



TMHRA

Grievances/Complaints/Appeals

February, 2023

This document is provided for general informational purposes only. It is not intended and is not to be construed to constitute legal advice. Please consult your employment attorney for specific situations.

© Ross | Gannaway | Clifton, PLLC 2023

Julia Gannaway, J.D.

Catherine Clifton, J.D., SPHR



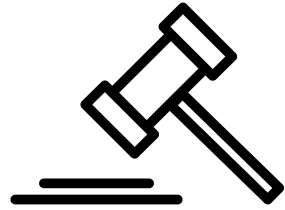
ROSS | GANNAWAY | CLIFTON

Attorneys at Law

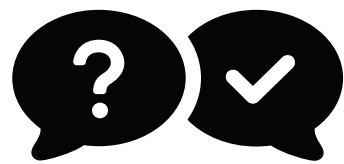
Overview



Complaints



Appeals



Grievances

Texas Government Code 614.021-023

Sec. 614.022. COMPLAINT TO BE IN WRITING AND SIGNED BY COMPLAINANT. To be considered by the head of a state agency or by the head of a fire department or local law enforcement agency, the complaint must be:

- (1) in writing; and
- (2) signed by the person making the complaint.

Sec. 614.023. COPY OF COMPLAINT TO BE GIVEN TO OFFICER OR EMPLOYEE. (a) A copy of a signed complaint against a law enforcement officer of this state or a fire fighter, detention officer, county jailer, or peace officer appointed or employed by a political subdivision of this state shall be given to the officer or employee within a reasonable time after the complaint is filed.

(b) Disciplinary action may not be taken against the officer or employee unless a copy of the signed complaint is given to the officer or employee.

(c) In addition to the requirement of Subsection (b), the officer or employee may not be indefinitely suspended or terminated from employment based on the subject matter of the complaint unless:

- (1) the complaint is investigated; and
- (2) there is evidence to prove the allegation of misconduct.

“Protected Categories” under Federal and State Law, and Employer Policies Include:

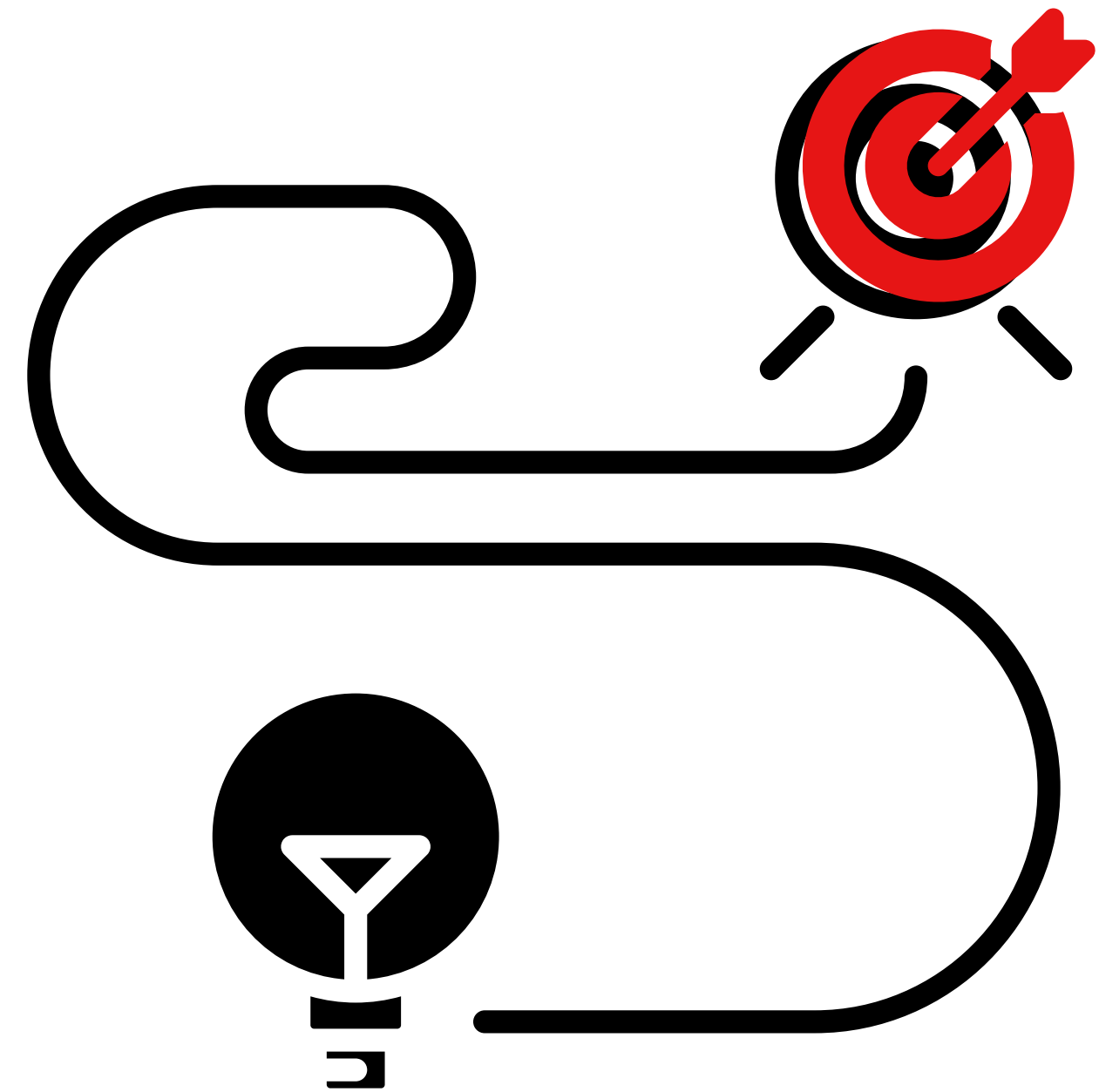
- Race – Title VII
- Color – Title VII
- Religion – Title VII
- Sex – Title VII
- National Origin – Title VII
- Sexual Orientation – Title VII
- Sexual Preference – Title VII
- Age (Over 40) – ADEA
- Disability – ADA
- Military service/Veteran status – USERRA
- Pregnancy – PDA
- Citizenship – IRCA
- Genetic Information - GINA

