



**U.S. Department of Justice
Office of the Inspector General
Evaluation and Inspections Division**

Review of the USAOs' and EOUSA's Disciplinary Process

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EXECUTIVE SUMMARY

INTRODUCTION

The U.S. Attorneys are the principal litigators for the U.S. government and oversee the operations of the 94 United States Attorney's Offices (USAO) located throughout the United States and its territories. The Executive Office for U.S. Attorneys (EOUSA) acts as a liaison between the headquarters of the Department of Justice (Department) and the USAOs and provides management oversight and administrative support to the USAOs. In this review, the Office of the Inspector General (OIG) evaluated the consistency, timeliness, and outcomes of the four phases of the discipline process of the USAOs and EOUSA, including the reporting and investigation of alleged misconduct, the adjudication of misconduct cases, and the implementation of the discipline imposed.

RESULTS IN BRIEF

Overall, we found that some aspects of the USAO and EOUSA discipline system worked well, but improvement is needed.

EOUSA is hampered in its ability to fully evaluate the disciplinary process and ensure that discipline decisions are consistent and reasonable. We found that case file documentation on misconduct cases was not centrally located and the files that do exist are incomplete. No one entity in EOUSA has the responsibility or authority to maintain a complete, centralized case file that includes all documents relevant to the disciplinary process, from the reporting, inquiry, and adjudication of misconduct allegations through the implementation of penalties for those allegations determined to be actual misconduct. As a result, EOUSA could not easily determine the actual number of misconduct cases for all the USAOs and EOUSA, how many misconduct allegations were referred to the OIG and the Department's Office of Professional Responsibility (OPR), whether penalties were implemented, or more generally evaluate disciplinary trends and problems or the efficacy of the disciplinary process itself. Additionally, the lack of documentation limited the ability of EOUSA's General Counsel's Office (GCO) to conduct comprehensive searches and analyses of case precedents.

USAO and EOUSA reporting, inquiry, and adjudication of misconduct and the implementation of penalties were generally consistent and do not appear to be unreasonable for the cases we were able to evaluate. Our review of the inquiry, adjudication, and implementation phases of the disciplinary process was limited by a lack of documentation in the case files. From our review of the documentation in the files, it appeared that the USAOs and EOUSA consistently reported misconduct to GCO and that GCO appropriately referred those allegations to the OIG and OPR when necessary. We also determined that the nature of USAO and EOUSA inquiries varied within offense types. However, we did not find that the differing levels of inquiry and documentation of the inquiry were unreasonable based on the individual case circumstances as we were able to determine them. Similarly, in the case files with sufficient information, we found that adjudications varied across offense types, but we generally did not find that the results reached were unreasonable based on the evidence and facts of the cases we were able to review. We also found that the USAOs and EOUSA were implementing penalties consistently. However, we could not conclude that these findings would be consistent across the USAOs because some of the case files we reviewed had insufficient information to draw any conclusions. We also conducted an in-depth review, discussed below, of sexual harassment and computer misuse allegations.

The USAOs and EOUSA were consistent in applying formal discipline for computer misuse involving pornography and informal penalties for the first-time offenses of computer misuse involving adult images.¹ We found that the handling of allegations of computer misuse involving pornography and allegations involving adult images was consistent and reasonable. The OIG believes these two serious offense types had consistent penalties in part because the cases were supported by concrete evidence of misconduct. In addition, EOUSA developed directives and policy to address these offenses. Further, GCO developed a table of cases and outcomes specifically applicable to these types of computer misuse to aid GCO attorneys when advising the USAOs on appropriate penalties.

¹ DOJ Order 2740.1A prohibits the creation, download, viewing, storage, copying, or transmission of sexually explicit or sexually oriented materials. GCO categorizes these activities as two types of offenses: “computer misuse – pornography” and “computer misuse – adult images.” Adult images include material that has sexual content or that is sexually suggestive but not within the definition pornography.

The lack of centralized documentation hampered our ability to assess the handling of sexual harassment allegations. While EOUSA policy directs the USAOs to memorialize the initial complaint and inquiry, we could not find this documentation in almost half of the GCO case files for allegations of sexual harassment. Consequently, it was difficult to evaluate the inquiries and outcomes reached, and whether they were done within the time period designated by EOUSA policy for such cases. This also made it difficult to determine what was alleged to have occurred and whether the allegations were substantiated after the inquiries. In the limited number of cases where there was sufficient documentation for us to evaluate the adjudication, we did not find the outcomes reached to be unreasonable based on the facts and circumstances available in the record. However, the lack of documentation in sexual harassment cases also could limit the ability of EOUSA to use these cases as precedent for future disciplinary decisions.

The USAOs and EOUSA are consistent in employing progressive discipline to address misconduct. We found that the USAOs and EOUSA employed progressive discipline consistently. GCO advised supervisors to use the lowest level discipline that would correct the misconduct or behavior and to progressively increase the penalty as misconduct continued. However, due to a lack of documentation in the case files, we were unable to determine if the suspensions or removals called for by the disciplinary process actually were imposed in 40 percent of those cases.

The USAOs and EOUSA have no specific timeliness standards to measure the performance of the disciplinary process and do not document the time taken by the process. While the Department does not require components to meet specific timeliness goals, it is important to ensure discipline cases are investigated and adjudicated in a reasonable amount of time. The lack of documentation in the discipline case files hindered our timeliness analyses. However, in the cases with sufficient information to review, we found that the USAOs and EOUSA were investigating and adjudicating misconduct cases in times comparable to the timeliness standard set by the Department's law enforcement components. The median time to adjudicate misconduct cases from open to close was 144 days for all cases resulting in formal discipline and 43 days for all cases resulting in informal discipline. By comparison, the Department's law enforcement components generally have a goal to complete such investigations and adjudications within 120 to 180 days.

RECOMMENDATIONS

We make four recommendations in this report to improve the USAOs' and EOUSA's management of the disciplinary process. We recommend that EOUSA delegate responsibility for maintaining complete misconduct case files that include a statement of substantiation or a report memorializing the findings of the inquiry and set timeliness goals for the inquiry and adjudication of misconduct cases. In addition, GCO should create and maintain an updated table of case precedents for sexual harassment and other serious misconduct offenses, and establish and implement data controls in its misconduct case file management system.

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BACKGROUND

Introduction

Federal agencies have the duty to maintain an orderly and productive work environment to ensure their missions are carried out in an efficient and effective manner. Federal employees are properly held to the highest standards of integrity and conduct to maintain the confidence and trust of the public they serve. To maintain these standards, federal agencies establish disciplinary systems that address and correct employee misconduct and communicate to employees which behavior is not acceptable. The system should be implemented uniformly and result in disciplinary decisions that are consistent and reasonable.

Since disciplinary systems play a significant role in ensuring the efficiency of government services and fair and equitable treatment of all covered employees, the Office of the Inspector General (OIG) has performed five reviews assessing the disciplinary systems of the Department of Justice (Department) law enforcement components: the Bureau of Alcohol, Tobacco, Firearms and Explosives; the Drug Enforcement Administration; the Federal Bureau of Prisons; the Federal Bureau of Investigation; and the U.S. Marshals Service.² In this review, we assessed the consistency, timeliness, and outcomes of the four phases of the discipline process of the U.S. Attorney's Offices (USAO) and the Executive Office for U.S. Attorneys (EOUSA): (1) the reporting of alleged misconduct to the EOUSA General Counsel's Office (GCO) and from GCO to OIG and the Office of Professional Responsibility (OPR), (2) the investigation or inquiry into the alleged misconduct, (3) the adjudication of misconduct, and (4) the implementation of the discipline imposed for misconduct by USAO and EOUSA employees.³ We also evaluated whether the processes for investigations and adjudications were complete and objective.

² See Appendix I for a list of the five previous OIG reports and other related reports.

³ We defined consistency as whether a disciplinary system processed similar misconduct cases using uniform standards and whether similar penalties were imposed for similar misconduct. We considered outcomes not to be unreasonable if the record as a whole contained sufficient evidence to allow a reasonable person to support the same conclusion, even though another reasonable person might have reached a different conclusion.

USAOs and EOUSA

The U.S. Attorneys are the principal litigators for the U.S. government and oversee the operations of the 94 USAOs located throughout the United States and its territories. EOUSA acts as a liaison between the Department and the USAOs, and also provides them with management oversight and administrative support. The EOUSA GCO consults with and provides advice to USAO and EOUSA managers on addressing employee misconduct. It offers guidance on the disciplinary process, including researching precedent and appropriate penalties, but disciplinary outcomes are decided by managers in the individual USAOs and EOUSA.⁴ In fiscal year (FY) 2012, the USAOs and EOUSA had 12,379 authorized positions for attorneys and support personnel, and a combined FY 2012 enacted budget of \$1.96 billion.

Legal Foundation for the Disciplinary System

The laws and regulations establishing the legal framework governing the discipline of most employees in the federal service, including USAO and EOUSA employees, are in 5 U.S.C. Chapter 75 and 5 C.F.R. Part 752.⁵ Additional policies and procedures directing how the Department handles discipline and adverse actions are in Department of Justice (DOJ) Order 1200.1.⁶ This Order outlines the roles and responsibilities of management officials seeking to impose formal discipline and delineates the mechanics of the inquiry, notice, adjudication, and grievance process applicable to most Department employees. The Order also outlines the rights of employees who appeal their discipline decision in third party administrative proceedings before the Merit Systems Protection Board (MSPB) or mediate the decision in

⁴ GCO also represents the Department in administrative proceedings before the Merit Systems Protection Board (MSPB) and the U.S. Equal Employment Opportunity Commission (EEOC). The MSPB is an independent, quasi-judicial agency in the executive branch that hears appeals of various agency decisions, most of which are appeals of agencies' adverse actions in discipline cases. The EEOC is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, or genetic information. Most employers with at least 15 employees are covered by EEOC laws (20 employees in age discrimination cases). Most labor unions and employment agencies are also covered. The laws apply to all types of work issues, including hiring, firing, promotions, harassment, training, wages, and benefits.

⁵ 5 U.S.C. §§ 7501-7504, 7511-7514 (2009), 5 C.F.R. § 752.201-752.606 (2009).

⁶ DOJ Order 1200.1, Chapter 3-1, Discipline and Adverse Actions (August 25, 1998).

binding arbitration. DOJ Order 1200.1 further describes the record retention and training requirements applicable to the disciplinary system.

The U.S. Attorneys' Manual (USAM) 3-4.000 outlines misconduct policy and statutes as they relate to USAOs and EOUSA specifically. USAM 3-4.000 describes the policies and procedures for handling personnel management issues in the USAOs and EOUSA, and USAM 3-4.752 specifically delegates authority to certain persons in USAO and EOUSA executive management to issue, propose, and decide adverse actions against Assistant U.S. Attorneys (AUSA) and non-attorney support staff. USAM 3-4.771 further delegates authority to USAO and EOUSA management officials to receive, refer, and issue decisions on employee grievances. When viewed together, these provisions create a system of discipline and adverse actions that defines the rights of management and employees.

The Discipline Process

The USAO and EOUSA disciplinary process consists of four phases: reporting, inquiry or investigation, adjudication, and implementation, which are discussed below.

Reporting

Allegations of misconduct can be reported by many sources. According to the U.S. Attorneys' Manual, USAO and EOUSA employees must report all non-frivolous allegations of misconduct to appropriate USAO and EOUSA officials, such as their supervisors. In the USAOs, supervisors generally report misconduct to USAO executive management (which includes the U.S. Attorney, First Assistant U.S. Attorney, and Executive Assistant U.S. Attorney) and possibly Human Resources.⁷ USAO executive management then contacts GCO or directs the supervisor to contact GCO, depending on the type of misconduct alleged and the type of employee (support staff or attorney). This process can vary across USAOs. In EOUSA, first- or second-line supervisors report misconduct up the supervisory chain and contact GCO. Allegations of computer misuse are usually first identified by the Department's Justice Security Operations Center and reported to EOUSA, which in turn contacts GCO.

⁷ There is no requirement to contact Human Resources, but some USAOs may involve the Human Resources unit in the disciplinary process.

All non-frivolous allegations of serious misconduct or criminal activity against USAO and EOUSA employees must also be reported to the OIG.⁸ The USAOs or EOUSA may report allegations directly to the OIG, but usually report to GCO, which then contacts the OIG. When the OIG receives an allegation of misconduct, it determines whether the matter is appropriate for investigation by the OIG or declines the referral. When the OIG declines a referral, it is sent back to the USAO or EOUSA for their management to determine how to handle the matter.

Allegations of misconduct involving Department attorneys and law enforcement personnel that relate to the exercise of their authority to investigate, litigate, or provide legal advice are, by statute, excluded from the jurisdiction of the OIG. Instead, such allegations of professional misconduct are referred to the Department's OPR.⁹ USAOs may report a professional misconduct allegation directly to OPR, attorneys can self-report to OPR, or USAOs can consult with GCO first and then report the allegation to OPR. OPR may accept or decline a referral.

Inquiry or Investigation

For investigations handled by the OIG, if the OIG investigates the allegations and believes that the misconduct allegation involves potential criminal activity, the OIG consults with the appropriate prosecutor's office to evaluate the possibility of filing criminal charges. If the prosecutor declines to bring criminal charges, or if the matter involves non-criminal misconduct allegations, the OIG sends its Report of Investigation, which contains the OIG's findings, to the USAO and EOUSA, which review it for adjudication of discipline.

For misconduct investigations handled by OPR, OPR may close the matter without investigation or after a preliminary inquiry if it finds no misconduct, or OPR may conduct a full investigation. If OPR makes a finding of professional misconduct involving an attorney from a USAO, it provides a Report of Investigation to the Department's Professional

⁸ 28 C.F.R. Parts 0 and 45 and U.S. Department of Justice, Office of the Inspector General, *Inspector General Manual*, Volume III – Investigations, Chapter 205 – Handling Complaints, Section 205.4, April 22, 2009; see generally the *Inspector General Act of 1978*, as amended, 5 U.S.C. App § 8(E)(b)(2) (providing the Inspector General the authority to investigate any Department employee misconduct).

⁹ 28 C.F.R. Parts 0 and 45, and the *Inspector General Act of 1978*, as amended, 5 U.S.C. App § 8E 3(b)(2).

Misconduct Review Unit (PMRU) for adjudication of the case.¹⁰ OPR findings of poor judgment, mistake, or cases in which it makes no findings are sent back to the USAO for adjudication and determination of any discipline.

