



**U.S. Department of Justice
Office of the Inspector General
Evaluation and Inspections Division**

Review of the United States Marshals Service Disciplinary Process

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EXECUTIVE DIGEST

The Department of Justice (DOJ) Office of the Inspector General (OIG), Evaluation and Inspections Division, evaluated the discipline process in the United States Marshals Service (USMS) to determine whether discipline actions taken in response to substantiated misconduct allegations were consistent, timely, and in accordance with USMS policy.

The USMS discipline process consists of two phases--the investigation of misconduct allegations and the adjudication of substantiated allegations. Depending on the severity of an allegation, the OIG, the USMS Office of Internal Affairs (OIA), or a USMS district or division office conducts the investigation into the misconduct. If the allegation is substantiated, the investigation report is forwarded through the OIA to the USMS Human Resources Division (HRD) Employee Relations Team (ERT) for adjudication. The adjudication phase involves a review of the case by designated USMS management officials to determine the discipline action, which can range from an oral admonishment to removal.

From a universe of 560 misconduct cases adjudicated between FY 1998 and FY 2000, we selected 50 cases to review for consistency and timeliness. We found 25 cases where the consistency of the discipline or the degree of discipline imposed raised serious concerns, and the reasons for the final discipline decisions were not adequately documented. In 8 of the 50 cases, we also found no documented evidence in the employees' official personnel folders that discipline actions had been enforced.

In 14 of the 50 cases, we found significant periods of unexplained elapsed time that appeared to prolong case adjudication. The overall adjudication timeline for these 14 cases ranged from 89 days to 330 days, with unexplained elapsed time periods ranging from 61 days to 217 days. Because of incomplete or inaccurate information in case files and the automated database, ERT personnel could not reconstruct case events to account for these time periods.

Timeliness of case processing was also a problem in the Alternative Dispute Resolution (ADR) Program. We found that 66 percent of the misconduct cases in the ADR Program had exceeded the Program's established time limit of 60 days. The backlog of cases may be attributed in part to the types of cases accepted by the ADR Program and limited use of USMS employees trained as ADR facilitators. In addition, the ADR Program did not effectively use its automated database to track the status of cases.

We also found a need for improved coordination between the various USMS entities involved in the discipline process. During our interviews, officials from these entities expressed concern or uncertainty about specific discipline process responsibilities, procedures, timelines, and work quality. Some of the general concerns mentioned by these officials involved the need for (1) cross-training to better understand the information requirements of the various entities to process misconduct cases, (2) improving or centralizing oversight of the entire discipline process, (3) clearly defining responsibilities concerning discipline process duties, (4) improving the timeliness in the discipline process, (5) improving the exchange of information among the entities, and (6) improving the OIA's response for follow-up investigative requests.

We found that the HRD and the ERT had not fully developed and implemented performance standards for the adjudication of misconduct cases. The USMS Performance Management Program identifies performance measures related to the OIA's investigative phase of the discipline process. However, goals and measures for the ERT's adjudication phase of the discipline process are not included. As a result, identifying and evaluating strengths and weaknesses in the adjudication phase of the discipline process cannot be accomplished.

Finally, the USMS is not reporting all allegations of misconduct to the OIG as required by OIG policy. Prior to forwarding an allegation to the OIG, the OIA performs a "preliminary investigation" of the allegation. If the OIA determines that the alleged misconduct did not violate USMS policy or that enough information is not provided to warrant opening a formal investigation, the OIA considers the allegation "closed." In this instance, the allegation is not forwarded to the OIG for review. The OIA's FY 1998, FY 1999, and FY 2000 annual statistics show that 70, 93, and 76 misconduct allegations were classified as preliminary investigations and closed. These 239 misconduct allegations were not reported to the OIG. The allegations included firearms violations, discrimination complaints, fraud, and hostile work environment misconduct that require immediate or 48-hour reporting by the USMS to the OIG according to OIG policy. In addition, allegations for 16 of the 50 cases we reviewed were opened by the USMS as full investigations but were not reported to the OIG.

We made 12 recommendations to help the USMS improve its discipline process:

- improve adherence to federal documentation standards for misconduct cases (Recommendation 1);
- ensure that formal discipline actions are enforced and properly documented in the official personnel folders (Recommendation 2);
- require the ADR Program to meet program time limits, improve the use of available USMS facilitators; accept only cases appropriate for ADR, and improve case tracking (Recommendations 4, 5, 6, and 7);

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- require development and implementation of data collection, entry, and review standards for ERT's automated database (Recommendation 8);
 - reactivate meetings with representatives from the appropriate entities to improve coordination within the discipline process (Recommendation 9);
 - establish performance standards, including timelines, to improve the adjudication and oversight of misconduct cases (Recommendations 3 and 10);
 - report all misconduct allegations to the OIA and then to the OIG (Recommendations 11 and 12).

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INTRODUCTION

After an allegation of misconduct is brought to the attention of management, USMS policy dictates that it be reported to the Office of Internal Affairs (OIA).¹ After receipt, the OIA is required to forward these allegations to the OIG for review. Depending on the severity of the allegation, the OIG makes a determination whether to investigate the allegation or refer it back to the OIA for appropriate action. Appendix 1 summarizes the policies and procedures governing the USMS discipline process.

The USMS discipline process is separated into two distinct phases: investigation and adjudication. The OIA, under the Executive Services Division (ESD), controls the investigation phase of the process. The Employee Relations Team (ERT), under the Human Resources Division (HRD), controls the adjudication phase of the process.

In the investigation phase, if the OIG does not perform the investigation, the OIG refers the allegation back to the OIA for appropriate handling. The OIA reviews the alleged misconduct and closes the case if it determines that no investigation is required. If the OIA determines that an investigation is required, the OIA either conducts the investigation or refers the case back to the district or division where the employee (the subject of the allegation) works for investigation. The OIA has established a performance standard of 100 days to complete an investigation.² If the allegation is substantiated by the investigation, the OIA forwards the completed investigative case file to the ERT to begin the adjudication phase of the discipline process.

After the ERT receives the investigative case file from the OIA, the ERT reviews the file and distributes the misconduct case for adjudication according to the USMS Discipline Delegation Policy (see Appendix 1). The ERT sends the cases it determines may warrant more than 14 days suspension as a potential discipline action to the USMS Discipline Panel to review and propose discipline actions. The ERT coordinates discipline proposals and decisions exceeding 14 days suspension with the USMS Office of General Counsel (OGC). The ERT sends the cases it determines may warrant less

¹ Examples of misconduct allegations are the unauthorized use of a government-owned vehicle, improper discharge of a weapon, failure to follow USMS policy, or associating with an individual involved in criminal activities.

² In FY 2000, the OIA reported to the USMS Director that its total of 150 misconduct investigations conducted were completed in an average of 42 days.

than 14 days suspension as a potential discipline action to the appropriate officials in the district or division where the employee works to propose and decide discipline actions.³

The ERT is required to review and approve all discipline proposals and decisions for consistency and compliance with applicable USMS policies prior to issuance. The ERT is responsible for maintaining the official misconduct case files and related documentation in accordance with federal guidelines, which require copies of all proposal and final decisions, employees responses, and other supporting materials to be maintained. In addition, the ERT enters specific misconduct case file information in its automated database.⁴ Throughout the adjudication phase, the ERT is available to provide advice and assistance to proposing and deciding officials or subjects of the allegation. (See Appendix 2 for details on the roles and responsibilities of the entities in the discipline process.)

Scope and Methodology

We reviewed the discipline process in the USMS to evaluate whether discipline actions taken in response to substantiated misconduct allegations were consistent, timely, and in accordance with USMS policy. Our review focused on the adjudication phase of the discipline process. We performed our fieldwork for the review from January 2001 through May 2001. We examined DOJ and USMS policies, procedures, and any other internal documents that pertained to the discipline process (see Appendix 1). We reviewed the official misconduct case files and the information in the automated database maintained by the ERT.

We interviewed the following officials and obtained data about the discipline process:

- the Acting Assistant Director of the ESD, who is responsible for oversight of the OIA,
- the Chief, Human Resources Service, within the HRD, who is responsible for oversight of the ERT,

³ Not every misconduct case goes through each stage of the formal adjudication phase. For example, a letter of closure can be issued at different stages of case adjudication if a reviewing official determines the allegation to be unsubstantiated. Eleven of the 50 case files in our sample resulted in the issuance of such letters.

⁴ The PeopleSoft Human Resources Management System is a commercial-off-the-shelf client/server software system designed to automate and streamline the existing USMS human resources processes. The ERT uses this system to track discipline cases within the USMS. According to ERT staff, PeopleSoft became fully operational around May 1999.

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- officials in the OGC,
 - the Chief, OIA, and select staff responsible for conducting and processing misconduct investigations,
 - the Team Leader and staff in the ERT responsible for controlling the adjudication of misconduct cases,
 - three members of the Discipline Panel who served as proposing officials from 1998 to 2000,
 - five Chief Deputy United States Marshals who currently serve as proposing officials in their respective districts,
 - the Ombuds and staff for the USMS's Alternative Dispute Resolution (ADR) Program, and
 - officials in the OIG Investigations Division responsible for the review of USMS misconduct allegations.

We selected a sample of 50 case files using information in the ERT's automated database.⁵ These 50 cases were substantiated misconduct allegations that had been forwarded to the ERT for adjudication processing. This case file review focused solely on the adjudication phase of the discipline process. We selected the sample cases based on the following criteria:

- any disparity between the proposal and decision action codes as displayed in the automated database,
- misconduct offense categories with higher frequencies of occurrence (see Table 1 on page 7),
- misconduct offense categories (though fewer in number) that represented more serious types of misconduct (see Table 1 on page 7),
- case adjudication occurred during FY 1998 through FY 2000.

⁵ Two of the case files selected involved the same employee who was disciplined on separate occasions for the same offense.

Our sample of 50 case files comprised 17 cases out of 214 cases adjudicated in FY 1998, 20 cases out of 214 cases adjudicated in FY 1999, and 13 cases out of 132 cases adjudicated in FY 2000. Our sample represents a broad range of misconduct offense categories. (See Appendix 3.)

We reviewed the misconduct case files to determine whether documentation complied with the minimum standards established in the Code of Federal Regulations (CFR) and whether the documented reasons explained the discipline actions recommended by proposing and deciding officials. We recorded case characteristics, milestones, and time periods. We also reviewed the official personnel folders to determine whether documentation was posted that showed the USMS had enforced the discipline decisions.

RESULTS OF THE REVIEW

Our review of 50 USMS misconduct case files revealed 25 cases where the consistency of the discipline or the degree of discipline imposed raised serious concerns. Because the USMS did not always follow federal documentation standards for the misconduct case files, the reasoning used in making penalty decisions was not fully documented or explained. We also found misconduct cases with unexplainable time periods that prolonged the adjudication of cases, and the USMS does not have policy guidance that addresses timeframes for each stage of the adjudication phase of the discipline process.

In addition to our findings on the consistency and timeliness of case adjudication, we also identified the following issues that negatively affect the discipline process:

- Discipline actions are not always documented in the employees' official personnel folders.
- The ADR Program is not effectively managing its caseload.
- Data collection, entry, and review standards have not been established for the ERT's automated database for cases.
- USMS entities in the discipline process are not effectively coordinating their efforts.
- Performance standards have not been fully established and implemented for adjudicating misconduct cases.
- Misconduct allegations are not always reported to the OIA or the OIG as required.

Over the past several years, the USMS has periodically reviewed its discipline process to identify areas that needed improvement. As a result of these reviews, the USMS implemented the following changes:

- a revised Discipline Delegation Policy (USMS Policy Notice 94-002A) that established the Discipline Panel and increased the discipline authority of districts and divisions for certain misconduct offenses was implemented in January 1995;

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- the DOJ Table of Offenses and Penalties was incorporated into the 1996 International Council of United States Marshals Service Locals Collective Bargaining Master Agreement;
 - the ADR program, an informal alternative to the formal adjudication phase of the discipline process, became operational in October 1998; and
 - an automated database capable of creating a uniform recordkeeping system to serve as an audit trail of discipline actions and decisions became operational in May 1999.

