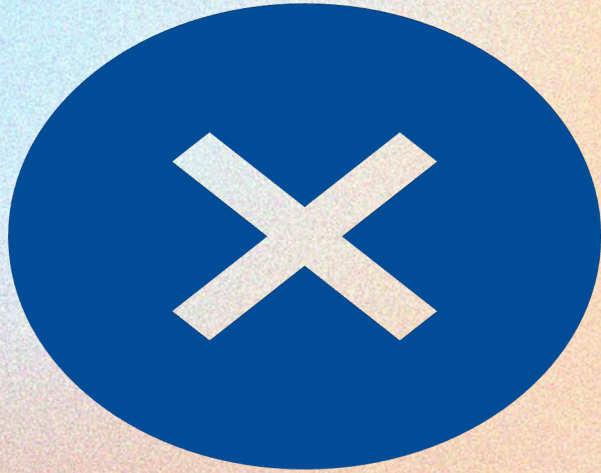
Opinion Evidence

When might it be relevant?

How do you establish a foundation for opinion evidence so that the reliability of the opinion can be assessed?

Asking Questions to Assess Authenticity

Investigating the products of the investigation



Never assume that
an item of evidence
is authentic.



Ask questions,
request proof.



Request further
investigation of the
authenticity if
necessary.

What are the “Hard” Questions

Details about the sexual contact

Seemingly inconsistent behaviors

Inconsistent evidence/information

What they were wearing

Alcohol or drug consumption

Probing into reports of lack of memory

How to Ask the Hard Questions

Lay a foundation for the questions

- Explain why you are asking it
- Share the evidence that you are asking about, or that you are seeking a response to

Be deliberate and mindful in your questions:

- Can you tell me what you were thinking when....
- Help me understand what you were feeling when...
- Are you able to tell me more about...

Special Considerations for Questioning the Investigator

- The Investigator(s) present a summary of the final investigation report, including items that are contested and those that are not;
- The Investigator's participation in the hearing is as a fact witness;
- Questions directed towards the Investigator shall be limited to facts collected by the Investigator pertinent to the Investigation;
- Neither the Advisors nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations;
- The Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

Special Considerations for Questioning the Investigator



Ask questions about how they conducted their investigation



Explore the investigators decision making



Seek clarity about evidence collected

Where it came from
Authenticity of the evidence



Ask factual questions that will assist in evaluation of the evidence



If bias is not in issue at the hearing, the Chair should not permit irrelevant questions of the investigator that probe for bias.