For investigations that are handled by USAOs or EOUSA, supervisors may conduct an inquiry to help determine whether misconduct occurred and whether to discipline an employee. No Department or EOUSA policies direct that a formal investigation must be conducted for allegations of misconduct handled at a USAO or EOUSA. The necessity for and scope of any such inquiry is determined by supervisors based on the facts and circumstances of each particular case. The inquiries at USAOs and EOUSA are conducted by supervisors or may be delegated to a neutral party. For USAOs, this may be an employee of another USAO and, at EOUSA, it may be another supervisor in EOUSA. Most misconduct allegations do not require an extensive investigation or inquiry and are handled by the supervisor, who may collect evidence such as witness statements, arrest reports, or credit card statements. GCO may advise on what types of evidence the supervisor should collect.

Adjudication

Adjudication is the process by which the evidence supporting discipline is evaluated and the disciplinary penalty is determined. When misconduct is substantiated by an inquiry or investigation, it can be addressed by either informal or formal discipline. DOJ Order 1200.1 requires supervisors to consult with what is referred to as the servicing personnel office, and EOUSA, before proposing formal discipline, but this is not required for informal discipline.¹¹ Informal discipline includes oral counseling, oral admonishment, or a letter of admonishment. Informal

¹⁰ In January 2011, the Department created the PMRU to adjudicate all findings of professional misconduct arising from the USAOs and the Criminal Division. The PMRU has the authority to issue, propose, and decide adverse actions for attorneys that are found to have committed professional misconduct. In the past, OPR referred findings of professional misconduct back to the USAOs for management to make a discipline decision. Today, the PMRU makes the discipline decision, but PMRU asks the USAO for an assessment of the Douglas Factors, and the subjects provide oral and written replies directly to the PMRU deciding official. (See footnote 12 and Appendix II for further discussion of the Douglas Factors.)

¹¹ DOJ Order 1200.1, Chapter 3-1, Discipline and Adverse Actions (August 25, 1998). EOUSA delegates some administrative functions, such as human resources, to 59 USAOs' Servicing Personnel Offices. The other 35 USAOs utilize the administrative services at EOUSA.

discipline is usually issued by the first-line supervisor or higher level management within the USAO or EOUSA.

Formal discipline has a more structured process than informal discipline, and the supervisors delegated to adjudicate the discipline differ for attorney and non-attorney staff. Formal discipline includes a letter of reprimand (which is considered the lowest form of formal discipline), suspension, or removal. Suspensions and removals require that a proposing official issue a proposal letter. The employee then has the opportunity to provide an oral and a written reply to the deciding official. The deciding official then weighs all the evidence, the employee's reply, and the Douglas Factors to make the ultimate decision about the penalty.¹²

USAM 3-4.752 gives the authority to issue, propose, and decide formal discipline for attorney misconduct, other than allegations of professional misconduct, as shown in Table 1.¹³ As set forth in Table 1, decisions on the most serious forms of attorney discipline, consisting of suspensions of 15 days or more, reductions in grade or pay, or removal, may be proposed by U.S. Attorneys for AUSAs in their offices, but are decided by higher level management at EOUSA.

¹² Under civil service law, there are 12 factors, known as the Douglas Factors that should be considered in determining the appropriateness of a disciplinary penalty. See *Douglas v. Veterans Administration*, 5 M.S.P.B. 313 (1981). See Appendix II for a list of the Douglas Factors.

¹³ According to 28 C.F.R. Parts 0 and 45, professional misconduct is any misconduct involving Department attorneys that relates to their exercise of their authority to investigate, litigate, or provide legal advice.

Table 1: Authority for Handling Formal Discipline Against Attorneys

Action	Delegated Authority to Issue
Written Reprimands	Director, EOUSA, or designee; Principal Deputy Director, EOUSA; Counsel to the Director, EOUSA; U.S. Attorneys; and First Assistant U.S. Attorneys
Suspensions (14 Days or Less)	<u>Proposals:</u> Director, EOUSA, or designee; Principal Deputy Director, EOUSA; Counsel to the Director, EOUSA; U.S. Attorneys; and First Assistant U.S. Attorneys <u>Decisions:</u> Director, EOUSA, or designee; Principal Deputy Director, EOUSA; Counsel to the Director, EOUSA; and U.S. Attorneys
Suspensions (15 Days or More), Reductions in Grade/Pay, Removal	<u>Proposals:</u> Director, EOUSA, or designee; Principal Deputy Director, EOUSA; Counsel to the Director, EOUSA; and U.S. Attorneys <u>Decisions:</u> Director, EOUSA, or designee; Principal Deputy Director, EOUSA; and Counsel to the Director, EOUSA

Source: U.S. Attorneys' Manual.

For non-attorney support staff, USAM 3-4.752 gives U.S. Attorneys and the Director of EOUSA the authority to issue, propose, and decide formal discipline for non-attorney staff, but they may delegate this authority to first- and second-line supervisors. The USAM requires that second-line supervisors make decisions on suspensions, reductions in grade or pay, or removals. How this authority is delegated can vary among USAOs. While the first- and second-line supervisors handle the adjudication in some districts, in others the chief of a section or higher level executive management handle the adjudication. The proposing official is usually the first-line supervisor and the deciding official is usually the second-line supervisor. However, an official higher on the supervisory chain may adjudicate the matter depending on the USAO, the type of misconduct, or if there is a conflict with a supervisor acting as a proposing or deciding official.

Implementation

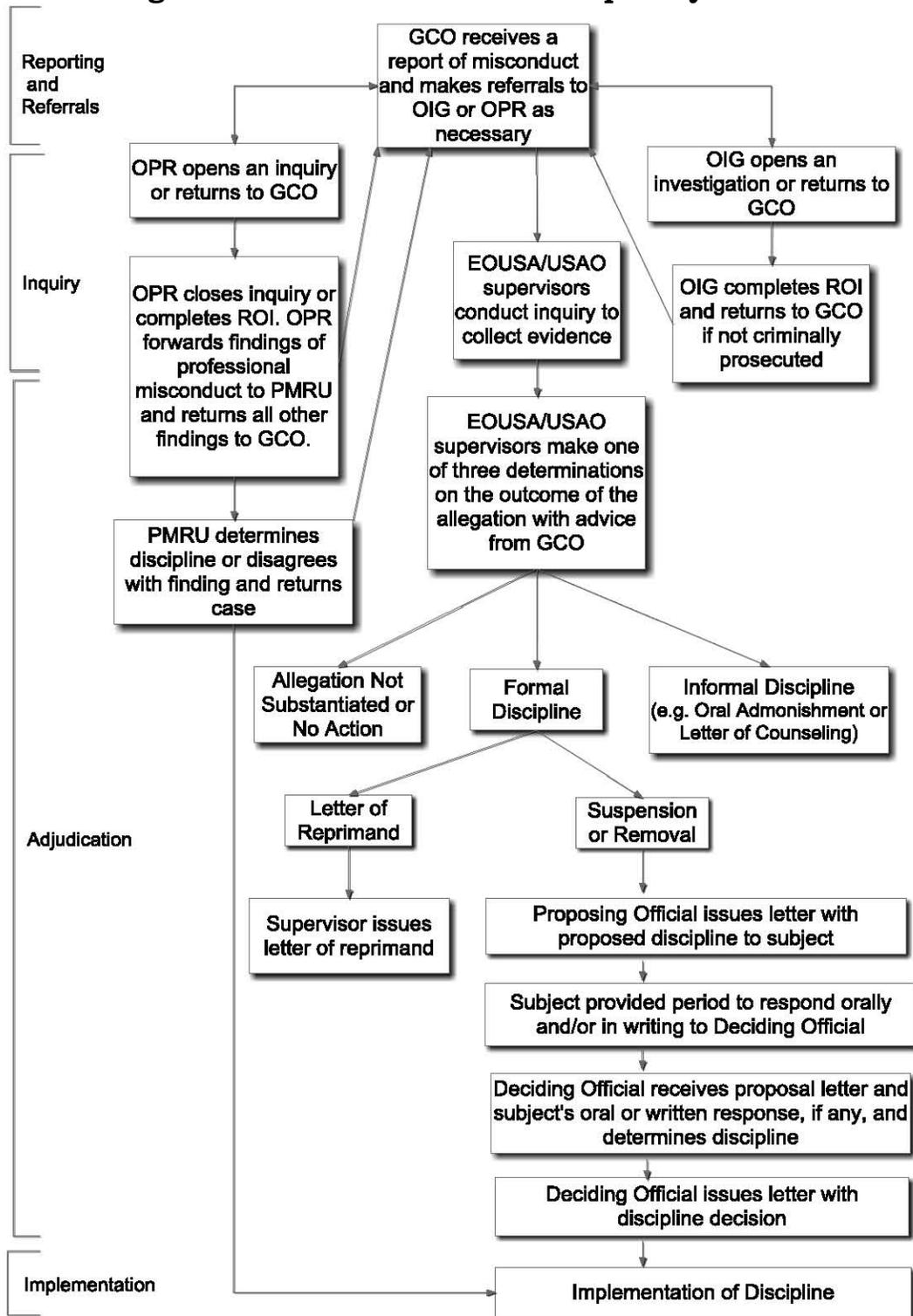
The USAO or EOUSA is responsible for initiating the implementation of discipline for its employees. If the penalty is a letter of reprimand, the supervisor that issued the letter sends it to Human Resources (either at the USAO or EOUSA) to be placed in the employee's official personnel file. The letter can remain in the employee's file for no

more than 3 years. A supervisor has the discretion to remove the letter prior to the 3-year limit.¹⁴ If the penalty is a suspension or removal, the supervisor notifies the respective human resources office, either at the USAO or EOUSA, and that office issues a standard form requesting the action. EOUSA Human Resources then processes the standard form implementing the action. Supervisors have the discretion to determine when employees will serve their suspension.

Figure 1 on the next page outlines in a flow chart the disciplinary process from the time an allegation of misconduct is reported to GCO.

¹⁴ DOJ Order 1200.1 allows each component to maintain copies of the removed letter of reprimand for statistical purposes, and the letter can be used in certain circumstances to support more serious discipline for later offenses.

Figure 1: USAO and EOUSA Disciplinary Process



SCOPE AND METHODOLOGY OF THE OIG REVIEW

Scope

This review covered allegations of misconduct by USAO and EOUSA employees that resulted in disciplinary action or decisions to take no action, from FY 2009 through FY 2011. We excluded misconduct cases that were still open as of the date of our data request, and we did not review investigations of professional misconduct, as those are conducted by OPR.

Methodology

Our review included interviews, data analysis, case file reviews, and site visits. We reviewed applicable laws, regulations, policy, and written procedures related to the disciplinary process. We collected and analyzed data from EOUSA and its GCO, OPR, and the OIG's Investigations Division.

Interviews

We interviewed officials and staff members at EOUSA, the EOUSA General Counsel's Office, and officials and staff members at our site visits to USAOs. We also interviewed officials of the OIG's Investigations Division, OPR, and the Department's Security and Emergency Planning Staff.

Data Analyses and Case File Reviews

We collected and analyzed component data on misconduct and discipline decisions from EOUSA from FY 2009 through FY 2011. Specifically, we reviewed misconduct case files from the GCO case management system referred to as "management-employee relations matters" (MER). GCO classifies misconduct, vetting questions, performance issues, and advice to USAOs regarding those topics as MERs. We initially received 1,353 MERs from EOUSA with limited information for each MER. We analyzed these MERs and were able to associate 671 of the 1,353 MERs with misconduct. We reviewed the case files for these 671 MERs in the GCO case management system to fill in missing information. From the review of these 671 case files, we determined that there were 563 misconduct allegations during our study period. We conducted a thorough review of 174 of these 563 case files, and our methodology for selecting the files to review is described in Appendix III. We also collected and analyzed data from the OIG and OPR

on referrals and EOUSA Human Resources on implementation of discipline.

Site Visits

To determine how the disciplinary process works in the USAOs and to obtain additional information and opinions about the efficacy of the process, we conducted six site visits. We made one site visit to EOUSA and five to USAOs in the Central District of California, the District of Columbia, the Eastern District of New York, the Eastern District of Virginia, and the Western District of Texas. We selected the site visits based on a variety of factors, including geographic location, size of the USAO, number of misconduct cases, and variety of offenses or misconduct.

RESULTS OF THE REVIEW

CHAPTER I: INCOMPLETE MISCONDUCT CASE FILES

EOUSA is hampered in its ability to fully evaluate the disciplinary process and ensure that discipline decisions are consistent and reasonable.

We found that case file documentation on misconduct cases was not centrally located and the files that did exist were incomplete. Because of its advisory and legal role, GCO had the most extensive information in its case management system, but GCO's files were not complete for several reasons. For example, USAOs are not required to provide misconduct information to GCO unless a case is appealed. Also, there are only limited requirements for GCO employees to complete or update the case management system when misconduct information is received. As a result, EOUSA cannot easily determine the number of misconduct cases or determine whether penalties are implemented. Additionally, GCO attorneys may be limited in their ability to find precedents in the case management system.

Incomplete Misconduct Case Files

We found that documents and information about misconduct cases exist in different locations, and no one case file may contain all information concerning a case. During our site visits to USAOs, we learned that supervisors (including the First Assistant U.S. Attorney, the Executive Assistant U.S. Attorney, Division Chiefs, or support staff supervisors) typically maintained a "working" or "drop" file with varying levels of completeness. Generally, the supervisors told us, and we saw some evidence during our site visits, that they kept drafts of the proposal and decision letters, e-mails, correspondence, and notes from any meetings concerning the proposed action on an informal basis. They all commented that they relied on GCO to maintain the "official" disciplinary case file.

Although the USAOs relied on GCO to maintain the official disciplinary file, GCO maintained only a part of the case file. EOUSA has not delegated responsibility to maintain an official misconduct case file to any entity. GCO is responsible for maintaining documents necessary in litigation, and EOUSA Human Resources or the USAO Human Resources divisions keep documentation related to implementation of misconduct penalties, such as Standard Form 50s (SF-50), in the employee's official personnel file.

Our review revealed that the GCO case management system had data fields that would provide sufficient information about the disciplinary process. However, we found that many of the data fields were blank or not completed consistently and that the assigned GCO attorneys did not attach or copy documents into the system consistently. We found that data fields that provided specific information about the disciplinary process, such as the case outcome, discipline charges, and a description of the allegation, were not always filled in or were filled in early in the case and not updated to reflect resulting changes or developments. For example, every matter entered in the case management system contained a “matter description” field. This field was designed to provide a quick summary of what occurred or what was alleged in the case. In 58 of the 563 case files we identified as misconduct allegations, the GCO attorney wrote little information in the field or entered a generic description that provided no details as to what occurred. We did find that general information fields, such as the name of subject, position of subject, open date, and closed date, were mostly completed in the case management system.

