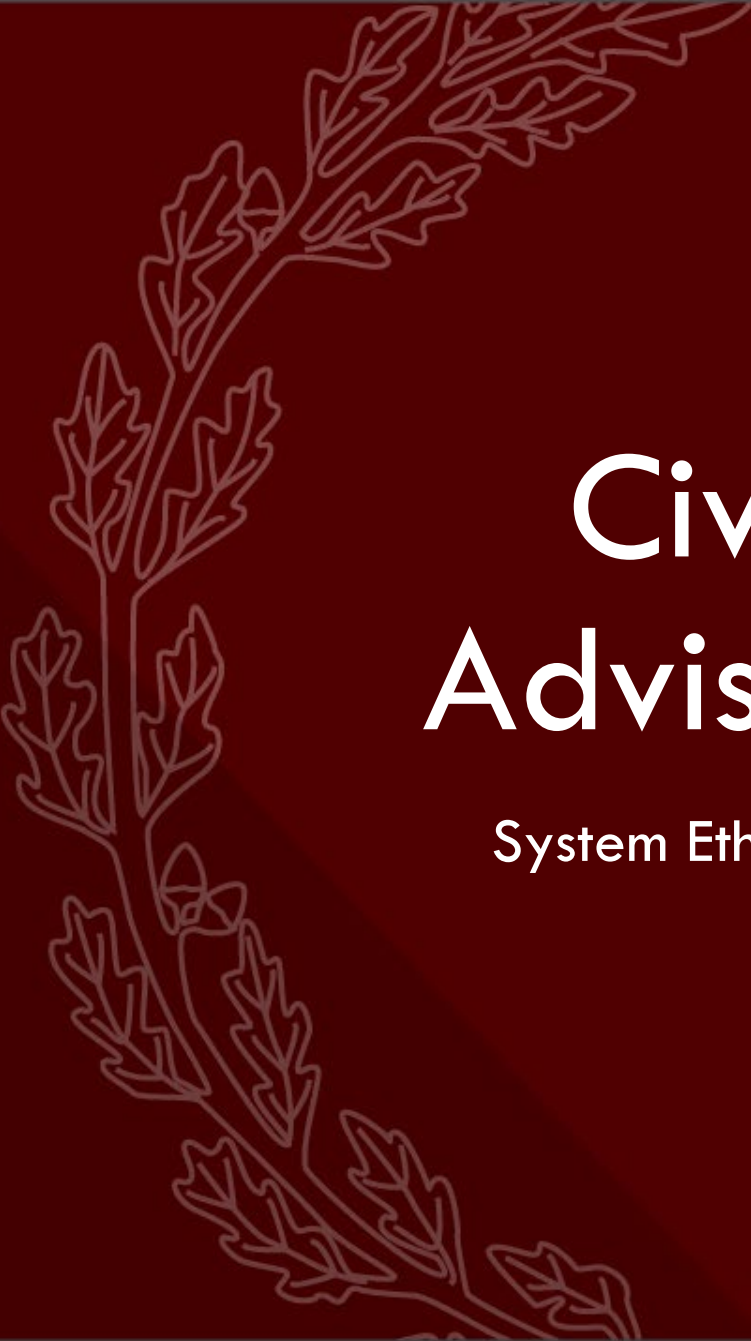


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Civil Rights Advisor Training

System Ethics & Compliance Office

THE
TEXAS A&M
UNIVERSITY
SYSTEM



Introductions

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THE
TEXAS A&M
UNIVERSITY
SYSTEM