Special Considerations for Panels

If a panel, decide in advance who will take the lead on questioning

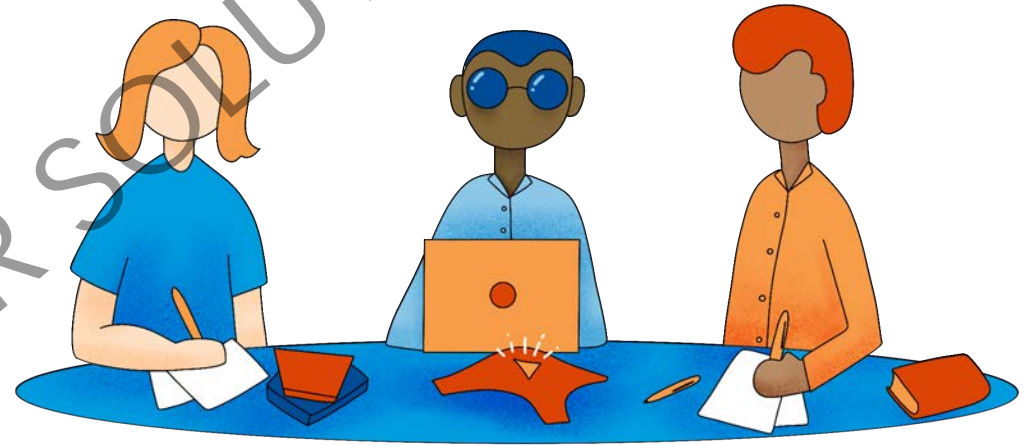
Go topic by topic

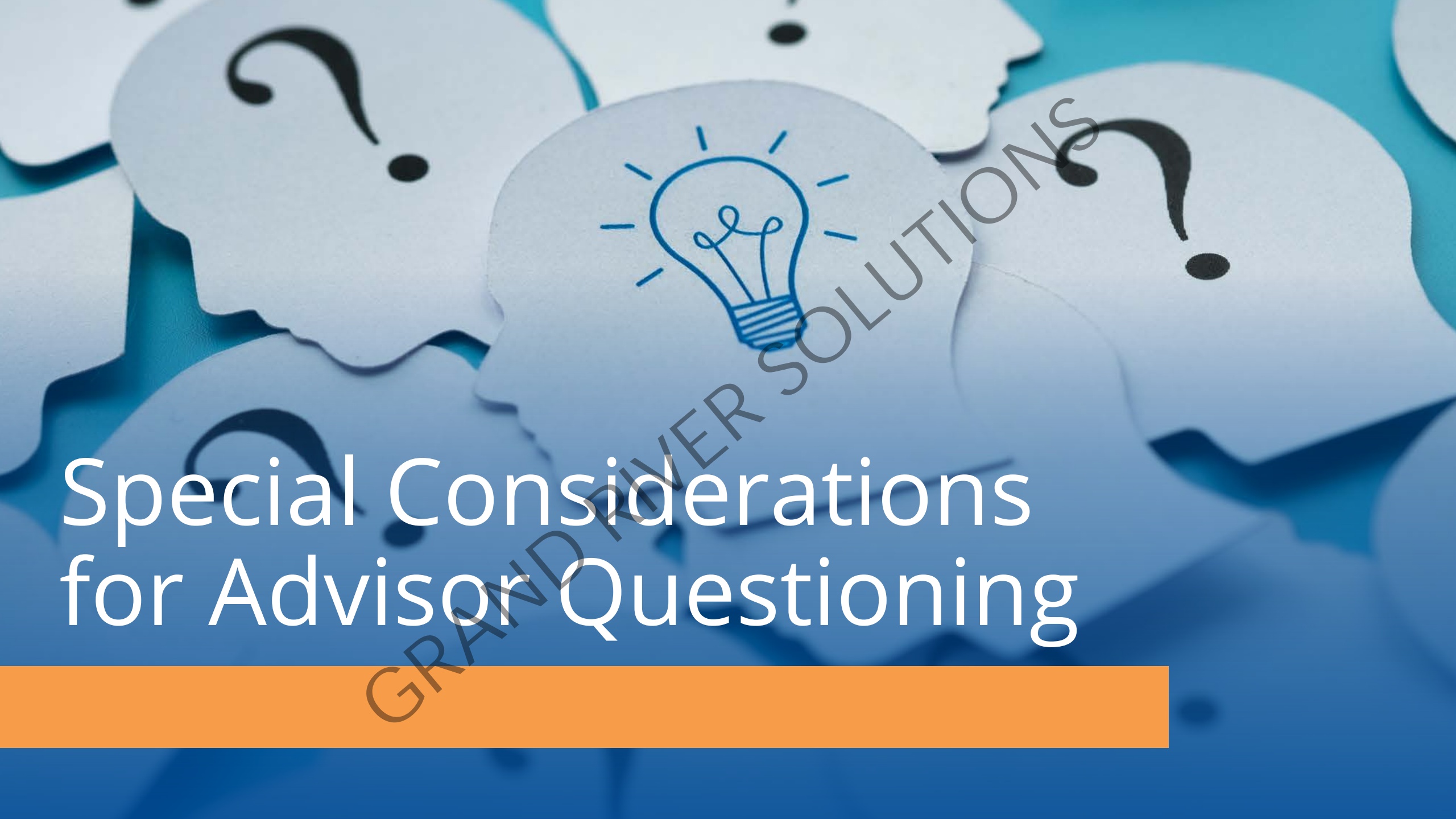
Ask other panelists if they have questions before moving on

Do not speak over each other

Pay attention to the questions of other panelists

Ok to take breaks to consult with each other, to reflect, to consult with the TIXC or counsel



The background features a collage of light blue puzzle pieces. One central piece displays a blue line-art lightbulb with radiating lines, symbolizing an idea. Other pieces show black question marks. A diagonal watermark reading "GRAND RIVER SOLUTIONS" is visible across the image. At the bottom, there is a solid orange horizontal bar.