Did Sheriff Follow All Requirements of Chapter 614?

- *Colorado County v. Staff*
- Deputy given copy of written complaint as required by Section 614.022
- Sheriff defended case based upon at-will status of Deputy, and Trial Court granted summary judgment to Sheriff and County
- Court of Appeals considered whether Deputy received proper notice under Section 614.022
- Sheriff argued provision did not apply as Deputy was at-will employee?

What does the investigation need to accomplish?

- Some goals may conflict
- Ultimate goal should be to conduct an objective and thorough investigation



Who Should Investigate?

- Credibility of investigation depends, in part, on who is investigating
- Inside organization or external?
- Attorney?

Plan the Investigation

Identify policies/
guidelines/
practices



Preserve email/
computer
information



Identify relevant
documents



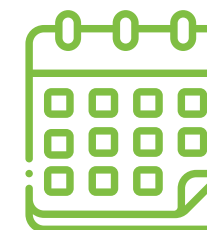
Determine interim
action(s) to
take while
investigation is
on-going



Review personnel
files



Schedule the
order of witnesses
to be interviewed



Determine the Scope of Investigation

Talk to everyone identified unless a good reason exists to skip the interview

Rank witnesses in order of most to least knowledgeable to determine urgency

Conduct follow up interviews when necessary

Note issues which may be outside scope of investigation, but may need attention.

