



# **CONDUCTING EFFECTIVE INTERVIEWS**

**Natasha Baker**  
Novus Law Firm, Inc.

**11:00 a.m. – 12:00 p.m.**



# California State University: DHR Investigations Training

July 26, 2023



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## Session Two: Conducting Effective Interviews



## Natasha Baker

Managing Attorney  
Novus Law Firm, Inc.

# Agenda & Logistics

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- Session One: Preparing for an Investigation (10:00 a.m. – 11:00 a.m.)
- Session Two: Conducting Effective Interviews (11:00 a.m. – 12:00 p.m.)
- Session Three: Evidentiary Analysis and Report-Writing (1:00 p.m. – 2:00 p.m.)





## Reminders

- 
- This presentation is not legal advice.
  - Investigations are challenging.
  - There are no bad or dumb questions.
  - You have to be neutral if you are an investigator.
  - Burnout is real to take care of yourself.

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## Session Two: Conducting Effective Interviews

1

Prepare for an interview, including strategies for required notices and managing attendees.

2

Understand notetaking and data gathering techniques.

3

Ask effective questions to gather the best information possible.

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## Preparing for an Interview

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Purpose of the interview

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Standard admonitions

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Outline of questions (yours and those proposed by the parties)

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Evidence handling

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Notice

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Disclosures of information to third party witnesses

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# Initial Meeting – Purpose/Objective



INSTILLING CONFIDENCE  
IN THE SYSTEM AND YOU



GATHERING FACTS



IDENTIFYING ISSUES

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## Considerations When Planning Respondent's Interview

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Sufficient details in advance?

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Who will be there? Advisor?

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What will be disclosed?

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When?

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What does the interviewee already know?

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Opportunity for follow up?

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## Standard Interview Opening/Closing

Who you are

Your role

Process

Confidentiality  
vs. privacy vs.  
secrecy vs.  
anonymity

Retaliation

Expectations,  
timing

Other  
admonishments  
(advisor)

Repeat and  
document



## Interviews: Outlining Your Approach

- **OUTLINE YOUR ISSUES** – carefully analyze all issues raised
- **LIST THE FACTS** that relate to each issue
- **LEAVE ROOM** underneath each fact to work in the individual's answers
- **RESPONSE CHART** for **RESPONDENT**

## Asking Effective Questions

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- GO BACK TO WHO, WHAT, WHEN, WHERE...(caution on WHY)
- Broad to narrow questions
- Caution: Leading questions
- Prepare: Tough questions



## Asking Effective Questions

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- Ask: Follow-up questions
- Avoid compound questions and inserting your own words – i.e., was the workplace demeaning?
- Avoid asking for conclusions – i.e., did you experience harassment?
- Commit every interviewee to their report (repeat back)



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Professor C has reported that the hostile environment began when they were granted tenure and another faculty member was not. This created factions within the department, led by Professor R, who was named as the respondent.

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The hostile environment is in the form of caustic group emails from Professor R, comments during department and committee meetings, and other microaggressions and forms of sabotage. Professor Aider and Professor Abetter also contribute to this hostile environment.

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Professor C reported that several faculty members left the department as a result of this toxic environment and that everyone in the department would be able corroborate Professor C's report of the meetings.

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## Example: Who/What/When/Where



*If you wanted to isolate the issue to Professor C's allegations about Professor Aider, what W/W/W/W questions would you prepare for Professor C?*



*How would you confront Professor Aider with those allegations?*





Note-taking/  
data gathering

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**NOTE TAKING IS CRITICAL** – do the best you can to get down key facts during the interview and complete your notes **IMMEDIATELY** after the interview is completed while the information is still fresh.