Learning Objectives

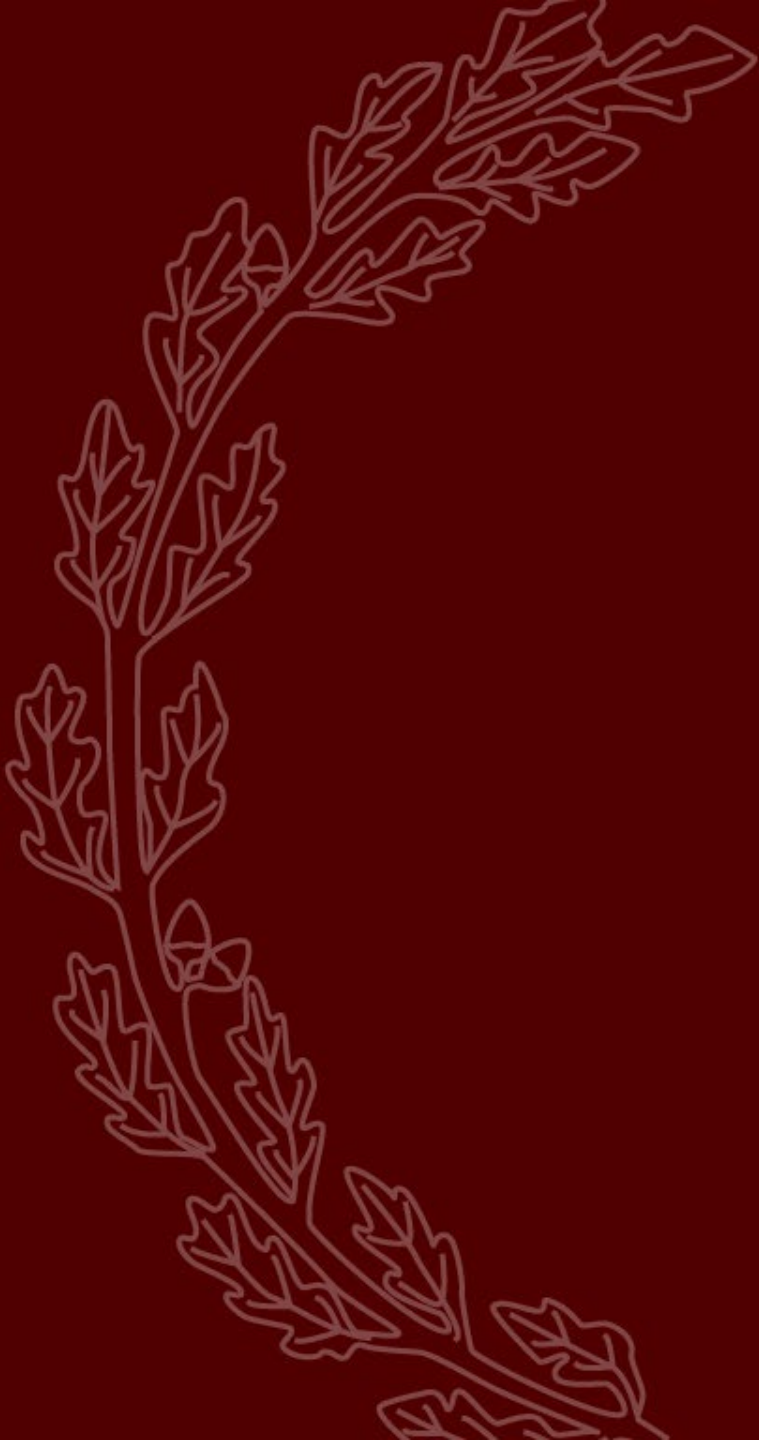
- Explain the role and limitations of the Advisor under Title IX and Texas A&M System Regulation 08.01.01.
- Demonstrate ethical advising practices grounded in integrity and good faith.
- Effectively support a party in preparing for meetings, written statements, and hearings.
- Participate appropriately in meetings and live hearings in accordance with procedural rules.
- Conduct cross-examination during the live hearing in a respectful and compliant manner.
- Assist the party in navigating the appeal process, when requested.

Disclaimers

- This training will cover sensitive and potentially disturbing topics related to Title IX, such as sexual harassment, sexual assault, dating violence, and stalking. Feel free to step away as needed. Counseling support can be accessed by contacting your Employee Assistance Program.
- This training is for informational and educational purposes only and does not constitute legal advice.