Although these changes represented efforts to enhance the integrity and efficiency of the USMS discipline process, our review shows additional oversight of the implementation of these program changes is needed.

Discipline Decisions are not Adequately Documented

Table 1, on the following page, demonstrates the varied range of penalty decisions for our sample of 50 misconduct cases. The table shows that in 36 of the 50 discipline cases (72 percent) either a formal or an informal penalty was imposed:⁶

- In 27 of the 36 discipline cases (75 percent), formal penalty decisions were issued to the employee ranging from a minimum of a Letter of Reprimand to a maximum of a demotion in grade, and
- In 9 of the 36 discipline cases (25 percent), informal penalty decisions involving a verbal or oral reprimand were issued.

For the remaining 14 of the 50 cases:

- Eleven (11) cases were adjudicated with the issuance of a Letter of Closure after the ERT or the deciding official determined that the misconduct allegation(s) was not substantiated, and
- Three (3) cases did not complete the adjudication phase because the employees retired in lieu of a penalty decision (including two proposed removals).

⁶ Discipline actions may be informal or formal. Informal discipline actions, such as oral admonishments and verbal warnings, are not made a matter of record in the employees' official personnel folders. Formal discipline actions, such as suspensions, reductions in grade or pay, and removals, are required to be documented in the official personnel folders.

Table 1: Penalty Range of USMS Discipline Actions

Offense Category	Removal	Demotion	More Than 14 Days	14 Days or Less	Letter of Reprimand	Letter of Caution/ Instruction	Verbal Reprimand	Letter of Closure - Not Substantiated	Other	Total
1. Unauthorized or Improper Use of a GOV	1 ^a		4	2	1			1		9
2. Unauthorized Use of Govt. Travel Charge Card			1	3	2					6
3. Violations of Standards of Conduct			1	1			1	2		5
4. Disorderly Conduct				1	1	2		1		5
5. Discharge of a Weapon With No Apparent Threat				1	1		1	1	1 ^b	5
6. Failure to Report						1		2		3
7. Failure to Honor Just Debts (Government Credit Card)					1	1				2
8. Improper Restraint of a Prisoner				1	1					2
9. Improper Seating of a Prisoner					2					2
10. Disrespectful Conduct						2				2
11. Failure to Follow USMS Policy						1				1
12. Misuse of Office			1							1
13. Conversion of Government Funds to Personal Use								1		1
14. Assault on a Prisoner								1		1
15. Falsification, Misstatement of Employment								1		1
16. Discrimination	1 ^a									1
17. Disgraceful Conduct		1								1
18. Association with Individual Known to be Involved in Criminal Activity			1							1
19. Failure to Disclose all Assets on Annual Executive Financial Disclosure Form								1		1
Total	2	1	8	9	9	7	2	11	1	50

Source: USMS

^a These employees elected to retire in lieu of proceeding with the proposed removal action. The USMS closed the disciplinary cases following the retirement actions.

^b Although the charge was substantiated, the employee elected to retire before the USMS proposed a discipline penalty action. The USMS Table of Offenses suggests a penalty range of Letter of Reprimand to Removal for this offense.

Note: Fifteen of the fifty misconduct cases comprised more than one offense category. In five instances, separate misconduct cases were combined and resulted in one adjudication action for the employee.

While most cases resulted in a formal or an informal penalty, we found that the USMS case file documentation did not always support final penalty decisions. According to 5 CFR, section 752.406, “the agency shall maintain copies of the items specified in Title 5 United States Code (U.S.C.), section 7513(e) and shall furnish them upon request as required by that subsection.” Title 5 describes these items as “Copies of the notice of proposed action, the answer of the employee when written, and a summary thereof when made orally, the notice of decision and reasons therefore, and any order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency....”

In our sample of 50 misconduct case files, we found cases that did not meet the minimum CFR documentation standards. The documentation in 25 cases was incomplete and did not explain the reasons used for penalty decisions in the following instances:⁷

- the penalty decisions were mitigated below the proposed penalty (19 cases);
- in cases where multiple offenses and supporting evidence were documented in proposal letters, the deciding official determined that some offenses were not sustained, but did not document the reasons used in supporting the decision (6 cases);
- in cases where multiple offenses were sustained, the final penalty imposed was lower than what would be required if each offense had been adjudicated separately (6 cases); and
- the final penalty decision fell below the range of penalties suggested in the USMS Table of Offenses (13 cases).

During our review of the 50 case files, we found the proposal letters were present and adequately documented the reasoning used in proposing any discipline action. However, we rarely found any documents detailing the employee’s response in the case files. In the absence of complete documentation, the reasoning applied in making final case decisions was not always apparent. Therefore, the differing levels of discipline imposed for similar offenses appeared as inconsistent or too lenient.

The following synopses detail case actions and penalty decisions imposed by the USMS that involve the two most prevalent offense categories found in our sample--the Unauthorized Use of a Government Owned Vehicle (GOV) and the Misuse of a Government-Issued Travel Card. These case synopses demonstrate the complexity of misconduct cases and the challenges associated with case adjudication. Most notably,

⁷ Twelve of the 25 cases had more than one instance of inadequate documentation.

these cases raise serious consistency concerns as a result of inadequate documentation of the decision reasoning.

Misconduct Cases Involving Unauthorized Use or Misuse of a GOV

Government officials are allowed limited flexibility in proposing and deciding discipline action relating to the misuse of government-owned vehicles. Title 31 U.S.C., section 1349(b), provides in part that:

An officer or employee who willfully uses or authorizes the use of a passenger motor vehicle . . . owned or leased by the United States Government . . . shall be suspended without pay by the head of the agency. The officer or employee shall be suspended for at least one month, and when circumstances warrant, for a longer period or summarily removed from office.

The USMS Policy Directive 99-11, "Use of Official Government Vehicles," February 12, 1999, allows for a broader interpretation of the statutory penalty range by allowing penalties ranging from a Letter of Reprimand to a removal for offenses determined not to rise to the level of the statutory "willful" misuse standard.

As shown in Table 1 on page 7, our sample included a total of nine cases that involved the Unauthorized or Improper Use of Government-Owned Vehicles (GOV). In five of these cases (described below), the case files did not document the reasoning used to support the penalty decisions imposed.⁸

1. A charge of Unauthorized Use of a GOV was combined with a charge of Conduct Unbecoming (involving public intoxication). The Discipline Panel proposed a 45-day suspension. The deciding official, after review, mitigated the proposal to a 14-day suspension. The reasoning provided in the decision letter appeared to contradict facts of the misconduct as detailed in the proposal letter. For instance, the deciding official concluded that the employee had violated the USMS policy. However, this conclusion did not state the reason the violation did not meet the "willful" [Title 31 U.S.C., section 1349(b)] misuse of the GOV criteria as clearly described in the proposal letter. The deciding official also concluded that the employee was not intoxicated when operating the GOV, but the official did not provide reasoning for differing with the facts previously detailed in the proposal letter. For instance, the proposal letter identified statements of the local police department indicating that the employee was intoxicated, did operate the vehicle, had behaved in a disrespectful and unprofessional manner, and that an arrest was

⁸ The OIA conducted the investigation for all five cases.

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- imminent for public intoxication. The local police department ultimately exercised its discretion by not arresting the employee following an apology and statements of remorse.
2. A charge of Unauthorized Use of a GOV was combined with a charge of Use of Offensive Language. The Discipline Panel proposed a penalty of 31 days. The proposed penalty was mitigated to a 1-day suspension following a settlement agreement reached between the employee and the USMS. The settlement agreement only addressed the Use of Offensive Language charge. The case file lacked documentation as to why the Unauthorized Use of a GOV offense identified in the proposal letter was disregarded.
 3. Two misconduct cases were combined into a single adjudication action. A charge of Unauthorized Use of a GOV was combined with the additional charges of (1) Unauthorized Use of a Government-Rented Vehicle, (2) Failure to Provide Accurate Information to a Management Official, (3) Unauthorized Use of the National Crime Information Center (NCIC), and (4) Attempting to Interfere with an Official Investigation. The Discipline Panel sustained all the charges and proposed the employee be removed from the USMS. The deciding official only sustained the charges of Unauthorized Use of a GOV and Unauthorized Use of the NCIC. The decision letter stated that the other three charges were not sustained by a preponderance of the evidence. As a result, the proposed removal was mitigated to a 30-day suspension -- the mandated penalty for "willful" Unauthorized Use of a GOV. However, the decision letter did not address any discipline for the second sustained offense of Unauthorized Use of the NCIC.
 4. A charge of Unauthorized Use of a GOV was mitigated from a 30-day suspension proposed by the Discipline Panel to a Letter of Reprimand. The decision letter stated that in the opinion of the deciding official, it was unclear whether the employee received permission from a supervisor to use the GOV for personal use. This opinion contradicted the evidence and documented statements of the employee and the employee's supervisors presented in the proposal letter that supported "willful" Unauthorized Use of a GOV. The deciding official did not document the reasoning used and the reason for mitigating the penalty from the statutory 30-day suspension to a Letter of Reprimand. The decision letter did not explain why the evidence was unclear. The employee response was not in the case file. Therefore, we could not accurately determine how the process ended with a drastic mitigation of the proposed penalty.
 5. A charge of Unauthorized Use of a GOV was combined with a charge of Failure to Report a Motor Vehicle Accident in a GOV. The Discipline Panel proposed a suspension of 30 days. The deciding official sustained both

charges and imposed a penalty of 30 days, a suspension equal to the mandated penalty for “willful” Unauthorized Use of a GOV. However, the decision letter did not address any discipline for the second sustained offense of Failure to Report a Motor Vehicle Accident in a GOV.

In cases 1 and 4, the decision letter or the official case files did not document the reasoning used concerning a significant mitigation of a proposed penalty. In cases 2, 3, and 5, the decision letter or the official case file did not document the reasoning behind the apparent disregard of a substantiated offense.

Misconduct Cases Involving the Improper Use of a Government-Issued Travel Credit Card

USMS policy states that the government-issued travel charge card is for official travel only and that cash advances can only be obtained when an employee is authorized for official travel.

As shown in Table 1 on page 7, our sample included a total of eight cases related to the Unauthorized Use of an Official Government-Issued Travel Card or the related Failure to Honor Just Debts (Travel Card). In the seven case synopses, we describe how the case files lacked adequate documentation of the reasoning used to support the final penalty decisions imposed.⁹

1. An employee was charged with Misuse of Government Property in relation to over \$45,500 in unauthorized purchases and cash advances accumulated over a 15-month period using a government-issued travel card. The Discipline Panel proposed a 30-day suspension. This 30-day suspension was mitigated to a 14-day suspension through a settlement agreement. Although the penalty imposed was within the parameters of the Table of Offenses, neither the case file nor the settlement agreement contained documentation outlining the reasoning applied in the penalty mitigation.
2. An employee was charged with Unauthorized Use of a Government-Issued Travel Card after obtaining over \$5,100 in unauthorized ATM cash advances during an 8-month period. An additional charge of Failure to Pay Just Debts in a Timely Manner was added to the first charge. This second charge was related to a previous outstanding balance of approximately \$4,500 that existed on the account at the time of the investigation (unpaid balances covering 10 months). The deciding official mitigated the proposed 2-day suspension to a Letter of Reprimand. The decision letter documented the deciding official’s reasoning for mitigating the penalty as the employee’s sincere remorse and assurance that the debt would be paid by a specified

⁹ The OIA conducted the investigations for all seven cases.