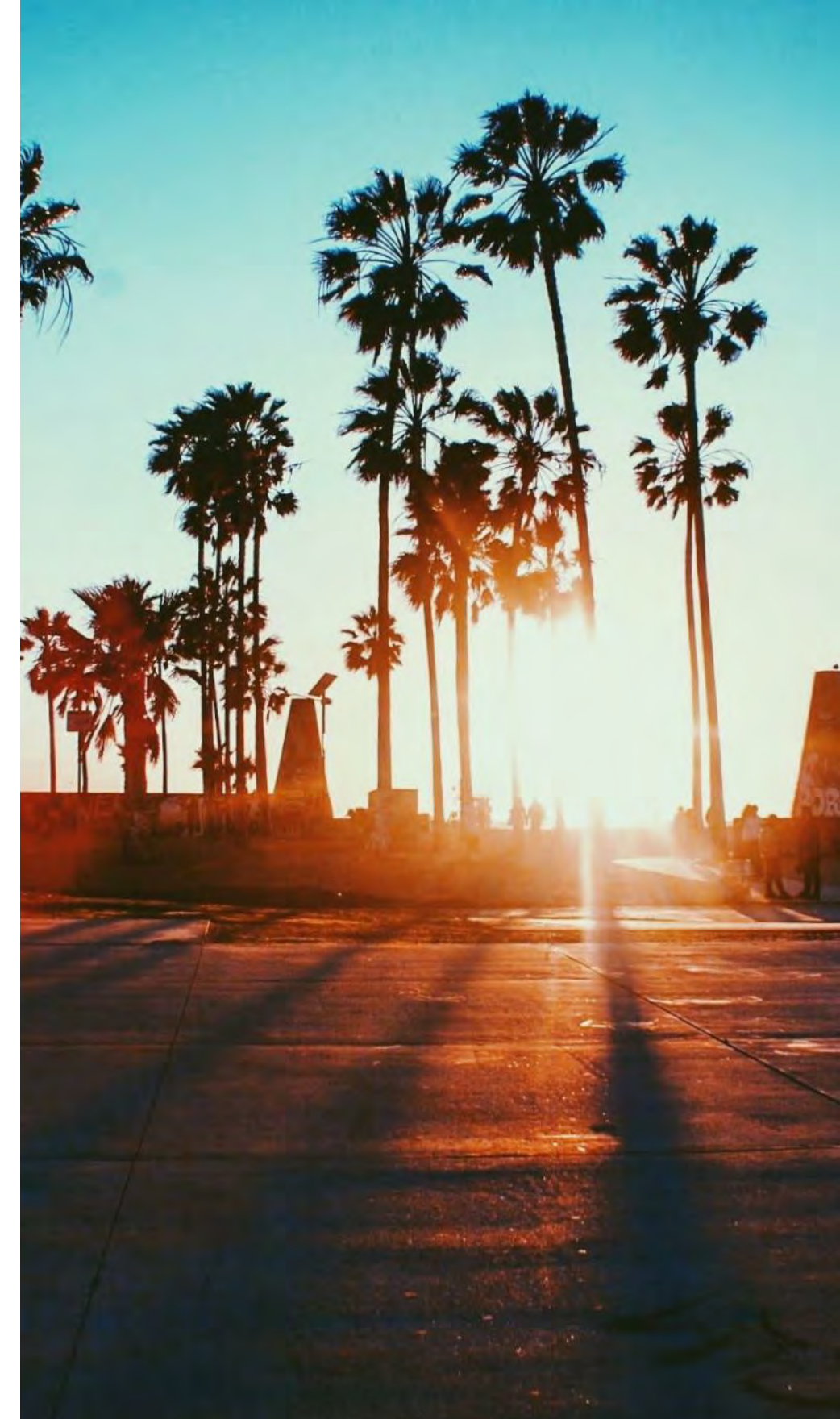


## Note-taking/ data gathering

- Options for note-taking
  - Best practices regardless of form
  - Scheduling time
  - Capturing what the witness said – not your analysis
  - Capturing what you said – easier with W/W/W/W questions
- Obtaining evidence in the moment