Session Guidelines

- Please be present (minimize distractions)
- Please be engaged; participate and ask questions
- Please take chances; “lean in” to any discomfort you may have
- Please be respectful of others
- Please maintain privacy of what is said by fellow participants
- Please ask questions as we go



Section I

Texas A&M System
Regulation 08.01.01

Role of the Advisor

Privacy Considerations

Texas A&M System Regulation 08.01.01: Summary

The Texas A&M University System (System) will provide equal opportunity to all employees, students, applicants for employment and admission, and the public. This regulations provides guidance to each member in complying with local, state and federal civil rights laws and regulations (laws) and related system policy.

Includes the following essential information:

- Overall process for Civil Rights Complaints (Sex-based and Other Civil Rights)
- Definitions of Violations
- Roles within the Process

Note: Be sure to visit your institution's website for member-specific information related to rules and/or procedures.

A Few Definitions

Title IX – Sexual Harassment (4.2.10)

- Unwelcome conduct on the basis of sex (of a sexual nature or otherwise): (1) by an employee of the member who conditions the provision of an aid, benefit, or service of the member on an individual's participation in that unwelcome sexual conduct; (2) determined by a reasonable person to be so severe and pervasive and objectively offensive that it effectively denies a person equal access to the member's education program or activity; or (3) sexual assault or dating violence, domestic violence, or stalking based on sex.

Sex-Based Misconduct – Hostile Environment (4.2.11)

- Unwelcome conduct on the basis of sex that is severe, persistent, or pervasive enough to create a work, educational, or campus living environment that a reasonable person would consider intimidating, abusive, or offensive. Sex-based misconduct is explicitly prohibited under this regulation. Aiding another in the commission of sex-based misconduct is also prohibited under this regulation. Sex-based includes, but is not limited to, sexual assault, sexual exploitation, dating violence, domestic violence, and stalking based on sex.

See System Regulation 08.01.01 and your
Member Rule for a full list of definitions

A&M System Regulation 08.01.01	Title IX (4.2.10) and Sex-based Misconduct (4.2.11)	Other Civil Rights (4.2.12) Non Sex-based
Supportive Measures	Yes	Yes
Requires	Formal Complaint	Report/Complaint
Standards of Evidence	Preponderance	Preponderance
Informal Resolution Allowed?	Yes - with SECO approval, except in allegations that an employee sexually harassed a student, as stated in Section 4.6.1(g)	Yes - with SECO approval
Role of the Investigator?	Collect and report inculpatory and exculpatory evidence	Collect and report inculpatory and exculpatory evidence Includes conclusions as to whether the alleged behavior or conduct occurred based on the preponderance of evidence. DM/DA determines if the conduct or behavior is a violation.
Adjudication	Formal (Live) Hearing	File/Paper Review (no hearing)
Adjudicator	Single DM or Panel (in role of Designated Administrator)	Single DM (in role of Designated Administrator)
Allowed an Advisor	Yes - provided by Member for formal hearing if no advisor is present	Yes
Role of Advisor	Support, Guidance, or Cross-examination (required)	Support & Guidance
Decision Letter	Yes - Requirements specific in Section 4.2.10 (p)(xi)	Yes - Recommend following Section 4.2.10 (p)(xi)
Appeals	Member Complaints of Sexual Misconduct 4.5.1	Member Complaints of Sexual Misconduct 4.5.1

Role of the Advisor: Defined

Per System Regulation 08.01.01 the "**Advisor**" is an individual selected by each complainant and respondent to **provide guidance** during the **investigation** and **resolution process** and to conduct **cross-examination** when a complaint is referred to a formal hearing.

An advisor may be an attorney. A member may appoint an advisor of the member's choice for a complainant or respondent for a hearing if either party does not have an advisor present. Advisors may not otherwise represent or speak for the party they are advising.