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- date. However, the case file did not contain documents detailing the employee's response.
3. An employee was charged with Misuse of a Government-Issued Travel Card as a result of two unauthorized cash withdrawals totaling approximately \$404. According to ERT's automated database the proposed penalty of a 2-day suspension was mitigated by the deciding official to a Letter of Reprimand. Although the Letter of Reprimand decision is the minimum allowable penalty suggested in the Table of Offenses, the case file did not contain the decision letter that may have documented the reasons for mitigating the proposed discipline.
 4. An employee was charged with Failure to Honor Just Debts in a Timely Manner for failure to make payments for a \$1,468 travel debt accrued on a government-issued travel card, though the employee had been reimbursed for the travel expenses. A Letter of Reprimand was proposed and imposed by the deciding official. We found a notation in the ERT's automated database that stated, "District reluctant to take more severe discipline action against employee, regardless of his admission that he lied to his superiors." In addition, charges identified in the OIA investigative report confirming that the employee lied during the investigation were not acted upon. Also, the proposal letter characterized this misconduct case as a first offense. However, previous offenses involving the Failure to Honor Just Debts in a Timely Manner and Improper Use of a Government-Issued Credit Card had been sustained a few months prior, and the employee had received a Letter of Caution for those offenses.
 5. An employee was charged with Misuse of a Government-Issued Travel Card and Failure to Report an Accident in a Timely Manner. The employee had failed to pay the credit card company over \$2,200 in travel expenses already reimbursed to the employee. The employee also misused the credit card to accumulate over \$3,100 in unauthorized personal purchases. In addition, the employee failed to file a timely government motor vehicle accident report related to a vehicle accident that resulted in a claim for over \$17,000. The deciding official mitigated the penalty for all these offenses from a proposed 1-day suspension to a Letter of Caution. As part of the reason for mitigating the penalty the deciding official cited the employee's response to the proposal letter. However, the case file did not contain any documents detailing the employee's response.
 6. An employee was charged with Absence Without Leave (AWOL), Misuse of a Government-Issued Travel Card for 13 unauthorized cash advances totaling approximately \$1,000 during the AWOL period, and Loss of a Government-Issued Weapon. The Discipline Panel initially proposed removal. The Panel

reduced the proposed penalty to a 14-day suspension following the OGC's review of the case. The OGC recommended against the removal based on the employee's past discipline history within the reckoning period,¹⁰ a strict interpretation of the reckoning period for repeat offenses, the likelihood the case would not withstand an MSPB appeal, and the incomplete investigation of several case issues. The OGC recommended that the Panel consider either a mitigation of the proposed penalty to remove the employee or return the case to the OIA for an investigation of the unaddressed issues. The Discipline Panel elected to propose a 14-day suspension. The 14-day suspension was imposed through a settlement agreement.

7. Five months later, the same employee (case 6) was charged with Unauthorized Use of a Government-Issued Travel Card involving three unauthorized cash withdrawals for a total of \$820. The Discipline Panel again proposed removal. This second proposed removal was mitigated to a 60-day suspension (with 30 days held in abeyance) as a result of another settlement agreement. An additional unauthorized cash withdrawal of \$600, which occurred after the employee was interviewed by OIA for the \$820 in withdrawals, was not included in this case. In addition to these two separate cases, the automated database maintained by the ERT lists a number of disciplinary actions for this employee dating back to 1990. The case file does not provide the reasons for the penalty mitigation decision, in particular, the reason against the proposed removal given the considerable discipline record of the employee.

In sum, for the misconduct cases involving Unauthorized Use of a Government-Issued Travel Card, the USMS imposed a wide range of penalties, such as a Letter of Caution (informal discipline), a Letter of Reprimand, and a 14-day suspension (formal discipline). After reviewing the case files we conclude that:

- Cases 1 and 2 were adjudicated during the same time frame and involved similar offenses, but each case received different levels of proposal and decision penalties. Case 1 involved a proposed 30-day suspension, which was mitigated to 14 days following a settlement agreement. Case 2 involved only a proposed 2-day suspension, which was mitigated to a Letter of Reprimand by the deciding official. Both case files lacked documentation of the reasoning for the penalty mitigations.
- Cases 3 and 5 also demonstrate similar concerns of inadequate reasoning to support the mitigation of penalties at the decision stage.

¹⁰ The reckoning period is used to determine whether an offense is a first, second, or third offense. The reckoning period begins on the date management becomes aware of a first offense and continues for the number of days contained in the reckoning period (e.g., 365 days or one year). Recurrences of similar offenses within the reckoning period will result in increasingly severe penalties.

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- Cases 4, 6, and 7 raise concerns with the thoroughness of the investigation process or the complete and accurate identification of misconduct offenses.
 - The discipline imposed in Cases 2, 4, 5, and 7 appears too lenient, given the levels of offense and the lack of justification.

Official Personnel Folders Do Not Always Reflect Whether Discipline Has Been Enforced

We reviewed the official personnel folders of employees for the cases where formal discipline decisions had been imposed to determine whether the USMS enforced the penalty decisions. Formal discipline actions, such as a suspension, a reduction-in-grade, or a removal, affect an employee's pay, position, or continued employment. They must be documented on a Standard Form 50 (SF-50), Notification of Personnel Action, and filed in the employee's official personnel folder.¹¹

As shown in Table 1 on page 7, 27 of the 50 misconduct cases in our sample involved formal discipline decisions. However, we found that 8 of the 27 employees' official personnel folders (30 percent) did not contain an SF-50 documenting that a specific discipline action had been enforced.¹² We contacted District management to obtain either documentation or verbal verification that the discipline had been enforced in these eight cases. We only were able to obtain verbal verification from District management for four of the eight cases.

¹¹ The SF-50 serves as the permanent record of personnel actions in an employee's official personnel folder. Informal discipline (e.g., oral admonishment, letter of caution) documentation is not required to be in the official personnel folders.

¹² All eight of these cases involved a 1-day suspension or more.

Recommendations

1. The USMS Director should instruct the HRD to improve adherence to the federal standards for documenting misconduct case actions and consider implementing additional case documentation standards as needed.
2. The USMS Director should instruct the HRD to ensure that all formal discipline actions are enforced and properly documented in the official personnel folders.

The Timely Adjudication of Misconduct Cases is not Always Accomplished

During the adjudication phase, a misconduct case is under the control of the ERT, the proposing official(s), or the deciding official. The progression of a case can be affected by factors such as employees' requests for extensions or officials asking for additional information. A case's progression can also be affected by influences external to the discipline process, such as when an employee requests ADR mediation, registers an Equal Employment Opportunity (EEO) complaint, or files a grievance. Other factors that can affect timely adjudication involve the severity of the allegation (proposed discipline over 14 days) and the subsequent OGC review. If the proposed discipline calls for a removal from the USMS, the Workforce Relations Group (WRG) in the DOJ's Justice Management Division (JMD) is also required to review the case (see Appendix 2).

Yet, based on the data in the case files and the ERT's automated database, we found 14 of the 50 misconduct cases (28 percent) in our sample had significant periods of unexplained elapsed time that prolonged the adjudication. The ERT staff could not account for the extended timelines in the 14 cases using the documentation in the case files, the information recorded in the automated database, or personal memory.

Table 2 on the following page shows the time range for the adjudication of the 50 misconduct cases after ERT's receipt of the investigation report from the OIA:

Table 2: Timeliness of Misconduct Case Adjudication

Elapsed Days From ERT's Receipt of Completed Investigation Report to Signed Decision Letter (50 Cases)	Number of Cases (%)
30 days or less	7 (14%)
31 days to 90 days	16 (32%)
91 days to 180 days	13 (26%)
181 days to 270 days	7 (14%)
271 days to 360 days	5 (10%)
361 days to 436 days	2 (4%)
Total	50 (100%)

Source: ERT official case files and automated database.

The overall adjudication timeline for the 50 cases varied from 1 to 436 days, while the average adjudication time for the 50 cases was 140 days.

The following synopses describe 4 of the 14 cases with the longest periods of unexplained elapsed time:

- Case 1 took 330 days from the time the ERT received the case to the time a decision letter was signed. It took 177 days from the time ERT received the case to the time a proposal letter (Letter of Reprimand) was completed and issued to the employee. It took another 153 days before a decision letter was issued.
- Case 2 took 322 days from the time the ERT received the case to the time a decision letter was signed. It took 169 days from the time ERT received the case to the time a proposal letter (removal) was issued. It took another 153 days before a decision letter was issued. This was due, in part, to the employee being granted a 49-day extension to respond to the proposal letter. The OGC was involved in the proposal stage. We could not ascertain what, if any, delay could be attributed to the OGC's involvement. The ERT had requested the OIA perform additional investigative work, but there was no documentation in the case file supporting whether the work had been done.
- Case 3 took 309 days from the time the ERT received the case to the time a decision letter was signed. It took 217 days from the time ERT received the case to the time a proposal letter (45-day suspension) was issued. It

took another 92 days before a decision letter was issued. This was due, in part, to the employee being granted a 47-day extension to respond to the proposal letter.

- Case 4 took 236 days from the time the ERT received the case to the time a settlement agreement was signed. It took 109 days from the time ERT received the case to the time a proposal letter (30-day suspension) was issued. It took another 127 days for a settlement agreement to be signed. Based on the data collected, it took 194 days from the time the OIA completed its investigation to the time ERT records show the case being received. When these unexplained 194 days are combined with the 236 days for adjudication, 430 days elapsed before the case was settled.

Table 3 displays the other ten cases with lengthy, unexplained time periods:

Table 3: Unexplained Adjudication Time Periods

Misconduct Offense	Number of Days from ERT Receiving Case to the Proposing Official(s)	Number of Days to Issue Proposal Letter	Number of Days to Issue Decision Letter	Total Days in Adjudication Phase
1. Unauthorized Use of a GOV ^a	39	57	154	250
2. Misuse of Office ^a	61	48	107	216
3. Unauthorized Use of a GOV ^{a,b}	4	180	79	263
4. Failure to Honor Just Debts (Travel Card) ^a	7	122	104	233
5. Disorderly Conduct	70	31	76	177
6. Violations of Standards of Conduct	27	145	113	285
7. Disgraceful Conduct ^a	19	84	156	259
8. Discharge of a Weapon With No Apparent Threat ^a	61	47	57	165
9. Violations of Standards of Conduct	1	74	14	89
10. Association w/ Individual Known to be Involved in Criminal Activity	3	37	169	209

Source: USMS misconduct case files

^a Case involved additional offenses.

^b Multiple cases combined into one adjudication.

Note: The emboldened numbers indicate the considerable unexplained time period for each case.

The DOJ has stressed the importance of processing discipline cases timely. A DOJ report entitled, “Justice Performance Review, Adverse Actions in the Department of Justice,” November 6, 1995, stated:

It is a long-held management principle that an adverse action is most likely to have the desired effect when it is carried out as close to the event as possible. Delaying action in misconduct and performance cases not only permits the inappropriate activity to continue for an extended period of time, but can also result in other employees forming an impression that the activities in question are not viewed as serious or inappropriate by agency supervisors.

Also, DOJ Human Resources Order 1200.1 states, “...there is no limitation with respect to when discipline must be effected after the commission of misconduct. However, managers are encouraged to act in a timely manner.”

The ERT needs to ensure that misconduct cases are adjudicated in a timely manner. The ERT should establish and implement timelines for the various stages involved in the adjudication of a case and monitor a case’s progress against those timelines.¹³ Currently, the ERT does not consistently exercise adequate management oversight of all misconduct cases. This results in some misconduct cases exceeding reasonable adjudication time periods.

Recommendation

3. The USMS Director should instruct the HRD to establish timelines for the adjudication of misconduct cases and to use the timelines to monitor the status of each case through the process.