# When Do You Have Enough?

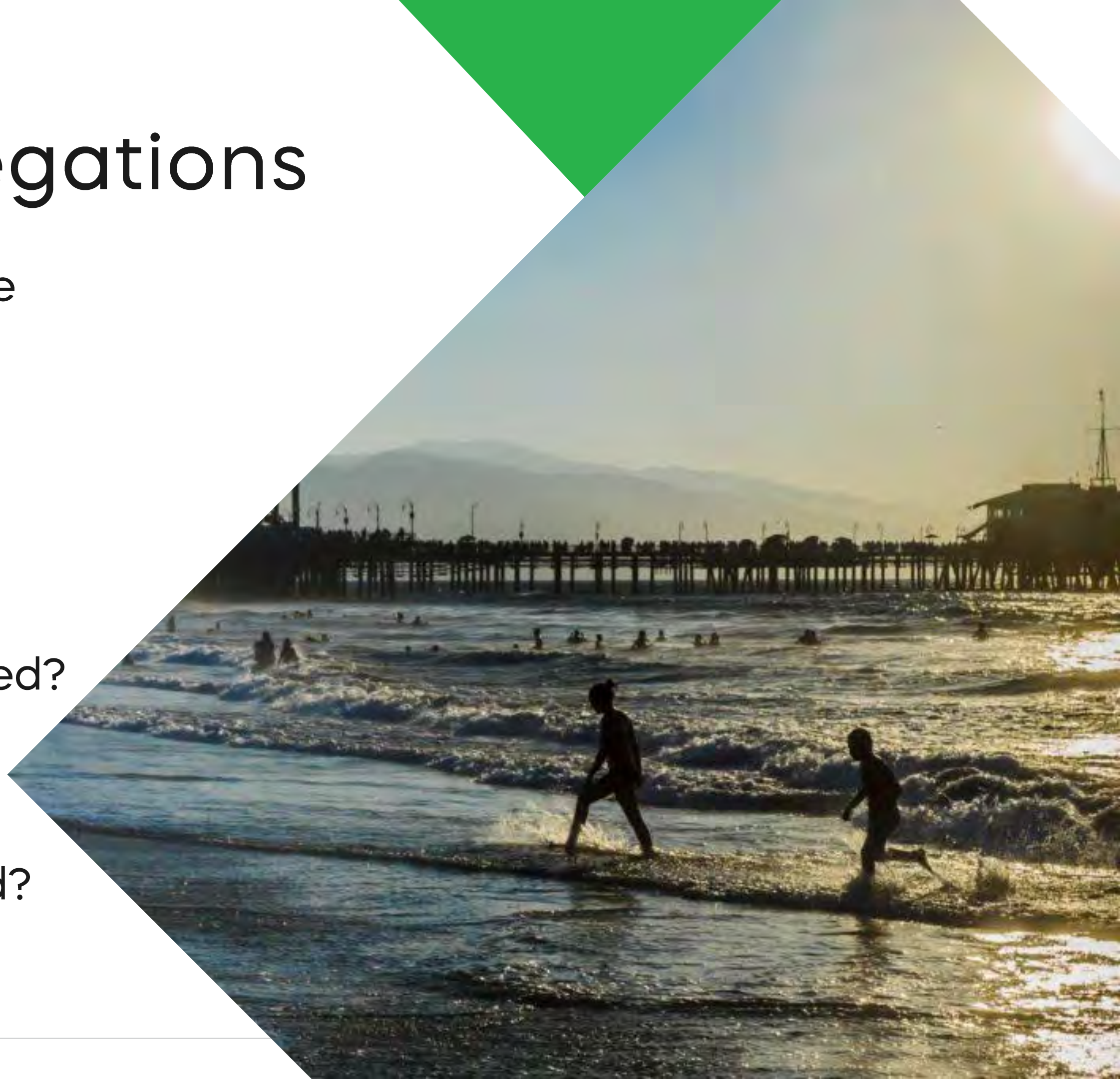
- Duplicative or cumulative testimony?
- Preponderance of the evidence (Track 3).
- Check the elements of the definitions.
- What was promised to the parties?
- Optics interviews



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# Assessment of Allegations

- Assess what was conveyed by the Complainant.
- Assess the scope of the investigation.
  - Does the Notice need to be amended?
  - Should any claims be dismissed?
  - Has another policy been triggered?
  - Who else should be consulted?



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When interviewed, Professor C reported that Professor R had hit on them once and, when rejected, began a campaign to torpedo their tenure application. Professor C reported that when they received tenure and another faculty member did not, Professor R used that as an opportunity to develop factions.

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Professor C reported that several other members of the department feel that tenure is now being awarded as part of the University's attempt to be "overly woke" and eagerly jumped on Professor R's team. When interviewed, they each denied any problems in the department and focused on the mission of the University and their perceptions of it.