We determined that both inadequate procedures for completing the data fields in the GCO electronic case file and insufficient adherence to the data control procedures that did exist contributed to GCO’s incomplete misconduct files. The written guidance for the GCO case management system only outlined basic instructions, such as when and how to open and close cases or how to link related cases. We did not find written requirements for GCO attorneys to fill in all necessary data fields and they often copied e-mails or documents into the case file without updating the corresponding data field. In those instances, although the information was contained in the case file, it was not easily retrievable without reading through notes or e-mails.

GCO provided the OIG a demonstration of its case management system and described the data control procedures, including what data fields should be filled in with information and that the “matter description” field should include key words for future searches. Our review of the GCO case management system found that GCO attorneys were not consistently following these data control procedures. GCO officials also told us that whenever an employee is the subject of an allegation of misconduct, a new matter (or MER) should be opened in the GCO case management system, but we did not find written guidance to this effect. We found that in seven MERs, a new matter was not opened when a new allegation on the same employee was reported to GCO, most likely because a prior misconduct allegation was in the process of adjudication or it was similar conduct. For example, we reviewed a case file where a subject had four misconduct cases included under one MER.

After a careful review of the MER, we determined that the subject had four separate misconduct allegations (all of the same nature) and four separate outcomes. However, the GCO case management system data fields showed only one misconduct charge or offense and one outcome. All seven cases had more than one matter or allegation and outcome in the same case file.

Another contributing factor to GCO's incomplete misconduct files was the absence of a policy requiring USAOs or supervisors to provide documents pertaining to a disciplinary matter to GCO unless the matter was being litigated. Since there was no requirement, the USAOs often had to be reminded to provide final executed documents, such as the proposal and decision letter, and in some cases the documents were not provided. If formal discipline was not pursued, the USAO did not have to consult with GCO or provide documents and information memorializing what action was taken. During our file review we saw numerous instances where GCO attorneys had asked for copies of final documents or asked the USAO what resulted from the misconduct allegation. However, the GCO attorneys often had to request information numerous times, and we saw cases in which GCO finally closed the matter without any communication from the USAO regarding what happened in the matter.

We found EOUSA Human Resources records were similarly incomplete. When an employee is suspended or removed, a request for personnel action is documented on the Office of Personnel Management Standard Form SF-52. The request is made by the servicing personnel office, usually the USAO's Human Resources office or at EOUSA. Once the employee serves a suspension, Human Resources at the USAO or EOUSA will issue a notice of personnel action to the employee, an SF-50, evidencing the date on which service of the penalty began and when it was completed. If the employee is removed from service, the SF-50 will state the date the removal became effective. The issuance of an SF-50 provides the best evidence of whether disciplinary action was imposed. However, we were unable to locate 46 percent (63 of 138) of the SF-52s or SF-50s in EOUSA Human Resources records documenting penalty implementations.

Potential Issues Resulting from Incomplete Case Files

Because the misconduct case files were incomplete, EOUSA could not easily determine the actual number of misconduct cases for all the USAOs and EOUSA, how many misconduct allegations were referred to the OIG and OPR, whether penalties were implemented in all misconduct cases, or evaluate disciplinary process trends and issues. Additionally,

the absence of documentation limited the ability of GCO to conduct comprehensive searches and analyses of case precedents. As a result of these limitations, EOUSA was hampered in its ability to fully evaluate the four phases of its disciplinary process for consistency and reasonableness.

Determining the Number of Misconduct Cases and Misconduct Allegations Referred to OIG and OPR

EOUSA cannot easily determine how many misconduct cases it has in its GCO case management system without conducting a comprehensive review of the system and USAO files. EOUSA told us that from FY 2009 to FY 2011 there were 1,353 MERs closed, but we could not easily identify which of these 1,353 MERs were related to misconduct. These MERs included general questions, performance issues, suitability reviews, and misconduct matters. After reviewing the data and the case management system, we determined that approximately 671 of the 1,353 matters were related to a misconduct allegation.

Upon a more detailed review of each of the 671 case files, we determined that there were actually 563 misconduct allegations.¹⁵ In those cases, 221 employees (39 percent) received formal discipline, 150 (27 percent) received informal discipline, and 192 of the cases (34 percent) had other results. Of the 192 cases that had other results, we could not determine what happened in 17 cases. (See Appendix IV for a further breakdown of the misconduct allegations and outcomes.) Further, even though the USAOs and EOUSA are required to consult GCO about formal discipline, they are not required to do so for informal matters and may simply handle them internally. As a result, the number of incidents involving misconduct was almost certainly higher than reported during our study period.

We also had difficulty determining from EOUSA case files how many matters reported to GCO were forwarded to the OIG and OPR.¹⁶ While GCO documented all open investigations of USAO and EOUSA employees conducted by other entities, such as the OIG or OPR, it did not consistently designate which entity was handling the investigation

¹⁵ We reviewed the case files in the GCO case management system for all 671 MERs, reading e-mails, notes, and other documents to determine if the case, in fact, involved misconduct.

¹⁶ To determine if all allegations were appropriately referred to the OIG and OPR, we had to compare referral data from both those entities and EOUSA.

despite its case management system having a drop down menu for that purpose. Consequently, we had to make an inference from the matter description or read notes and e-mails in the case file to determine which entity handled a misconduct investigation. Additionally, when misconduct allegations were referred to the OIG and immediately declined, the referral was not documented in a uniform place in the MER. In many cases, we had to search the whole case file to find an e-mail or note reflecting the referral.

Verifying Implementation of Penalties

We were unable to easily determine whether discipline was implemented in all formal discipline cases because EOUSA was not able to provide complete documentation. To verify whether disciplinary penalties were implemented, we requested SF-50s for the 138 suspensions and removals that occurred during our study period from EOUSA Human Resources.¹⁷ EOUSA Human Resources had only 75 of the 138 forms we requested. EOUSA told us that some of the missing forms were a result of EOUSA no longer having access to the employee's official personnel folder.¹⁸ We further reviewed the suspension and removal cases in the GCO case management system to see if there was proof of implementation. We found documentation such as an e-mail or a note in the GCO case management system indicating that the penalty was implemented for an additional eight suspensions. Therefore, we found some type of proof of implementation for a total of only 83 of the 138 cases (60 percent) and no such proof in the remaining 55 cases (40 percent). Because of the absence of documentation in so many cases, EOUSA and the Department cannot be assured that USAO and EOUSA employees served the penalties imposed for misconduct.

Limited Case Precedent Searches

We found that incomplete case files also limited the ability of GCO to conduct comprehensive searches for case precedent. As part of their advisory role, GCO attorneys recommend appropriate ranges of discipline

¹⁷ The implementation phase of the disciplinary process is discussed in more detail later in this report.

¹⁸ Once employees separate from federal service, their official personnel folders are forwarded to the National Personnel Records Center. Federal agencies do not have access to these official personnel folders for individuals who are no longer employed with the federal government. Even though some USAOs have a Servicing Personnel Office that provides human resources services, EOUSA Human Resources has access to all current USAO employees' official personnel files and was able to provide us with the forms that were still accessible.

to USAOs. GCO attorneys told us that they conducted searches in the EOUSA GCO case management system and relied on the institutional knowledge of their colleagues and superiors to identify similar misconduct cases for precedent. However, many of the attorneys did not have a long tenure in GCO. This could be particularly problematic when the offense type or misconduct is rare or has traditionally resulted in informal discipline. As previously mentioned, informal discipline cases have much less documentation in the case files. Without better recordkeeping, GCO attorneys will not have a comprehensive database of precedents to search for guidance to help ensure discipline is imposed consistently for similar offenses.

Inability to Evaluate the Disciplinary Process

As a result of a lack of complete, centralized misconduct case files, we found that EOUSA is hampered in its ability to adequately evaluate the four phases of the disciplinary process, and cannot ensure that disciplinary decisions are consistent and reasonable. If EOUSA cannot determine the number of allegations reported or what kind of allegations were reported, except anecdotally, EOUSA cannot accurately identify trends or patterns of behavior, decisions, or penalties and cannot address emerging issues at a particular USAO or across the USAOs or EOUSA. In the following sections we discuss EOUSA's inability to fully evaluate the four phases of the disciplinary process.

CHAPTER II: EVALUATION OF THE DISCIPLINARY PROCESS

USAO and EOUSA reporting, inquiry, and adjudication of misconduct and the implementation of penalties were generally consistent and did not appear to be unreasonable for the cases we were able to evaluate. However, we did find some issues in all four phases of the disciplinary process that could not be explained by the case files.

Based on our analysis of GCO case files and interviews of USAO and EOUSA staff, it appears that in the cases we reviewed that the USAOs and EOUSA consistently reported misconduct to GCO and that GCO appropriately referred those allegations to the OIG and OPR when necessary. However, our review of the inquiry, adjudication, and implementation phases of the disciplinary process was hampered by a lack of documentation in the case files. For the case files with sufficient documentation to review, we determined that USAO and EOUSA inquiries were not always consistent within offense types; however, the differing levels of inquiry did not appear to be unreasonable based on the individual case circumstances. Similarly, we found that adjudications or outcomes were not always consistent within offense types, but generally did not appear to be unreasonable based on the available evidence. Lastly, for the cases with adequate documentation, we found that the USAOs and EOUSA were implementing penalties consistently.

Reporting

USAO and EOUSA employees appeared to be reporting misconduct. During our five site visits, we spoke with USAO and EOUSA support staff and attorneys at all levels, including USAO executive management. Employees uniformly told us that if they became aware of misconduct, they would report it to their supervisor or management. We did not find evidence that misconduct was not reported up the supervisory chain as appropriate.

Moreover, it appeared that managers are notifying and consulting with EOUSA GCO before taking formal discipline against an employee who has engaged in misconduct. And, although imposing informal discipline does not require notification to GCO, we found that 27 percent (150 of 563) of the misconduct cases we reviewed resulted in informal discipline. Consequently, we concluded that the USAOs and EOUSA were seeking GCO advice even when the penalty ultimately imposed did not require such consultation. Our data review also found that USAOs and EOUSA were consulting GCO on other matters such as suitability (for example, background checks, verification of employment, and verification of credentials) and performance issues. USAO and EOUSA

supervisors told us that GCO was extremely helpful and that they relied on GCO advice for a range of disciplinary issues, especially when considering formal discipline. One U.S. Attorney stated, “I don’t take a step [in discipline matters] without contacting GCO.”

Referrals to the OIG and OPR

Allegations involving criminal activity and other serious misconduct, such as misuse of position, must be reported to the OIG, and allegations of professional misconduct against Department attorneys must be referred to OPR.¹⁹ Based on data from EOUSA, the OIG, and OPR, we determined that GCO was appropriately referring misconduct allegations to the OIG and OPR. For OIG referrals, we compared reports of referrals from the GCO and the OIG’s Investigations Division case management systems to ensure that allegations of criminal activity and other serious misconduct were forwarded to the OIG.²⁰ During our study period, the 158 referrals to the OIG documented in the GCO case management system were also in the OIG’s Investigations Division case management system. The OIG’s Investigations Division officials stated that allegations from the USAOs and EOUSA were properly referred to the OIG.

For OPR referrals, we compared reports of referrals from the GCO case management system and the OPR database to ensure allegations of professional misconduct were referred to OPR.²¹ There were 230 referrals to OPR recorded in the GCO case management system during our study period. We were able to match all but five referrals that were in GCO’s system but not in OPR’s database. In one of the five cases, we found proof of referral based on an e-mail in the GCO case file. We consulted with OPR on the remaining four allegations that we were not able to verify as having been referred. The OPR Deputy Counsel stated that these referrals may not have been recorded in OPR’s case management system if they were made by telephone and did not warrant initiating an inquiry. For example, an AUSA may call GCO and be advised to self-report the incident to OPR. If OPR determines that it is

¹⁹ 28 C.F.R. Parts 0 and 45 and USAM 1-4.100.

²⁰ The USAOs or EOUSA may report allegations directly to the OIG, but usually report to GCO, which then contacts the OIG. Generally, if an allegation is reported directly to the OIG, the OIG notifies GCO.

²¹ The GCO case management system may not contain all referrals of allegations of professional misconduct because the USAOs may refer allegations directly to OPR.

not an OPR matter and it does not need to be reported, this type of report or referral would not be recorded in OPR’s database, but could be reflected as a MER at GCO. Overall, the OPR Deputy Counsel stated that he believed that all professional misconduct allegations from the USAOs and EOUSA were being properly referred to OPR.

Inquiry and Adjudication

Due to a lack of documentation in case files, our review of USAO and EOUSA inquiries and adjudications was somewhat limited. Generally, in our review of the 563 allegations, we found varied evidence of documentation that an inquiry was conducted and the level of the inquiry, ranging from notes in the case file to copies of e-mails or reports of investigations. Our review of the 563 allegations and our quantitative data analysis of the outcomes of the cases showed that the outcomes varied across most offense types.²² To evaluate the reasonableness of the results, we conducted three types of case file reviews.

First, we reviewed a sample of case files by six offense types. We found that the nature of the inquiries varied within those offense types, although the differing levels of inquiry did not appear to be unreasonable based on the individual case circumstances. Similarly, we found that adjudications were not always consistent within offense types, but we generally did not find that they were unreasonable based on the available evidence.

Second, we performed an in-depth review of all the case files on computer misuse – pornography and adult images, and sexual harassment allegations.²³ For computer misuse cases, we found that those cases generally had consistent outcomes, which we believe can be attributed in part to the specific policies and procedures in place for detecting, responding to, and disciplining instances of computer misuse, including a table of cases and outcomes specifically applicable to these types of computer misuse that is used to aid GCO attorneys when advising the USAOs on appropriate penalties. For the sexual harassment

²² We also attempted to analyze the outcomes of similar offense types across demographic categories, including race, gender, and job category, and across fiscal years and USAOs. However, the number of cases under each offense type was often too small to reach any meaningful conclusions.

²³ DOJ Order 2740.1A prohibits the creation, download, viewing, storage, copying, or transmission of sexually explicit or sexually oriented materials. GCO categorizes these activities as two types of offenses: “computer misuse – pornography” and “computer misuse – adult images.” Adult images include material that has sexual content or that is sexually suggestive but not within the definition pornography.

cases, we found that a lack of documentation hampered our ability to assess the reasonableness of the inquiry that was conducted and the penalties that were imposed.

Lastly, we reviewed the 33 cases we found at GCO for which the USAO ultimately chose not to implement discipline. We found that while most of the offenses in these 33 cases were not considered serious misconduct, 18 of the 33 case files had no documentation or explanation as to why the USAO chose not to pursue informal or formal discipline.

We also found 55 subjects with repeat misconduct cases in our dataset. We analyzed these cases and found that the USAOs and EOUSA were consistently using progressive discipline to address repeat misconduct.