Each party is allowed one advisor, although members may establish circumstances under which a second advisor would be permitted (e.g., accommodating a party with a disability). See Section 4.2.5.

Role of the Advisor: Selection

- Selecting an Advisor:
 - Parties select their own advisors – may be family member, friend, roommate, mentor, attorney, etc.
 - Ideally should not be an involved party (W), but 2020 TIX regulations prevent prohibiting that
- If parties don't have an advisor, the institution/agency must provide for a hearing for cross-examination.
- Parties can change advisors at any point.
- Parties have the right NOT to have an advisor, except in Title IX formal hearings.

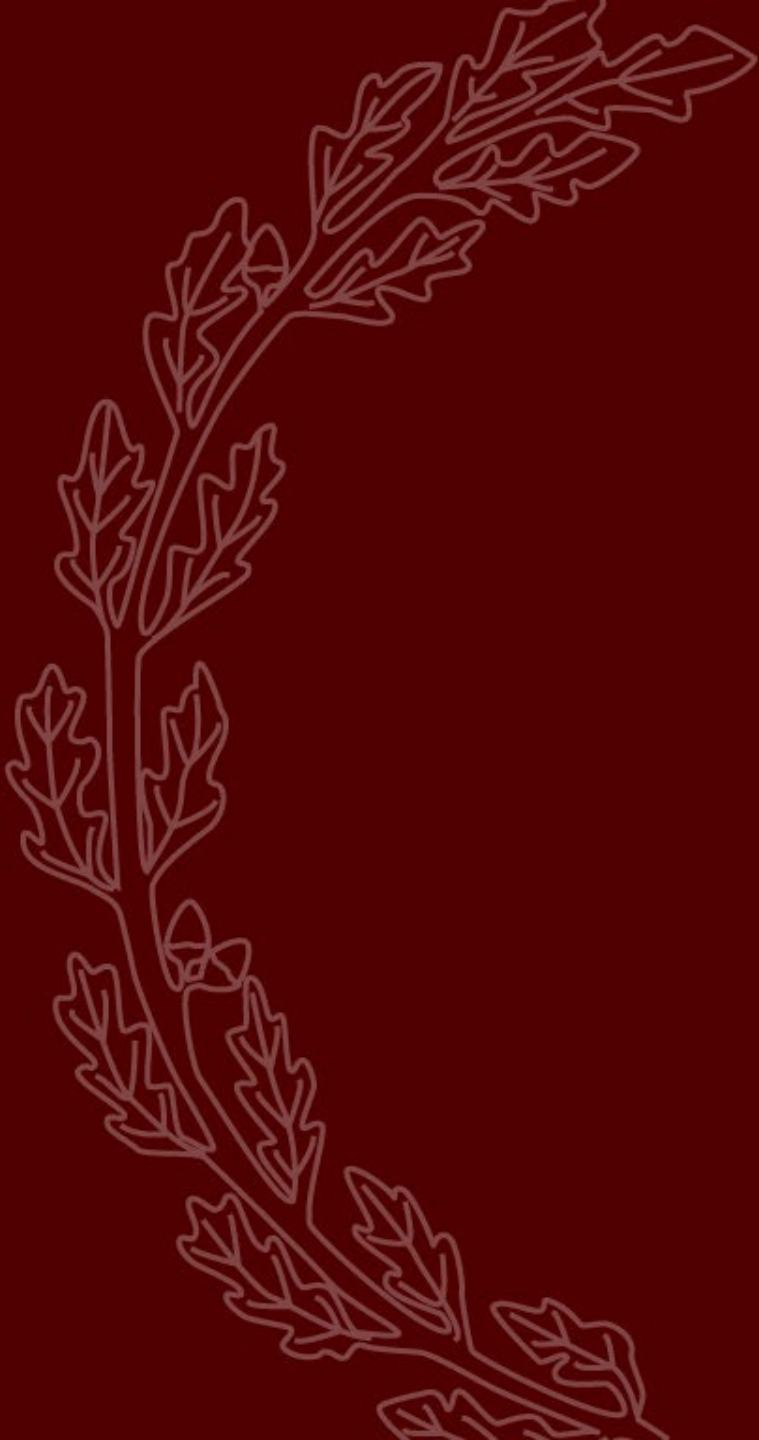
See System Regulation 08.01.01 Section 4.2.10(p)(iii)

