

# Managing the Federal Employee Discipline and Performance Process

**March 5-6, 2008**  
The Brookings Institution  
Washington, DC

## Program Overview

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- I. Introduction – Purpose of the Course**
  - a. Rationale
  - b. Interaction with Investigators and Support Units
  
- II. Rights and Responsibilities**
  - a. Supervisors and Managers
  - b. Employees
  
- III. Providing a Misconduct Case**
  - a. The Three-Part Burden
    - i. Establishing the Cause of Action (Nexus)
    - ii. Providing the Allegation
    - iii. Justifying the Penalty
  - b. Detection of Misconduct
  - c. Conducting the Inquiry
    - i. In General
    - ii. Search of the Worksite
    - iii. Interviews and Warnings
    - iv. Bargaining-Unit Employee Problems
  - d. Impeding the Investigation and Lying
  
- IV. The Administrative Process**
  - a. Disciplinary Actions
    - i. Informal
    - ii. Formal
    - iii. Suspension under the “Crime Provision”
  - b. Appeals
    - i. Merit Systems Protection Board
    - ii. Equal Employment Opportunity Commission
    - iii. Arbitration and the Federal Labor Relations Authority
    - iv. The Federal Courts

- c. Probationary Employees and Supervisors
- d. Rules of Evidence and Standard of Proof
- e. Performance-Based Actions
  - i. Under the “Chapter 43”
  - ii. Under the “Chapter 75”

**V. Errors of Management**

- a. Confusing Conduct and Performance
- b. Disparate Treatment (Performance)
- c. Progressive Discipline and the Douglas Factors
- d. “Changing the Rules”
- e. Punitive Actions
- f. Delaying the Process

**VI. Complaint Vehicles**

**VII. Discrimination**

- a. Bases
  - i. Title VII
  - ii. Other Bases
- b. Prima Facie Case
- c. Order of Events
- d. Disability Discrimination
- e. Reasonable Accommodation
- f. Agency Defenses
- g. Drugs and Alcohol

**VIII. Whistle-blowing and Other Prohibited Personnel Practices**

**IX. Specific Offenses**

- a. Insubordination
- b. Critical and Malicious Statements
- c. Slurs
- d. Threats
- e. Assaults
- f. Thefts
- g. Falsification of Documents
- h. Misuse of Government Property
- i. Sexual Harassment and Misconduct
- j. Leave-related Offenses

**X. Conclusion**

# Agenda

**Wednesday, March 5, 2008**

<b>8:30 – 9:00 a.m.</b> <i>Lobby/Zilkha Lounge</i> <i>The Brookings Institution</i>	Registration and Continental Breakfast
<b>9:00 – 9:15 a.m.</b> <i>Saul Room/Zilkha Lounge</i>	Welcome and Introductions <ul style="list-style-type: none"><li>▪ William M. Goodwin, Senior Director, Center for Executive Education, The Brookings Institution</li><li>▪ Robin S. Wink, Instructor and Consultant, Rudman Wink Associates, LLC.</li></ul>
<b>9:15– 10:30 a.m.</b> <i>Saul Room</i>	Conference Begins
<b>10:30 – 10:45 a.m.</b>	Break
<b>10:45 a.m. – 12:00 p.m.</b> <i>Saul Room</i>	Conference Continues
<b>12:00 – 1:00 p.m.</b> <i>Zilkha Lounge</i>	Lunch
<b>1:00 – 2:30 p.m.</b> <i>Saul Room</i>	Conference Continues
<b>2:30 – 2:45 p.m.</b>	Break
<b>2:45 -4:30 p.m.</b> <i>Saul Room</i>	Conference Continues
<b>4:30 p.m.</b>	Adjourn for the Day

## Thursday, March 6, 2008

<b>8:30 – 9:00 a.m.</b> <i>Zilkha Lounge</i>	Breakfast
<b>9:00 – 10:30 a.m.</b> <i>Saul Room</i>	Conference Begins
<b>10:30 – 10:45 a.m.</b>	Break
<b>10:45 a.m. – 12:00 p.m.</b> <i>Saul Room</i>	Conference Continues
<b>12:00 – 1:00 p.m.</b> <i>Zilkha Lounge</i>	Lunch
<b>1:00 – 2:30 p.m.</b> <i>Saul Room</i>	Conference Continues
<b>2:30 – 2:45 p.m.</b>	Break
<b>2:45 – 4:30 p.m.</b> <i>Saul Room</i>	Conference Continues
<b>4:30 p.m.</b>	Conference Adjourns