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Professor C reported that several faculty members (Professors Goodbye and Goodluck) left the department as a result of this toxic environment. When interviewed, they confirmed that they left due to racial tensions.

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## Example

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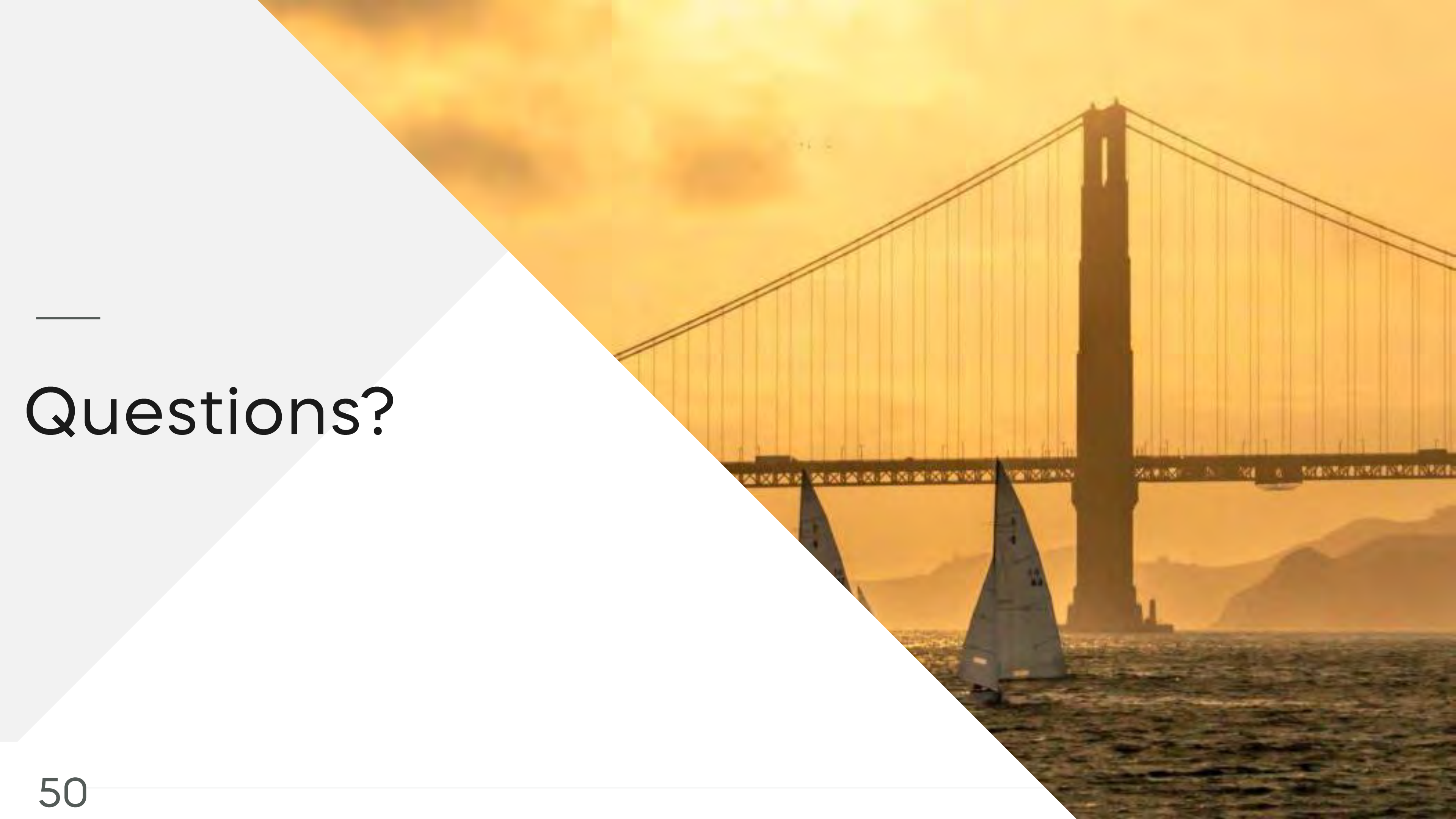
Professor Introverted and Professor Checked Out corroborated Professor C's statements that Professor R made condescending comments about Professor C's academic qualifications in department and committee meetings and that a side conversation on Zoom between Professors R, Aider and Abettor had been inadvertently shared with the department after a meeting - in which they blamed Professor C's grant of tenure on gender and race.