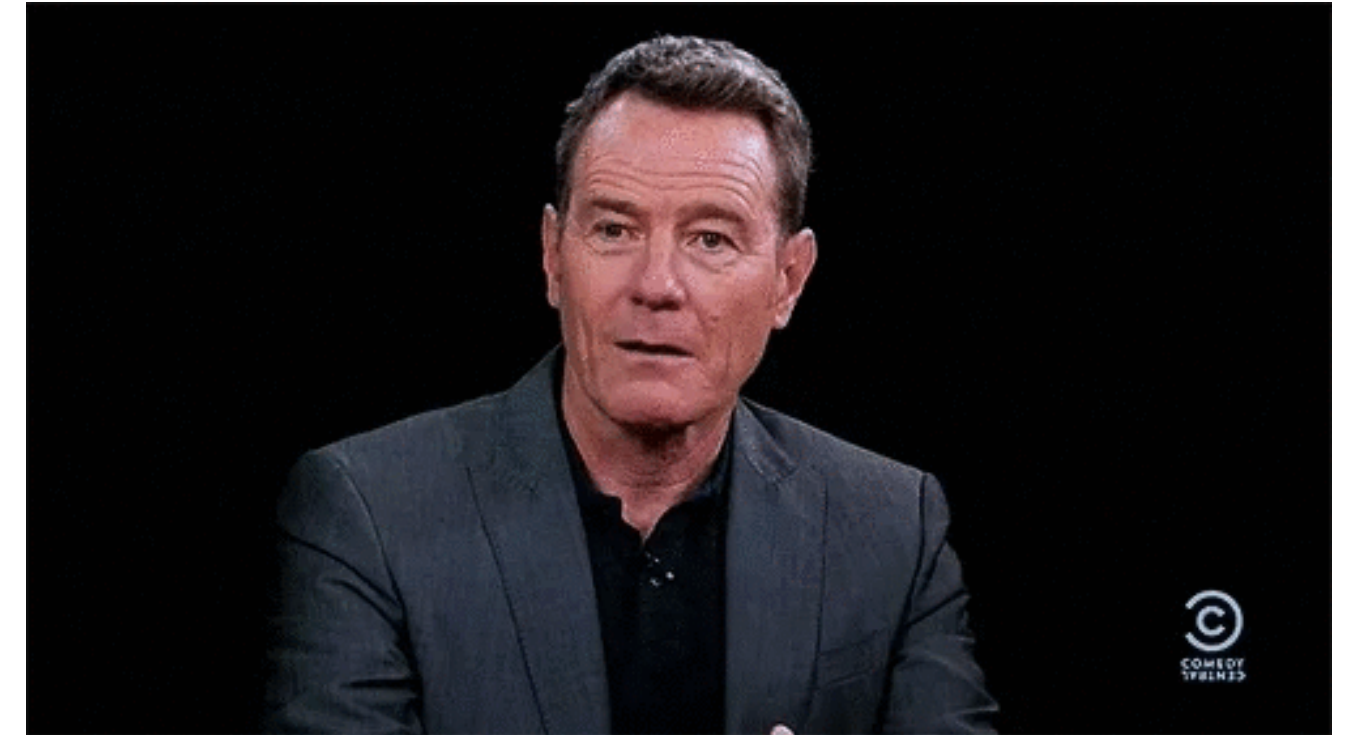
Investigating

- Initial Meeting with Complainant
- Information Regarding Complaint
- Witness Interviews
- Documentation



Interviewing the “Accused”

- State purpose/complaint
- Give opportunity to respond
- Ask for documents
- Give opportunity to respond to each accusation
- Should you offer a polygraph?