Special Considerations for Advisor Questioning

First Decide: To Cross or Not to Cross

Special Considerations



WILL SUBMITTING TO CROSS
EXAMINATION SERVE THE PARTY'S
INTERESTS?



WILL CONDUCTING CROSS
EXAMINATION SERVE THE
PARTY'S INTERESTS?

Cross Examination

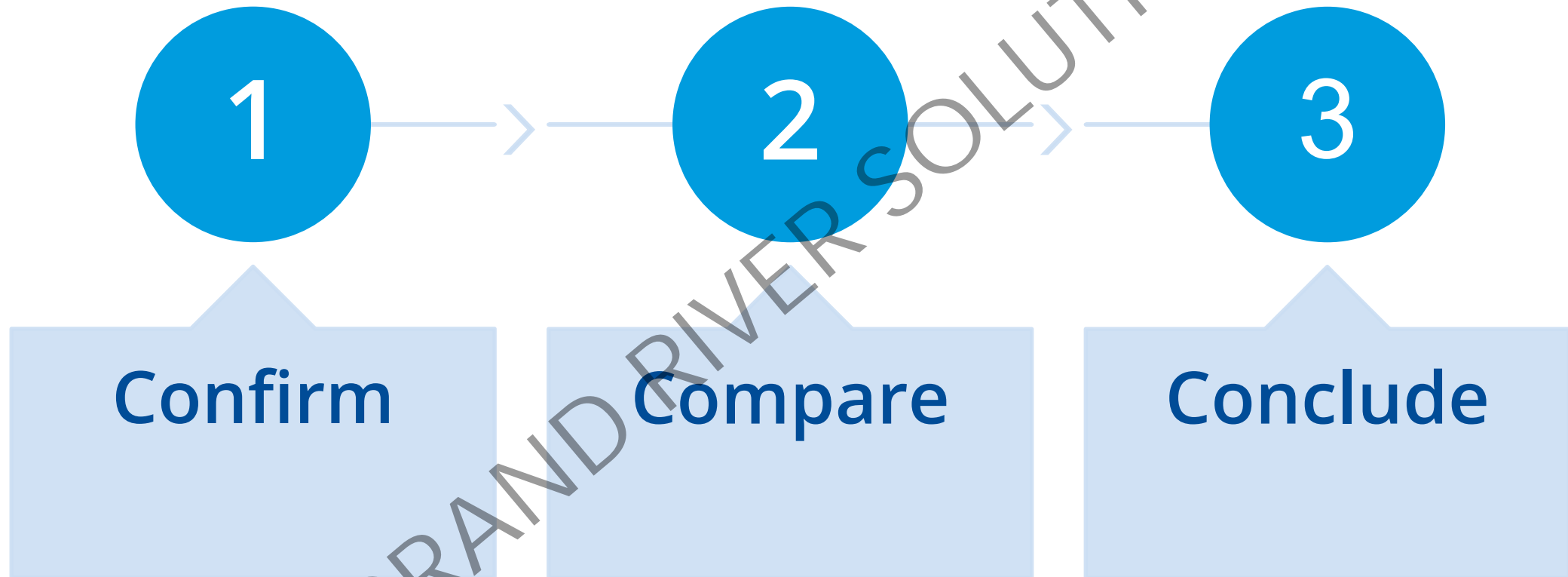
Common Approaches

1. Highlight the evidence that supports your advisee's narrative/version of events and the findings of fact that you want the decision maker to make.
2. Obtain/Highlight helpful information.
3. If a witness does not have information that is helpful, ask questions that illustrate that they are unimportant.
4. Highlight bias/lack of bias.
5. Highlight credibility and reliability/lack of credibility or reliability.
6. Discounting/Impeachment of the party or witness.



