



# HOW TO CONDUCT A MISCONDUCT INVESTIGATION

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# Session 2



Honor confidentiality

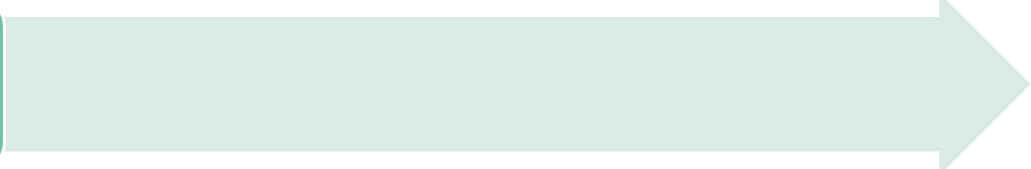
Respect others and yourself

Give everyone space to participate

Use "I" statements – speak from personal experience

Use active listening

Be responsible for your own learning – Ask for what you need



# Group

# Agreements

# Agenda

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1. Investigations and Interviews

2. Credibility and Complicating Factors

3. Challenges, Scenarios, and Discussion



# Before We Begin

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1. Let's talk – what do you see as the key issues you are investigating in this scenario?



2. Populate the chat box with some of the initial questions you designed for Jason or Janae



# Evidence is weighted

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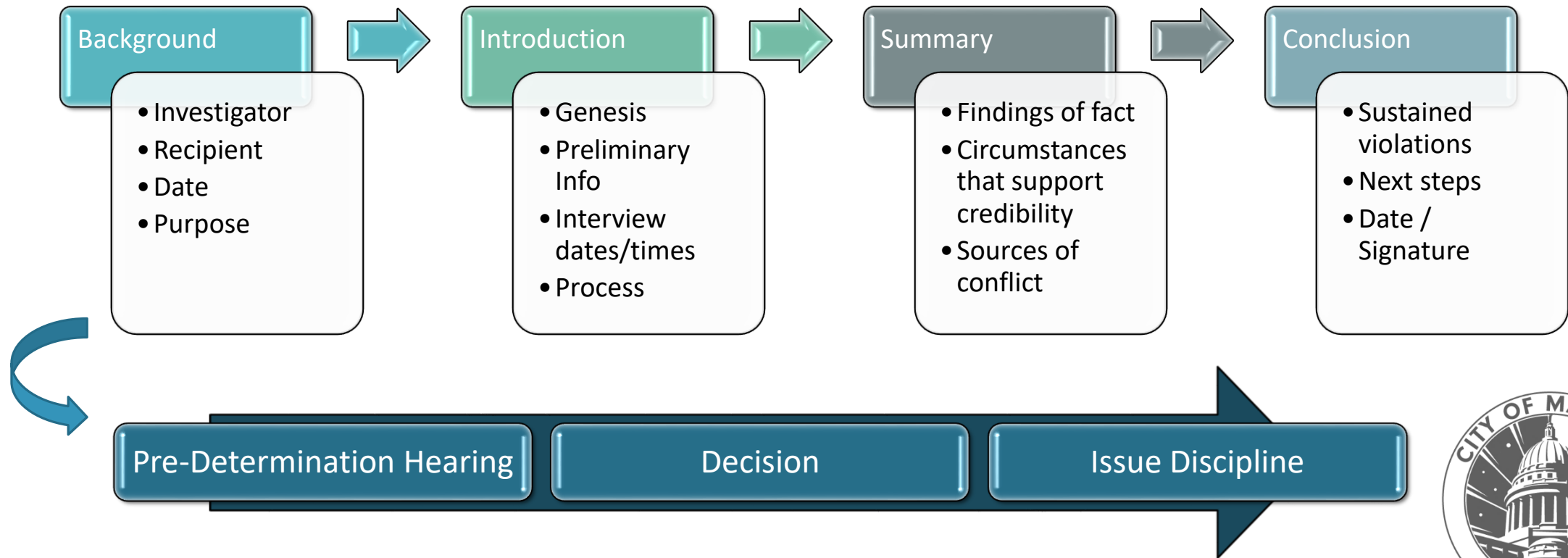
Credibility /  
Reliability



Need for  
corroboration  
of evidence



# Written Report



# Let's Try it Out

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An employee (E1) accuses a coworker (E2) of calling them derogatory names over leaving their old food in the refrigerator. The incident apparently occurred in the break room, where there are no recording devices.

E2 indicates that there was no altercation, and they only remember stopping at the microwave to make their food and that E1 “might have been there,” but said no one else was.

- VOTE**
1. We can't do anything, it's one person's word against another
  2. We can believe E1 because they wouldn't have a reason to make it up
  3. We need more investigation





# Other Legal Issues

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Criminal  
Cases

Fourth  
Amendment:  
Search and  
Seizures

First  
Amendment:  
Protected  
Speech

Arrest  
Conviction  
Record:  
Discrimination

Off-Duty  
misconduct



# Criminal Conduct - Garrity and Kalkines

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Garrity and Kalkines warnings are administered when it appears that an investigation has crossed over into a possible criminal prosecution.