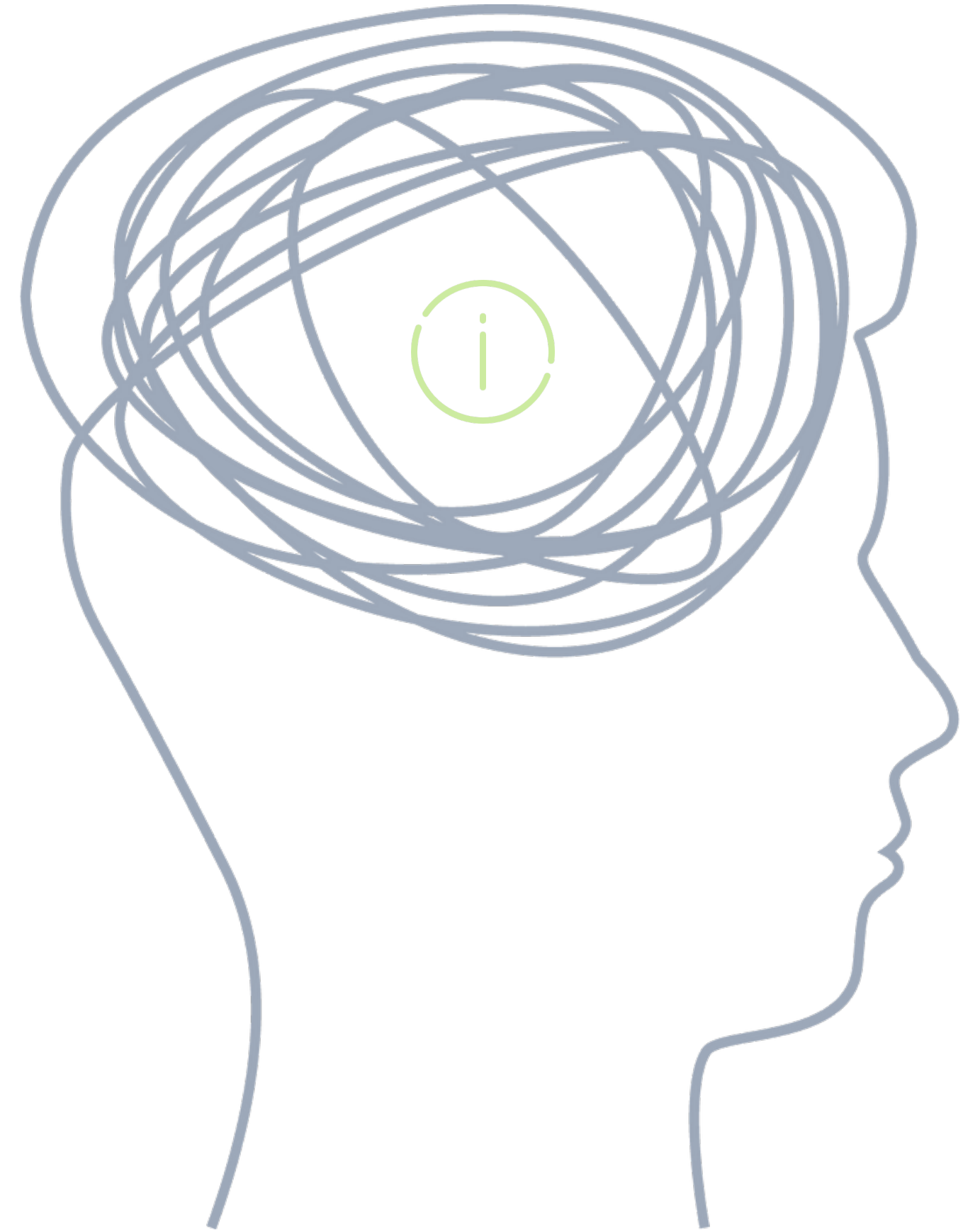


Wrapping it Up

Analyzing the Investigation

Assessing Credibility

Investigation Report



If Complaint Not Substantiated

Inform accused

Inform complainant

No retaliation v. complainant or witness

Take action against complainant only if clear proof of fabrication

Monitor workplace

If Complaint is Substantiated



- Take “prompt remedial action” under Title VII
- Ensure compliance with State law and City policies
- Consult discipline policies
- Loudermill/predetermination meeting
- Inform complainant
- Strict prohibition of retaliation against witnesses

Discipline & Termination



THE 180-DAY RULE §143.052(h):

- A Department Head may investigate any alleged misconduct by an officer *regardless of when it occurred*. The only limitation is what disciplinary action can be imposed if misconduct is sustained.
 - Temporary Suspension 1-15 days (consecutive calendar days)
 - Agreed Suspension 16-90 days
 - Indefinite Suspension: civil service equivalent of termination.



What Acts Can Result in Removal or Suspension of An Officer or Firefighter?