Questioning

How to Discount



Discounting Example

Statement A:

During her interview with the investigator, Witness Y stated that she overheard Respondent and Complainant fighting inside of Complainant's bedroom. She stated that Complainant came out of the room crying and that their face was red and swollen. She stated that Respondent followed Complainant out of the room "looking angry" and grabbed Complainant by the arm "aggressively" and pulled them back into the room. The fighting then continued.

Statement B:

At the hearing, Witness Y tells the decision maker that while she heard loud voices, it might not have been fighting. She also stated that the parties came out of the room together, that Complainant looked upset, that Respondent looked concerned, and that they "calmly" went back in the room together.

Confirm

- Witness Y, earlier today you were asked about what you heard and saw on the night in question...
- And you indicated that you heard loud voices, but that you are not sure if it was fighting, is that correct?
- You also said that the parties came out together and then went back into the room, is that what you saw?
- And you are sure of this?





Compare

- Witness Y, this isn't the first time you shared your observations of Complainant and Respondent that night, is it?
- Did you talk to the investigator about this?
- And that statement was provided just two days after the incident, correct?
- Do you recall what you said to the the investigator?
- Did you tell the investigator the truth when you were interviewed?





Conclude

- Witness Y, when you spoke to the investigator, you indicated that you heard fighting, correct?
- And that Complainant came out of the room crying, isn't that right?
- And that Respondent came out looking angry, correct?
- You also stated that you saw Respondent grab Complainant and drag them back into the room, isn't that true?
- Since speaking with the investigator, you and Complainant have had a falling out, haven't you?

The Do's of Conducting Cross



Be efficient



Highlight the portions of their testimony that support your narrative.



Listen.



Do make your points through pointed and calm questioning



Be prepared to go down a road that you hadn't considered or anticipated exploring.



Do raise concerns about credibility and reliability



Take your time. Be thoughtful. Ask for breaks if you need it.

The Do Nots of Cross Examination:

Don't rehash
everything a
witness has said.

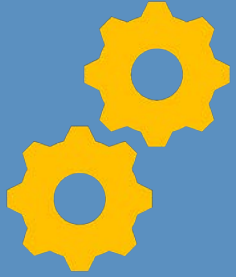
Don't call folks
liars or attack
them.

Don't rant, rave,
loose your
temper.

Observe and Listen

Be open to adjusting plans or strategy based on information presented at the hearing.

Make note of any issues that you think may be appropriate for appeal.



The Decision Maker's Role in Advisor Questioning

05(a)

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The Role of the Decision Maker During Questioning by the Advisors

After the advisor poses a question, the proceeding will pause to allow the Chair to consider it.

Chair will determine whether the question will be permitted, disallowed, or rephrased. The Chair may explore arguments regarding relevance with the Advisors.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive.

The Chair will state their decision on the question for the record and advise the Party/Witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair has final say on all questions and determinations of relevance. The parties and their advisors are not permitted to make objections during the hearing. If they feel that ruling is incorrect, the proper forum to raise that objection is on appeal.

When Assessing Relevance, the Decision Maker Can:

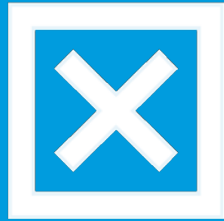
Ask the advisor why their question is relevant

Take a break

Ask their own questions of the party/witness

Review the hearing record

Impact of Not Submitting to Cross Examination



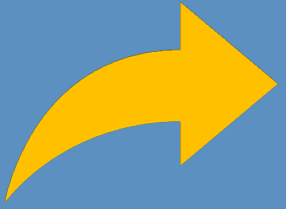
Exclusion of all statements of that party or witness



When a Party or Witness Declines to Answer a Relevant Questions Posed by an Advisor

The Chair should:

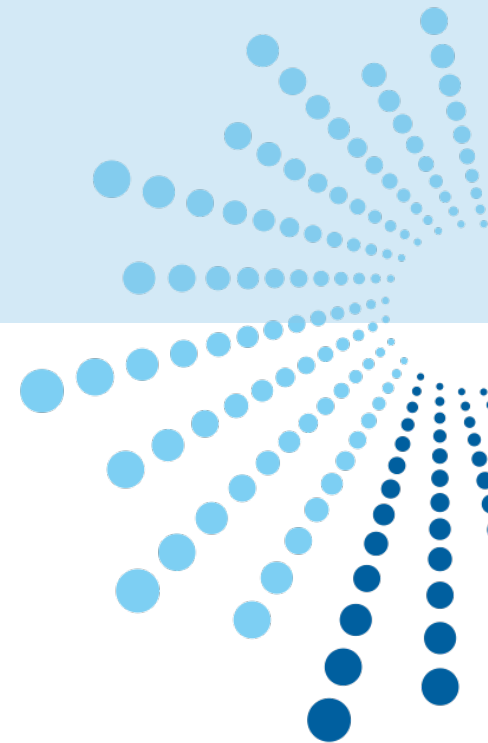
- Remind the party of the impact of not submitting to cross examination;
- Pause the proceedings to allow the party or witness to reconsider.



After the Hearing

06

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Deliberations



Weighing the Evidence & Making A Determination

1. Evaluate the relevant evidence collected to determine what weight, if any, you will afford that item of evidence in your final determination;
2. Apply the standard of proof and the evidence to each element of the alleged policy violation;
3. Make a determination as to whether or not there has been a policy violation.

Preponderance of the Evidence

More likely than not

Does not mean 100% true or accurate

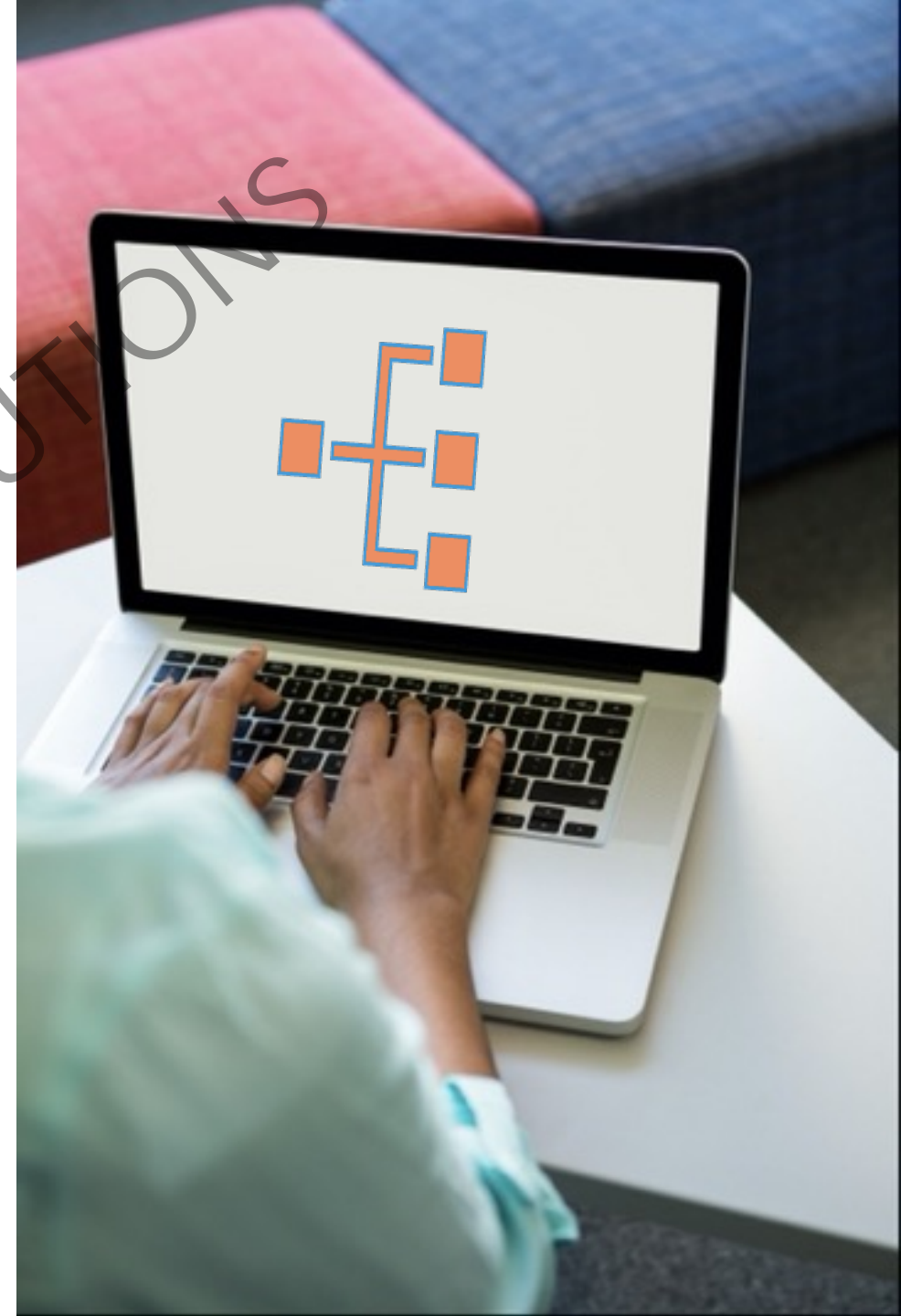
A finding of responsibility =
There was sufficient reliable, credible evidence to support a finding, by a preponderance of the evidence, that the policy was violated