We also found that for formal discipline cases, the USAOs and EOUSA are required to adhere to the record-keeping provisions of Title 5 of the Code of Federal Regulations (C.F.R.), but because of the lack of documentation in the GCO case management system, we could not verify that the regulations were consistently adhered to when formal discipline was imposed for a few cases.

Case File Review by Offense Type

We conducted a case file review as to the level of inquiry and adjudication or outcome on 25 randomly selected case files covering six offense types.²⁴ The results of our analysis are as follows:

Inquiry – According to DOJ Order 1200.1(6)(b), component management may conduct any level or type of an inquiry when seeking to determine whether to discipline an employee or when determining the most appropriate penalty for the conduct committed. Certain types of misconduct lend themselves to varying levels of inquiry. For example an allegation of credit card misuse may require only a copy of the credit card bill, while an allegation of leave abuse may take an extensive review of leave records. In interviews with GCO, we were told that most of the

²⁴ The offense types were: unprofessional conduct (four cases), lack of candor (five cases), credit card misuse (three cases), alcohol/drug abuse (six cases), leave abuse/absent without leave (three cases), and disclosure of sensitive information (four cases). We selected the case with the highest penalty, the case with the lowest penalty, and a case in the mid-range of penalty for each offense type. When a case had unique circumstances that did not allow for easy comparison within that offense type, we then selected additional cases to review, for a total of 25 case files. We also reviewed cases that included more than one offense or type of misconduct. See Appendix III for a description of our methodology.

misconduct case files did not contain anything more than an e-mail or an initial report of misconduct. Our review of the case files found limited documentation except in some formal discipline cases, such as computer misuse. In cases where an outside entity conducted the investigation, such as the OIG or OPR, we typically saw more formal inquiry documentation such as a report of investigation.

We reviewed the level of inquiry for a sample of 25 case files for 6 offense types.²⁵ We found that the level of inquiry conducted was not unreasonable under the circumstances in all but one instance. In that case, there was no evidence in the case file that the USAO conducted an inquiry, only a complaint from an outside party forwarded by the U.S. Attorney to GCO and two unsuccessful efforts to speak by telephone thereafter. The AUSA in question was alleged among other things to have been intoxicated in the office and at grand jury and to have driven drunk to an official function. The case file reflected that GCO closed the matter over a year after the unsuccessful efforts to speak by telephone with the USAO with no documentation of further follow-up by either the USAO or GCO. The level of inquiry for the remaining 23 cases appeared to be consistent and did not appear to be unreasonable.

Adjudication – Our case file review found that outcomes varied for most of the cases, but the outcomes in most cases did not appear to be unreasonable based on the evidence reflected in the case files. There was only one case for which the outcome appeared unreasonable based on the documentation in the case files, as explained below.

Four of the 25 case files in our sample had insufficient documentation to fully evaluate the adjudication, leaving 21 cases for which we could make a determination on consistency and reasonableness.²⁶ We determined that two offense types had consistent outcomes – four out of the six alcohol/drug abuse cases and two out of three credit card misuse cases. The remaining 15 cases in our sample had varying outcomes. It appears that this resulted from a number of factors, including that the subject committed additional misconduct or had a record of prior discipline.

The specific circumstances in cases often accounted for why we determined varied outcomes were not unreasonable. For example, in a case involving disclosure of sensitive and confidential information, the

²⁵ We were unable to evaluate the level of inquiry in one of the cases.

²⁶ The four cases involved allegations of disclosure of sensitive/confidential information, leave abuse/absent without leave (AWOL), and unprofessional conduct.

subject, a support staff employee, disclosed law enforcement sensitive information to criminal defendants and may have been compensated for the disclosure. Although the subject had no prior disciplinary history, removal was not an unreasonable result given the seriousness of the conduct and the resulting harm caused to the government.²⁷ In another case in the same offense category, the subject, a supervisory AUSA, received a letter of reprimand for disclosing *Privacy Act* information (stemming from an Equal Employment Opportunity claim) to a subordinate AUSA and yelling at another subordinate AUSA in the presence of others. The disclosure of information was not as damaging to the Department as in the previous example, but was serious enough, when combined with yelling at a subordinate, that it was not unreasonable to impose formal discipline at the lowest level.

The penalties for the five cases in the lack of candor offense varied from no action to a removal. However, we determined the outcomes were not unreasonable based on factors described in the case files, such as the subjects' disciplinary record, intent, and the extent or seriousness of the misconduct. This also is a category in which the misconduct can encompass varying degrees. For example, in one case, the subject was dishonest about her whereabouts and received a letter of reprimand, and in another the subject repeatedly lied about whether her leave was approved and ultimately received a letter of termination and resigned. In a third case, the subject AUSA participated in backdating an internal case memorandum, apparently to make it appear to be previously approved by the Criminal Chief as per office policy. The AUSA was suspended for 3 days without pay. The discipline was mitigated because the AUSA had no prior discipline issues and had an otherwise stellar employment record. In a fourth case the subject AUSA was not found to have lacked candor, but rather to have failed to use sufficient diligence in making statements to a probation officer, resulting in a personal oral admonishment from the U.S. Attorney. Again, we did not find that the outcomes reached in these five cases were unreasonable under the circumstances presented.

We determined that the outcome did not seem reasonable in 1 of the 21 cases we evaluated. In a credit card misuse case, despite a finding that the subject engaged in the conduct on several occasions and that it was intentional, the USAO issued a letter of reprimand, which we believe was unreasonable in light of penalties imposed in similar cases.²⁸

²⁷ The case was referred for criminal prosecution, which was declined.

²⁸ The penalties for credit card misuse range from oral counseling for a first offense to suspension for repeat offenses.

In this case, the subject alleged that she mistook her government card for her personal card to obtain cash advances on two occasions and that she had been told by another employee that it was permissible to use her government card to hold a hotel room for personal purposes. However, the other employee denied believing that was permissible or giving such advice to anyone, and the USAO determined that the subject's explanations were not credible. Based upon our review of the file and the penalties imposed in other credit card misuse cases, we believe that the issuance of a letter of reprimand was not a reasonable outcome in this case.

We found that the outcomes in the remaining 20 cases were within the range of penalties typically imposed for similar conduct and not unreasonable based on the facts and circumstances presented. For example, in one case involving an allegation of leave abuse, a subject, who had been counseled about arriving to work on time on several prior occasions, received a leave restriction letter because he continued to be perpetually late to work. By contrast, in another leave abuse case, a subject with a significant prior disciplinary history was removed from employment for frequent unapproved absences and for failing to provide medical documentation required to support the absences. We found that the decision to issue a leave restriction in the former case was not unreasonable and was consistent with the penalty for similar offenses in light of the prior counseling and continued violations. The decision to remove the subject in the latter case for being absent without leave or providing required medical documentation was also not unreasonable given the seriousness of the repeated misconduct and the subject's prior disciplinary history.

In-Depth Review of Two Offense Types

Computer Misuse (Pornography and Adult Images) – Unlike most misconduct within EOUSA and the USAOs, specific policies and procedures provide a framework for detecting, responding, and disciplining instances of computer misuse. We believe that this additional guidance, along with the emphasis EOUSA placed on addressing computer misuse in 2008, has led to more consistent penalties for misuse involving pornography or adult images than for any other offense categories in our study period. GCO categorizes the creation, download, viewing, storage, copying, or transmission of sexually explicit or sexually oriented materials as “pornography.” GCO characterizes as “adult images” material that has sexual content or that is sexually suggestive, but not within the definition of pornography. The Department requires that any cases involving possible child pornography

be referred to the OIG's Investigations Division.²⁹ All of the cases we examined in our review involved adult pornography.³⁰

DOJ Order 2740.1, Use and Monitoring of DOJ Computers and Computer Systems, notifies all Department employees that computer activity, such as e-mail and web browsing, conducted on a government computer is monitored. Most communications a Department employee makes through the Internet or the Department's intranet system can be identified and traced to a specific employee. The Department routinely monitors and intercepts computer traffic for security purposes and to detect improper use through an Information Technology Intrusion Detection System that alerts the Information Systems Security Staff (ISS) to incidents that could potentially compromise the security of the network. In all but 4 of the 49 computer misuse – pornography and computer misuse – adult images cases, the misconduct was discovered through an ISS alert or a follow-up search resulting from prior misuse. If the evidence collected through the initial alert is insufficient to determine the breadth and scope of the suspected misuse, GCO, with concurrence from ISS, may request that the Director of EOUSA approve additional monitoring or searches in accordance with procedures established in DOJ Order 2740.1A and elaborated upon in U.S. Attorneys' Procedures 3-16.200.010, Obtaining Approval to Search Individual User Computer Data.

On July 29, 2008, the Director of EOUSA sent out a memorandum to all U.S. Attorneys and EOUSA stating that EOUSA had seen an increasing number of computer misuse incidents and reminding USAO and EOUSA employees of unacceptable uses of government computer systems. This memorandum established the prevention of and discipline for computer misuse as priorities for EOUSA. Subsequently, GCO started to compile information on computer misuse cases, in particular those involving pornography, in a table that included the subject's name, a description of the computer misuse, and the disciplinary outcome. This table served as an informal list of penalties imposed in prior computer misuse offenses that GCO attorneys could reference when confronting new computer misuse cases. We saw evidence in several

²⁹ 28 C.F.R. Part 45 § 11 states, "Department of Justice employees have a duty to, and shall, report to the Department of Justice Office of the Inspector General . . . any allegation of criminal or serious administrative misconduct on the part of a Department employee."

³⁰ All allegations of child pornography are referred to the OIG as possible criminal cases. We did not identify any allegations of child pornography during the study period.

internal notes and e-mails that GCO attorneys referred to the table when deliberating about discipline for computer misuse – pornography cases. This may have further contributed to the consistency in penalties seen in computer misuse – pornography cases in our study period.

We reviewed all 34 cases of computer misuse – pornography that occurred during our study period. Out of 34 cases, 24 resulted in a suspension, 1 case (which also included a sexual harassment allegation) resulted in a removal, and 3 cases resulted in penalties lighter than a suspension, including a case in which no action was taken. The remaining six cases resulted in the subject’s resignation, retirement, or an unknown outcome. Table 2 shows the penalties for the 34 cases.

Table 2: Outcome of Computer Misuse – Pornography Cases, FY 2009 through FY 2011

Outcome	Number	Percentage
Removal	1	3%
Suspension	24	70%
Letter of Reprimand	1	3%
Oral Admonishment	1	3%
Resignation or Retirement	5	15%
No Action	1	3%
Unknown	1	3%
Total	34	100%

Source: GCO misconduct case files, OIG analysis.

We also reviewed all 15 cases of computer misuse – adult images that occurred during our study period. Similar to the cases involving computer misuse pornography, the adult images cases resulted in consistent penalties. Of the 15 cases, 8 resulted in informal discipline, such as oral counseling, oral admonishment, or a letter of admonishment. An additional three allegations resulted in a letter of reprimand. Therefore, 11 of the 15 computer misuse – adult image cases received lighter penalties than the most common penalty imposed, suspension, for computer misuse -pornography cases. Both of the computer misuse – adult images cases that resulted in suspensions had aggravating circumstances. In one, the subject had prior serious misconduct, and in the other the subject was using Department e-mail to request damaging information about his ex-wife. Table 3 outlines all computer misuse – adult images cases.

Table 3: Outcome of Computer Misuse – Adult Images Cases, FY 2009 through FY 2011

Outcome	Number	Percentage
Suspension	2	13%
Letter of Reprimand	3	20%
Informal Discipline	8	53%
No Action	1	7%
Unknown	1	7%
Total	15	100%

Source: GCO misconduct case files, OIG analysis.

Overall, we found the penalties to be consistent for computer misuse cases involving pornography or adult images. Computer misuse cases with pornography regularly resulted in suspensions, and cases with adult images generally resulted in less harsh discipline absent aggravating circumstances.

The computer misuse – pornography and adult images categories generally appeared to exhibit a higher level of consistency in penalties compared with those issued for other offense categories. We believe this may partly result from better guidance on handling these types of violations than other offense categories. Greater guidance increases the likelihood that each allegation is handed uniformly. In this instance, the guidance also created a structured evidence collection method involving specific procedures for requesting and obtaining approval for computer searches. This contributed to more structured and better documented inquiries that would enable proposing and deciding officials to be more confident and consistent in their determinations. The informal table listing the description and outcome of prior computer misuse cases allowed GCO to quickly determine prior penalties for similar incidents and informed the consultation process. Since EOUSA does not have a table of penalties establishing standard penalties for specific offenses and the GCO case management system is not complete, tables like the one established for computer misuse promote consistency and provide an easy way to document precedents.³¹ Similar tables would be particularly useful for serious or commonly occurring offenses, such as sexual harassment allegations, which are discussed immediately below.

³¹ The Department does not require its components to have tables of offenses and penalties as a part of their discipline systems. However, all the law enforcement components and some of the other components in the Department have tables of offenses and penalties.

Sexual Harassment – We reviewed all the sexual harassment cases completed during our study period and found that some cases had insufficient documentation to enable us to assess the level of inquiry and the disciplinary outcomes. While EOUSA policy directs the USAO to memorialize the initial complaint, we could not find this documentation in almost half of the case files. Additionally, we could not find a written summary of the inquiry in some case files and could not determine if the inquiries were completed within the time period designated by EOUSA policy. This made it difficult to determine what was alleged to have occurred and whether the allegation was substantiated after inquiry. We also found that some case files with attorney subjects had less documentation than some case files with support staff subjects, which could have resulted from differing outcomes in these cases. (Case files with formal discipline are more documented than those with informal discipline and, as detailed below, more of the support staff members who did not resign received formal discipline.) The lack of documentation also hampered our ability to fully evaluate the outcomes reached in these cases.

The legal framework protecting federal employees from harassment on the basis of sex, including employees of EOUSA and the USAOs, is contained in Section 703 of Title VII of the *Civil Rights Act of 1964*, the *Civil Service Reform Act of 1978*, and 29 C.F.R. § 1604.11 (which contains the Equal Employment Opportunity Commission’s (EEOC) *Guidelines on Discrimination Because of Sex*). EOUSA developed a *Policy and Plan for the Prevention of Sexual Harassment*, which became effective October 1994 and was updated in June 2000. The plan outlines EOUSA’s and the USAOs’ commitment to preventing sexual harassment in the workplace by providing avenues of redress and worksite monitoring for indicators of potential harassment and mandating training for employees.

USAM 3-5.800 also requires each USAO to identify a sexual harassment point of contact (POC) to ensure that employees have an avenue of redress outside of the Equal Employment Opportunity and grievance process. Small USAOs usually appoint one POC, while large USAOs may appoint more than one. The sexual harassment POC’s primary responsibility is to serve as the neutral initial recipient of such complaints. In addition, POCs also are responsible for presenting annual anti-sexual harassment training for their USAOs.