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Citing a happy marriage, Professor R. denied "hitting on" Professor C. and claimed academic freedom to speak about the quality of tenure candidates.

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Professor R. denied discussing Professor C. with Professors Aider and Abettor. When confronted with the Zoom chat, Professor R's position was that the chat had been altered. When reviewing the draft evidence, Professor R's response to Professor Aider's confirmation of the chat was that Professor R's Zoom login had recently been hacked so that they were not part of the chat.



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Questions?

The logo for The California State University, consisting of the letters 'CSU' in white on a red square background.

The California State University

OFFICE OF THE CHANCELLOR

2023 TITLE IX & DHR ANNUAL CONFERENCE

## EVIDENTIARY ANALYSIS AND REPORT WRITING

**Natasha Baker**

Novus Law Firm, Inc.

1:00 P.m. – 2:00 p.m.





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## Session Three: Evidentiary Analysis and Report Writing



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# Session Three: Evidentiary Analysis and Report Writing



# Comparison of Investigation Reports

## Track 1

- [A] final investigation report...will summarize all Relevant evidence (inculpatory and exculpatory), including additional Relevant evidence received during the review of evidence. Any Relevant documentary or other tangible evidence provided by the Parties or witnesses, or otherwise gathered by the Investigator will be attached to the final investigation report as exhibits.

## Track 3

- The final investigation report will include a summary of the allegations, the investigation process, the Preponderance of the Evidence standard, a detailed description of the evidence considered, analysis of the evidence including relevant credibility evaluations, and appropriate findings. Relevant exhibits and documents will be attached to the written report.



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## Example: Track 3 Report

- A summary of the allegations
- The investigation process
- The preponderance of the evidence standard
- A detailed description of the evidence considered
- Analysis of the evidence including relevant credibility evaluations, and appropriate findings



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## Summary of the Allegations