Role of the Advisor: Limitations

- All information disclosed to the advisor by the advisee is private unless information disclosed would be subject to mandatory reporting.
- Dissemination and/or disclosure of any case materials to any non-involved third parties and/or public is strictly prohibited.
- Any meeting that your party fails to attend where that party was expected to attend may result in a refusal to admit the advisor into the proceeding.
- Your participation in proceedings is limited to asking cross-examination questions in the hearing.

Privacy Considerations

- Advisors will be required to sign a statement at the time of their appointment indicating that they **will not disclose information shared** with them by the System Member.
- Advisors appointed to parties or selected by parties who are employed by a System Member **are not providing legal counsel and have no expectation of privilege**. If called to testify in the adjudicatory process, they are expected to do so willingly and truthfully (though this is unlikely unless cause has been provided).
- Advisors will **cooperate fully and comply with directives** from the System Member, the System Ethics and Compliance Office, and the Office of General Counsel.



Section II

Introductions

Investigation Process

Hearing Process

Introductions

- Build Rapport- reduce the STRANGER ELEMENT.
- Tell them who you are and what your purpose is.
- Describe the process and what they can expect (see "Hearing Process: The Script" slide).
- Reinforce that this can be stressful/overwhelming and emphasize the importance of taking care of themselves.
- Discuss the investigation report with the party:
 - What do they see as their **strengths** in the report?
 - What areas of **vulnerability** do they see in the report?
 - What **questions do they want you to ask** the opposing party and specific witnesses (including the investigator)?
 - What questions **do you believe your party would benefit from having asked?**
- Discuss and outline questions prior to attending the hearing.
- Identify post-hearing communication.



Creating a safe space!

Who can share their opening statement in which they describe their role as an advisor to help the advisee feel comfortable?

Introduction: Sample Questions

- Tell me about your experience at [institution name], outside of this situation.
- What would you like me to know about you?
- Tell me about your support system (on-campus vs. off-campus).
- Would it be okay for us to talk about what happened so I can help you prepare?
- I recognize this is a stressful situation. Have you considered going to the Counseling Center?
- What questions do you have?

Intake & Investigation Process: Advisor Role

- Advisors are expected to maintain total privacy of records or information shared with them.
- Advisors are to support and advise – advisee is expected to respond to questions on their own behalf.
- Advisors may ask procedural questions or advise the advisee to respond/not respond to a question.
- Advisors should monitor advisee's mental/physical state and request breaks when needed, either to confer about questioning and/or for health reasons.
- Consult with the advisee as needed even if it means requesting breaks or passing notes.

Investigation Process: The Report

REPORT: ALL evidence relevant to the complaint (inculpatory and exculpatory)

EXHIBITS: ALL EVIDENCE relevant to the complaint and ALL EVIDENCE directly related to the complaint that the investigator(s) determines is relevant

COMMENTS: At times, there will be comments added that are neither relevant or related to the complaint but may provide context or fill in gaps

Note: For **Non-sex Based** cases the investigation report may include questions and answers from each party as that serves as their ability to cross examine the other party. Also, the IA will make conclusions on alleged behaviors based on the preponderance of evidence standards.

Hearing Process: Advisor Role

- Advisors are expected to maintain total privacy of records or info shared with them.
- Advisors should formulate questions (in conjunction with advisees) for other parties (Investigators, Witness(es), Respondent/Complainant) prior to hearing.
- Advisors may need to be available to attend a pre-hearing meeting, during this time they can ask procedural questions.
- Advisors are expected to ask cross-examination questions of other parties. Refusal to do so may result in hearing being delayed and Advisor replaced.
- Advisors are expected to know the alleged violations and relevant details of the case.
- Advisors will ask cross-examination questions directly to the parties (or designated hearing chair).

