



Office of the Inspector General
U.S. Department of Justice

OVERSIGHT ★ INTEGRITY ★ GUIDANCE



**Management Advisory Memorandum
of Concerns Identified in the
Handling of Supervisor-Subordinate
Relationships Across DOJ
Components**



March 10, 2020

MANAGEMENT ADVISORY MEMORANDUM FOR:

JEFFREY A. ROSEN
DEPUTY ATTORNEY GENERAL

FROM:


MICHAEL E. HOROWITZ
INSPECTOR GENERAL

SUBJECT:

Notification of Concerns Identified in the Handling of
Supervisor-Subordinate Relationships Across DOJ
Components

The purpose of this memorandum is to advise you of the wide variation the Office of the Inspector General (OIG) has identified among the policies of Department of Justice (Department, DOJ) components regarding romantic or intimate relationships between supervisors and subordinates. We have observed these variations during a number of our recent misconduct investigations. Specifically, some components prohibit such relationships, some components do not have policies regarding such relationships, and most other components permit them but impose obligations on the supervisor, and in some instances the subordinate, to report them so that the supervisor can be recused from personnel decisions involving the subordinate. In this memorandum, the OIG makes three recommendations to address these concerns.

The Problem

In the recent past, the OIG has noted an increase in the number of allegations it has received and subsequently investigated regarding allegedly inappropriate relationships between high-level supervisors and subordinates in

several different components.¹ In the context of such investigations, we have observed that most DOJ components have policies regarding supervisor-subordinate relationships but that those policies substantially differ from one another. Following is an overview of policies across components.

Executive Office for United States Attorneys (EOUSA): *United States Attorneys' Policies and Procedures 1-4.200.001, Policy on Notification of Romantic or Intimate Relationships, dated November 2, 2018*. EOUSA's policy does not prohibit supervisor-subordinate relationships, but imposes reporting obligations on both parties and holds supervisors accountable for ensuring that the relationship does not result in favoritism, conflicts of interest, abuse of authority, or sexual harassment claims.

Federal Bureau of Investigation (FBI): *FBI Policy Directive 0802D, Personal Relationships Policy, dated August 14, 2015*. The FBI's Personal Relationships Policy does not prohibit supervisor-subordinate relationships, but imposes reporting obligations on both parties and imposes an additional obligation on supervisors by prohibiting supervisors from engaging in romantic or intimate relationships with subordinates "if the relationship negatively affects a professional and appropriate superior-subordinate relationship or otherwise adversely affects the FBI mission."

¹The OIG posts on its public webpage summaries of investigative findings for certain misconduct cases involving subjects who are members of the Senior Executive Service, employees at the GS-15 level and above, Assistant U.S. Attorneys, or cases for which there may otherwise be significant public interest. See <https://oig.justice.gov/reports/inv-findings.htm>. As reflected on the OIG's public webpage, several recent investigative findings involved supervisor-subordinate relationships. See, e.g., *Investigative Summary: Findings of Misconduct by a Federal Bureau of Prisons Supervisor for Engaging in an Inappropriate Sexual Relationship with a Subordinate and Related Misconduct* (posted January 6, 2020); *Investigative Summary: Findings of Misconduct by an FBI Senior Official for Failing to Report an Intimate Relationship with a Subordinate and for Failing to Avoid Creating the Appearance of Preferential Treatment* (posted October 17, 2019); *Investigative Summary: Findings of Misconduct by a FBI Special Agent in Charge for Failing to Report an Intimate Relationship with a Subordinate and for Taking Actions that Lacked Impartiality, Demonstrated Favoritism Toward the Subordinate, and Contributed to the Decline in Staff Morale* (posted September 17, 2019); *Investigative Summary: Findings of Misconduct by a Senior DOJ Official for Ethical Misconduct, Sexual Harassment, Sexual Assault, and Lack of Candor to the OIG* (posted December 4, 2018).

Federal Bureau of Prisons (BOP): *BOP Program Statement 3420.11, Standards of Employee Conduct, dated December 6, 2013.* The BOP's Program Statement does not explicitly address supervisor-subordinate relationships. However, the penalty table attached to the Program Statement references discipline that may be imposed for engaging in "a financial, sexual, or emotional relationship with a subordinate in a supervisor's chain of command," therefore suggesting that the BOP prohibits such relationships.

Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF): *ATF Order 2130.4, Fraternalization Policy, dated May 3, 2017.* ATF's Fraternalization Policy does not prohibit supervisor-subordinate relationships, but imposes reporting obligations on both parties. The policy specifies that, upon being made aware of any such relationship, ATF management will consult with its Office of Chief Counsel and take steps to address the situation, which may include reassignment of the senior employee or recusal of the senior employee from all official matters affecting or appearing to affect the subordinate.

United States Marshals Service (USMS): *USMS Policy Directives, General Management, 1.7 Code of Professional Responsibility.* USMS policy explicitly prohibits any USMS employee from supervising any person with whom the employee is having an intimate personal relationship. The policy does not address reporting requirements or any steps that should or must be taken to address a relationship.

Office of the Inspector General (OIG): *OIG Inspector General Manual, Volume I (Executive Direction), Chapter 030 (Standards of Conduct).* The OIG Standards of Conduct do not prohibit supervisor-subordinate relationships, but impose an obligation on the supervisor to immediately cease supervising the subordinate and to report the relationship so that alternative arrangements can be made for the supervision of the subordinate employee. The Standards further specify that the subordinate's assignments and responsibilities shall not be negatively affected by the supervisory change. The Standards of Conduct do not impose any reporting requirement on the subordinate.

Drug Enforcement Administration (DEA): The OIG did not locate any specific DEA policy governing supervisor-subordinate relationships.

Offices, Boards and Divisions (OBD): The OIG did not locate any specific OBD policy governing supervisor-subordinate relationships.

The above overview of DOJ components' policies illustrates the variations in approaches within Department components in handling romantic or

intimate supervisor-subordinate relationships and the potential issues they present. The OIG is concerned that these different policies—or in some instances the lack of any policy at all—have led or will lead to inconsistent disciplinary treatment of supervisor-subordinate relationships across the Department for similar or even identical conduct, which could undermine confidence in the fairness of the Department’s disciplinary system.

Among the concerns the OIG has identified is that some components’ policies impose reporting obligations on not only the supervisor, but also the subordinate. In particular, the OIG’s review of allegations involving supervisor-subordinate relationships across components has led us to conclude that the imbalance of power between supervisors and subordinates has, in many instances, raised questions about the consensual nature of such romantic or intimate relationships. As a result, in investigations involving allegations that a subordinate failed to report a romantic or intimate relationship with a supervisor in violation of a component policy, the OIG does not intend to name the subordinate as a subject, nor will the OIG make a finding of misconduct against the subordinate, solely for failure to report the subordinate’s romantic or intimate relationship with his or her supervisor.

While certain authorities, such as the *Standards of Conduct for Employees of the Executive Branch Federal Employees*, 5 Code of Federal Regulations Part 2635, and DOJ Policy Memorandum 2015-04, *Prevention of Harassment in the Workplace*, address various issues that may arise from supervisor-subordinate relationships, the OIG believes that a comprehensive review of the policies of the various components governing such relationships would result in an increased ability to manage the potential issues such relationships present.

Recommendations

The OIG recommends the following:

1. The Department should consider these differing policies governing supervisor-subordinate relationships and determine whether to adopt a consistent policy across all Department components.
2. The Department should assess whether a subordinate should be required to report a romantic or intimate relationship with his or her supervisor.
3. If the Department concludes that a subordinate should be required to report a romantic or intimate relationship with his or her supervisor, the Department should consider:
 - a. Alternate mechanisms for that reporting, such as reporting outside the subordinate’s chain of command;

- b. What penalties, if any, should flow from a failure to report; and
- c. Whether the penalty for a supervisor's failure to report a romantic or intimate relationship should be more severe than the penalty, if any, for a subordinate's failure to report the same relationship.

Please advise us within 60 days of the date of this memorandum of any actions the Department has taken or intends to take with regard to these issues. If you have any questions or would like to discuss this information and our concerns, please contact me at (202) 514-3435.



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