In 2011, GCO developed specific guidance for POCs in the USAOs and EOUSA, *Guidance for Sexual Harassment Points of Contact*. EOUSA’s June 2000 sexual harassment policy statement directed POCs to take complaints from employees and notify them of the requirements

to initiate an inquiry within 7 days and complete that inquiry within 30 days. The 2011 POC guidance goes beyond the June 2000 policy and directs the POC to take written notes when receiving the initial complaint and to present the information to management “at the earliest possible moment.” Once an allegation has been reported to the POC, an inquiry is to take place within 30 days (which may be conducted by the POC, USAO management, or both, at the discretion of the USAO).

We reviewed all 18 sexual harassment case files in our study period and analyzed all phases of the disciplinary process.³² The allegations in these 18 cases ranged from hugging to sexual advances to possible sexual battery. We determined that the allegations of sexual harassment in these cases came most often from employees in subordinate and support positions. There were at least 29 alleged victims in these cases, 22 of whom held support staff, contractor, or law student intern positions. The remaining alleged victims were AUSAs and a law enforcement officer. Most of the cases with alleged AUSA victims involved subjects who were in supervisory AUSA positions, and the subject in the case with a law enforcement victim was an AUSA.

Table 4 presents the 18 cases of sexual harassment allegations in our study period. In 1 of the 18 cases, the allegation was determined to be unsubstantiated after an inquiry, and in 3 cases the allegations were substantiated and resulted in formal discipline. In 5 of the 18 cases, the subjects resigned before the investigation was complete. In 9 of the 18 cases, informal discipline was imposed, but it is unclear from the case files whether and to what extent the sexual harassment allegation was substantiated. In the cases in which informal discipline was imposed, there was no formal statement of substantiation or other report summarizing the findings of the inquiry. In all misconduct cases, particularly those where informal discipline is imposed, we believe EOUSA should include a statement indicating the facts that were substantiated or a report memorializing the findings of the inquiry.

³² Allegations of sexual harassment can go through the disciplinary process or the Equal Employment Opportunity and grievance process. There may be additional sexual harassment cases that went through the latter process that were outside of the scope of our review.

Table 4: Sexual Harassment Allegations

Case	Type of Sexual Harassment Alleged	Position Type of Subject	Position Type of Victim	OIG Assessment of the Written Record	Discipline Imposed
1	Hugging	Supervisory AUSA	AUSA	Not Substantiated	Allegation Not Substantiated after Inquiry
2	Sexual Advances, Consensual/ Coercion Harassment, Stalking	AUSA	Contractor, Support Staff, and Student Interns	Unable to Determine	Not Clear in File
3	Not Clear in File, Possible Discrimination Based on Sex	Supervisory AUSA	AUSA	Unable to Determine	Reassignment
4	Sexual Advances	AUSA	Support Staff, Student Intern	Unable to Determine	Oral Counseling
5	Sexually Inappropriate Comments, Sexual Advances	AUSA	Support Staff	Unable to Determine	Oral Counseling
6	Sexually Offensive Comments, Touching	AUSA	Law Enforcement Officer	Unable to Determine	Oral Counseling, USAO Kept Subject and Victim Apart
7	Sexually Offensive Comments	AUSA	Law Student Interns	Unable to Determine	Oral Admonishment
8	Sexually Inappropriate Comments	AUSA	Support Staff	Unable to Determine	Oral Admonishment
9	Minor Sexually Inappropriate Comments	Support Staff Supervisor	Support Staff	Unable to Determine	Oral Admonishment
10	Sexual Advances	First AUSA	AUSA	Unable to Determine	Oral Admonishment Reassignment of Victim
11	Sexually Inappropriate Comments	Support Staff	Support Staff	Substantiated	Letter of Reprimand

Case	Type of Sexual Harassment Alleged	Position Type of Subject	Position Type of Victim	OIG Assessment of the Written Record	Discipline Imposed
12	Sexual Advances, Touching, Possible Assault	Support Staff Supervisor	4 Support Staff, Contractor	Substantiated	Suspension
13	Sexually Inappropriate Comments*	Support Staff Supervisor	AUSA, 2 Support Staff	Substantiated	Removal
14	Sexual Advances, Touching	AUSA	Support Staff, Contractor	Unable to Determine	Resignation
15	Sexually Offensive Comments, Sexual Advances	AUSA	AUSA, Law Student Interns	Unable to Determine	Resignation
16	Sexual Advances, Consensual/ Coercion Harassment, Possible Sexual Battery	Special AUSA	Support Staff	Unable to Determine	Resignation
17	Sexual Advances, Consensual/ Coercion Harassment, Stalking	Deputy Chief AUSA	2 AUSAs	Unable to Determine	Resignation
18	Type of Harassment Unclear**	Support Staff Supervisor	2 Support Staff	Unable to Determine	Resignation

* This case also involved an allegation of computer misuse – pornography. The subject was removed for these offenses, but later appealed the decision and was allowed to resign.

** This case involved allegations of sexual harassment, misuse of position, and disclosure of sensitive and confidential information.

Source: GCO case management system, OIG analyses.

When examining the case files, we observed that the allegations of misconduct and the level of inquiry were not well documented in some cases. We found that only 10 of the 18 case files included a written summary of the initial complaint. In 12 of the 18 case files, we found information about the allegation, ranging from an e-mail summarizing the facts to a formal report memorializing the findings, and some of these were not as complete as others. In the remaining six files, no such

summary or report was included in the case file. Instead, these six case files included e-mails and notes with minimal information about the circumstances of the allegation or the inquiry. This made it difficult to determine what was alleged to have occurred and whether the allegation was substantiated after inquiry.

We found evidence in 17 of the 18 case files that an inquiry was conducted. However, in 4 of the 17 cases that showed evidence of an inquiry we were unable to determine if the inquiry occurred within the timeframe established by EOUSA guidance because of a lack of documentation or the absence of a summary of inquiry.

USAM 3-5.800 and the *Guidance for Sexual Harassment Points of Contact* advise the USAOs not to appoint a manager or supervisor as the POC because managers must often make decisions that respond to a complaint or otherwise assess the validity of a complaint. According to the Sexual Harassment Prevention Coordinator at EOUSA's headquarters, most of the designated POCs in the 94 USAOs were line AUSAs, Administrative Officers, or Support Staff Supervisors. We found that these staff members were generally the proposing or deciding officials for misconduct allegations against support staff. Therefore, if a supervisor was taking an initial complaint of sexual harassment, and the subject was under their supervision, there could be a potential conflict if the supervisor was later called upon to act as the proposing or deciding official for that case. In 6 of the 18 cases we reviewed, there was evidence that a sexual harassment POC took the initial complaint and may have handled some aspect of the inquiry. In 10 of 18 cases, management officials handled the initial complaint and the inquiry exclusively. Due to the lack of documentation in the case files, we were not able to determine who took the initial complaint or conducted an inquiry in the two remaining cases or whether a conflict of interest occurred in practice.

In 13 of the 18 cases we reviewed, an AUSA was the subject of the sexual harassment allegation, while in 5 cases the subjects were support staff members.

In 7 of the 18 cases, the subject of the allegation was an AUSA or support staff supervisor. Three of the seven supervisors were AUSAs, and four were support staff.

In 5 of the 18 cases, the subject resigned before receiving a decision on discipline. Four of the subjects who resigned were AUSAs, while one subject was a support staff member.

We excluded from our analysis the cases in which the subject resigned before the disciplinary process was completed and reviewed the outcomes of the remaining 13 cases. In 10 of the 13 cases, we did not find the outcomes reached to be unreasonable based on the facts and circumstances available in the record.³³ For example, in one case the file included sufficient documentation, including a POC summary of the inquiry, to allow us to determine that the outcome did not appear unreasonable.

In contrast, we could not evaluate the outcome in 3 of the 13 cases because there was insufficient evidence available to determine the substance of the complaint or the inquiry. In one case, we could not even determine the outcome of the allegation. The case file only included an e-mail from the USAO reporting the allegation and GCO notes on conversations with the USAO, and did not contain any information regarding the outcome of the allegation.

The lack of documentation in the case files also hampered our ability to compare outcomes between position types. We found that the three case files with the least amount of information had attorney subjects with allegations of conduct similar to a fourth case where the subject was a support staff member. However, the support staff member received formal discipline, a letter of reprimand, and the three AUSAs received informal discipline, oral counseling, or admonishment. The lack of documentation and the limited number of cases makes it difficult to assess the outcomes across position types. Moreover, the lack of documentation in these and other sexual harassment cases could limit the ability of EOUSA to use them as precedent for future disciplinary decisions.

Progressive Discipline

We found that, from the files we were able to review, the USAOs and EOUSA were consistent in employing progressive discipline to address misconduct. Progressive discipline is defined by the Office of Personnel Management as “imposition of the least serious disciplinary or adverse action applicable to correct the issue or misconduct with penalties imposed at an escalating level for subsequent offenses.”³⁴ The

³³ In one of the nine cases, the subject was removed for sexual harassment and computer misuse – pornography.

³⁴ *Employee Relations, Reference Materials, Glossary of Terms and Concepts*, Office of Personnel Management, <http://www.opm.gov/policy-data-oversight/employee-relations/reference-materials/#url=P> (accessed January 23, 2013).

USAOs and EOUSA employed progressive discipline, and GCO attorneys told us that they routinely advised supervisors to use the lowest level discipline that would correct the misconduct or behavior and to progressively increase the penalty if the employee continued misconduct.

We identified 55 employees with repeat misconduct cases in our dataset from FY 2009 to FY 2011. Only 12 of the 55 subjects did not receive progressively harsher discipline. Five of the 12 subjects' case files included reasonable explanations for the lack of progressive discipline (for example, the allegation was not substantiated in a later case or the subsequent misconduct was so different it did not warrant a harsher penalty). However, we could not conclude that the lack of progressive discipline for the seven remaining employees was reasonable because it was not clear from the case files why the USAO chose not to employ progressive discipline.

Code of Federal Regulations Compliance

We found that the USAOs and EOUSA were generally complying with 5 C.F.R. Part 752 when imposing formal discipline. However, the lack of documentation or centralized case files prevented us from verifying compliance for all the cases we reviewed.

We randomly selected 31 case files that resulted in a suspension or removal to evaluate the adherence with the regulations of Part 752 for formal discipline. Section 752.203(g) requires agencies to maintain copies of the following documents to provide to the employee or the Merit Systems Protection Board upon request:

1. notice of the proposed action;
2. employee's written reply, if any;
3. summary of the employee's oral reply, if any;
4. notice of decision; and
5. any order effecting the suspension, together with any supporting material.

Table 5 below outlines what we found from the compliance check of case files.

Table 5: Compliance with 5 C.F.R. Part 752

C.F.R. Requirement	Yes	No	Not Applicable	Total Cases
Notice of Proposed Action	27	4	N/A	31
Employee's Written Reply (if any)	19	5	7	31
Summary of Employee's Oral Reply (if any)	4	11	16	31
Notice of Decision	28	1	2*	31
Documentation of Implementation	16	15	N/A	31

* In one case the subject waived her right to a decision letter and accepted and served the proposed discipline. In another case, the subject accepted an agreement and the discipline was mitigated from a removal to a 30-day suspension and last chance agreement with the termination decision held in abeyance.

Source: GCO case management system, OIG analysis.

We could find both the notice of proposed action and the decision letter in only 26 of the 31 case files. For a few of the cases in our sample, the lack of documentation prevented us from determining if the USAOs and EOUSA were in compliance with the record-keeping provisions.

Similarly, there was an indication in 24 of the 31 case files in our randomly selected sample that the employee had made a written reply to the proposed discipline. We were not able to find the written reply for 5 of the 24 cases. There was an indication in 15 of the 31 case files that the employee made an oral reply.³⁵ However, we were able to find a written summation of the oral reply or a transcript of the oral reply in only 4 of these 15 cases. Additionally, according to § 752.203(e)(1) and § 752.404(2)(g)(1), the deciding official must consider only the proposal, the employee reply, and supporting material provided by the proposing official when rendering a discipline decision (sometimes referred to as the “four corners of the proposal”). In the 26 case files with decision letters, we found 3 cases in which it appeared that the deciding official may have been involved in discussions regarding the misconduct before receiving the proposal for discipline. Therefore, we could not be certain that the deciding officials in those three cases considered only the “four corners of the proposal.”

³⁵ In some cases, the oral reply is simply a conversation between the employee and the deciding official. The deciding official may include a summation of the conversation in the decision letter. Ten of the 31 subjects submitted both an oral and a written reply.

Implementation

We were able to analyze the implementation of penalties for only 83 of 138 suspensions and removals due to a lack of documentation in the case files.³⁶ Troublingly, in the remaining 55 cases – representing 40 percent of the total – we were unable to determine from the case files if the suspensions or removals called for by the disciplinary process actually were imposed. In the cases we were able to analyze, we found that the USAOs and EOUSA were implementing penalties consistently.

The USAOs and EOUSA are responsible for implementing formal discipline of suspensions and removals after a decision has been issued. In cases involving USAO personnel, supervisors (or deciding officials if not the first-line supervisor) contact the USAO’s Human Resources staff to issue the standard form requesting the action to the Human Resources department at EOUSA. The Human Resources department at EOUSA then processes the form for implementing the action with the National Finance Center.³⁷ Supervisors have the discretion to determine when employees will serve their suspension, but removals are effective immediately upon issuance of the SF-50 (Notice of Personnel Action). We requested copies of the SF-50s and SF-52s (Request for Personnel Action) for all employees that received suspensions or were removed during our study period. EOUSA was able to produce SF-50s and SF-52s for 75 of the 83 cases. We were able to find implementation information for the additional eight cases in GCO’s case management system.³⁸

We analyzed the forms to determine if penalties were implemented, the timeliness of the implementation, and if there were trends in the data based on demographic categories. (We present the analysis on timeliness in the next section of this report.) Again, the documentation in the case files was sufficient for us to determine if the penalty was imposed in a total of only 60 percent of the suspension and removal cases – 71 of the 106 suspensions, and 12 of the 32 removals. We did not find trends in demographic categories for the implementation of penalties.

³⁶ EOUSA does not capture data on implementation of letters of reprimand. Therefore, we could not evaluate the implementation of that type of formal discipline.

³⁷ The National Finance Center is a federal government agency that provides human resources, financial, and administrative services to over 130 agencies of the federal government.

³⁸ GCO can request copies of the forms requesting and implementing the penalty from the USAOs, but cannot require USAOs to share a copy for the GCO case file.