**BOTTOM LINE: CONTACT HR  
BEFORE PROCEEDING FURTHER**



# Fourth amendment

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No search may be conducted by the government without a warrant and probable cause

- Government searches to retrieve work related materials or to investigate violations of work-place rules . . . Do not violate the Fourth Amendment in the public agency environment.”
- Reasonable expectation of privacy addressed on case by case basis
- Search of purses, backpacks, briefcases, vehicles during a misconduct investigation could require probable cause and search warrant
- Computer system is City property. No expectation of privacy in e-mail



# Fourth Amendment Requirements

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Employer must point to specific, objective facts which would support a search.

It is “reasonably related in scope to the circumstances” that prompted the search, i.e. measures taken by the employer are reasonably related to the search’s objective and are not overly intrusive in light of the nature of the alleged misconduct.

Search limited to areas where evidence can reasonably be found. Search must be ended when evidence is found.



# First amendment

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Congress shall make  
no law . . . abridging  
the freedom of  
speech.

A public employer needs  
to be able to reasonably  
regulate employee  
conduct



# Balancing test

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When a public employee speaks on a matter of public concern, the First Amendment protects the employee from discipline, provided the employee's interest in expressing such views is greater than the state's interest in regulating employee conduct so that services are delivered efficiently and effectively.

Pickering v. Board of Education, 391, U.S. 563, 88 S.Ct. 1731 (1968)



# Arrest and Conviction Record

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Prohibits discrimination based on arrest and conviction record.

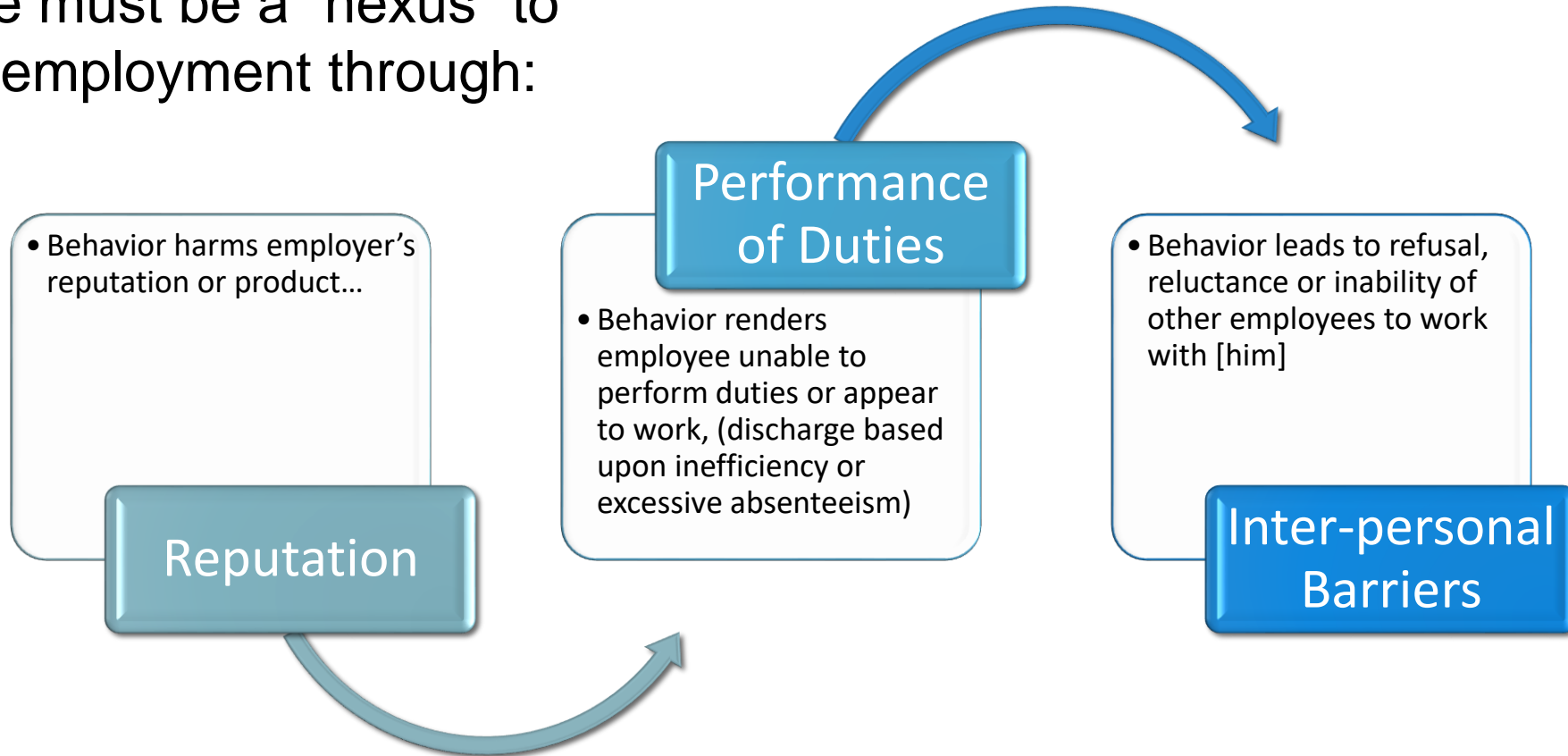
Employer may not discharge employee based solely on their arrest (innocent until proven guilty)

Employer may conduct an investigation and discharge based upon unacceptable conduct or violation of policy



# Off-duty Misconduct

There must be a “nexus” to their employment through:





# Next Time

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Pair Up

Practice  
Interviewing

Answer  
Questions

