

# WHAT TO EXPECT WHEN YOUR COMPLAINT IS REFERRED FOR FURTHER INVESTIGATION

*The Office of Special Counsel's (OSC's) Complaints Examining Unit has referred your complaint to one of the agency's Investigation and Prosecution Divisions (IPD's) for further investigation and legal review. This notice tells you what will happen during the investigation and review process.*

## **Your Case Team**

An investigator and an attorney will soon be assigned to your case. The investigator will look for evidence of the prohibited employment practice(s) that you alleged. The attorney will analyze the evidence to see if OSC can prove that a violation of law or regulation occurred.

Generally, the investigator will be your primary contact during the evidence-gathering phase; the attorney will be the primary contact during the legal review phase. There is, however, considerable overlap between these two phases, and you should feel free to contact either the investigator or the attorney if you have questions about your case.

## **Initial Contact**

The investigator will call you within a few weeks to give you his/her name and telephone number, and the name and number of the case attorney. If OSC has not received your signed consent form (blank form was enclosed with the letter acknowledging receipt of your complaint), the investigator will verify that you have agreed to the disclosure of your name, and the information you provided to OSC, to the extent necessary to investigate your allegations. The investigator will also ask you to complete the consent form (indicating a Level I consent) and return it to OSC.

In the initial call, the investigator may briefly discuss some of the issues in your complaint, ask about any changes in your status, and inquire about the corrective action you are seeking. The investigator will ask you to notify him or her whenever there are any important changes in your situation, and to provide any additional information you may get during the investigation. While your complaint is pending, the case investigator or attorney will contact you at least every 60 days to tell you the status of your complaint.

You may send additional documents and leave voice mail messages at any time to update or add information to your case file. If you have asked the investigator or the attorney to contact you and you do not receive a response immediately, he or she may be out of the office working on another case.

Be assured that you will be contacted as soon as possible. If you have an urgent message, you can ask to speak to the investigator or attorney supervisor.

## **Case Priority**

During the initial call, the investigator will tell you when the inquiry is likely to begin. Normally, your complaint will be investigated in the order in which the investigator received it. Because there are many other complaints that must be investigated, however, it may take several months before the investigator is able to begin interviews in your case. In addition, some cases are given higher priority than others and are taken out of sequence. For example, a case in which a stay of a personnel action has been agreed to by an agency or granted by the Merit Systems Protection Board (MSPB) has highest priority for investigation; cases in which there is significant public interest or compelling evidence of a violation also receive priority. OSC assigns a different priority to cases that involve relatively minor personnel actions. These cases are investigated under modified, but expedited, procedures that permit quicker resolution of the allegations.

Attorneys also work with heavy caseloads and process cases based on established priorities. As a result, work on other cases pending before yours may delay the case attorney's review of the evidence gathered by the investigator. Many OSC cases are complex, involve review of extensive documentary and other evidence, and take considerable time to complete a legal analysis.

## **Stays**

If there are reasonable grounds to believe that a prohibited personnel practice occurred, OSC may seek a stay of the personnel action involved until the investigation is done or a determination can be made on whether a violation of law occurred. A stay may be agreed to by an agency, or ordered by the MSPB. As a general rule, OSC will only seek a stay of a personnel action that would cause substantial harm, such as removal from your position, a geographical reassignment, or a long suspension. (OSC's full stay policy may be read at [www.osc.gov/documents/osc\\_d7.pdf](http://www.osc.gov/documents/osc_d7.pdf)). You may request a stay of a personnel action through the investigator or the attorney on your case team.

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### **Investigation**

When the investigator is ready to conduct interviews, he or she will contact you again and arrange to speak with you. This interview may be in person or by telephone, depending on your location and the nature of the case. You should be prepared to tell the investigator about significant events leading to and after the prohibited employment practice(s) that you alleged, and your reasons for believing that an employment law or regulation was violated. The investigator will go over the facts related to the issues that were referred for investigation to clarify timing and events; discuss the investigative process; and give you an estimate of how long it will take to complete the investigation of your complaint. You will be asked for the names and telephone numbers of potential witnesses and for the information that each witness may be able to provide. The investigator will interview witnesses who have information relevant to your allegations. These include persons who have first hand knowledge of the issues and events, participated in the decisions, observed interactions, or have other knowledge necessary to a full understanding of the alleged violations of law being investigated. After all logical leads have been pursued, the case attorney will conduct a legal review.

### **Legal Review**

The case attorney will review the evidence and law applicable to your case and prepare a recommendation for the Associate Special Counsel (ASC) for Investigation and Prosecution. After reviewing the recommendation and the case file, the ASC will either make a preliminary determination to close the case because no further action is warranted, or refer the case to the Special Counsel with a recommendation to pursue corrective and/or disciplinary action.

If the ASC's preliminary decision is to close the file, you will receive a "pre-determination" letter that explains the reasons for that decision. Under the law and OSC procedures, you will have 16 days to respond to the letter in writing and to provide additional information. If you do not respond within 16 days, or if you respond but do not provide a basis for OSC to change its determination, you will receive another letter notifying you that the case has been closed, and describing any other remedies that may be available to you.

### **Settlement**

If there is evidence that supports your allegations of a prohibited employment practice, the case investigator or attorney may attempt to settle your complaint with the agency. Any such effort to resolve your complaint will be discussed with you, and you will be kept informed of the progress of any negotiations. OSC will not settle your complaint with the agency without your consent. If the agency offers complete corrective action, however (that is, action that would give you all the relief that we could obtain in litigation before the MSPB), and you do not accept the settlement offer, OSC may end its efforts on your behalf and close the case.

### **Corrective Action**

If OSC's preliminary determination is to prosecute your case, the Special Counsel must by law send a letter to the head of the agency involved to request corrective action. For example, if your case involves a 30-day suspension, OSC might request that the suspension be rescinded, and that you receive back pay. In most cases, agencies agree to take the corrective action requested and a settlement agreement resolves the matter.

### **Litigation Before the MSPB**

If the agency does not take the corrective action requested within a reasonable period of time (usually 45-60 days), OSC will ordinarily file a petition for corrective action with the MSPB. If OSC initiates litigation on your behalf, you will be consulted throughout the process. You will also probably be asked to testify at the hearing.

### **Disciplinary Action**

In some cases in which OSC determines that an agency official has taken a prohibited personnel action, OSC will seek disciplinary action against that agency official. OSC may attempt to obtain disciplinary action through the agency involved, or may file a petition for disciplinary action with the MSPB. Whether or not disciplinary action will be sought against the subject of your complaint is wholly within the prosecutorial discretion of OSC.