We found that in one-quarter (18 of 71) of the cases in which a suspension was documented, the subjects were allowed to serve part of their suspensions on a weekend (most included 1 or 2 weekend days if the suspensions were short and 4 to 9 weekend days if the suspensions were longer) or over multiple pay periods.³⁹ This is a form of alternative discipline that is allowed by the Department and could be reasonable if imposed for particular reasons appropriate to the case.⁴⁰ However, it does raise a risk that penalties will be imposed inconsistently, and we did not find sufficient documentation to determine whether this form of alternative discipline was applied consistently. We did not find that alternative discipline was limited to a certain demographic category or offense type. We could not evaluate if applying alternative discipline in this manner in these cases was appropriate.

³⁹ There were 36 cases where we could not determine if the subject served part of the suspension over a weekend because of incomplete information on the standard forms, such as the dates of the suspension.

⁴⁰ According to a 2009 Department memorandum, alternative discipline is corrective action other than traditional discipline, such as attending classes to address behavior, issuing a public apology to individuals affected by misconduct, serving a suspension on the weekend or on non-consecutive days, or entering into an agreement that holds the penalty in abeyance. Alternative discipline is not to be used in all situations and is determined on a case-by-case basis with advice from offices of general counsel or legal counsel. The Department states that one of the main benefits is “it can substantially curtail an employee’s grievance or appeal rights if the employee voluntarily agrees to waive those rights as a condition of the alternative discipline agreement.” Department of Justice Memorandum for Human Resources Officers, Alternative Discipline, January 26, 2009. We found in our review of case files that the USAOs and EOUSA have employed some of these forms of alternative discipline.

CHAPTER III: TIMELINESS OF DISCIPLINARY PROCESS

The USAOs and EOUSA have no timeliness standards to measure the performance of the disciplinary process and do not document the time taken by the process.

We found that the USAOs and EOUSA are not required to meet specific timeliness standards for processing misconduct cases. Also, the lack of documentation in the case files hindered our timeliness analysis. According to DOJ Order 1200.1, Part 3, and USAM 3-4.752, the USAOs and EOUSA are required to notify GCO only prior to taking formal discipline, not when they first become aware of the misconduct. Therefore, the inquiry or investigation, if any, could take place before or after consultation with GCO. For all cases reported to GCO and reflected in its case management system, we were able to evaluate how long the process took from the time GCO was notified of an allegation to the disciplinary decision and to the date the case was closed in the GCO case management system.⁴¹ For formal discipline cases with sufficient documentation, we were also able to evaluate the time from when GCO was notified of an allegation to the disciplinary decision and the time from the disciplinary decision to the implementation of the penalty.

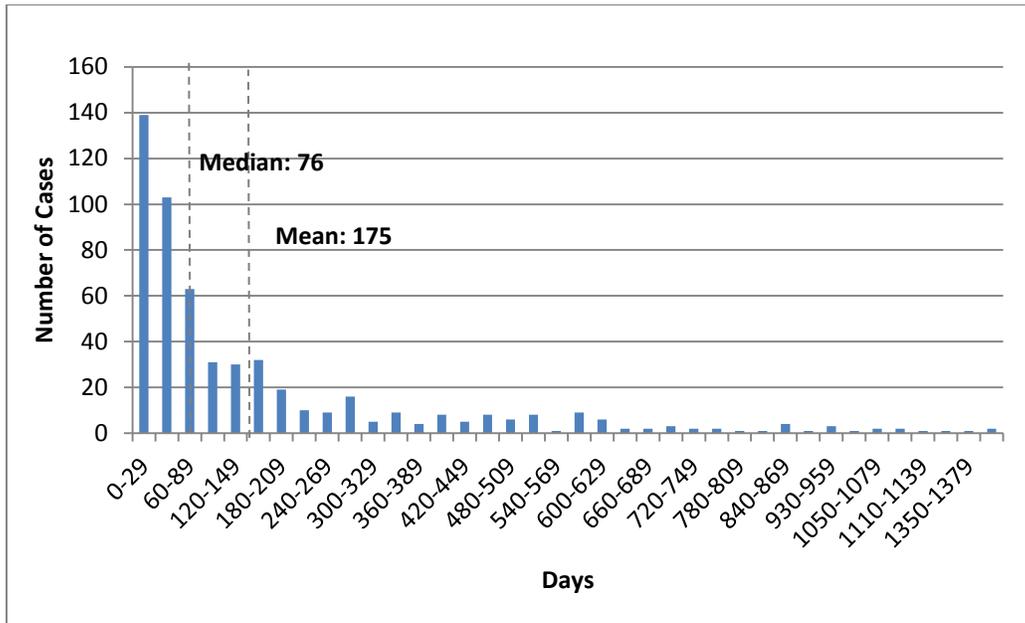
Inquiry and Adjudication

The mean and median from when GCO opened a case in its case management system to the close of the case for all misconduct cases during our study period were 175 and 76 days, respectively.⁴² Figure 2 shows the distribution of all the misconduct cases.

⁴¹ A formal discipline case is closed in the GCO case management system after adjudication of the case. All other cases are closed based on the discretion of the GCO attorney and notification of the outcome from the USAO.

⁴² The wide differences between the mean and median times can be attributed to a small number of very lengthy cases that skewed the data. The mean is the arithmetic average of a set of numbers, and the median is the numeric value separating the higher half of a set of numbers from the lower half. Both are measures of central tendency; however, when a dataset has outliers that skew the data, the resulting mean is artificially high. Therefore, the median provides a better measure of the “average” of the dataset, and we present both measures in the report.

Figure 2: Days from Open to Close for All Misconduct Cases, FY 2009 through FY 2011



Source: GCO case management system, OIG analysis.

We also found that the USAOs and EOUSA took a mean of 139 days and a median of 67 days from notification of GCO to reaching a decision in formal discipline cases. To place the time taken by the USAOs and EOUSA to reach a disciplinary decision in perspective, we compared it to the timeliness standards of Department law enforcement components we reviewed in the past.⁴³ While this is not an identical comparison because the USAOs’ and EOUSA’s disciplinary process does not include a formal investigation, except when conducted by the OIG or OPR, it is reasonable to expect the USAOs’ and EOUSA’s disciplinary process to take no longer than the standards of other Department components. Only misconduct cases resulting in formal discipline go through adjudication. Therefore, we computed the times of formal discipline cases from case opened to decision date and found they were within the range of Department law enforcement components, which generally have a goal to complete investigations and adjudications within 180 days.⁴⁴

⁴³ The Department law enforcement components whose disciplinary processes we previously reviewed are the Bureau of Alcohol, Tobacco, Firearms and Explosives; the Federal Bureau of Prisons; the Drug Enforcement Administration; the Federal Bureau of Investigation; and the U.S. Marshals Service.

⁴⁴ The EOUSA GCO case management system has a field for “decision date” that reflects the date that the decision letter or letter of reprimand was issued.

We found specific characteristics that contribute to the time taken to complete a case. On average, cases resulting in formal discipline took longer than cases resulting in informal discipline, and cases involving an OPR or OIG investigation took longer than those handled exclusively by EOUSA and the USAOs. The mean and median from open to close for all cases resulting in formal discipline were 251 and 144 days, respectively. The mean and median from open to close for informal discipline cases were 86 and 43 days, respectively. As explained previously, formal discipline requires specific procedures, consideration of multiple factors, and a written decision (either a signed letter of reprimand or a decision letter). Consequently, it is not surprising that the process for addressing misconduct resulting in formal discipline would require longer deliberation than cases resulting in informal disciplinary action.

Another factor contributing to the length of a case is OIG and OPR involvement. As expected, if the OIG or OPR conducted an investigation, the time required to complete the disciplinary process increased because GCO and EOUSA and USAO management wait for the findings and conclusions of the investigation before considering discipline.⁴⁵ Fifty-nine percent of cases not involving the OIG or OPR closed in less than 90 days, compared with 41 percent of cases involving the OIG or OPR.⁴⁶

We conclude that while the cases generally appeared to be completed in a reasonable amount of time, the lack of general timeliness standards could create a risk of lengthy cases. Protracted cases could diminish the effectiveness of the discipline imposed or leave innocent employees under a cloud of suspicion for an unreasonable period.

Implementation

Due to incomplete information, we were unable to determine the time between the disciplinary decision and the imposition of the penalty for 62 of the 138 cases resulting in suspensions and removals.⁴⁷ However, most disciplinary decisions with sufficient information for

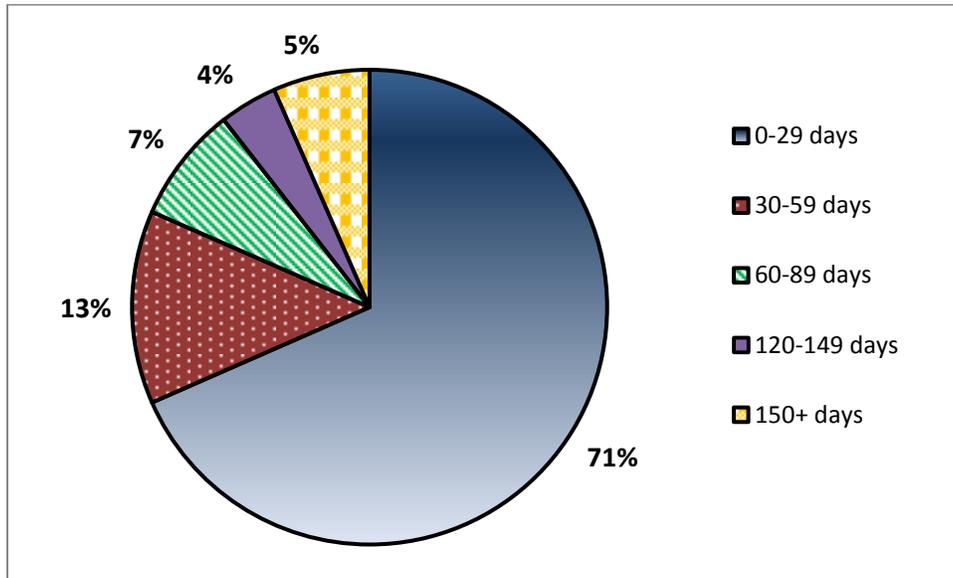
⁴⁵ Cases handled exclusively by USAOs and EOUSA had a mean and median of 149 and 68 days from open to close, compared with 240 and 110 days for cases involving the OIG and 320 and 155 days for cases involving OPR.

⁴⁶ The difference between the two types of cases diminished as processing times lengthened, and there were a few very long cases of both types that skewed the data.

⁴⁷ While we were able to find SF-50s or information about implementation of penalties in 83 of 138 cases with suspensions and removals, we were able to compute timeliness for only 76 of the 138 cases due to a lack of forms or dates in the case files.

analysis were implemented in a timely manner. Most of the removals were imposed the same day as the decision letter, and most of the suspensions were imposed within 29 days. Figure 3 shows the percentage of these suspensions and removals implemented within the specified time.

Figure 3: Implementation Length for Suspensions and Removals, FY 2009 through FY 2011



Source: GCO case management system, OIG analysis.

Additionally, we found that removal decisions were implemented far more quickly than suspensions. For the 65 out of 106 suspensions with sufficient information to permit analysis, the mean and median from decision to implementation were 44 and 19 days, respectively. For the 11 out of 32 removals with sufficient information, the mean and median for the same timeframe were both less than 1 day. There was no evidence that certain USAOs implemented penalties any faster than others or that certain offense types resulted in a longer time to implement penalties than others.

CONCLUSION AND RECOMMENDATIONS

Overall, we found that some aspects of the USAO and EOUSA discipline system worked well, but improvement is needed in several critical areas. There is no complete misconduct case file information available that includes all documents relevant to the disciplinary process. GCO has the most extensive information in its case files due to its legal and advisory role, but it does not have the authority to require USAO and EOUSA supervisors to share all documents related to a misconduct case, even when formal discipline has been imposed. Also, EOUSA has not delegated responsibility or authority for maintaining a centralized and current misconduct case file and consequently information and documentation on each misconduct allegation may not be up to date. Further, inadequate procedures and insufficient data control requirements, such as the absence of a requirement to update case information in certain data fields, have resulted in incomplete case files in GCO's case management system.

As a result of incomplete misconduct case files, EOUSA is not able to easily determine the number of misconduct cases or whether penalties actually have been implemented. Additionally, GCO attorneys may well be limited in their searches for case precedents that could assist them in their advisory function and help ensure consistent outcomes in similar situations. Overall, these deficiencies hamper EOUSA in its ability to evaluate the disciplinary process and ensure that discipline decisions are consistent and reasonable.

The lack of information and incomplete case files impeded our evaluation of the four phases of the disciplinary process, and we were able to only partly assess the system. However, where we were able to analyze the four phases of the process, we generally found that the USAOs and EOUSA were appropriately reporting misconduct, conducting inquiries that did not appear to be unreasonable into the allegations, consistently adjudicating formal discipline cases, processing misconduct cases in a timely manner, and producing outcomes that did not appear to be unreasonable.

We determined that USAO and EOUSA supervisors were consulting with, and reporting misconduct to, GCO, even when it was not required by policy, so as to gain the benefit of GCO's experience and advice in such matters. We also found that, based on all the allegations we were able to review, EOUSA was appropriately referring misconduct allegations to the OIG and OPR.

While we did find that the extent of misconduct inquiries were inconsistent within the same offense types, the variation in the collection of evidence and investigation into the allegations generally was not unreasonable given the variety of circumstances addressed in the cases.

We also found that the outcomes of the misconduct allegations varied substantially within all offense types, except for computer misuse – pornography and computer misuse – adult images. While most of the outcomes in misconduct cases varied, where we were able to evaluate them based on the available records, we generally determined that the outcomes in these cases were not unreasonable based on the circumstances of the case or evidence presented.

Our in-depth review of the computer misuse cases revealed that the USAOs and EOUSA were consistent in applying formal discipline to computer misuse – pornography and applying informal penalties for first-time offenses of computer misuse – adult images. We believe these two offense types had consistent penalties because the cases were supported by concrete evidence of misconduct. In addition, EOUSA developed directives and policy to address these offenses. Further, GCO developed a table of cases and outcomes specifically for these types of cases to aid GCO attorneys when advising the USAOs on penalties. We believe that these factors have contributed to consistent and reasonable penalties for a very serious type of misconduct.

Our in-depth review of cases involving allegations of sexual harassment was hampered by the lack of documentation in many such cases. This made it difficult to evaluate the inquiries and adjudications, and whether they were completed within the time period designated by EOUSA policy for these cases. In addition, in a number of cases, it was difficult to determine whether the allegations were substantiated because there was no statement of substantiation or other record of the finding of the inquiry in many of the case files. In the limited number of these cases where there was sufficient documentation for us to evaluate the adjudication in these cases, we did not find the outcomes reached to be unreasonable based on the facts and circumstances available in the record. However, the lack of documentation could limit the ability of EOUSA to use these cases as precedent for future disciplinary decisions.