Precision



Check notices and amended notices



Quote the policy – the exact definitions of prohibited misconduct

# Investigation Process



Audience



Tone



Strategy

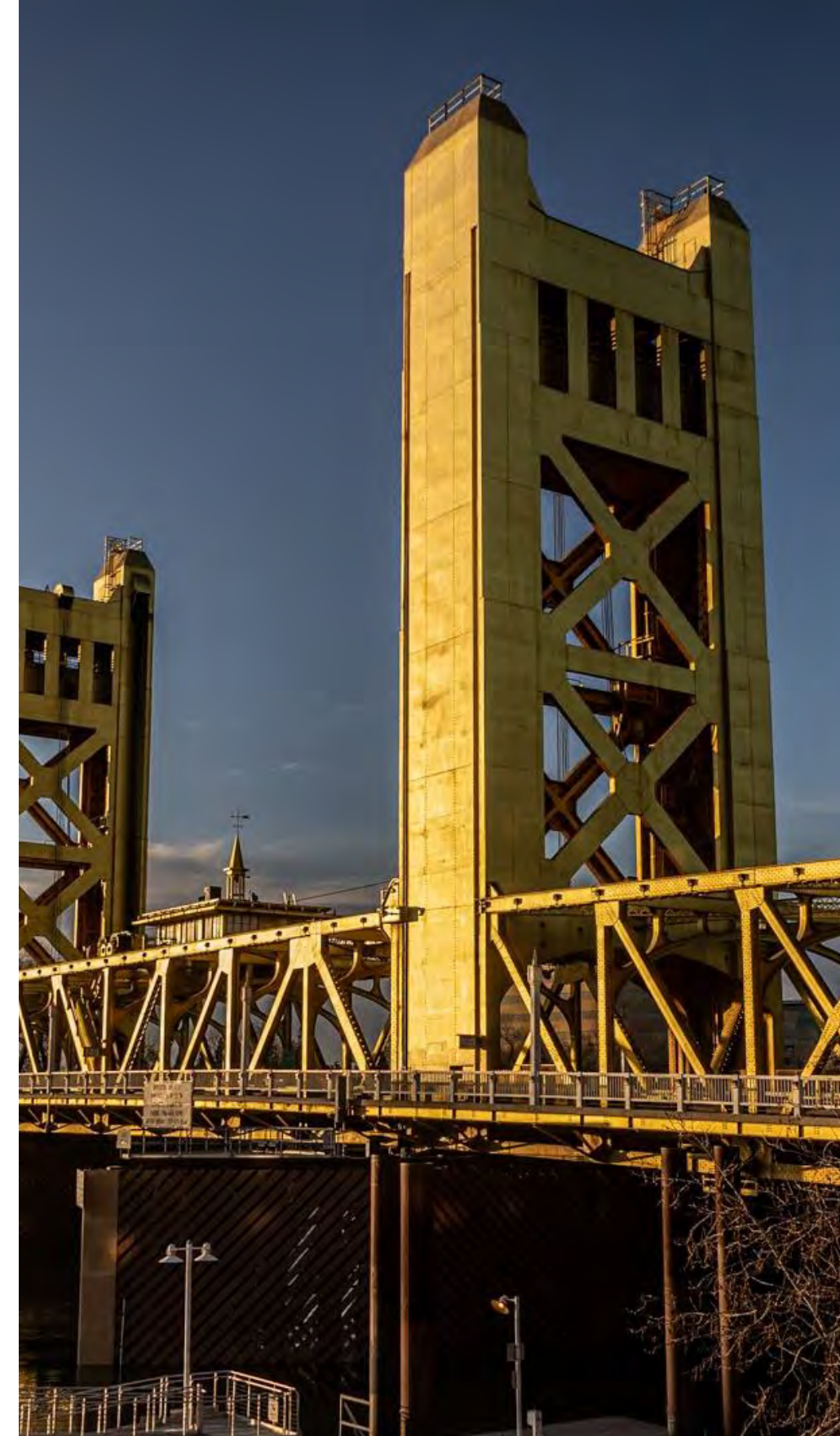


Include minor procedural details that you will not remember

# Detailed Description of Evidence

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- Reminder Track 1 vs. Track 2 vs. Track 3
- Organization of this section is critical.
- This is not the same as findings. This is what was gathered and where it came from. There is no analysis yet.
- Demonstrating amendments/modifications after the review process.



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# Analysis, Credibility Resolutions, Findings

This is AFTER  
the summary  
of evidence.

This is  
analysis of  
the evidence.

Only analyze  
what you  
need to.

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# Analyzing Evidence

What facts are not in dispute?

What facts are in dispute?

What undisputed facts are important?

Do you need more information about anything?

On which points are witnesses NOT credible and why?

What do you think probably happened?

Was there a policy violation?

## Credibility Analysis

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- Motivation/relationships
  - Reluctant witnesses
  - Witness who loves the limelight
  - Witness with an ax to grind
- Demeanor (?)
- Logic/consistency of story
- Corroborating evidence
- Circumstantial evidence