The ADR Program Does not Manage its Caseload for the Timely Processing of Misconduct Cases

The ADR Program is a non-traditional, non-adversarial, informal process that uses a trained facilitator as a neutral third party to resolve workplace conflicts between two or more parties. The USMS ADR Program is under the oversight of the HRD but is separate from the ERT, which administers the adjudication phase of the formal discipline process. Day-to-day management and cost accountability for the ADR Program is the responsibility of the ADR Ombuds.

¹³ During our fieldwork the ERT was unaware of any timelines for adjudicating misconduct cases. However, prior to issuance of this report, the HRD did provide the OIG with a document describing partial timeline standards for adjudicating cases.

The USMS's ADR Handbook (June 1999) states that 60 calendar days are allowed for resolution of a dispute once an employee has initiated a request for ADR. An additional 30 days is allowed if the employee and agency official(s) both agree to the extension.

According to the ADR Ombuds, approximately 150 cases have been submitted to ADR since the program's inception; 41 of these were identified as misconduct cases. The ADR Ombuds stated that 60 days is a reasonable goal for mediating ADR disputes. Based on data provided by the ADR Ombuds, however, 27 (66 percent) of these 41 misconduct cases have exceeded the 60-day time period.¹⁴

The ADR Ombuds provided data describing the status of the 41 misconduct cases. Our analysis showed the following:

- Nineteen cases were open and awaiting action. For these 19 cases, the time periods in the ADR Program ranged from 14 days to 487 days; the average time was 234 days. Sixteen of these open cases had exceeded the 60 days allowed.
- Fifteen cases had reached agreements and were closed.¹⁵ For these 15 cases, the time periods for closure ranged from 4 days to 342 days, and the average time in the ADR Program was 96 days. Eight of these cases exceeded the 60 days allowed.
- Five cases failed to reach an agreement and were returned to the ERT for adjudication through the formal discipline process. Three of these five cases had been in ADR for 39 days, 141 days, and 292 days, respectively. The data was incomplete and did not provide the length of time the other two cases had been in ADR.

¹⁴ Our review of the ADR data showed that 23 of these 27 cases had also exceeded the 90-day limit. The data did not show any requests for, or granting of, 30-day extensions in these 23 cases. The OIG team did not review individual ADR case files.

¹⁵ Discipline penalties, such as those established in the Table of Offenses, do not have to be applied in the ADR Program. However, we compared the ADR outcomes versus the discipline penalties proposed during formal case adjudication. For 6 of the 15 closed cases, the ADR agreement matched the formally proposed discipline action. For 5 of the 15 closed cases, the ADR agreement was slightly less than the proposed discipline action (such as proposed letters of reprimand mitigated to letters of caution). For 2 of the 15 closed cases, the ADR agreement was considerably less than the proposed discipline action. A 30-day suspension was reduced to 3 days and a 45-day suspension was reduced to 12 days. For the 2 remaining closed cases, the ADR Program did not provide data on the outcome of the ADR agreements.

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- Two cases were withdrawn. The data was incomplete and did not provide the reason for the withdrawals or the length of time these two cases had been in ADR.

As noted above, after 60 days (90 days if a 30-day extension had been granted) in the ADR Program, misconduct cases should resume adjudication through the formal discipline process. However, the ADR Ombuds does not monitor or return misconduct cases that have exceeded these time periods to the ERT. The ERT does not monitor the status of misconduct cases sent to the ADR Program or request the return when the 60-day deadline has expired. Consequently, cases have languished in ADR.

The ADR Ombuds cited inadequate staffing for the ADR Program that includes both misconduct and performance cases. The ADR Ombuds estimated that 50 percent of his time is directed to the ADR Program duties and the other 50 percent is directed to Labor Relations Program duties. During our review, a full-time assistant was appointed to the ADR Program. In addition to the assistant, the ADR Ombuds has approximately 20 trained USMS personnel located in various USMS districts to assist as facilitators in mediating disputes.¹⁶ However, the Ombuds has not used the majority of these facilitators to assist in the mediation of misconduct cases. The Ombuds stated that, despite the training, he believes most of the USMS facilitators are not sufficiently knowledgeable about personnel management laws and regulations to effectively resolve personnel issues. Consequently, when seeking mediation assistance, the Ombuds relies predominantly on contract personnel to serve as facilitators.¹⁷ Despite the availability of these additional USMS and contract facilitators, the ADR Program's 60-day time limit is not being met.

During interviews with officials in the USMS OGC, they expressed concerns about the timeliness of the ADR Program and the types of cases accepted into the ADR Program. The OGC believed that misconduct cases that are appealable to the MSPB should not be accepted into the ADR Program before the decision letter is issued. The ADR Handbook states, "ADR is generally not an option in discipline actions appealable to the MSPB." Despite that policy, the ADR Ombuds told us that the MSPB was incorporating ADR into its own process. Therefore, the Ombuds believed ADR at the USMS-level for these appealable cases was also appropriate and had accepted cases prior to a decision letter being issued.

¹⁶ USMS personnel were trained and certified as facilitators by undergoing a 3-day course conducted by the Justice Center of Atlanta, a non-profit organization.

¹⁷ Contract personnel serving as facilitators are employees of the Federal Personnel Management Institute and cost the USMS \$85.00 an hour for labor and materials, which is paid by the ADR Program. The ADR Program could not provide data on how many times contract facilitators were used or the total cost to the USMS.

According to 5 CFR 1201.22(b)(1), the MSPB acknowledges ADR as a method of resolving disputes prior to filing a formal appeal. The MSPB allows a time extension for filing an appeal “Where an appellant and an agency mutually agree in writing to attempt to resolve their dispute through an alternative dispute resolution process....” While ADR may be an acceptable and less costly method of reaching agreeable solutions in misconduct cases, we believe that the USMS, not the ADR Ombuds alone, should decide what types of cases are eligible for ADR and at what stage the cases are appropriate for ADR.

We did not assess the ADR Program’s database as part of our review. However, we have concerns about the reliability of the data. These concerns are attributed to the inconsistent quality of the data we received and the length of time taken by the ADR Ombuds to compile the data. For example, the ADR Ombuds could provide us with only a verbal estimate of the total ADR caseload, and we had to request several versions of the ADR misconduct case data because of incompleteness or inaccuracies. Entering consistent, accurate, and complete data in a timely manner is essential to improving the case monitoring capabilities and the administration of the ADR Program.

Recommendations

4. The USMS Director should instruct the HRD to meet established ADR timelines and return cases that do not meet these time lines to the appropriate office to continue with formal processing.
5. The USMS Director should instruct the HRD to develop and implement a strategy for increasing the use of trained USMS ADR facilitators.
6. The USMS Director should ensure the HRD is accepting only eligible cases for ADR and at the appropriate stage.
7. The USMS Director should instruct the HRD to ensure that consistent, accurate, and complete data is entered in a timely manner in the ADR database to allow for more effective monitoring, oversight, and reporting.

Inconsistent Data Entry Procedures Results in Unreliable Case Information

The ERT does not have written standards addressing the primary source, the completeness, and the accuracy of the information about misconduct cases entered in its automated database. At the time of our review, ERT staff could individually determine and enter what they considered to be relevant data for each case. The automated database does not contain edit checks identifying required fields or incomplete or inaccurate information. The ERT does not periodically review the database to identify and correct deficiencies to ensure the integrity of the information. As a result, we found numerous instances of either incomplete (blank data fields) or inaccurate (wrong dates) data entered in the ERT's automated database. Complete and accurate case management information is a critical element for monitoring the progress of each case, for analyzing case trends, and for assessing needed changes in the adjudication phase overall.

Recommendation

8. The USMS Director should instruct the HRD to develop and implement data collection, entry, and review standards for ERT's automated database.

Discipline Process Entities are not Effectively Coordinating Efforts

The USMS entities involved in the discipline process--the OIA, the ERT, the OGC, the ADR Program, the EEO Office, and the Discipline Panel--must work closely to ensure that misconduct allegations are investigated and adjudicated in a manner that is consistent, timely, and responsive to the needs of USMS. During our interviews, officials from these entities expressed concern or uncertainty about specific discipline process responsibilities, procedures, timelines, and work quality. Some of the general concerns mentioned by these officials involved the need for:

- cross-training to better understand the information requirements of the various entities to process misconduct cases,
- improving or centralizing oversight of the entire discipline process,
- clearly defining responsibilities concerning discipline process duties,
- improving the timeliness in the discipline process,
- improving the exchange of information among the entities, and

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- improving the OIA's response for follow-up investigative requests.¹⁸

Officials told us that they had met periodically to discuss discipline process issues. However, these meetings were discontinued about a year ago because of a turnover in USMS leadership. We found no documentation describing the frequency or what was discussed or accomplished at the meetings. Based on our interviews and observations, we believe the USMS must improve coordination among the entities involved in the discipline process. Our review shows the necessity for corrective actions for some of the issues listed above. The USMS needs to renew its previous efforts to identify and address issues that affect the discipline process.

Recommendation

9. The USMS Director should direct the HRD to reactivate these meetings with representatives from the appropriate entities involved in the discipline process to identify and solve discipline process issues. These meetings should occur periodically and a written record of activities and decisions should be maintained.

Performance Standards Have not Been Established for Adjudicating Misconduct Cases

The USMS has not established performance goals and measures for the adjudication phase of the discipline process. The Government Performance and Results Act of 1993 (GPRA) requires agencies to set multiyear strategic goals and corresponding annual goals to measure the performance toward the achievement of those goals and to report on their progress. Although the GPRA addresses the major functions and operations of agencies, the concept of measuring outcomes to improve effectiveness applies to all programs and processes. Setting goals and measuring performance helps to establish priorities, control operations, communicate accomplishments, and motivate staff.

The Department's Strategic Plan for Fiscal Years 2000-2005 outlines specific program goals, objectives, and strategies. One strategic goal is to "ensure excellence, accountability, and integrity in the management and conduct of Department of Justice programs." A strategic objective supporting this goal addresses human resources.

¹⁸ Because requests to OIA for additional investigative work are usually accomplished telephonically and rarely documented, the frequency of this issue could not be determined.

The USMS published three multi-year planning documents in response to the GPRA and the Department's Strategic Plan.¹⁹ Each plan addresses human resources. The USMS Performance Management Program (PMP) identifies performance measures related to the OIA's investigative phase of the discipline process. However, goals and measures for the ERT's adjudication phase of the discipline process are not included. In the absence of performance goals and measures in the broader USMS planning documents, the HRD and ERT have not fully developed and implemented internal performance goals, standards, and measures for guiding the work efforts of ERT personnel and for identifying strengths and weaknesses in the adjudication of misconduct cases overall.²⁰ As a result, progress toward achieving basic desirable goals and objectives of the discipline program goes unmeasured.

Recommendation

10. The USMS Director should instruct the HRD to develop performance standards for the adjudication of misconduct cases and monitor cases against those standards.

The OIA Does not Report all Misconduct Allegations to the OIG

According to OIG policy memorandum, "Guidelines for Reporting Allegations of Misconduct to the OIG," July 1, 1998, and USMS Policy Directive 99-33, "Misconduct Investigations," August 2, 1999, misconduct allegations received by the OIA will be forwarded to the OIG.²¹ We found that the OIA is not fully complying with these policies.

Prior to forwarding an allegation to the OIG, the OIA performs a "preliminary investigation" of the allegation. If the OIA determines that the alleged misconduct did not violate USMS policy or that enough information is not provided to warrant opening a formal investigation, then the OIA considers the allegation "closed." In this instance, the allegation is not forwarded to the OIG for review.

The OIA's FY 1998, FY 1999, and FY 2000 annual statistics show that 70, 93, and 76 misconduct allegations were classified as preliminary investigations and closed. These 239 misconduct allegations were not reported to the OIG as required.

- For FY 1998, the 70 misconduct allegations represented 28 percent of the total 248 misconduct allegations received by OIA.

