

The FBI's Disciplinary Process Explanation of Process

The following is a general discussion of the FBI's disciplinary process. For specific information pertaining to your individual case, please consult the documents you receive from OPR or contact the OPR Unit Chief supervising your case.

Allegations of Employee Misconduct: If an employee is alleged to have engaged in misconduct, the Inspection Division and/or DOJ's Office of Inspector General will review the allegation to decide whether the allegation is sufficiently serious and credible to warrant an investigation. If yes, a file will be opened and the matter will be investigated. At the conclusion of the investigation, the matter will be referred to OPR for further action.

Referral to OPR: Once a matter is referred to OPR, OPR's staff of experienced lawyers and SSAs will review all investigative materials and prepare a report discussing the allegations, relevant facts, applicable policies, rules, regulations, laws, or other legal standards, and make a finding as to whether the employee violated an FBI Offense Code (the FBI's Offense Codes and Penalty Guidelines may be found on OPR's website under "Library"). OPR will also prepare a document informing the employee of OPR's decision. The following are the types of such documents issued by OPR:

- No Action Letter: Issued when the employee is found to have not engaged in misconduct.
- Non Disciplinary Counseling EC: Issued when the employee is found to have not engaged in misconduct, but would benefit from counseling.
- Oral Reprimand EC: Issued when OPR concludes the employee committed misconduct that warrants an oral reprimand.
- Letter of Censure: Issued when OPR concludes the employee committed misconduct that warrants a letter of censure.
- Letter of Suspension, Demotion, or Dismissal: Issued when OPR concludes the employee committed misconduct for which the employee should be suspended, demoted, or dismissed (the additional procedures that apply in such cases are discussed below).

Suspension of 1 to 14 days ("non-adverse" suspensions): If OPR determines that an employee should be suspended for a period of 1 to 14 calendar days, the employee will receive a letter setting forth OPR's findings/penalty. The employee may appeal a non-adverse suspension (i.e., less than 15 days) to the Executive Assistant Director (EAD) of the Human Resources Branch (HRB). OPR's suspension letter will explain the employee's appeal rights. The suspension is stayed (not imposed) during the pendency of an appeal.

Suspension of 15 days or more, demotions, dismissals ("adverse actions"): If OPR determines that an employee should be suspended for 15 days or more, demoted, or dismissed, the employee is provided additional procedural protections to ensure the correct decision is reached. This is a *general* explanation of an employee's procedural protections:

1. The employee will first receive a "proposal letter" from an OPR Unit Chief that advises the employee of OPR's findings and identifies the specific FBI Offense Code the employee is believed to have violated, as well as OPR's proposed penalty.
2. OPR's proposal letter will advise the employee that he/she has 10 days from the receipt of OPR's proposal letter to advise OPR (contact information is included in the letter) whether the employee wishes to invoke his/her "procedural protections."

3. The FBI's "procedural protections" include:
 - (a) The employee may review the FBI's 263 (OPR) file related to his/her case.
 - (b) The employee may prepare a written response to OPR's proposed findings.
 - (c) The employee may make an oral presentation to the AD, OPR.
4. The employee may retain outside counsel. FBI Non-Disclosure documents will be provided to counsel for execution. The employee is responsible for the payment of any fees or expenses related to hiring an attorney.
5. As noted above, the employee may prepare a written response to the proposed action. The written response is due within 10 days of the receipt of OPR's proposal letter or after the employee has been provided access to the materials described above, whichever occurs later. The employee may email or fax his/her written response to OPR.
6. As also noted above, the employee may make an oral presentation to the AD, OPR. Oral presentations may be in-person, telephonic, or by video-conference, and employee's counsel may attend.
7. Following the oral presentation, the AD, OPR, will further consider the matter and make a final decision. The employee will be provided a copy of the AD's final decision, which will include an explanation of the employee's appeal rights.

Preference-eligible veterans: Preference-eligible veterans have appeal rights to the Merit System Protection Board (MSPB) in accordance with the instructions contained in 5 CFR Part 1201. Further information may be found at <http://www.mspb.gov>.

Probationary Employees: The FBI does not grant probationary employees a right of appeal from an OPR disciplinary action.

DUIs: Pursuant to Section 3.6.3 of the FBI's Government Vehicle Use Policy Implementation Guide (0430PG, July 29, 2011), an employee arrested for a DUI, convicted of a DUI, or suspended by OPR for a substantiated finding of a DUI will have his/her FBI driving privileges suspended by his/her AD or SAC. The AD or SAC may reinstate the employee's FBI driving privileges if the conditions set forth in Section 3.6.3(d) are met.