Hearing Process: Advisor Role

Discuss the investigative report with the party

- What do they see as their strengths in the report?
- What areas of vulnerability do they see in the report?
- What questions do they want to have you ask of the opposing party and/or specific witnesses (including the investigator)?
- What questions do you believe your party would benefit from having asked?
- Discuss and outline questions prior to attending the hearing.

Hearing Process: The Script

1.) Introduction of Participants

- Introductions, Ground Rules

2.) Procedural Questions

- Complainant
- Respondent

3.) Opening Statements

- Complainant
- Respondent

4.) Investigators' Testimony

- Summary of Report
- Decision-Maker(s) Questions
- Cross-Examination Questions (C Adv; R Adv)

5.) Complainant's Testimony

- Decision-Maker(s) Questions
- Cross-Examination Questions (R Adv)

6.) Witness Testimony

- Decision-Maker(s) Questions
- Cross-Examination Questions (C Adv; R Adv)

7.) Respondent's Testimony

- Decision-Maker(s) Questions
- Cross-Examination Questions (C Adv)

8.) Closing Statements

- Complainant
- Respondent

9.) End of Hearing

- Deliberations

Hearing Process: Live Hearing

- **Follow the script and rulings** on questions by the Hearing Officer/Hearing Panel Chair.
- **Provide advisement without** disrupting the proceedings (e.g., pass notes or direct message when virtual, may request a break).
- **Direct question to the Hearing Officer/Panel Chair**, pausing to allow a ruling on admissibility. Questions must be relevant to the complaint and may not be repetitive.
- If a question or set of questions is **ruled inadmissible**, **you may ask** the Hearing Officer/Panel Chair for an opportunity **to explain why you believe the information should be admissible**, with the opposing party being given an opportunity to argue against admissibility.

Hearing Process: Live Hearing (cont.)

- Questions and evidence about the complainant's **sexual predisposition or prior sexual behavior are not relevant unless** such questions and evidence are offered to prove that **someone other than the respondent committed the alleged conduct.**
- Before concluding questioning for each witness, **check in with the advisee** to ensure they have **no additional questions and feel heard throughout the process.**

Note: Hearing officers/hearing panels cannot draw an inference regarding responsibility based solely on a party's or witness's absence or refusal to answer questions.

Hearing Process: Cross-Examination Questioning

- When determining what to ask, guide your party to:
 - Focus on details of the complaint and the investigative report.
 - Address statements that lack specificity, are inconsistent, or contradictory.
 - Challenge statements that make assumptions based on incomplete information.
 - Identify how the question is relevant to the alleged violations
- Determine whether the question should be open-ended or closed.
- State the question directly, avoiding over-explanation.
- Avoid compound questions that contain two or more ideas requiring separate responses.
- Avoid leading questions.

