

## B. BRIEFS

### OVERVIEW:

Section [2423.33](#) provides for the filing of a post-hearing brief with an ALJ and § [2423.40](#) provides for the filing of exceptions, oppositions and cross-exceptions, and supporting briefs with the Authority (See [Part 3, Chapter F](#) concerning Exceptions). Section [2423.26](#)(c) and (d) provides for the filing of a brief directly with the Authority after the Authority has granted the parties' joint motion to decide the case based on the parties' stipulations of fact.

### OBJECTIVE:

To establish quality standards to ensure that briefs submitted on behalf of the GC are of a high level of quality and that those standards of quality will be the same regardless of which RO submits the brief; to establish a standard format for briefs filed with the OALJ or the Authority; and to provide guidance concerning filing and service requirements.

#### 1. QUALITY STANDARD CRITERIA APPLICABLE TO ALL BRIEFS:

- The brief is well organized, thorough, and clearly written;
- The facts relied upon to establish the violation and the remedy are supported by citation to the record or by stipulation;
- The brief accurately represents the GC's position as reflected in Guidance Memoranda; Advice Memoranda; and other Policy Pronouncements;
- The lead, most current and relevant precedent is cited to support all legal arguments, including, as appropriate, a statutory analysis; the Statute's legislative history; relevant Authority and

court decisions; applicable NLRB decisions; and other applicable court and/or administrative decisions;

- Legal arguments are concisely and persuasively presented and are well reasoned;
- All relevant issues are addressed in the brief, including all elements of the alleged violation, defenses that have been raised and the appropriate remedy requested; and
- All regulatory processing requirements are met.

## 2. EXPLANATION OF CRITERIA:

- a. *The brief is well organized, thorough, and clearly written:*

The brief represents the GC's last chance to persuade either the ALJ or the Authority, on review of exceptions or in a stipulation, that the GC has sustained the burden of proof. Briefs are organized by a logical sequence of presentation of issues, facts, law and argument. Briefs set forth all factual and legal issues necessary for a determination, and are understandable. Each portion of the brief addressing the facts, legal support, argument, and remedy is accurately and persuasively presented.

- b. *The facts relied upon to establish the violation and the remedy are supported by citation to the record or stipulation:*

In briefs to ALJs and on exception to the Authority, the facts set forth are supported by evidence in the record or by facts contained in the stipulation. The brief contains citations to record testimony, exhibits, and stipulated facts.

- c. *The brief accurately represents the GC's position as reflected in guidance memoranda; advice memoranda; and other policy pronouncements:*

The brief accurately reflects the position taken by the GC in internal and external GC pronouncements, such as advice memoranda, Guidance Memoranda and other policy pronouncements that have been communicated to the Regions. These pronouncements, when applicable, are applied to the particular factual situations and nuances of the case.

- d. *The lead, most current and relevant precedent is cited to support all legal arguments, including, as appropriate, a statutory analysis; the statute's legislative history; relevant authority; court decisions; analogous NLRB decisions; and other applicable court and administrative decisions:*

The brief reflects that all relevant issues, whether relating to procedural matters, the legal elements of the violation or the appropriate remedy, have been thoroughly researched. The brief relies, in descending order, on the plain wording of the Statute, its legislative history, relevant Authority and court decisions, applicable NLRB decisions and other applicable court and administrative decisions to support the GC's interpretation of the Statute or other controlling laws and regulations.

- e. *Legal arguments are concisely and persuasively presented and are well reasoned:*

Legal arguments, which include the application of the law to the facts, are presented in a concise and persuasive manner. Legal arguments are well thought-out and possible shortcomings are explored and addressed. The facts, the law, and legal arguments are presented in a persuasive and supportable manner.

- f. *All relevant issues are addressed in the brief, including all elements of the alleged violation(s), defenses that have been raised, and the appropriate remedy:*

Briefs to ALJs and to the Authority address all relevant issues, including the elements of the violation, defenses to the allegations and the remedy. Briefs in opposition to exceptions address the arguments raised in the exceptions. A brief to an ALJ also is responsive to any concerns raised by the ALJ at the hearing or suggested by the ALJ to be included in the brief.

g. *All regulatory processing requirements are met:*

All regulatory requirements for filing and serving a brief are met. Briefs are timely and properly filed and properly served.

### 3. **FORMAT FOR BRIEFS FILED EITHER BEFORE THE AUTHORITY OR AN ALJ:**

Each brief filed by a Trial Attorney on behalf of the GC follows the following format:

- Title Page;
- Table of Contents;
- Table of Authorities if brief is 25 or more pages (§ [2423.40\(a\)\(3\)](#); **(it is OGC policy to include a Table of Authorities in briefs of 25 or more pages filed with an ALJ)**);
- Statement of the Case (procedural case history including date of hearing; allegations with explanation and dates);
- Issues (may include defenses, as necessary) (See [ATTACHMENT 3B1](#) for examples of Issues);
- Statement of Facts (with citations to the transcript; topic sentences; no cites to cases; recognition of opposing facts in footnotes);
- Argument (mirror for each issue; state law with citation to Authority lead cases; argue credibility; address defenses; no string cites unless necessary; use parentheticals to give purpose or holding of case; citation to volume 50 and later cases);
- Remedy (explain why; proposed Notice and Order);
- Conclusion (what Trial Attorney wants ALJ to find); and
- Draft of Proposed Order.

See [ATTACHMENT 3B2](#) for an example of a Brief filed in Defense Logistics Agency, Defense Distribution Region East, Defense Depot Susquehanna, New Cumberland, Pennsylvania, OALJD 98-15 (Jan. 29, 1998) (no exceptions filed) (finding that in denying the union access to conduct asbestos tests, Respondent failed to furnish the union with

information under § [7114](#)(b)(4) and thereby violated § [7116](#)(a)(1), (5) and (8) of the Statute).

**4. FILING AND SERVICE REQUIREMENTS:**

All briefs filed with either the Authority or an ALJ must comply with the filing and service requirements set forth at Part 2429 of the Regulations.

**Q [Part 3, Chapter F](#) concerning Exceptions.**

RESERVED