Finally, a lack of documentation in the case files also hindered our analyses of the implementation of penalties and the timeliness of the disciplinary process. For example, we were unable to determine if suspensions and removals called for by the disciplinary process actually were imposed in 40 percent of those cases. However, we were able to determine for those cases where there were sufficient records that the

USAOs and EOUSA generally appeared to be implementing penalties in a timely manner. Additionally, the USAOs and EOUSA were processing and adjudicating misconduct cases in times comparable with Department law enforcement agencies. However, the lack of general timeliness standards could lead to lengthy cases that diminish the effectiveness of the discipline or leave innocent employees under a cloud of suspicion for an unreasonable period.

To improve the USAO and EOUSA disciplinary process and to help ensure that disciplinary decisions are consistent and reasonable, we recommend that:

1. EOUSA delegate to a person or office the responsibility and authority for maintaining a complete and centralized misconduct case file with all documentation related to the case, including the SF-50, even for individuals who are no longer employed by the Department, and a statement indicating the facts that were substantiated or a report memorializing the findings of the inquiry.
2. EOUSA set timeliness goals for the inquiry and adjudication of misconduct cases.
3. GCO establish and implement data controls and procedures for data entry in its case management system.
4. GCO consider maintaining an updated table of case precedents with penalties for sexual harassment and other serious and commonly occurring offense types, along the lines of that developed in computer misuse cases involving pornography and adult images.

APPENDIX I: RELATED OIG REPORTS

The OIG has completed eight prior reports examining discipline within the Department of Justice. These eight reports focused exclusively on the five law enforcement components within the Department – the Bureau of Alcohol, Tobacco, Firearms and Explosives; the Drug Enforcement Administration; the Federal Bureau of Investigation; the Federal Bureau of Prisons; and the U.S. Marshals Service.

- *Review of the United States Marshals Service Discipline Process*, Evaluation and Inspections Report I-2001-001 (September 2001).
- *A Review of Allegations of a Double Standard of Discipline at the FBI*, Special Report (November 2002).
- *A Review of Allegations of a Continuing Double Standard of Discipline at the FBI*, Special Report (November 2003).
- *Review of the Drug Enforcement Administration’s Disciplinary System*, Evaluation and Inspections Report I-2004-002 (January 2004).
- *Review of the Federal Bureau of Prisons’ Disciplinary System*, Evaluation and Inspections Report I-2004-008 (September 2004).
- *Review of the Bureau of Alcohol, Tobacco, Firearms and Explosives’ Disciplinary System*, Evaluation and Inspections Report I-2005-009 (September 2005).
- *Review of the Federal Bureau of Investigation’s Disciplinary System*, Evaluation and Inspections Report I-2009-002 (May 2009).
- *Review of the USMS Office of Internal Investigations*, Evaluation and Inspections Report I-2010-003 (March 2010).

APPENDIX II: DOUGLAS FACTORS

The Merit Systems Protection Board in its landmark decision, *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981), established criteria that supervisors must consider in determining an appropriate penalty to impose for an act of employee misconduct.

Although not an all-inclusive list, the following factors must be considered when relevant in determining the severity of the discipline:

- (1) The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
- (2) The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- (3) The employee's past disciplinary record;
- (4) The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- (5) The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's work ability to perform assigned duties;
- (6) The consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- (7) The consistency of the penalty with any applicable agency table of penalties;
- (8) The notoriety of the offense or its impact upon the reputation of the agency;
- (9) The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
- (10) The potential for the employee's rehabilitation;

-
- (11) Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
 - (12) The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

APPENDIX III: METHODOLOGY

For this review, the OIG conducted six site visits and interviewed 120 officials and staff at USAOs, EOUSA, EOUSA General Counsel's Office, OPR, and the OIG's Investigations Division. We conducted a series of analyses to evaluate the consistency, timeliness, and outcomes of the four phases of the USAOs and EOUSA disciplinary process: reporting, inquiry or investigation, adjudication, and implementation. We defined consistency as whether a disciplinary system processed similar misconduct cases using uniform standards and whether similar penalties were imposed for similar misconduct. We defined reasonableness as whether the record as a whole contained sufficient evidence to allow a reasonable person to support the same conclusion, even though another reasonable person might have reached a different conclusion. We also considered whether the processes for investigations and adjudications were complete and objective. We defined our evaluation criteria based on the interpretations of these criteria used in the five previous OIG reports examining Department law enforcement components' disciplinary systems.

Cleaning and Normalizing the Misconduct Data

In response to the OIG request for the number of closed misconduct allegations reported during our study period, EOUSA provided a spreadsheet containing various data points from 1,353 Management Employee Relations Matters (MER) closed from FY 2009 through FY 2011. MERs are matters handled by the EOUSA GCO and include general questions, performance issues, suitability reviews, and misconduct matters. Many of the data points related to the disciplinary process were missing, and the OIG could not complete data analysis without additional information.

We obtained access to the GCO case management system to review each MER individually. We wanted to determine which MERs were misconduct cases and find the information missing from the data fields. We first reviewed the spreadsheet containing data from the 1,353 MERs to identify those that were related to misconduct. Every MER contains a "matter description" field that is designed to provide the reader with a brief description of what occurred or what was alleged in the case. In some MERs the "matter description" contained a brief but thorough account of what occurred, while others contained little information or only a generic description of the matter. We removed the MERs that were clearly not related to misconduct, but kept the MERs that had any mention of misconduct or discipline or that were not clear. This resulted

in a list of 671 MERs. We then reviewed each of these 671 MERs in GCO's case management system. We read e-mails, notes, and reviewed documents to identify misconduct cases, and we filled in the blank data fields in the spreadsheet, or corrected errors, where we could. We also identified some MERs that contained more than one misconduct case, and we added those cases to our list. We were able to determine that 563 of the MERs were misconduct cases or included an allegation of misconduct.

After assembling the final list of 563 MERs and filling in missing information in data fields, we had to normalize the data for some fields.⁴⁸ Charges applied to misconduct allegations are general and may not adequately describe the conduct to allow for comparisons (for example, "conduct unbecoming a federal employee"). We created a data field and normalized the charges into standardized offense categories or types. This allowed us to better characterize the misconduct, and to make comparisons across various demographic categories, such as position, race, and grade level. We also created data fields to better categorize the cases, such as identifying the cases in which an allegation was not substantiated, the USAO chose not to discipline an employee, or the outcome was not clear based on documentation in the case file. We then completed descriptive statistical analysis of the misconduct case data.

Analysis of Reporting and Referrals

We interviewed USAO and EOUSA staff and managers specifically about the reporting of misconduct. We interviewed OIG and OPR officials about misconduct referrals from USAOs and EOUSA. We also conducted data analysis to compare cases in the EOUSA GCO case management system to the list of referrals maintained by the OIG and OPR to determine if misconduct was appropriately referred.

To determine whether matters were reported to the OIG, we first compared an EOUSA referral list with a list of referrals provided by the OIG's Investigations Division for our study period. We did the same for OPR referrals and matched a list provided by EOUSA to a list provided by OPR. If we could not match a referral, we then reviewed all the e-mails, notes, and other materials contained in both the misconduct and investigative matters in the GCO case management system. Generally, when the OIG or OPR accepts a case and begins an investigation, GCO opens an investigative matter in its case management system to track the

⁴⁸ Normalization is the process of standardizing and organizing values to allow for easier comparisons and analysis. In this case, we normalized the wide range of misconduct into more descriptive offense categories.

events or other important information, so a referral could be mentioned in the MER or the investigative matter.

Analysis of Inquiry and Adjudication

Quantitative Data Analysis

To evaluate the consistency and reasonableness of USAO and EOUSA disciplinary decisions, we compared the outcomes of all cases within offense types. We also analyzed the outcomes of similar offense types across various demographic categories, including race, gender, position, and job category. Since the number of cases under each offense type was often too small to make any conclusion about the consistency and reasonableness across these categories or across fiscal years or USAOs, we selected several samples of case files to determine if inquiry and adjudication phases of the disciplinary process were reasonable and consistent.

Case File Review

We selected a series of samples of case files to review USAO and EOUSA compliance with 5 C.F.R. Part 752 and to evaluate the inquiries and adjudications for consistency and reasonableness. We also reviewed all case files of three specific offense types (sexual harassment, computer misuse – pornography, and computer misuse – adult images) and one specific outcome (the USAO chose not to employ discipline). We then reviewed the cases in which subjects had more than one misconduct allegation in our study period to evaluate the use of progressive discipline. Each type of case file review is explained below.

5 C.F.R. § 752.203 and § 752.404-406 – We randomly selected case files in our study period for which the disciplinary penalty was a suspension or removal. To select the sample, we first identified the 221 cases that resulted in formal discipline. We then created a list of random numbers to select 31 case files. To evaluate the case files, we created a checklist with questions about specific regulatory provisions. We reviewed the documents in the case files, such as the proposal and decision letters, e-mail, correspondence, and notes. Based upon the review of the case files, we answered the questions on the checklist to determine compliance.

Level of Inquiry – We selected a random sample of 14 case files to review the level of inquiry. We followed the same procedures as described above to randomly select 14 case files from the 371 cases that ended in formal or informal discipline. We developed a checklist with

questions that would aid us in evaluating the level of inquiry. Based on our review of all the documents contained in the files, we answered the questions on the checklist and came to a determination.

Inquiry and Adjudication by Offense Type – We selected six offense types to obtain a wide range of cases to evaluate the inquiry, adjudication, and outcomes for consistency and reasonableness. The six offense types were unprofessional conduct, lack of candor, credit card misuse, driving under the influence charges, leave abuse/absent without leave, and disclosure of sensitive information. We selected the case with the highest penalty, the case with the lowest penalty, and a case in the mid-range of penalty for each offense type. When a case had unique circumstances that did not allow for easy comparison within that offense type, we then selected additional cases to review for a total of 25 case files. We also took into account whether a case included more than one charge or offense. We developed a checklist with questions that would aid us in determining the consistency and reasonableness of the inquiry and adjudication. Based on our review of all the documents contained in the file, we answered the questions on the checklist and came to a determination.

Sexual Harassment – There were 18 sexual harassment allegations in our study period. To evaluate the handling of sexual harassment allegations, we developed a checklist with questions regarding specific points in the EOUSA policy statement. We also supplemented the checklist with questions from our inquiry and adjudication analysis to determine if the penalties imposed were reasonable and consistent. We reviewed the sexual harassment case files and answered the checklist questions to make our final determinations.

Computer Misuse – Pornography and Adult Images – We also reviewed all of the computer misuse case files in our study period with allegations of accessing pornography (34 cases) and adult images (15 cases). Adult images are classified as sexually suggestive material, such as minimally clothed women, that did not rise to the level of pornography. We examined all of the notes, e-mails, and documents in the case files to determine if the outcomes were reasonable and consistent. We also noted how the computer misuse was detected and if follow-up computer monitoring and searching were requested, approved, and conducted when appropriate.

Progressive Discipline – We analyzed whether the USAOs and EOUSA employed progressive discipline when imposing penalties against an employee who had committed previous misconduct. To conduct our analysis, we reviewed the 563 misconduct cases and identified the

subjects that had more than one misconduct allegation in our study period. Once identified, we reviewed the outcomes in these cases to determine if USAO and EOUSA supervisors were using progressive discipline.

Analysis of Implementation

To determine if suspensions and removals had been implemented by the USAOs and EOUSA, we reviewed SF-50s, SF-52s, and other documentation in case files. There were 138 suspensions and removals in our study period, but we were able to evaluate only 83 of those cases because of a lack of documentation. For a number of cases, EOUSA Human Resources was unable to provide us with SF-50s evidencing the imposition of discipline. For those cases, we reviewed e-mails and other correspondence in the EOUSA GCO case management system to determine if the disciplinary penalty was implemented.

Analysis of Timeliness

After filling in the missing information in the original spreadsheet of misconduct cases, we created additional data fields to compute times for different phases of the disciplinary process. We could not compute times for reporting because that data is not collected by EOUSA or the USAOs. We were able to compute times for the following: open to close, open to decision, and proposal letter to decision letter. We then conducted descriptive statistical analysis, including the mean, median, mode, maximum time, minimum time, and variance. We identified outlier cases that took a very long time to close. We next split the data and conducted descriptive statistical analysis on the different types of cases, such as those that ended in formal discipline, those that ended in informal discipline, those that involved the OIG or OPR, and those that had no such outside involvement. We also analyzed the lengths of time by other factors, such as USAO and fiscal year, to identify trends or issues. EOUSA has not established timeliness standards for the disciplinary process, but we used the Department's law enforcement components' standards to make comparisons.

We conducted a separate analysis on the length of time between the disciplinary decision and implementation of discipline. We created a spreadsheet using information from the OIG's main datasheet, such as decision date, outcome, and offense. We then added implementing dates from the SF-50s to compute times for the implementation of penalty.

**APPENDIX IV: DATA ON USAO AND EOUSA MISCONDUCT CASES
AND DISCIPLINE, FY 2009 THROUGH FY 2011**

From FY 2009 through FY 2011, 563 misconduct allegations were processed against employees of the USAOs and EOUSA:

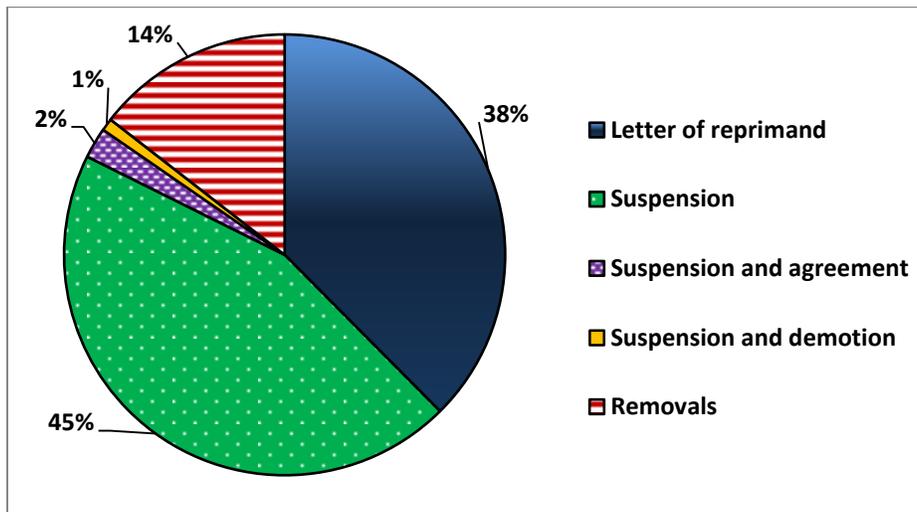
- 221 (39 percent) resulted in formal discipline;
- 150 (27 percent) resulted in informal discipline; and
- 192 (34 percent) had other results, such as an agreement, separating before discipline, or allegations not substantiated.