Hearing Process: Follow-up Communication

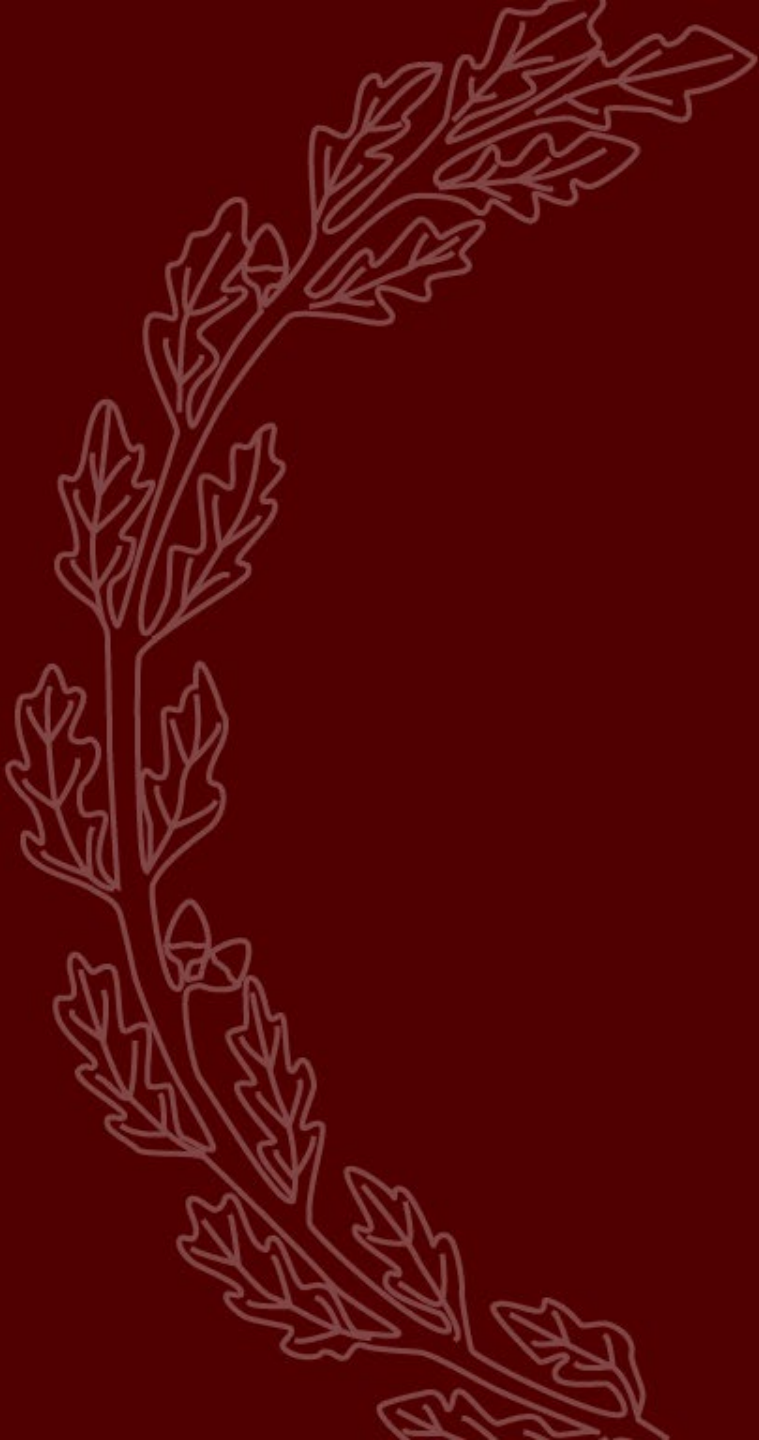
Determine if the advisee would like to be contacted after the hearing.

- Check in to see how they are doing. This may involve connecting them with institutional resources that provide support.
- Ask if they have received the outcome letter. If they have not, ask if, once received, they want to follow up with you. If they have received it, ask if they are planning to appeal and if they would like your assistance.

Hearing Process: Follow-up Communication

If the party plans to appeal:

- Do you understand the appeal process? When does the appeal need to be submitted, and how?
- How would you like me to support you in developing your appeal? Do we need to plan a follow-up time to talk?
- What do you see as your strengths in submitting an appeal? How will you organize your thoughts?



Section III

Advisor Training Activity

Advisor Tips

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Activity

See "Advisor Training Activity" handout

Advisor Tip

See "Advisor Tips TAMUS" handout

What to avoid...

- "Why" questions may come across as judgmental.
- Being harsh.
- Asking things that are outside of your scope (e.g., counselor, friend, investigator, decision-maker, etc.).
- Oversharing about yourself or making it about what you would do.
- Being overly sympathetic or instilling unrealistic confidence.
- Trying to know the whole story.