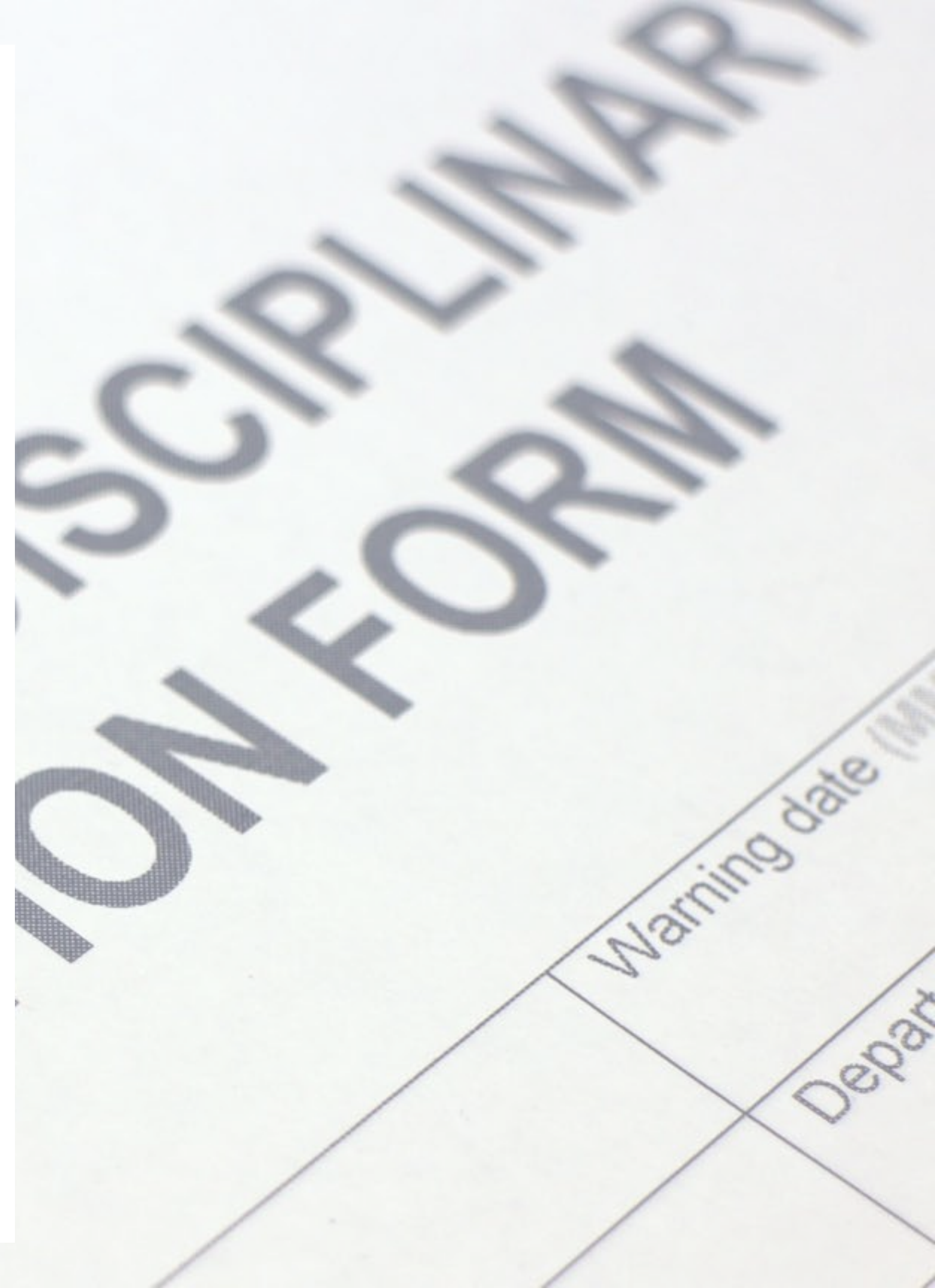
Appeals

What disciplinary actions can be appealed?

What happens to the disciplinary notice?

When does the notice have to be filed with the Commission?

Can the notice be amended?



A photograph of a document titled "GRIEVANCE PROCEDURE" lying on a wooden desk. The document is white with the title in large, bold, black, serif capital letters. The desk is made of light-colored wood with a visible grain. The document is slightly angled, and the lighting is soft, creating a professional and serious atmosphere.