The formal discipline actions were as follows:

- 83 letters of reprimand;
- 106 suspensions, including 5 suspensions combined with an agreement and 2 suspensions combined with a demotion; and
- 32 removals.

Figure 4 below displays the breakdown of the formal discipline outcomes for the 221 cases.

**Figure 4: Formal Discipline Outcomes,
FY 2009 through FY 2011**



Source: EOUSA GCO case management system, OIG analysis.

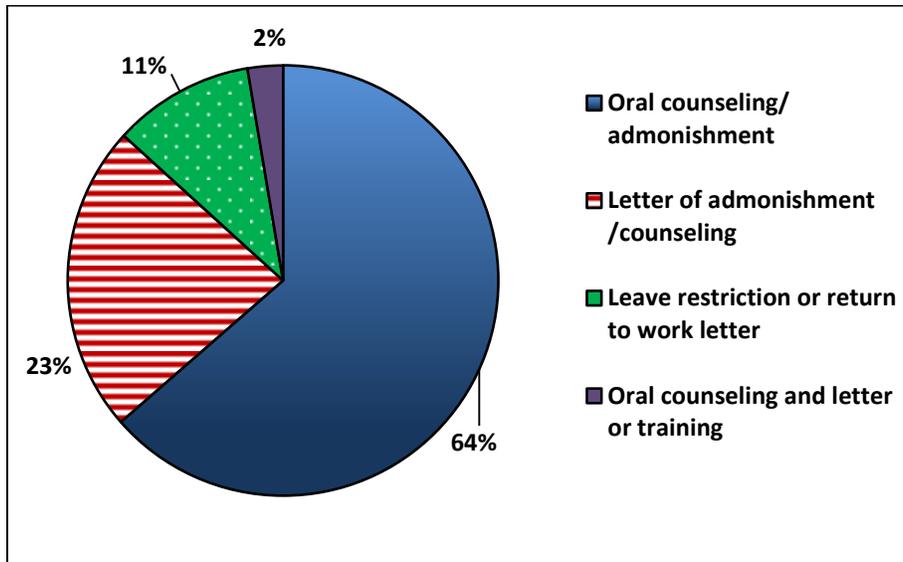
The informal discipline actions were as follows:

- 96 oral counseling or admonishments;
- 35 letters of counseling or admonishment;

-
- 16 leave restriction or return to work letters; and
 - 3 oral counseling combined with letters or training.

Figure 5 below displays the breakdown of the informal discipline outcomes for the 150 cases.

Figure 5: Informal Discipline Outcomes, FY 2009 through FY 2011



Source: EOUSA GCO case management system, OIG analysis.

The remaining 192 cases had a variety of outcomes, including cases in which the misconduct allegation was not substantiated, the subject retired or resigned before discipline, or the allegation resulted in other action besides discipline. Table 6 presents the outcomes of these cases.

**Table 6: Other Types of Outcomes of Misconduct Allegations,
FY 2009 through FY 2011**

Outcome	Number of Cases
Number of cases that resulted in an agreement only*	23
Number of resignations/retirements before discipline	40
Number of cases in which the USAO did not do anything	44
Number of cases in which misconduct allegation was not substantiated or no finding from investigation	33
Number of cases in which criminal charges were dropped or not filed	8
Number of cases that resulted in action, but not discipline (for example, reassignment, demotion, medical retirement, leave warning, computer monitoring)	21
Number of OIG or OPR cases still open at end of FY 2011	6
Number of cases for which outcome was not clear from documents in EOUSA database	17
Total	192

* Two misconduct allegations were combined for one agreement.

Source: EOUSA GCO case management system, OIG analysis.

APPENDIX V: LIST OF ACRONYMS

AWOL	Absent Without Leave
AUSA	Assistant U.S. Attorney
C.F.R.	Code of Federal Regulations
DOJ	Department of Justice
EEOC	Equal Employment Opportunity Commission
EOUSA	Executive Office for U.S. Attorneys
FBI	Federal Bureau of Investigation
FY	fiscal year
GCO	General Counsel's Office
ISS	Information Systems Security Staff
MER	Management Employee Relations Matter
MSPB	Merit Systems Protection Board
OPR	Office of Professional Responsibility
OIG	Office of the Inspector General
POC	Point of Contact
PMRU	Professional Misconduct Review Unit
SF-50	Standard Form 50, Notification of Personnel Action
SF-52	Standard Form 52, Request for Personnel Action
USAO	U.S. Attorney's Office
USAM	U.S. Attorneys' Manual
USMS	U.S. Marshals Service
U.S.C.	United States Code

APPENDIX VI: EOUSA RESPONSE TO DRAFT REPORT



U.S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

EOUSA, 1500 Pennsylvania Avenue, N.W.
Washington, DC 20530

(202) 512-1000

FEB - 3 2014

Ms. Nina Pelletier
Assistant Inspector General
Evaluations and Inspections
Office of the Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Ms. Pelletier:

The Executive Office for United States Attorneys (EOUSA) appreciates the opportunity to review and respond to the Office of the Inspector General's (OIG) comprehensive evaluation of the United States Attorney's Offices' (USAOs) and EOUSA's disciplinary process.

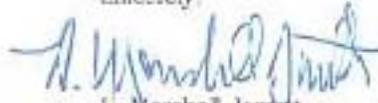
The report documents that USAO and EOUSA managers are appropriately reporting instances of misconduct, conducting appropriate inquiries into alleged misconduct, and processing cases in a reasonably timely manner that results in appropriate outcomes. Additionally, the evaluation found that managers were regularly consulting with the General Counsel's Office even under circumstances where there was no requirement to do so. The report confirms the overall consistency, reasonableness, and timeliness of the USAO and EOUSA disciplinary system.

Nevertheless, the report does properly highlight areas in EOUSA's disciplinary process for which there is room for improvement. Consistent with your recommendations, we concur that procedures should be implemented to ameliorate the discrepancies in the documentation of misconduct case files. We also concur with establishing timeliness goals for completing the various phases of the disciplinary process. Further, we are considering ways to improve data entry by the General Counsel's Office within its case management system.

Finally, we will undertake an evaluation of creating a table of case precedents that incorporates information regarding penalties for various offenses.

The Department of Justice community strives for fairness and excellence not only in our role as the nation's premier law enforcement entity, but also as the employer of more than 12,000 attorneys and support personnel who are critical to fulfilling our mission. We appreciate the opportunity your report has given us to improve upon our disciplinary system. Please find enclosed our response to OIG's recommendations. Should you have any questions, please do not hesitate to contact General Counsel Jay Macklin or Acting Deputy General Counsel Kimya Jones at (202) 252-1600.

Sincerely,



F. Marshall Jarratt
Director

Enclosure

**EOUSA Response to OIG Report:
Review of the USAOs' and EOUSA's Disciplinary Process**

Recommendation 1: "EOUSA [should] delegate to a person or office the responsibility and authority for maintaining a complete and centralized misconduct case file with all documentation related to the case, including the SF-50, even for individuals who are no longer employed by the Department, and a statement indicating the facts that were substantiated or a report memorializing the findings of the inquiry."

EOUSA Response: EOUSA concurs with this recommendation. The Director will delegate to General Counsel the authority to collect and maintain a centralized misconduct case file for all formal disciplinary actions. We concur that this documentation must include the SF-50 generated when an employee serves a suspension or when a removal is implemented. Prior to issuance of the OIG report, GCO implemented a requirement that, before closing a matter in our electronic database, its staff obtain the SF-50s from USAOs and EOUSA to document the implementation of discipline.

We concur that GCO's official files for formal disciplinary matters should contain sufficient information to efficiently ascertain the outcome of the matter. Although formal discipline necessarily results in documentation such as a letter of reprimand or a suspension which sets forth the facts underlying the discipline, GCO has not always been able to obtain the final issued letter. We expect the new delegation of authority to General Counsel will help that process. In the instances where an inquiry is undertaken but the facts support either mitigation of the penalty or no implementation of discipline, the file should contain sufficient information to allow GCO to assess the manager's decision. To that end, GCO will evaluate ways in which its staff may better document management findings in the absence of a written reprimand, suspension or removal. GCO will continue its current practice of requesting and maintaining copies of all issued formal disciplinary actions (reprimands, suspensions and removals), and SF-50s in its official file.

Recommendation 2: "EOUSA [should] set timeliness goals for the inquiry and adjudication of misconduct cases."

EOUSA Response: EOUSA concurs with this recommendation. The report noted that despite the absence of specific timeliness standards, the median time during which USAOs and EOUSA adjudicated misconduct cases resulting in formal discipline was 144 days. By comparison, the Department's law enforcement components generally have a goal to complete their investigations and adjudications within 120-180 days. Thus, although it does not appear that timeliness goals are necessary for USAOs or EOUSA, we agree that

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establishing such a framework will emphasize the importance of efficient and expedient handling of misconduct matters.

GCO utilizes a chart that sets forth the normal expected response times during which the USAOs and EOUSA may anticipate a final response pertaining to a variety of matters. Currently, GCO advises that for issues pertaining to employee matters, including misconduct, the normal expected response time is 30 calendar days. For example, if a USAO seeks to issue a reprimand or place an employee on a leave restriction, a final written product should be reviewed by GCO and available to management to issue within 30 days from the date management first contacted GCO (assuming, of course, that all relevant information is timely made available to GCO). GCO will endeavor to prepare and distribute, as appropriate, a more comprehensive timeline setting forth expected timeliness goals for the reporting of and inquiry into the misconduct, adjudication and implementation of any discipline.

Recommendation 3: “GCO [should] establish and implement data controls and procedures for data entry in its case management system.”

EOUSA Response: EOUSA concurs with this recommendation. The General Counsel will evaluate whether to incorporate into the performance work plan of each GCO attorney a critical performance element requiring accurate and complete documentation for misconduct matters. Additionally, the General Counsel will task GCO’s database committee with evaluating how staff may properly and efficiently utilize database tools or create new data entry fields to more clearly document the status and outcome of disciplinary matters.

Recommendation 4: “GCO [should] consider maintaining an updated table of case precedents with penalties for sexual harassment and other serious and commonly occurring offense types, along the lines of that developed in computer misuse cases involving pornography and adult images.”

EOUSA Response: EOUSA concurs with this recommendation. GCO will obtain copies of tables of penalties maintained by other Department components for consideration of creating and maintaining a table of penalties/case precedents for sexual harassment and other serious, commonly occurring offenses. We anticipate this would be a long-term project to be undertaken by a GCO staff member.

APPENDIX VII: OIG ANALYSIS OF EOUSA'S RESPONSE

The Office of the Inspector General provided a draft of this report to the Executive Office for United States Attorneys for its comment. EOUSA's response is included in Appendix VI to this report. The OIG's analysis of EOUSA's response and the actions necessary to close the recommendations are discussed below.

Recommendation 1: EOUSA delegate to a person or office the responsibility and authority for maintaining a complete and centralized misconduct case file with all documentation related to the case, including the SF-50, even for individuals who are no longer employed by the Department, and a statement indicating the facts that were substantiated or a report memorializing the findings of the inquiry.

Status: Resolved.

EOUSA Response: EOUSA concurred with the recommendation and said that the Director of EOUSA will delegate the authority to the GCO to collect and maintain a centralized misconduct case file for all formal disciplinary actions. EOUSA stated that prior to the issuance of the OIG report, the GCO implemented a requirement that its staff obtain a copy of the SF-50s from USAOs and that EOUSA document the implementation of discipline before closing a matter in the GCO database. EOUSA expects that the new delegation of authority will allow GCO to obtain final documentation in formal discipline cases. In the cases where an inquiry does not support formal or informal discipline, the file should contain sufficient information to assess the manager's decision. GCO will evaluate ways in which its staff may better document management findings in the cases without formal discipline. GCO will continue its current practice of requesting and maintaining copies of all issued formal disciplinary actions and SF-50s in its official file.

OIG Analysis: EOUSA's planned actions are responsive to this recommendation. Please provide the OIG with a copy of the memorandum or directive that delegates the authority to GCO to collect and maintain a centralized misconduct case file for all formal disciplinary actions and communicates this authority to the USAOs.

Recommendation 2: EOUSA set timeliness goals for the inquiry and adjudication of misconduct cases.

Status: Resolved.

EOUSA Response: EOUSA concurred with this recommendation and stated that GCO currently uses a chart that lists normal response times that USAOs and EOUSA can expect from GCO on a series of matters, including misconduct. The expected response time for misconduct matters is 30 calendar days from the time management first contacts GCO. For example, if a USAO wants to issue a reprimand, GCO will review and complete a final written letter of reprimand with 30 days, assuming that all relevant information is made available to GCO in a timely manner. GCO will work to prepare and distribute, as appropriate, expected timeliness goals for the reporting of and inquiry into the misconduct, as well as adjudication and implementation of any discipline.

OIG Analysis: The actions planned by EOUSA are responsive to the recommendation. Please provide the OIG with the established timelines for USAOs and EOUSA to report misconduct, conduct inquiries, adjudicate the cases, and implement discipline.

Recommendation 3: GCO establish and implement data controls and procedures for data entry in its case management system.

Status: Resolved.

EOUSA Response: EOUSA concurred with this recommendation and stated that the General Counsel will evaluate whether to include in each GCO attorney's performance work plan a critical performance element requiring accurate and complete documentation for misconduct matters. The General Counsel will also task the GCO's database committee to evaluate how staff may properly and efficiently use database tools or create new data entry fields to clearly document the status and outcome of disciplinary matters.

OIG Analysis: EOUSA's planned actions are responsive to this recommendation. Please provide the OIG with the results of the General Counsel's evaluation and any changes to GCO attorney performance work plans regarding documentation of misconduct matters. Additionally, please provide the OIG with the results of GCO's database committee's evaluation of database tools and a description of any changes to the GCO database/case management system.

Recommendation 4: GCO consider maintaining an updated table of case precedents with penalties for sexual harassment and other serious and commonly occurring offense types, along the lines of that developed in computer misuse cases involving pornography and adult images.

Status: Resolved.

EOUSA Response: EOUSA concurred with this recommendation and GCO will obtain copies of tables of offenses and penalties maintained by other Department components. EOUSA will consider creating and maintaining a table of penalties or case precedents for sexual harassment and other serious, commonly occurring offenses. EOUSA anticipates this will be a long-term project undertaken by a GCO staff member.

OIG Analysis: The actions planned by EOUSA are responsive to this recommendation. Please provide the OIG with a copy of any table of penalties or case precedents created.