¹⁹ The planning documents are the USMS Fiscal Year 2000 Performance Management Program (PMP), July 1999; the USMS Tactical Plan FY 2000-2002, July 1999; and the Marshal's Service 2000: The Strategic Plan of the USMS, 1997 and Beyond, February 1997.

²⁰ Partial timelines for the adjudication of cases has been developed but not yet implemented.

²¹ This OIG policy memorandum was also directed to the Immigration and Naturalization Service and the Bureau of Prisons.

- For FY 1999, the 93 misconduct allegations represented 36 percent of the total 258 misconduct allegations received by OIA.
- For FY 2000, the 76 misconduct allegations represented 30 percent of the total 254 misconduct allegations received by OIA.

Table 4 below and Table 5 on the following page show the types and numbers of misconduct allegations that were preliminarily closed by the OIA and not reported to the OIG in FY 1998 and FY 2000. These statistics were not available for FY 1999.

Table 4: Allegations Closed by OIA After Preliminary Investigations and not Forwarded to the OIG—FY 1998

Allegation	Number
Lost/Stolen Government Property	1
Firearms/Weapons Violations	1
Discrimination Complaints	2
Fiscal Improprieties	14
Prisoner Violations	7
Investigative Violations	2
Personnel Prohibitions	14
Off Duty Misconduct	4
On Duty Misconduct	14
Use/Misuse of Government-Owned Vehicles	4
Other Violations	7
Total	70

Source: USMS Office of Internal Affairs

Table 5: Allegations Closed by OIA After Preliminary Investigations and not Forwarded to the OIG—FY 2000

Allegation	Number
Conduct Unbecoming	39
Fraud or Theft	16
Hostile Work Environment	1
Misuse of a Government-Owned Vehicle	5
Misuse of Position	1
Missing or Mishandled Prisoner Property	7
Unfair Personnel Practices	7
Total	76

Source: USMS Office of Internal Affairs

The allegations include firearms violations, discrimination complaints, fraud, and hostile work environment misconduct that require immediate or 48-hour reporting to the OIG by the USMS according to OIG policy. See Appendix 1 for OIG classification levels for reporting allegations.

One case in particular illustrates the importance of OIA reporting all misconduct allegations to the OIG rather than discretionarily closing allegations through preliminary investigations. This case was active and involved various allegations of unprofessional misconduct concerning two USMS employees. These two employees were found to have created a fictitious, sexually explicit letter that identified two other USMS employees as the subjects of the letter. The letter was crafted to appear as an official USMS document. Although the allegation was reported immediately to the OIA, the OIA reviewed, closed, and referred the allegation back to the originating office for “appropriate managerial action.” As a result, the immediate supervisor issued an oral admonishment to one of the two employees involved. This allegation was not reported by the OIA to the OIG, as required.

Approximately five months later, the OIA reopened the case and forwarded the allegation to the OIG upon receiving requests to reopen the investigation from the HRD and a division official charged with oversight of the office where the incident occurred. The OIA conducted interviews with nine employees who had seen or heard of the letter. This case remains open after approximately 22 months from the occurrence and initial reporting of the incident. The Discipline Panel has reviewed the case and proposed suspensions for 5 and 7 days, respectively, for the two employees. As of June 19, 2001, one case was in ADR and one case was in the decision stage of the adjudication phase of the discipline process.

We also found that allegations for 16 of the 50 misconduct cases (32 percent) we selected for our sample were not reported to the OIG. In 9 of these 16 cases, the OIA never reported the allegations to the OIG. The OIA had formally investigated and substantiated these 9 allegations and sent the reports of investigation to the ERT for adjudication. The OIA was unable to provide any documentation or reasoning as to why the 9 cases had not been reported to the OIG. Some of these cases involved allegations of unauthorized use of a government-owned vehicle, unauthorized discharge of a weapon, disrespectful conduct, and failure to properly transport prisoners.

The remaining allegations for 7 of the 16 cases had not been reported to the OIA by the originating district office. Four of the seven allegations not reported occurred in one district. As a result, the OIA was unaware of these allegations and therefore, could not report them to the OIG.²² Some of these cases involved allegations of disorderly conduct and failure to use proper restraints.

Separate from our case file review, we also interviewed five Chief Deputy United States Marshals (CDUSM) who serve as the proposing officials for misconduct cases in their respective districts. Three of the five CDUSMs we interviewed said they have exercised discretion on whether or not to report certain types of misconduct to the OIA. This discretion was based on the initial source of the complaint (internal or external to the district) or the perceived severity of the misconduct. However, USMS Policy 99-33 does not allow for discretion by employees, supervisors, or managers in reporting misconduct allegations. USMS Policy 99-33 states, "...employees are also responsible for immediately reporting misconduct allegations or violations of policies and procedures to their immediate supervisor, the OIA, or the OIG . . . USMS managers/supervisors [are] responsible for...reporting all misconduct complaints immediately to OIA."

The OIG has previously expressed its concern to the USMS regarding compliance with the OIG reporting requirements. In an OIG memorandum sent to the USMS, "Policy on Reporting Misconduct," February 23, 1999, the OIG Investigations Division stated,

We are concerned that current USMS reporting of misconduct is not consistent with our July 1, 1998, reporting guidelines policy memorandum. We are particularly concerned with Classification I allegations which are the most serious offenses, requiring immediate reporting to OIG field offices, and often requiring contemporaneous response. It is our perception that there may be confusion at the District level regarding the requirements of reporting misconduct.

²² One of the seven cases was eventually reported to the OIG after a judge who presided over the conviction of a USMS employee wrote a letter to the USMS Director expressing concern that misconduct incidents may be occurring without management's knowledge.

We understand that Districts are allowed to handle certain “performance” issues at the local level. However, the line between performance and misconduct is often not clear and we are concerned that misconduct is being handled as performance without reporting to OIA or the OIG.

Although OIG and USMS policies require that allegations of misconduct be reported through the OIA to the OIG, adherence to these policies has been inconsistent within the USMS. As a result, the OIA and the OIG are not fully aware of misconduct allegations and cannot ensure that they are properly investigated and adjudicated. The OIA and the OIG also do not have complete information on misconduct within the USMS for analyzing trends, identifying systemic problems, and recommending solutions to these problems.

Recommendations

11. The USMS Director should instruct all USMS districts, divisions, and headquarters organizations to report all misconduct allegations to the OIA.

12. The USMS Director should instruct the OIA to report all misconduct allegations to the OIG in accordance with OIG policy.

Policies and Procedures

Legislation

A federal employee who has had a misconduct allegation substantiated by an investigation is subject to disciplinary action. This action is imposed during the adjudication phase as provided in the Civil Service Reform Act of 1978; and Title 5, Code of Federal Regulations, Part 752, Adverse Actions; and 5 U.S.C. Chapter 75, Section 7501-7504, 7511-7514.

Department of Justice

Office of the Inspector General

The Inspector General Act of 1978, as amended, and Attorney General Order 1931-94, dated November 8, 1994, require misconduct allegations concerning USMS employees and contractors to be reported first to the OIG Investigations Division for review and disposition. The OIG decides whether it will conduct an investigation or refer the misconduct allegation to the Chief, USMS OIA, for subsequent investigation by an OIA investigator, the originating district or division, or for discretionary closure if appropriate.

The OIG Assistant Inspector General (AIG) for Investigations issued a memorandum to the Immigration and Naturalization Service, the Bureau of Prisons, and the USMS, dated July 1, 1998, which outlined guidelines for reporting misconduct allegations to the OIG. This memorandum provided a general breakdown of misconduct allegations into three separate classifications, with corresponding reporting periods to the OIG depending on the severity of the allegation. Classification 1 requires immediate reporting, and no investigation can be initiated prior to receipt and classification of the allegation by the OIG. Classification 2 requires reporting within 48 hours. An internal investigation can be started but the OIG reserves the right to terminate and initiate its own investigation. Classification 3 only requires that the allegation be reported in a pre-determined monthly format. These three classifications also carry certain reporting requirements if the investigation is referred back to the component.

The AIG for Investigations issued an additional memorandum, dated February 23, 1999, to the USMS which clarified policy requirements of reporting misconduct given reporting and consistency concerns.

Justice Management Division

DOJ Human Resources Order DOJ 1200.1, "Discipline and Adverse Actions," August 25, 1998, which replaced DOJ Order 1752.1A, recognized that each Bureau has different management requirements that must be addressed in determining the appropriate offense penalty. This Order granted each Bureau the authority to establish its own Schedule of Disciplinary Offenses and Penalties. However, the Bureaus are required to notify the Department's Workforce Relations Group (WRG) within the Justice Management Division of any case that presents a significant legal (as opposed to factual) issue that may be of interest to the Department. This requirement is due in part to the potential of the WRG representing any Bureau (at the request of the Bureau or the direction of the Assistant Attorney General for Administration) or the Department on matters that fall within the jurisdiction of MSPB, its administrative judges, or the Office of Special Counsel.

United States Marshals Service

Discipline Delegation Policy

The USMS Policy Notice 94-002A, "Discipline Delegation Policy," dated January 1995, describes who serves as the proposing and deciding officials for the following misconduct categories:

Informal Discipline -- Minor corrective actions (*i.e.*, oral admonishments, letters of caution) are issued at the lowest appropriate level.

Disciplinary Actions of 14 Days or Less -- The Chief Deputy United States Marshal or Branch/Unit Chief serves as the proposing official for all disciplinary actions warranting a suspension of 14 days or less at the District or Division level. The U.S. Marshal or Division Chief serves as the deciding official for all disciplinary actions warranting a suspension of 14 days or less.

Disciplinary Actions Greater than 14 Days -- The Discipline Panel comprises five USMS officials (two serve as alternates) who serve as panel members for two years. The Discipline Panel reviews and issues proposed discipline action in all misconduct cases that will result in suspensions greater than 14 days. The Discipline Panel can also propose less severe discipline. A senior USMS official, selected by the Director, serves as the deciding official for the Discipline Panel's proposed discipline actions.

Other USMS Discipline Policies

Related policies and directives issued by the USMS that also identify misconduct complaint reporting, investigation, and adjudication requirements are found in USMS Policy Directive 99-33, "Misconduct Investigations," and Policy Directive 99-18, "Code of Professional Responsibility." Related policy and procedures also are published in the USMS Policy and Procedures Manual, Volume III, 3.13, Discipline and Adverse Actions. However, the manual has not been updated since October 31, 1995, to fully reflect all related and subsequent policies.

Pursuant to DOJ Order 1200.1, the USMS opted to retain the existing USMS Table of Offenses as a guide in determining appropriate discipline penalties. The USMS Policy and Procedures Manual states that the Table of Offenses "is intended to provide guidance in the application of uniform discipline" and that management should not apply a rigid or narrow interpretation when determining discipline action. The Table "is intended to provide maximum flexibility in the assignment of penalties to employees in a variety of grades and positions and for varying degrees of culpability." The Manual also states "...there is enough flexibility that offenses listed in the Table can be used in proposing and deciding penalties for similar offenses not found in the Table." There are 28 separate offense categories listed in the Table of Offenses. There are 99 separate offense codes used to identify various misconduct allegations.

Merit Systems Protection Board — The Douglas Factors

In *Douglas v. Veterans Administration* (1981), the MSPB identified 12 relevant factors agency management needs to consider and weigh in deciding an appropriate disciplinary penalty. The factors are:

1. the nature and seriousness of the offense and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2. the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
3. the employee's past disciplinary record;
4. the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5. the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;

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6. consistency of the penalty with those imposed upon other employees for the same or similar offenses;
 7. consistency of the penalty with the applicable agency table of penalties (which are not to be applied mechanically so that other factors are ignored);
 8. the notoriety of the offense or its impact upon the reputation of the agency;
 9. the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
 10. potential for employee's rehabilitation;
 11. mitigating circumstances surrounding the offense, such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
 12. the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Roles and Responsibilities

Department of Justice Office of the Inspector General

In 1989, the Office of the Inspector General (OIG) was created in the Department of Justice pursuant to the Inspector General Act Amendments of 1988. According to the Act and its legislative history, jurisdiction over the investigation of misconduct allegations against Department employees was divided between the Department's Office of Professional Responsibility (OPR) and the OIG. OPR was responsible for the investigation of misconduct allegations involving Department attorneys, criminal investigators, and other law enforcement personnel. Responsibility for the investigation of other matters was assigned to the OIG.