A finding of not responsible =
There was not sufficient reliable, credible evidence to support a finding, by a preponderance of the evidence, that the policy was violated



Policy Analysis

- Break down the policy into elements
- Organize the facts by the element to which they relate



Allegation: Fondling




Fondling is the:

- ❑ touching of the private body parts of another person
- ❑ for the purpose of sexual gratification,
- ❑ without the consent of the victim,
 - ❑ including instances where the victim is incapable of giving consent because of their age or **because of their temporary or permanent mental incapacity.**

Analysis Grid

Touching of the private body parts of another person	For the purpose of sexual gratification	Without consent due to lack of capacity
Undisputed: Complainant and Respondent agree that there was contact between Respondent's hand and Complainant's vagina.	Respondent acknowledges and admits this element in their statement with investigators. "We were hooking up. Complainant started kissing me and was really into it. It went from there. Complainant guided my hand down her pants..."	Complainant: drank more than 12 drinks, vomited, no recall Respondent: C was aware and participating Witness 1: observed C vomit Witness 2: C was playing beer pong and could barely stand Witness 3: C was drunk but seemed fine Witness 4: carried C to the basement couch and left her there to sleep it off.

Apply Preponderance Standard to Each Element

Touching of the private body parts of another person	For the purpose of sexual gratification	Without consent due to lack of capacity
<p>Undisputed: Complainant and Respondent agree that there was contact between Respondent's hand and Complainant's vagina.</p> 	<p>Respondent acknowledges and admits this element in their statement with investigators.</p>  <p>"We were looking up. Complainant started kissing me and was really into it. It went from there. Complainant guided my hand down her pants..."</p>	<p>Complainant: drank more than 12 drinks, vomited, no recall Respondent: C was aware and participating Witness 1: observed C vomit Witness 2: C was playing beer pong and could barely stand Witness 3: C was drunk but seemed fine Witness 4: carried C to the basement couch and left her there to sleep it off.</p> 

Final Report

- The allegations
- Description of all procedural steps
- Findings of fact
- Conclusion of application of facts to the policy
- Rationale for each allegation
- Sanctions and remedies
- Procedure for appeal

