



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

December 13, 1993

MEMORANDUM

TO: Michael E. Shaheen, Jr.
Counsel
Office of Professional Responsibility

FROM: Philip B. Heymann
Deputy Attorney General *P. H.*

SUBJECT: Disclosure of the Results of Investigation of
Allèged Professional Misconduct by Department
Attorneys

I understand that the Department in the past has publicly disclosed the results of investigations conducted by the Office of Professional Responsibility only in rare cases in which OPR found knowing and intentional misconduct by senior officials. Upon reviewing that policy, I have concluded that more frequent disclosure of the results of OPR's findings concerning professional misconduct by attorneys will promote public accountability and further the fair administration of justice and the law enforcement process. Accordingly, I hereby adopt a policy that will result in the disclosure of findings in a larger number of cases.

While we must respect legitimate privacy interests of Department employees, we must also recognize that serving as an attorney with the Department of Justice carries with it a responsibility to observe high ethical standards. The public's interest in knowing whether all of our attorneys are consistently satisfying those standards should be weighed in the balance when making the determination about whether disclosure is appropriate.

Accordingly, in the future the Department will disclose the final disposition, after all available administrative reviews have been completed, of any matter in the following categories:

1. Any finding by the Department of intentional or knowing professional misconduct by a Department attorney in the course of an investigation or litigation conducted under the authority of the Department of Justice, where the Attorney General or Deputy Attorney General finds that the public interest in

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disclosure outweighs the privacy interest of the attorney and any law enforcement interests.

2. Any case involving an allegation of serious professional misconduct where there has been a demonstration of public interest in the disposition of the allegation, including matters where there has been a public referral to the Department by a court or bar association, where the Attorney General or Deputy Attorney General finds that the public interest in disclosure outweighs the privacy interest of the attorney and any law enforcement interests.
3. Any case in which the attorney requests disclosure, where law enforcement interests are not compromised by the disclosure.

Prior to any disclosure in category (1) or (2), the attorney whose name is to be released will receive notice of the planned disclosure and will be given an opportunity to object in writing to the public disclosure. The Deputy Attorney General shall resolve any such objections.

In each disclosed case, the Department will disclose the name of the employee, sufficient facts to explain the context of the allegation, and the disposition of the allegation, including any final action taken by the Department.

Please ensure that procedures are implemented in your office so that each matter falling within one of the above categories is forwarded to the Deputy Attorney General after resolution by your office. Your referral should include your recommendation about whether disclosure is appropriate. If you believe that disclosure is appropriate, please include a brief summary of the matter appropriate for public release.

Depending upon the degree of public interest in the matter, we may release the information when the matter is resolved or include it in OPR's annual report.

PROCEDURES FOR PUBLIC DISCLOSURE OF OPR FINDINGS

1. OPR concludes its investigation and submits its final report to the appropriate supervisor;
2. The supervisor reviews the OPR report, makes any additional inquiry, consults with the employee and makes a disciplinary recommendation, if appropriate;
3. The decision-maker endorses the disciplinary action and notifies OPR of any action taken;
4. If OPR decides that the case fits one of the categories in which disclosure may be appropriate, OPR prepares a brief summary of the matter which includes: (a) the employee's name; (b) sufficient facts to explain the context of the allegation; and, (c) the final disposition of the allegation, which it submits to the Office of Information and Privacy (OIP);
5. OIP reviews the proposed statement for privacy concerns and advises OPR if the statement is appropriate for public disclosure as drafted, would be appropriate with changes or excisions, or is not appropriate for public disclosure in any form;
6. If OIP advises that the summary (in original or revised form) is appropriate for disclosure, OPR circulates the proposed summary to the affected employee and to the Presidential appointee or other appropriate official who supervises the employee, giving them the opportunity to object in writing to the proposed disclosure on the grounds of a privacy or law enforcement concern;
7. If the affected employee or the supervising official objects to disclosure of the proposed summary, OPR submits the objections to OIP for review;
8. OIP advises OPR of its conclusions regarding the objections;
9. OPR forwards the proposed summary to the Deputy Attorney General with its recommendation regarding release and attaches all comments that were received;
10. If the Deputy Attorney General decides that disclosure is appropriate, she forwards the summary to the Office of Public Affairs for release.