

## § 28.9

(b) Informal procedural advice will be supplied within the limits of available time and staff.

[58 FR 61992, Nov. 23, 1993, as amended at 68 FR 69298, Dec. 12, 2003]

### § 28.9 Procedures; general.

(a) The procedures described in this subpart are generally applicable to the processing of all matters presented for consideration by the Board. Where special procedures are to be followed, they will be prescribed in those subsequent subparts to which they are particularly applicable.

(b) No pleading, motion or supporting memorandum filed with the Board shall exceed 60 pages, exclusive of attachments. The Board or the administrative judge may waive this limitation for good cause shown. Pleadings, motions and supporting memoranda, and attachments thereto, shall be on standard letter-size paper (8½x11).

### § 28.10 Notice of petition rights.

(a) The GAO shall be responsible for ensuring that employees are routinely advised of their rights to petition the Board and that employees who are the object of an adverse or performance-based action are, at the time of the action, adequately advised of their rights to petition the Board. The notice in adverse or performance-based actions must be accompanied by proof of service.

(b) The notice in adverse or performance-based actions shall include:

(1) Time limits for filing a petition with the Board and the address of the Board;

(2) A copy of the Board's regulations; and

(3) Notice of the right to representation, and the availability of a hearing before the Board where factual issues are in dispute.

[58 FR 61992, Nov. 23, 1993, as amended at 68 FR 69298, Dec. 12, 2003]

### § 28.11 Filing a charge with the Office of General Counsel.

(a) *Who may file.* (1) Any person claiming to be affected adversely by GAO action or inaction which is within the Board's jurisdiction under Subchapter IV of Chapter 7 of Title 31,

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United States Code, may file a charge with the General Counsel.

(2) Non-EEO class actions. One or more persons may file a charge as representative of a class in any matter within the Board's jurisdiction. See § 28.97 for EEO class actions.

(3) Unfair labor practice proceedings. Any person may file a charge alleging that the GAO or a labor organization has engaged or is engaging in an unfair labor practice. (The types of allegations which may be included in an unfair labor practice charge are discussed at § 28.121(a)).

(b) *When to file.* (1) Charges relating to adverse and performance-based actions must be filed within 30 days after the effective date of the action.

(2) Charges relating to other personnel actions must be filed within 30 days after the effective date of the action or 30 days after the charging party knew or should have known of the action.

(3) Charges which include an allegation of prohibited discrimination shall be filed in accordance with the special rules set forth in § 28.98.

(4) Charges relating to continuing violations may be filed at any time.

(c) *How to file.* Charges may be filed with the Office of General Counsel by personal delivery (including commercial carrier) or by mail. The address to be used differs for the two kinds of filing.

(1) A charge may be filed by personal delivery at the Office of General Counsel, Personnel Appeals Board, GAO, Suite 580, Union Center Plaza II, 820 First Street, NE., Washington, DC 20002.

(2) A charge may be filed by mail addressed to the Office of General Counsel, Personnel Appeals Board, Suite 580, Union Center Plaza II, 441 G Street, NW., Washington, DC 20548 or Office of General Counsel, Personnel Appeals Board, GAO, Suite 580, Union Center Plaza II, 820 First Street, NE., Washington, DC 20002. When filed by mail, the postmark shall be the date of filing for all submissions to the Office of General Counsel.

(d) *What to file.* The charging party should include in any charge the following information:

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(1) Name of the charging party or a clear description of the group or class of persons on whose behalf the charge is being filed;

(2) The names and titles of persons, if any, responsible for actions the charging party wishes to have the Office of General Counsel investigate;

(3) The actions complained about, including dates, reasons given, and internal appeals taken;

(4) The charging party's reasons for believing the actions to be improper;

(5) Remedies sought by the charging party;

(6) Name and address of the representative, if any, who will act for the charging party in any further stages of the matter; and

(7) Signature of the charging party or the charging party's representative.

(e) The General Counsel shall not represent a petitioner when the only issue is attorney fees. When attorney fees are the only issue raised in a charge to the Office of General Counsel, the General Counsel shall transmit the charge to the Board for processing under §§ 28.18 through 28.88 as a petition.

[58 FR 61992, Nov. 23, 1993, as amended at 59 FR 59106, Nov. 16, 1994; 61 FR 36810, July 15, 1996; 68 FR 69298, Dec. 12, 2003]

### § 28.12 General Counsel procedures.

(a) The General Counsel shall serve on the GAO or other charged party a copy of the charge, investigate the matters raised in a charge, refine the issues where appropriate, and attempt to settle all matters at issue.

(b) The General Counsel's investigation may include gathering information from the GAO or other charged party, and interviewing and taking statements from witnesses. Employees of GAO who are requested by the General Counsel to participate in any investigation under these Rules shall be on official time.

(c) Following the investigation, the Office of General Counsel shall provide the charging party with a Right to Petition Letter. Accompanying this letter will be a statement of the General Counsel advising the charging party of the results of the investigation. This statement of the General Counsel is not subject to discovery and may not

be introduced into evidence before the Board.

(d)(1) If the General Counsel determines that there are reasonable grounds to believe that the charging party's rights under subchapters III and IV of chapter 7 of title 31, United States Code, have been violated, then the General Counsel shall represent the charging party unless the charging party elects not to be represented by the Office of General Counsel.

(2) If, following the investigation, the General Counsel determines that there are not reasonable grounds to believe that the charging party's rights under subchapters III and IV of chapter 7 of title 31, United States Code, have been violated, then the General Counsel shall not represent the charging party. The charging party may nonetheless file a petition with the Board in accordance with § 28.18.

(3) Any charging party may represent him- or herself or obtain other representation.

(e) When the charging party elects to be represented by the General Counsel, the General Counsel is to direct the representation in the charging party's case. The charging party may also retain a private representative in such cases. However, the role of a private representative is limited to assisting the General Counsel as the General Counsel determines to be appropriate.

(f) When the General Counsel is not participating in a case, the General Counsel may request permission to intervene with regard to any issue in which the General Counsel finds a significant public interest with respect to the preservation of the merit system.

(g) If 180 days have elapsed since the filing of the charge, and the Office of General Counsel has not completed the investigation and issued a Right to Petition Letter, the charging party may bring his or her case directly to the Board by filing a petition in accordance with § 28.18. If a charging party exercises this option to file a petition with the Board without waiting for the completion of the investigation, the Office of General Counsel shall not represent the charging party in proceedings before the Board. The charging party may represent him- or herself