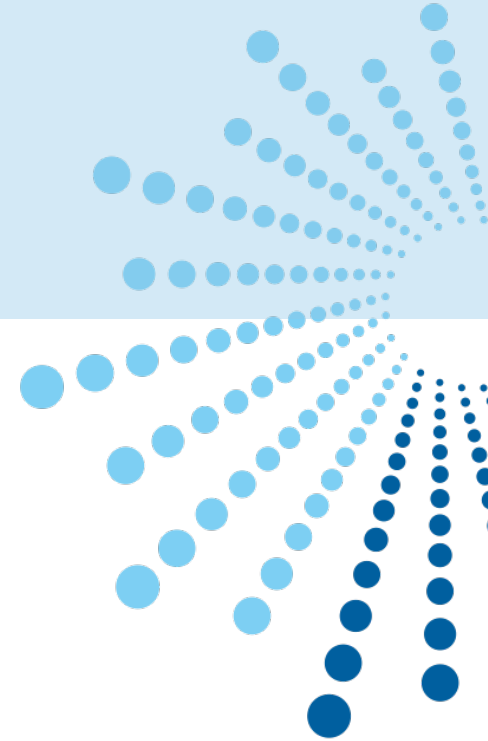




Practical Application

07

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Scenario 1

During the hearing, Witness 1 appears. Witness 1 answers all relevant questions by the Decision Maker, the Complainant's Advisor, and the Respondent's Advisor. After cross by both Advisors, the Decision Maker asks a second round of questions. Witness 1, who is now tired and frustrated, refuses to answer any of the Decision Maker's follow up questions.

- **Can the Decision Maker rely upon/consider the statements of Witness 1?**



Scenario 2A

Respondent provides a polygraph report to investigators wherein it is concluded that Respondent is not being deceptive when denying the allegations.

- **The Investigator determines the report is irrelevant. Must the Investigator share the report with the decision maker?**



Scenario 2B

Respondent provides a polygraph report to Investigators wherein it is concluded that Respondent is not being deceptive when denying the allegations. The polygrapher appears and declines to answer all questions posed on cross by Complainant's advisor.

- **Can the Decision Maker consider the answers to other questions during the hearing? The report?**



Scenario 2C

Respondent provides a polygraph report to Investigators wherein it is concluded that Respondent is not being deceptive when denying the allegations. The polygrapher appears and answers all relevant questions on cross.

- **Must the Decision Maker find Respondent not responsible because of the findings in the report?**



Scenario 3

Complainant provides records of a sexual assault forensic exam. In the record, the nurse notes that Complainant had bruising on her inner thighs and abrasions on her cervix. The nurse does not appear at the hearing. Complaint testifies and fully submits to cross. In her testimony she states that she saw bruises on her inner thighs and that the nurse told her about the injuries to her cervix.

- **Can the DM consider evidence of the inner thigh injuries?**
- **Can the DM consider evidence of the injuries to C's cervix?**



Scenario 4

Respondent appears at the hearing with Witness 7. Respondent would like Witness 7 to provide information testimony about text messages between them and Complainant that indicate that Complainant has made the allegations up.

- **Can the DM hear from Witness 7 at the hearing?**

The Formal Complaint charges Respondent with sexual assault for engaging in sexual contact with Complainant when she was incapacitated by alcohol. Specifically, Complainant alleges that they were at a party with friends when they met Respondent. Complainant reported that prior to the party she pre-gamed with Witness 1 and they split a bottle of prosecco. Complainant stated that while at the party, Respondent and Witness 2 approached her and her friend, Witness 3, and asked if they would be their partners in a round of beer pong. Complainant reported that she paired up with Respondent and they played several rounds. She further alleged that that Respondent was the one who filled their cups. Complainant stated that she "got drunk fast" and her last memory was of Respondent handing her a celebratory shot because they had won the tournament. Her next memory was waking up on a couch in a bedroom that was unfamiliar to her, naked from the waist down. Respondent was on the floor next to her, asleep. He was under a blanket but was also naked.

Witness 1

Witness 1 was interviewed by the investigator and reported that she and Complainant are roommates, but they are not close. Witness 1 is an athlete and tends to hang out with her teammates. She stated that for this reason, they rarely hang-out, but that the night of the alleged incident they did because they were planning on going to the same party. Witness 1 stated that they split a bottle of prosecco, but that Complainant drank most of it because Witness 1 had an early practice the next morning and so didn't want to get "too messed up." Witness 1 said that they went to the party together, but then went their separate ways. Witness 1 stated that towards the end of the night, she saw Complainant and described her as "a disaster." She also reported that Respondent was "practically carrying her" and so she approached them and offered to take Complainant home. According to Witness 1, Complainant said she was fine, but her words were slurred, and she could barely stand. Witness 1 told Respondent to take care of her and he said, "I'm just going to put her to bed."