# Analysis Tips

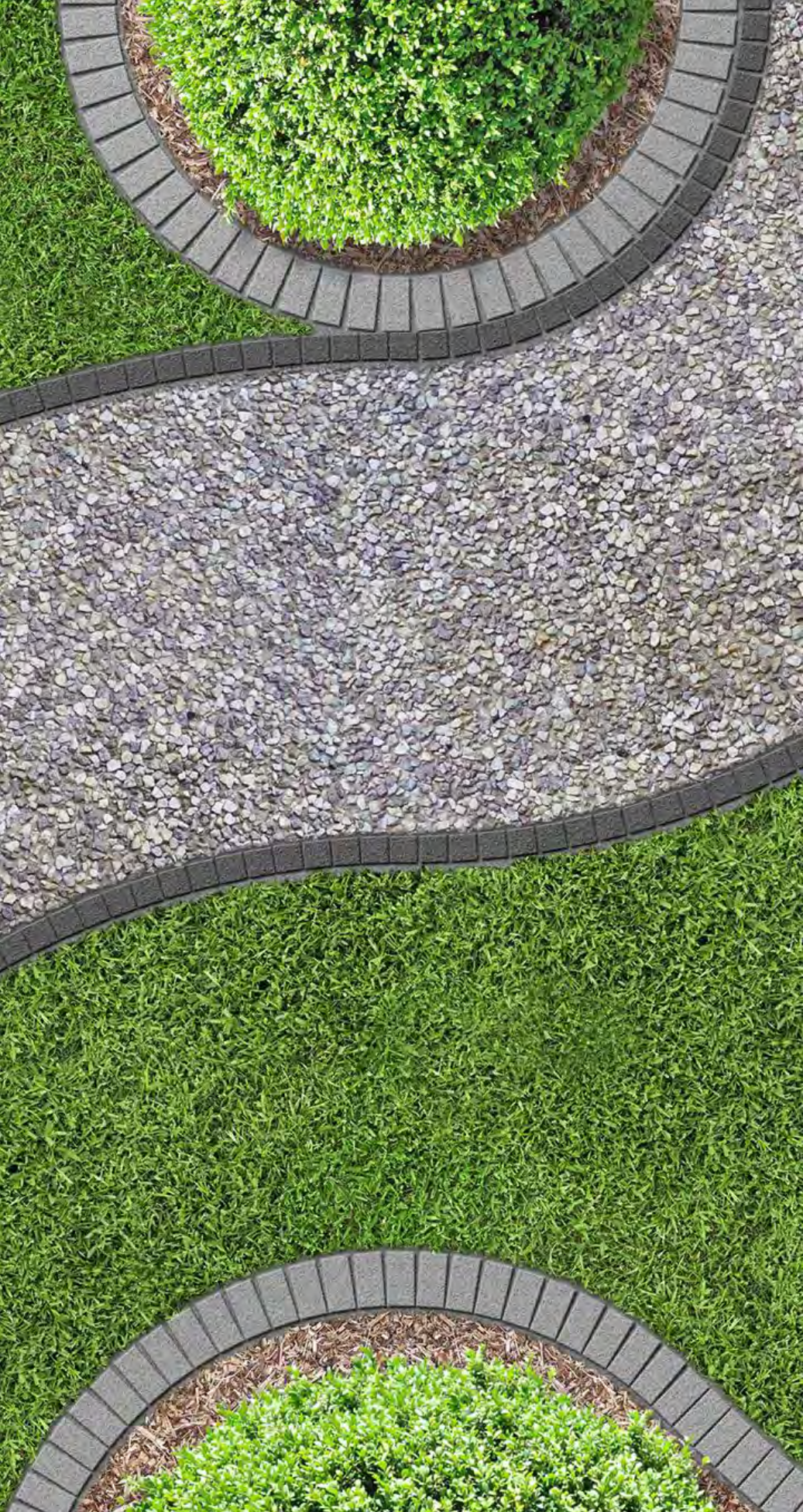
Resolve	Resolve KEY disputed facts
Resolve	Resolve credibility issues
Show	Show your work
Apply	Apply the correct standard of proof

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## Example

- Put it together for the reader. Show your work.
- Example:
- *I find, by a preponderance of the evidence that the door to the residence hall was accessed by the Respondent on October 12, 2022 at 6:03 p.m. This was confirmed by Witness A and Witness B, who observed Respondent entering the residence hall. This was further confirmed by the access log. I did not find Respondent's explanation that they lost their key card to be credible, given the testimony of Witness A and B and that the hall camera corroborated that a person matching Respondent's description entered at that time.*





## Other Best Practices

Write for an audience who knows nothing about the case.

This is technical writing. Not persuasive writing. Put it together piece by piece.

Use the language of the case. Quotes – not your language.

Be very clear what is an allegation vs. what is a factual finding. (Reminder only Track 3 reports have findings.)

Set it aside, come back and review for errors, typos, gaps in analysis.

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Professors Aider and Abettor noted that Professor R. would never demonstrate romantic interest in a colleague – that would be unprofessional. However, Professor Introverted disclosed that upon joining the department, Professor R. had sent them a Valentine’s gift and an invitation to a getaway at a winery, which Professor Introverted had declined. It had never been discussed after that.