GRIEVANCE PROCEDURE

Steps to a Grievance Response

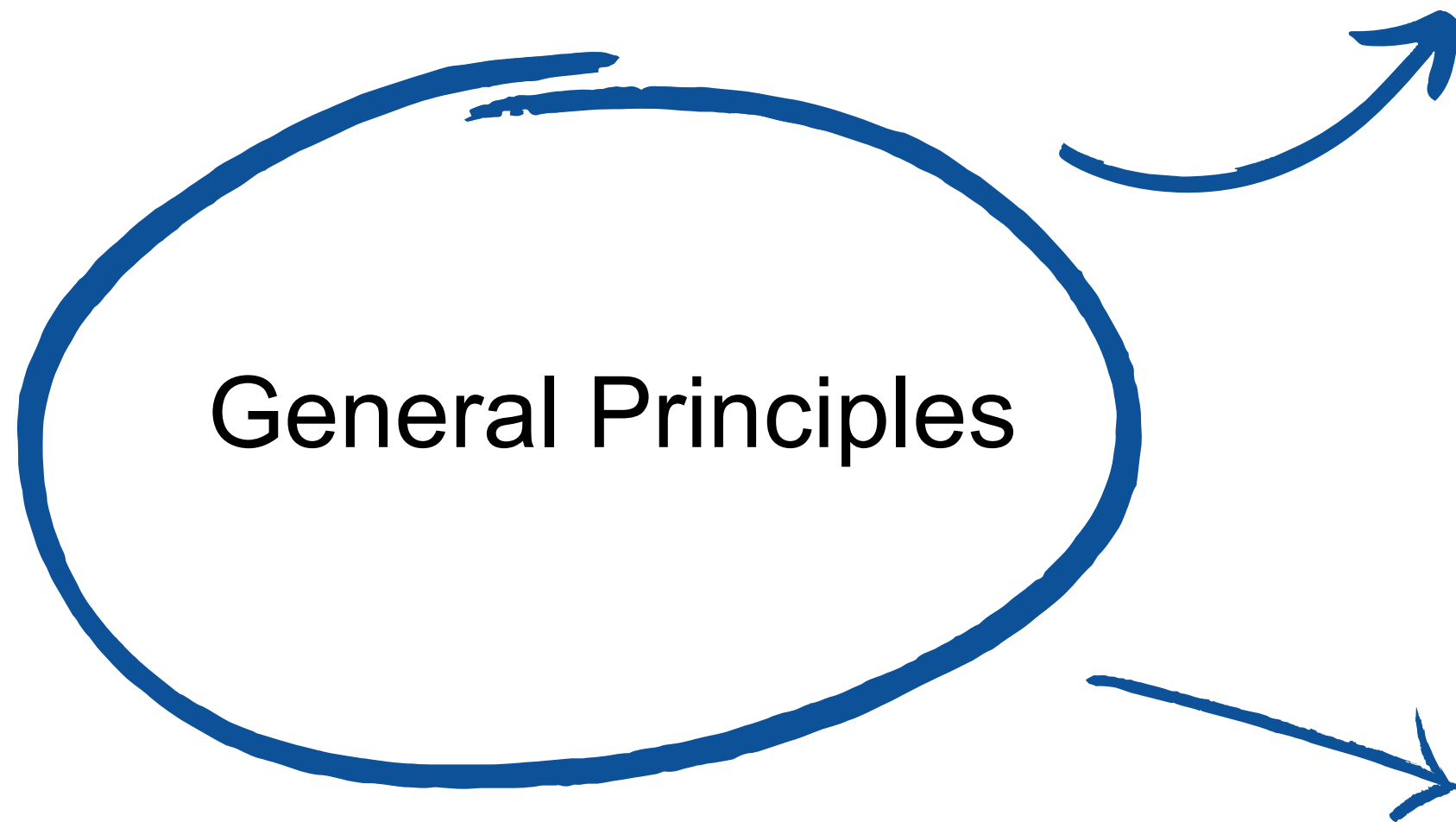
If you have a collective bargaining agreement or meet & confer *and* if your agreement permits appeals to arbitration

Thoroughly investigate

Provide thorough
response at pre-
arbitration level

Set up your theory and
argument for arbitration if
unresolved





General Principles

Do: Hold the union accountable for following the specific requirements of the grievance procedure

Don't: Give the union a break!



Preliminary Issues

Analyzing the Grievance

Is the grievance timely?

- Hold the union accountable at each step of the procedure

Was it properly filed?

- Did the union skip a step?
- Was the required information provided?

What remedy is the union seeking?

- Make the union tell you

Make an initial case assessment

- Witnesses?
- Relevant documents?
- Vulnerabilities?