She didn't see either party again that night.

At the hearing, Witness 1 gave testimony that was substantially the same as what she told the investigator.

Witness 2

Witness 2 told the investigators that he is Respondent's best friend and teammate. Witness 2 stated that when looking for partners for the beer pong tournament, Respondent saw Complainant and Witness 3 and suggested that they approach them because Complainant "was hot" and Witness 3 "looked drunk enough to be a good time." Witness 2 said that Complainant was fine and didn't appear to be that drunk. He also stated that she made most of the winning shots after several rounds of the game so she couldn't have been too messed up. When asked who was filling the cups, he said that he wasn't sure who did it each round, but he definitely saw Complainant fill them on two occasions. After the tournament was over, he helped Witness 3 get home and so didn't see Complainant and Respondent again that night. He also mentioned that he and Witness 3 are now dating.

At the hearing, Witness 2 testified that Complainant was fine. He also stated that Respondent never filled Complainant's cup and that Complainant was all over Respondent the entire night.

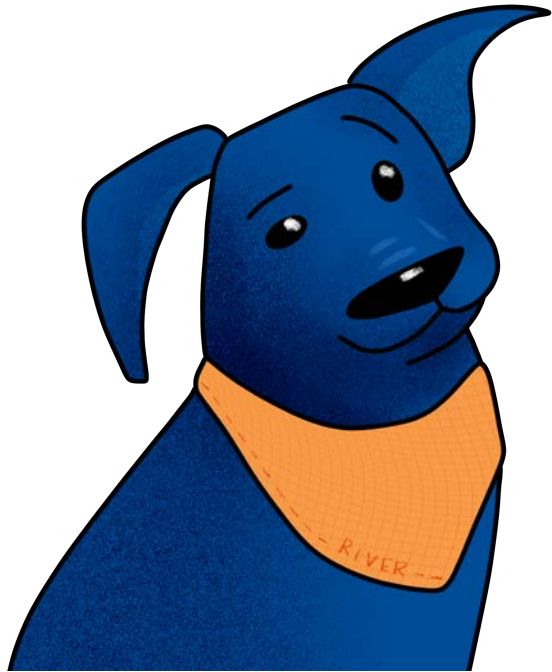
Witness 3

Witness 3 was Complainant's best friend at the time of the incident. They are no longer close and Witness 3 is now dating Witness 2.

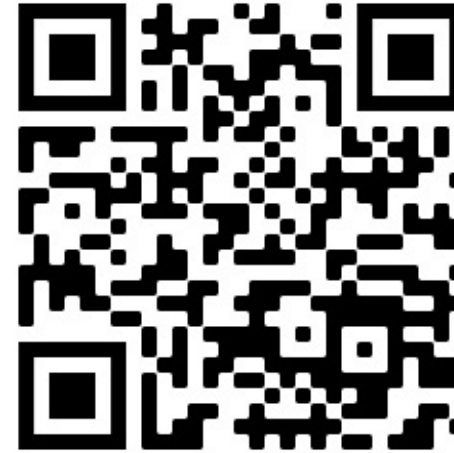
Immediately following the alleged incident, Witness 3 told the investigators that Complainant was already drunk when she got to the party. She stated that Respondent and Witness 2 asked them to play beer pong and they agreed. She stated that the parties seemed to hit it off immediately. She stated that they won the tournament and so played at least five rounds and that by the end of the game Complainant was the "drunkest she had ever seen her." Witness 3 stated that Complainant was slurring her words, couldn't stand on her own, and was really loud, which is not like her. Witness 3 stated that that she was pretty drunk too, but not as bad as Complainant. Witness 3 stated that she left the party with Witness 2.

At the hearing, Witness 3 stated that she may have exaggerated her description of Complainant when she spoke to the investigators. She told the decision makers that although Complainant drank a lot, she wasn't that out of it, because she had a high tolerance and drank a lot all the time.

Questions?



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