In Attorney General Order No. 1638-92, dated December 11, 1992, the Attorney General clarified the jurisdictional division between OPR and the OIG. Under the 1992 Attorney General Order, the jurisdiction of the OPR was revised to extend to the investigation of misconduct allegations against Department employees which implicated the Department's core functions, defined as the "prosecutive, investigative, or litigative functions of the Department." The responsibility of investigating matters not involving the core functions was assigned to the OIG.

The OIG's responsibility was changed by Attorney General Order 1931-94, dated November 8, 1994.²³ Under this Order, the OIG was given the responsibility of reviewing and investigating any misconduct allegations committed by Department employees, contractors, grantees, or other individuals conducting business with or receiving benefits from the Department. This Order exempted from OIG review DOJ employees who worked for the Federal Bureau of Investigation (FBI) and the Drug Enforcement Administration (DEA)--each of these components has its own internal OPR.

An Attorney General Order, dated July 11, 2001, assigned primary jurisdiction over allegations of misconduct against employees of the DEA and the FBI to the OIG.

²³ Attorney General Order 1931-34 gave the Department's OPR jurisdiction to investigate misconduct allegations by Department attorneys that relate to "the exercise of their authority to investigate, litigate, or provide legal advice." In addition, OPR also was given responsibility for investigating misconduct allegations brought against law enforcement personnel when the allegations relate to misconduct by attorneys within the jurisdiction of OPR.

United States Marshals Service

The United States Marshals Service (USMS) is the nation's oldest federal law enforcement agency. Since 1789, federal Marshals have served the United States through a variety of law enforcement activities. The mission of the USMS is to protect the federal courts and to ensure the effective operation of the judicial system. Other areas of responsibility include fugitive investigations, witness security, prisoner transportation, and asset seizure. The Director, Deputy Director, and 94 U.S. Marshals appointed by the President direct the activities of 94 district offices. Approximately 4,210 personnel serve in the USMS--2,863 employees serve in operations positions and another 1,347 serve in administrative positions.

USMS Office of Internal Affairs

In the USMS, all misconduct allegations are required to be forwarded to the Office of Internal Affairs (OIA) and then forwarded to the OIG. After the OIG reviews the USMS misconduct allegations, OIA conducts the majority of investigations. The exceptions are allegations the OIG determines it should investigate, allegations the OIA refers to other law enforcement entities, or allegations the OIA refers back to the employee's office of employment for investigation.

An investigation establishes supporting evidence for whether or not an allegation is substantiated. If an allegation is not substantiated, the case is closed and a copy of the case file is maintained by the OIA. If an allegation is substantiated, a copy of the case file is forwarded to the ERT in the HRD for review to begin the adjudication phase of the discipline process.

At the time of our review, the OIA had a staff of 10 personnel consisting of one Chief, six investigators, and three support staff.

USMS Employee Relations Team

The Employee Relations Team (ERT), under the supervision of the Assistant Director for the HRD, assists USMS employees in the following areas: discipline and performance actions, performance management, leave administration, and awards. At the time of our review, the ERT was authorized four staff positions but only had on-board one team leader and two employee relation specialists. The individual in the role of team leader was serving in an acting capacity. At the conclusion of our review, the position was officially filled.

The ERT is responsible for the adjudication of misconduct cases. Upon receipt of an investigative case file from the OIA, the ERT team leader reviews the case and assigns it to an ERT staff member, who is responsible for monitoring the progress of the case. The ERT team leader also determines whether a case should be referred back to

the district or division or forwarded to the Discipline Panel for review. The ERT also ensures any proposed discipline action is in accordance with USMS Discipline Delegation Policy.

The ERT is responsible for maintaining the official misconduct case files; monitoring the adjudication progress of each case; providing assistance in the form of advice, information, or expertise to employees, district, division, and Discipline Panel personnel; and reviewing and approving all proposal and decision letters for consistency and compliance. Also, according to USMS policy, the ERT can continue to adjudicate a case by revising the original allegation if the facts support this action or issue a letter of clearance or of closure in a case if the facts support this action.

Proposing and Deciding Officials

Once the ERT reviews and decides to adjudicate a case, it is forwarded to the proposing official at the appropriate level (district, division, or Discipline Panel) for review. Based on the information in the investigative case file, any prior misconduct information on the employee provided by the ERT, and any first-hand knowledge of the case or employee (usually at the district level), a proposed discipline action by the official(s) is recommended. This action is presented in the form of a proposal letter, prepared by ERT staff, to the employee for signature. The letter also informs the employee of available options and specific time periods that must be met.

Officials determine the level of discipline actions by reference to guidelines established in the USMS Table of Offenses. If the proposed discipline calls for a suspension of over 14 days, a copy of the proposal letter and the investigative case file are also provided to the Office of General Counsel (OGC) for review. If the proposed discipline action calls for removal of the employee, then a copy of the proposal letter and the case file are provided to the WRG in the Department's JMD for review.

The deciding official reviews the case file and the proposal letter and considers any written or verbal response submitted by the employee to the proposed action before rendering a final decision. This decision is prepared and finalized in written format by ERT before being presented to the employee.

USMS Office of General Counsel

The OGC's involvement in the discipline process occurs when a proposed discipline action against an employee calls for a suspension of more than 14 days. This level of proposed discipline action can be appealed to the MSPB. Because the OGC represents the USMS in these cases before the MSPB, the OGC is provided with a copy of the proposal letter and investigative case file for review. The OGC reviews the thoroughness of the investigation, the proposal notices, and the reasonableness of the proposed penalties and provides an opinion that the identified offenses are sustainable

and that the proposed discipline action is reasonable and warranted based on the evidence. In addition, the OGC ensures that the relevant Douglas factors are given consideration in the penalty determination. If a case is appealed to the MSPB, control of the case is relinquished to the OGC by the ERT. The OGC also becomes involved in the discipline process when employees choose to resolve their cases using the ADR Program. The OGC generally acts in a consultant role to USMS management concerning this program.

USMS Alternative Dispute Resolution Program

The ADR Program began in the USMS as a pilot project in 1996 and was implemented as a fully operational program in October 1998. Oversight of the program is the responsibility of the ADR Ombuds. The ADR Ombuds can decline or discontinue any request or case if it is deemed to be in the best interest of the USMS. The USMS ADR Handbook, dated June 1999, describes the program as being non-traditional, non-adversarial, and informal in nature. By using a trained facilitator as a neutral third party, the program is designed to resolve workplace conflicts, including misconduct cases, between two or more parties to achieve an agreement that benefits all parties. According to USMS standards, 60 calendar days are allowed for the ADR Program to reach a conclusion. An additional 30 days is allowable if both parties consent. Management as well as employees can request ADR and can have counsel present.

USMS Equal Employment Opportunity Office

USMS employees may file EEO complaints. Some of the factors that would qualify as the basis for an EEO complaint involve race, sex, age, or religious discrimination. A complaint has to be registered with an EEO Counselor within 45 days of the date of occurrence. If a complaint cannot be remedied during the informal phase of the EEO process and the evidence warrants, the USMS EEO Office will conduct a formal investigation (to be completed within 180 days). If an EEO complaint is related to or a result of a misconduct allegation, this can affect the overall processing of the misconduct case. During the informal phase of the EEO process, the employee is also informed of the ADR Program as an option.

Merit Systems Protection Board

Established by the Civil Service Reform Act of 1978, the MSPB is an independent agency in the executive branch of the federal government.²⁴ The MSPB is charged with oversight of the federal government's merit-based system of employment. In most cases, this is accomplished by hearing and deciding appeals from federal employees being considered as recipients of major personnel actions, such as removal

²⁴ The Act replaced the Civil Service Commission with three agencies: the MSPB, the Office of Personnel Management, and the Federal Labor Relations Authority.

from service. Other, less serious, actions may be appealed as well. The MSPB also hears and decides other types of civil service cases, reviews regulations of the Office of Personnel Management, and conducts studies of the merit system.

Case File Characteristics and Offenses

**Table 5: Misconduct Case File Characteristics
50 Case Sample**

Assignment	Number
District Operations	44
District Administration	2
Headquarters Administration	4
Classification	
District Operations -- Non-Supervisory	31
District Operations -- Supervisory	13
District Administration -- Supervisory	2
HQ Administration -- Supervisory	2
HQ Administration -- Non-Supervisory	2
Grade	
GS-7	4 (8%)
GS-9	1 (2%)
GS-11	5 (10%)
GS-12	25(50%)
GS-13	9 (18%)
GS-14	1 (2%)
GS-15	5 (10%)
Sex	
Male	42
Female	8
Race	
White	31
Black	11
Hispanic	5
American Indian	2
Asian	1

Source: USMS

Table 6: Misconduct Case Sample by Offense Category

Offense Category	Number of Misconduct Cases
Unauthorized Use of a Government-Owned Vehicle (GOV)	8
Unauthorized Use of Government Property (Travel Credit Card)	6
Violations of Standards of Conduct	5
Disorderly Conduct	5
Discharge of a Weapon with no Apparent Threat	5
Failure to Report	3
Failure to Honor Just Debt (Travel Credit Card)	2
Improper Restraint of a Prisoner	2
Improper Seating of a Prisoner	2
Disrespectful Conduct	2
Failure to Follow USMS Policy	1
Improper Use of a GOV	1
Misuse of Office	1
Conversion of Government Funds to Personal Use	1
Assault on a Prisoner	1
Falsification, Misstatement of Employment	1
Discrimination	1
Disgraceful Conduct	1
Association with an Individual Known to be Involved in Criminal Activity	1
Failure to Disclose All Assets on an Annual Executive Financial Disclosure Form	1
Total	50

Source: USMS

USMS's Response to the Draft Report

Introduction

The Department of Justice Office of Inspector General (DOJ-OIG) Evaluation and Inspections Division conducted an evaluation of the discipline process in the United States Marshals Service to determine whether discipline actions taken in response to substantiated misconduct allegations were consistent, timely and in accordance with USMS policy.

We appreciate the opportunity to comment on the major findings of the report, and agree with all of the report findings except Recommendation One. Under Recommendation One, while we agree in principal that such detailed explanations and documentation could be helpful from the perspective of the DOJ-OIG evaluation, we feel that when considering the overall process, from investigation to completion of a third-party review, this recommendation is not practical.

We trust that the DOJ-OIG will take the opportunity to reconsider their position on this recommendation based on our response, which we feel is consistent with Federal sector disciplinary requirements and accepted practices among the Federal employee relations community.

The following responses address each of the DOJ-OIG recommendations:

Recommendation 1: The USMS Director should instruct the HRD to improve adherence to the Federal standards for documenting misconduct case actions and consider implementing additional case documentation standards as needed.

Response: Recommendation Not Accepted:

The Employee Relations Team (ERT) will continue to adhere to Federal standards. We agree that Federal standards require documenting misconduct cases. However, we do not agree that Code of Federal Regulations (CFR) documentation standards require the detailed explanations outlined in the evaluation report. We believe that when considering the overall process, from investigation to completion of any potential third-party review, this recommendation is not practical. The basis for this conclusion is outlined below.

- In several of these cases that were reviewed during the DOJ-OIG evaluation that resulted in disciplinary actions of 14 days or less, we acknowledge that some of the supporting documentation was not present in the case files. These cases were adjudicated at the local level, and

while local managers were directed to provide copies of oral and written replies, in some cases they apparently did not. ERT will remind local managers of their obligation to provide this documentation and will further instruct Employee Relations Specialists to ensure that this documentation is maintained in the disciplinary case file.