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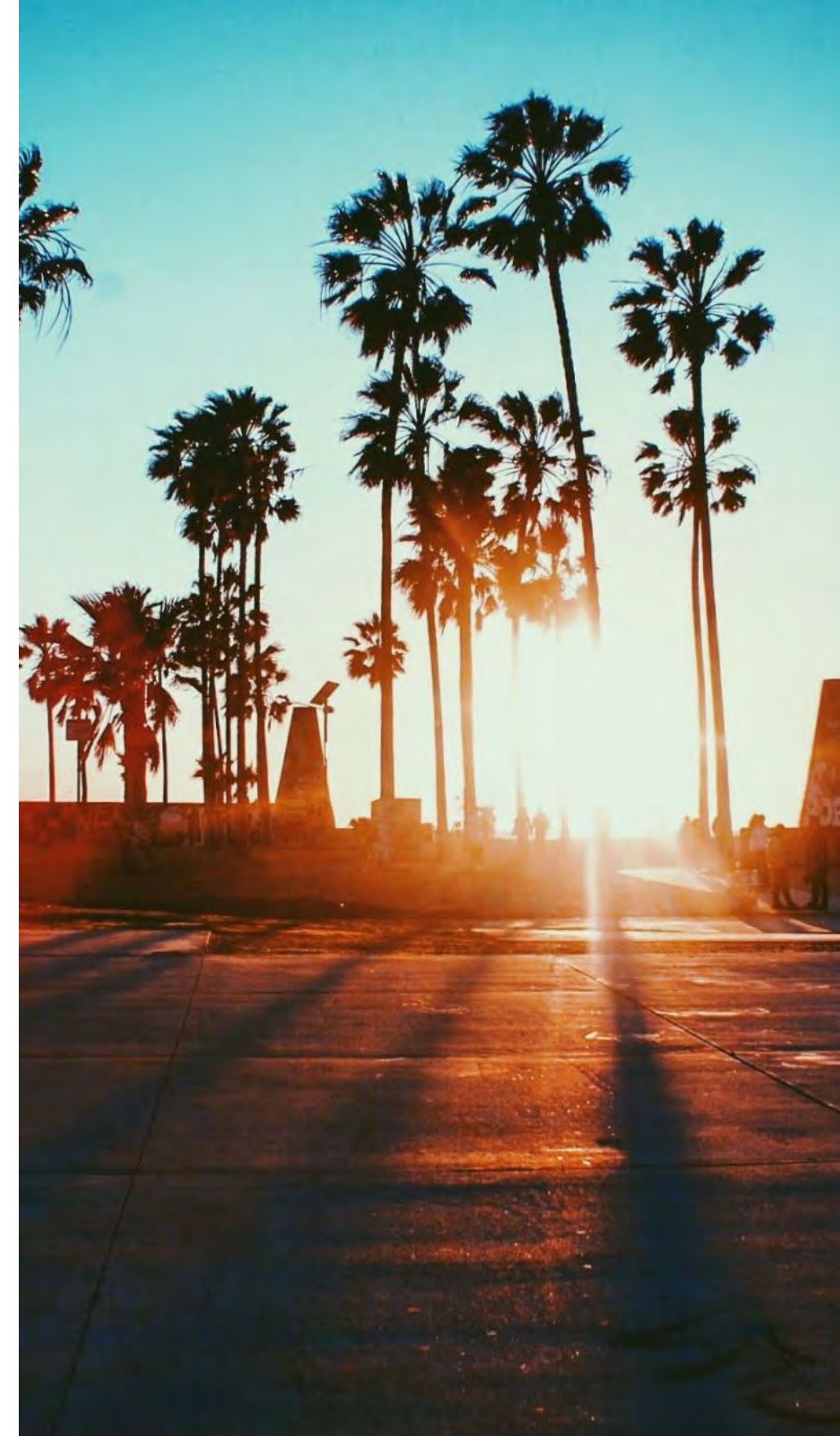
The winery is owned by Professor Abettor’s family and Professor R. has shown several pictures of the winery on Instagram.

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# Application of Track 3 to Example

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- A summary of the allegations
- The investigation process
- The preponderance of the evidence standard
- A detailed description of the evidence considered
- Analysis of the evidence including relevant credibility evaluations, and appropriate findings





## Natasha Baker

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Clients and colleagues can  
schedule a call or  
videoconference [here](#)



THANK  
YOU