Analyzing the
Grievance

Do: Refer to the contract
each and every time you
process a grievance

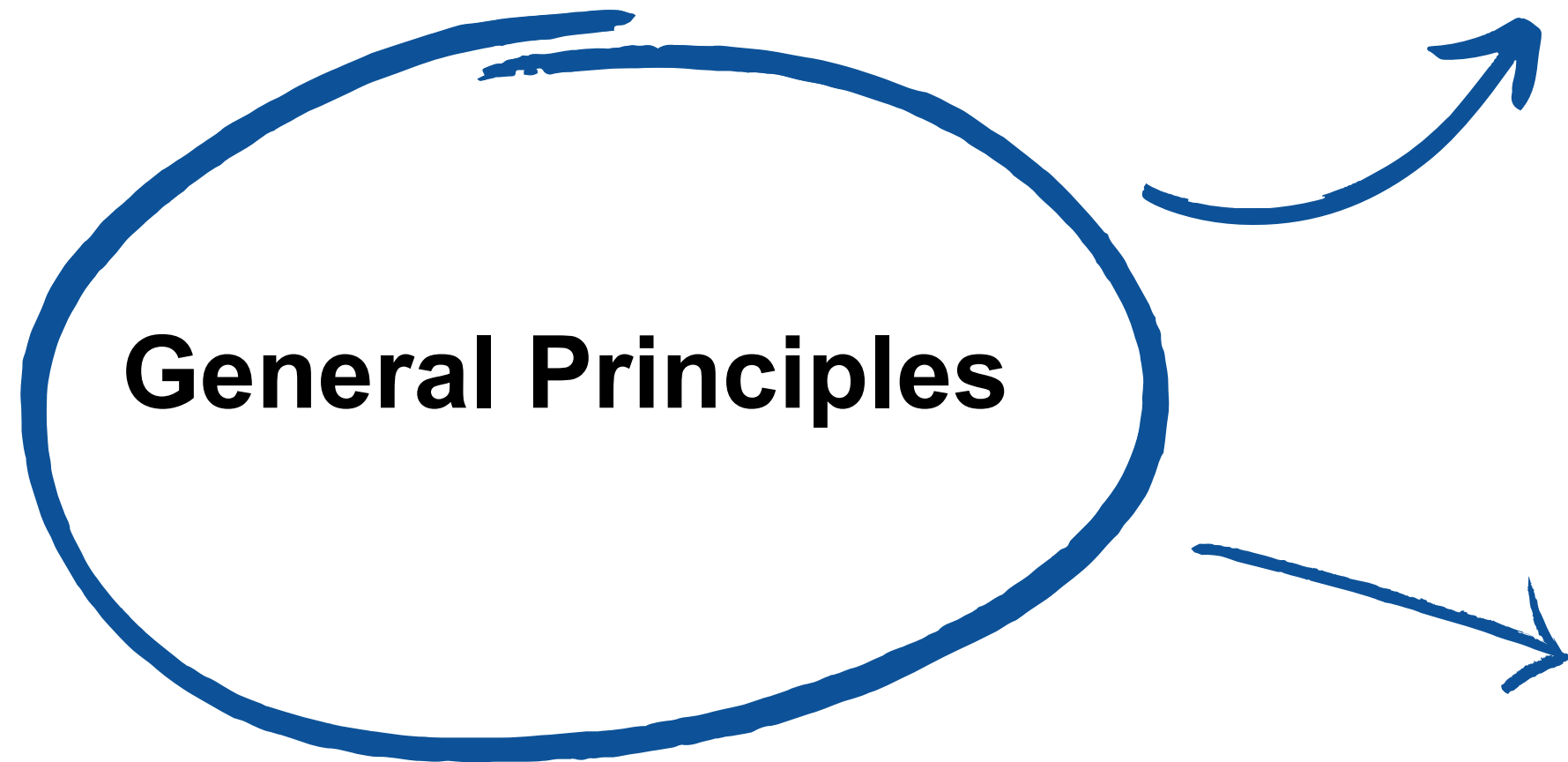
Don't: Rely on memory!

A close-up photograph of a document titled "Employee Grievance" on a light-colored, textured paper. The document is placed on a wooden surface. A black pen is visible in the lower right corner of the frame.

Employee Grievance

Processing the Grievance: Conduct the Grievance Meeting

Drafting the Grievance Response



Do: Review carefully before forwarding to the union

Don't: Wait until the last minute

Poor Grievance Responses...



“I would help if I could...but it’s out of my hands”



“I have no authority to resolve this...”



Let’s Make A Deal



“We screwed up...”

What if the Union is Right?

Settlement is always an option – throughout the grievance process – consider all ramifications carefully



thank you!

Julia Gannaway, JD

JG@RossGannaway.law

817.332.8512

Catherine Clifton, JD

CC@RossGannaway.Law

817.442.7133



ROSS | GANNAWAY | CLIFTON

Attorneys at Law