- The Federal standards cited in the OIG report, 5 CFR Section 752.406, specifically apply to formal disciplinary actions effecting a penalty range greater than a 14-day suspension. In addition, these standards do not apply to cases that are resolved by use of settlement agreements, where employees waive their rights to the normal disciplinary process. In a review of these cases effecting a penalty greater than a 14-day suspension, all applicable cases complied with the requirements set forth in 5 CFR Section 752.406, in as much as copies of written replies and summaries of oral replies were present in these files. In other cases where no oral and/or written reply was made, this fact was documented in the decision letter.
- When considering the entire disciplinary process, including the fact that discipline is subject to further review by appellate bodies, it is an accepted Federal personnel management practice not to “litigate” a disciplinary action in the decision letter.
- The DOJ-OIG based their findings on a review of 50 selected misconduct cases. Since these cases were not selected at random but were chosen based on specific criteria, the report should make it clear that the statistics arrived at cannot be applied to the entire universe of cases.
- The DOJ-OIG review appears to conclude that a disparity between proposal and decision warrants a concern, and that such a disparity demonstrates a weakness in the system. However, we believe that we are compelled to give appropriate weight and consideration to the due process rights of employees and the Douglas factors. While the focus of the DOJ-OIG review was the discipline process only, the application of this process must take into consideration the overall picture, which could include such issues as the quality of the evidence in the discipline file and the strategies that may evolve during third party litigation. The strength of this position is evidenced by our success in third-party proceedings.
- Regarding consistency of penalty, in the USMS there are in excess of 200 possible proposing and deciding officials who could be involved in the disciplinary process at any given time. In making consistency determinations, the third-party review standard requires that deciding officials be consistent with their own decisions. Therefore, no conclusions should be drawn from an across-the-board comparison of discipline penalties.

Recommendation 2: The USMS Director should instruct the HRD to ensure that all formal discipline actions are enforced and properly documented in the official personnel folders.

Response: Recommendation Accepted. We concur with this recommendation. On March 1, 2001, the Employee Relations Team implemented new procedures to ensure that all disciplinary actions were properly documented and enforced. At that time, the following procedures were established for all discipline actions greater than a letter of reprimand:

- When the decision letter is signed, a Request for Personnel Action (SF-52) identifying the suspension dates will be prepared by the ER Specialist managing the case.
- A copy of the signed SF-52 (s) will go to Staffing.
- A copy of the signed SF-52 (s) will go to the Specialist for inclusion in the discipline file.
- A copy of the signed SF-52 (s) will be maintained in a binder.
- Approximately one pay period after the effective date of the suspension, ERT will check the payroll system to determine if the suspension was recorded.
- If the suspension was not recorded in the payroll system, the Specialist managing the case will be notified.
- The Specialist will determine if a Notification of Personnel Action (SF-50) was prepared and follow up (with district/headquarters office) to determine if the suspension was served.
- If the suspension was not served, the Specialist will obtain from management new dates when the suspension will be served.
- A new SF-52 correcting the dates of the suspension will be prepared and the above steps will again be followed.
- If there are unusual issues involving the suspension, the Specialist will notify the Team Leader for appropriate action.

Recommendation 3: The USMS Director should instruct the HRD to establish time lines for the adjudication of misconduct cases and to use the time lines to monitor the status of the cases through the process.

Response: Recommendation Accepted:

ERT has time lines for issuance of the proposals: 90 days for Discipline Panel disciplinary actions and 30 days for disciplinary actions delegated to District/Division Managers. Employees have 10 days to submit their replies. In cases where employees request additional time to make their replies, the deciding official may extend this time line as he determines is necessary to afford the employee sufficient time to reply.

Timeliness has always been and will continue to be a concern in the disciplinary process.

Additional internal goals will be informally established and revised as needed to ensure the timely adjudication of disciplinary cases, keeping in mind that the cases that normally take the longest time to adjudicate are usually the most complex and usually involve the most severe discipline, up to and including removal. These internal standards and goals will be used as a management tool to assist in the process, but in all fairness to the employee, we do not want these standards to drive the process. We do not feel that it is necessary or appropriate to establish formal time lines.

According to DOJ 1200.1, Part 3, Labor/Employee Relations, Timing of Discipline: "There is no limitation with respect to when discipline must be affected after the commission of misconduct. However, managers are encouraged to act in a timely manner." This guidance seems to support our position that timeliness is important, but not necessarily the key element in taking a disciplinary action. There is nothing in this order that makes time lines a requirement in the disciplinary process.

We will constantly strive to improve in these areas, and make every effort to document any significant delays in the process in the disciplinary case file.

In addition, on March 7, 2001, all ER Specialists were reminded to ensure that all correspondence that relates to the case file should be maintained in the case file, including, but not limited to, requests for extension, requests for information, etc. Each Specialist was also reminded to include any and all communications/documentation that would identify or explain any significant time delays.

Recommendation 4: The USMS Director should instruct the HRD to meet established ADR time lines and return cases that do not meet these time lines to the appropriate office to continue with formal processing.

Response: Recommendation Accepted. The ADR policy is being revised to automatically return the disciplinary action to the formal processing once the

established time lines have expired. ADR may continue at the option of the parties, but, formal adjudications of discipline will occur.

Recommendation 5: The USMS Director should instruct the HRD to develop and implement a strategy for increasing the use of trained USMS ADR facilitators.

Response: Recommendation not accepted: Due to a revision in the ADR policy (recommendation # 6) there will be no need for more trained USMS mediators to handle these cases. Sufficient numbers of mediators are available for lesser discipline matters that are not as complex.

Recommendation 6: The USMS Director should ensure the HRD is accepting only eligible cases for ADR and at the appropriate stage.

Response: Recommendation accepted: The ADR policy is being revised such as to not provide an ADR option for pre-decisional appeal of major disciplinary actions, i.e., those greater than 14 days and appealable to the MSPB.

Recommendation 7: The USMS Director should instruct the HRD to ensure that consistent, accurate, and complete data is entered in a timely manner in the ADR database to allow for more effective monitoring, oversight, and reporting.

Response: Recommendation Accepted: Currently the ADR process has in place an excellent data and record keeping system. Due to personnel shortages, the data entry requirements were not being met. With the addition of another staff member to the ADR program, these requirements will be met on a continuing basis.

Recommendation 8: The USMS Director should instruct the HRD to develop and implement data collection, entry, and review standards for ERT's automated database.

Response: Recommendation Accepted: The Employee Relations Team will establish standards for data collection, entry, and review for ERT's automated database. Standards will be established NLT November 30, 2001.

Recommendation 9: The USMS Director should direct the HRD to reactivate these meetings with representatives for the appropriate entities involved in the discipline process to identify and solve disciplinary process issues. These meetings should occur periodically and a written record of activities and decisions should be maintained.

Response: Recommendation Accepted: On a monthly basis, representatives from IA, ADR, OGC and EEO will meet with the Employee Relations Team to

identify, discuss and resolve disciplinary process issues. A written record of these activities and decisions will be maintained by the ER Team. The next meeting is scheduled to take place on October 3, 2001.

Recommendation 10: The USMS Director should instruct the HRD to develop performance standards for the adjudication of misconduct cases and monitor cases against those standards.

Response: Recommendation Accepted: Performance standards have traditionally been in place for the ER Team in that the ER Specialist was expected to have the proposed disciplinary action memorandum mailed to the district within 30 days of receipt of the investigative file. In addition, the traditional standard for cases being sent to the Discipline Panel was to have the proposed disciplinary action mailed to the Discipline Panel within 90 days of receipt of the investigative file. Prior to the implementation of a standardized Performance Plan for all USMS employees in January 1997, each ER Specialist had a Performance Plan that included these specific standards.

In December 1999, this standard was again cited in the Mission and Activity Statement for the Employee Relations Team as follows:

1. Prepare proposals for all disciplinary actions for issuance by the USMS Discipline Panel within 90 days.
2. Prepare proposals for all disciplinary actions for issuance by District/Division Managers within 30 days.

A copy of this statement has been provided to the OIG.

Recommendation 11: The USMS Director should instruct all USMS districts, divisions, and headquarters organizations to report all misconduct allegations to the OIA.

Response: Recommendation Accepted: All USMS districts, divisions, and headquarters organizations will be reminded of their responsibility to report all misconduct allegations to the OIA.

Recommendation 12: The USMS Director should instruct the OIA to report all misconduct allegations to the OIG in accordance with OIG policy.

Response: Recommendation Accepted: OIA has always reported classification one and two allegations to the OIG as required by OIG guidelines. Some class three allegations were not reported to the OIG. These unreported allegations were found either to be unsubstantiated after the preliminary investigation or to involve misconduct by contractors. Pursuant to the OIG findings, OIA will forward all allegations to the OIG as required by the reporting

guidelines. Currently, OIA is working with the OIG to electronically report class three allegations on a monthly basis. The changes in reporting to the OIG have been implemented and the OIA is in full compliance with the guidelines.



U.S. Department of Justice

Office of the Inspector General

December 19, 2001

MEMORANDUM FOR BENIGNO G. RENYA

DIRECTOR
UNITED STATES MARSHALS SERVICE

A handwritten signature in black ink, appearing to read "Paul Price", written over the typed name "PAUL A. PRICE".

FROM: PAUL A. PRICE
ACTING ASSISTANT INSPECTOR GENERAL
FOR EVALUATION AND INSPECTIONS

SUBJECT: Office of the Inspector General Analysis of the
United States Marshals Service Response to
Report, I-2001-011

On September 28, 2001, the Office of the Inspector General (OIG) issued the final report to the Acting Director, United States Marshals Service (USMS), entitled "Review of United States Marshals Service Discipline Process." The report contained 12 recommendations that required action by the USMS. The USMS response, dated October 5, 2001, addressed each of the recommendations and is included as Appendix 4 in the report. Our analysis of the USMS response follows and is included as Appendix 5 in the report.

Recommendation Number I - Resolved - Open. Although the USMS response did not agree with several aspects of our finding, including our conclusion that most of the case files did not meet the Code of Federal Regulations (CFR) case documentation standards, the USMS agreed to adhere to the federal standards for documenting misconduct cases. The USMS responded that many of the case files the Office of the Inspector General (OIG) reviewed contained the required documentation. In addition, the USMS response stated that the information contained in the decision letters in the case files the OIG reviewed was adequate because the CFR does not require decision letters to include a "detailed explanation" to meet CFR standards.

However, our report states that the CFR requires that the reasons for the discipline actions, not a detailed explanation, be documented. We found that the decision letters did not consistently provide adequate reasoning to

understand why the deciding official mitigated proposed discipline action. The USMS response also concluded that our recommendation to improve adherence to CFR standards was impractical, when the overall disciplinary process is considered, but it failed to explain why improved adherence to CFR standards was impractical.

The USMS response to Recommendation Number 1 also includes comments on several specific aspects of the report. Our response to each of the comments follows.

- In its response, the USMS acknowledged that several of the case files we reviewed involving discipline action of less than 14 days may not have contained all of the required supporting documents because the cases were adjudicated at the local level (District and Division). For those cases adjudicated at the District and Division level, the USMS stated that it will instruct the Employee Relations Team (ERT) to remind local managers of the obligation to provide this documentation and will further instruct the ERT to ensure that this documentation is maintained in the discipline case file.

We agree that this corrective action for cases adjudicated at the District and Division level is important, but it will not fully address the documentation deficiencies we found in the other case files adjudicated by the Discipline Panel. Not all cases resulting in discipline action of 14 days or less are reviewed and adjudicated at the District and Division level. Of the 50 cases in our review, 22 cases were initially determined to be serious enough to warrant being sent to the Discipline Panel by the ERT for review and adjudication. After review and adjudication by the Discipline Panel, only 11 of these cases resulted in a discipline action of more than 14 days. The other 11 cases resulted in a discipline action of 14 days or less. Yet, most of these 22 case files did not contain all the required documentation as defined in the CFR. Therefore, we recommend that the USMS should instruct the ERT to ensure that all cases processed at all adjudication levels contain the required documentation.

- The USMS response notes that 5 CFR Section 752.406 provides the federal standard for documenting misconduct cases involving more than 14 days discipline. As provided in our report, this section states "the agency shall maintain copies of the items specified in Title 5 United States Code (U.S.C.), section 7513(e) and shall furnish them upon request as required by that subsection." Title 5 describes these items as "Copies of the notice of proposed action, the answer of the employee when written, and a summary thereof when made orally, the notice of

decision and reasons therefore, and any order effecting an action covered by this subchapter, together with any supporting material..." Although not specifically mentioned in the report, Title 5, section 7503(c) requires the same case documentation standards for discipline actions involving 14 days or less.

The USMS also comments that not all cases in our review required all of the documents described in the CFR standards. We agree that each case file we reviewed did not always require a proposal letter, an employee response, and a decision letter, because the case may not have gone through the entire formal discipline process. This was the case in 20 of the 50 case files we reviewed. Six cases were closed through the use of a settlement agreement, 3 cases were closed due to the employee deciding to retire before the process was completed, and 11 cases were closed with a letter of closure issued by either the ERT or the Discipline Panel. During our review, we considered the extent the formal discipline process had been completed and the effect this had on the CFR documentation requirements for each case.

In addition, the USMS stated that all the case files in our review that involved an imposed discipline action of more than 14 days (total of 11) complied with the CFR documentation requirements. While we found decision letters in case files that indicated an employee had responded, a copy of the written response or a summary of the oral response was not included in the case file as required by the CFR, with the exception of 2 cases adjudicated at the District level. Thus, in most of the 30 cases that went through the entire discipline process, the USMS was not consistently meeting the entire CFR documentation standard for its case files with respect to employee responses.

- The USMS asserts that it is an accepted federal practice not to "litigate" a discipline action in the decision letter, but the USMS response does not explain what this means. Our report does not propose that the USMS prepare decision letters that itemize or discuss the merits of all evidence provided during the disciplinary process. The report cites the need for the USMS to improve adherence to the CFR standard that requires the reasons for the imposed discipline actions to be included in the notice of decision. In the cases that went through the entire formal discipline process where a deciding official mitigated the proposed discipline action, we found varying levels of information describing the reasons for mitigation. Our report provided specific examples of case files that did not contain sufficient information to determine the reasons for the imposed discipline actions. For example, the report describes certain cases that had multiple charges supported in the proposal letter, We found that the deciding official in these cases did not indicate that consideration was given to each of these charges when determining discipline action. In other cases, the discipline action imposed fell below the range of penalties suggested in the USMS Table of Offenses or the discipline action imposed appeared to be inconsistent to other similar discipline actions or lenient and the deciding official did

not include the reasons for the imposed discipline.

The USMS also did not agree with our finding that the reasons for the imposed discipline actions were not adequately documented in the decision letters. As an argument for the adequacy of the documentation, the USMS referred to its success with third party reviews -- an explanation we believe is not directed to the issue discussed in our report. Third party reviews, such as a review by the Merit System Protection Board, involve more than the case file contents to determine the merits of a case. As the case examples in the report show, we were not always able to understand the reasons used in imposing certain penalty decisions from the decision letter. A case file should allow for a reviewer to follow the entire progression of the discipline process and, if necessary, draw reasonable and accurate conclusions on the fairness or the consistency of a discipline action imposed. A case file should contain the necessary documentation so that the logical progression, direction, and reasoning used in the case, from the investigative stage to the decision letter, are clear and defensible.

- The USMS indicates in its response that it is important for the report to clarify that the statistics in the report are not based on a random sample and therefore cannot be applied to the entire universe of cases within the USMS. Early in the report, we provided the specific criteria for selecting the 50 case files for our review, and it is clear from the description in the report that the sample was not a random sample. However, based on the high incidence of cases with insufficient documentation in our selected sample, it is reasonable to assume that similar deficiencies exist in other cases.
- The USMS response comments that our report appears to conclude that a disparity between the proposed penalty and the final decision warrants concern and that such a disparity demonstrates a weakness in the system. Our report fully acknowledges the complexity of misconduct cases and the challenges associated with adjudicating them. However, based on our case file review, our report does raise important concerns over the inconsistent penalties and the disparity in the penalty decisions. The report shows that 19 cases were mitigated below the proposed penalty and in 13 cases the final penalty fell below the suggested range of penalties. The report also includes specific cases where similar offenses adjudicated during the same time frame received differing levels of proposed and imposed discipline, cases where prior offenses were not considered during the final penalty decision, or cases that failed to show that all offenses had been considered and addressed by the deciding official. Thus, the imposed discipline appeared inconsistent with similar

cases or too lenient. The report's conclusions, however, are derived from our review of the case files, which did not always have the required or adequate level of documentation to support or explain the reasons for the imposed discipline actions.

The response also again comments on "the strength" of the USMS position as evidenced by the USMS's success in third-party proceedings. That success rate does not answer the question of whether USMS penalty decisions are inconsistent. Moreover, success rates in third party proceedings may be based on numerous factors, one of which could be undue leniency in the USMS's proposed discipline actions.

- The USMS asserts that our report should not draw conclusions regarding the consistency of penalties from a comparison of cases. The USMS states that there could be over 200 possible proposing and deciding officials, who could be involved in the disciplinary process at any given time, and based on the third party review standard it is only critical that the deciding officials are consistent within their own decisions. Contrary to the USMS's view that consistent penalty decisions are not critical or possible, the OIG believes that the discipline process should result in supportable and consistent disciplinary decisions, regardless of the number of possible proposing and deciding officials, and the disciplinary decisions should be made after the deciding officials consider all relevant factors in a case. Our review of the case files did not indicate that all relevant factors were considered because the documentation was not complete and the decision letters did not adequately explain the reasoning used to determine the imposed discipline actions.

Consistency in penalty decisions supported by sound and documented reasoning is the hallmark of an effective, fair and objective disciplinary process. As we state in the report, the USMS has taken steps in the past to improve the disciplinary process and has established a Discipline Panel to provide consistent review and adjudication of misconduct cases, which may result in discipline action of over 14 days.

The ERT is the caretaker of the USMS disciplinary process, and has the overall responsibility for ensuring the discipline process serves both the employee and the agency. According to USMS procedures, the ERT is responsible for maintaining the official misconduct case files; monitoring the adjudication progress of each case; providing assistance in the form of advice, information, or expertise to employees, district, division, and Discipline Panel personnel; and reviewing and approving all proposal and decision letters for consistency and compliance. The USMS response

indicated that over 200 individuals potentially play a role in the disciplinary process at any given time. Because of the large number of individuals involved in the process, it is crucial that the ERT provide sufficient guidance to ensure the standards for documenting misconduct are consistently met and followed.

To close this recommendation the USMS should issue a memorandum that clarifies the importance and necessity of meeting CFR documentation standards for misconduct case files to its staff and officials involved in the disciplinary process. This memorandum should also identify the documents the USMS requires in its misconduct case files and highlight the CFR documentation requirements. Specifically, the memorandum should identify the employee response (when provided) as a required part of the case file. The memorandum should also address the need for a more detailed review by the ERT staff of each decision letter, especially when it contains mitigating factors. This memorandum should be distributed to all entities involved in the discipline process for reference purposes. We will consider this recommendation resolved but will keep it open until we receive a copy of this memorandum.

Recommendation Number 2 - Resolved - Open. The USMS accepted our recommendation to ensure that all formal discipline actions are enforced and properly documented in official personnel folders. We consider the recommendation resolved but will keep it open until a copy of the procedures that had been implemented on March 1, 2001 is received.

Recommendation Number 3 - Resolved - Open. The USMS accepted our recommendation to establish time lines for the adjudication of misconduct cases and to monitor the status of the cases through the process. While the ERT has partial timelines in place, as stated in the response, these time lines were not used to measure timeliness of adjudication. Formal time lines should be established for each segment of the adjudication process, from the time the ERT accepts a case file from the OIA to when the decision letter is signed. The OIG realizes that each misconduct case is unique and involves certain complexities. These timelines would not be designed to "drive the process," but rather serve as a gauge to measure where each case should be at a given point in the process and an indicator when the process is not performing as efficiently as it should. These timelines would be flexible and subject to modification as analysis was performed on the accuracy of the initial attempt to establish these timelines. We consider the recommendation resolved but will keep it open until a set of formal timelines is provided.

Recommendation Number 4 - Resolved - Open. The USMS accepted our recommendation to meet established Alternative Dispute Resolution (ADR) timelines and return cases that do not meet these timelines to the appropriate office to continue with formal processing. We consider the recommendation

resolved but will keep it open until a copy of the revised ADR policy is provided.

Recommendation Number 5 - Resolved - Closed. The USMS accepted our recommendation to develop and implement a strategy for increasing the use of trained USMS ADR facilitators. Due to a change in ADR policy, which will reduce the number of ADR cases and will remove the need for increasing the use of trained facilitators, we consider the recommendation resolved - closed.

Recommendation Number 6 - Resolved - Open. The USMS accepted our recommendation to accept only eligible cases for ADR and at the appropriate stage. We consider the recommendation resolved but will keep it open until a copy of the revised ADR policy detailing the change is provided.

Recommendation Number 7 - Resolved - Closed. The USMS accepted our recommendation to ensure that consistent, accurate, and complete data is entered in a timely manner in the ADR database to allow for more effective monitoring, oversight, and reporting. Based on the USMS response that additional staffing will prevent data integrity from being a concern in the future we consider the recommendation resolved - closed.

Recommendation Number 8 - Resolved - Open. The USMS accepted our recommendation to develop and implement data collection, entry, and review standards for the ERT's automated database. We consider the recommendation resolved but will keep it open until a copy of the data entry standards, scheduled to be completed by November 30, 2001, are provided.

Recommendation Number 9 - Resolved - Closed. The USMS accepted our recommendation to reactivate meetings with representatives for the appropriate entities involved in the discipline process to identify and solve disciplinary process issues. Based on the USMS response we consider this recommendation resolved - closed.

Recommendation Number 10 - Resolved - Closed. The USMS accepted our recommendation to develop performance standards for the adjudication of misconduct cases and monitor cases against those standards. The USMS response only refers to performance standards that address timelines for part of the adjudication segment of the discipline process. These timelines are a first step towards measuring an important aspect of the discipline process, but the timelines should be expanded to include all activities involved in case adjudication. The USMS should also consider the establishment and implementation of performance standards for other important aspects of the discipline process, such as consistency or customer satisfaction. The USMS will not be able to measure the success or improve the discipline program without having complete timelines and other performance standards in place. Based on the response and discussions with USMS officials, we consider this

recommendation resolved - closed.

Recommendation Number 11 - Resolved - Open. The USMS accepted our recommendation to report all misconduct allegations to the Office of Internal Affairs (OIA). We consider the recommendation resolved but will keep it open until a copy of the memorandum distributed to internal USMS entities is provided.

Recommendation Number 12 - Resolved - Closed. The USMS accepted our recommendation for the OIA to report all misconduct allegations to the OIG in accordance with OIG policy. Based on the response provided by the USMS we consider this recommendation resolved - closed.

Please provide the information required to close the open recommendations within 45 days of this memorandum. If you cannot provide the information or cannot complete the corrective action, please advise us of the expected completion date. If you have any questions regarding your response, please contact Barbara Kee on 202-616-4615.

cc: Isabel Howell
Liaison
U.S. Marshals Service

Vickie Sloan
Director
Departmental Audit Liaison Office