

How To Read The Amendments

The text of the amendments shows changes to the preexisting text of the Procedural Rules as follows: *//deletions within italicized brackets//*, and *added text in italicized bold*. Only subsections of the rules which include amendments are reproduced in this NOTICE. The insertion of a series of small dots (. . . .) indicates additional, unamended text within a section has not been reproduced in this document. The insertion of a series of stars (* * * * *) indicates that the unamended text of entire sections of the Rules have not been reproduced in this document. For the text of other portions of the Rules which are not amended, please access the Office of Compliance web site at www.compliance.gov

Included with these amendments are “Discussions” which are not part of the Procedural Rules, but which have been added to provide additional information regarding the adoption of these amendments to the Procedural Rules.

PART I -- OFFICE OF COMPLIANCE RULES OF PROCEDURE

As Amended -- February 12, 1998 (Subpart A, section 1.02, "Definitions"), and As Amended by the publication of this Notice of Adoption of Amendments to the Procedural Rules on June __, 2004.

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§1.03 Filing and Computation of Time.

(a) Method of Filing. Documents may be filed in person or by mail, including express, overnight

and other expedited delivery. *When specifically requested by the Executive Director, or by a Hearing Officer in the case of a matter pending before the Hearing Officer, or by the Board of Directors in the case of an appeal to the Board, any document may also be filed by electronic transmittal in a designated format, with receipt confirmed by electronic transmittal in the same format.* Requests for counseling under section 2.03, requests for mediation under section 2.04 and complaints under section 5.01 of these rules may also be filed by facsimile (FAX) transmission.

Discussion: The Office is beginning the process or migrating to electronic filing of documents. Because of the limitations in current capabilities, this authorization is optional, and provides for a designation of the format to be utilized. The Rule does not contemplate that a party will be involuntarily required to file electronically. The authorization for such filing must be made by the official(s) before whom the filing is pending.

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(d) Service or filing of documents by certified mail, return receipt requested. Whenever these rules permit or require service or filing of documents by certified mail, return receipt requested, such documents may also be served or filed by express mail or other forms of expedited delivery in which proof of date of receipt by the addressee is provided.

Discussion: Because of the increase in time required to process mail through the U.S. Postal Service since 9-11, the Office has determined that additional flexibility in the use of comparable document delivery services is needed.

* * * * *

2.03 Counseling.

(a) *Initiating a Proceeding; Formal Request for Counseling.* In order to initiate a proceeding under these rules, an employee shall *formally file a written request for counseling from* with the Office regarding an alleged violation of the Act, as referred to in section 2.01(a) above. All *formal* requests for counseling shall be confidential, unless the employee agrees to waive his or her right to confidentiality under section 2.03(e)(2), below.

Discussion: Requiring a written request for counseling provides the Office with documentation of the request. Such documents remain confidential, as required by section 416 of the Act, and by the Procedural Rules.

* * * * *

(c) *When, How, and Where to Request Counseling.* A *formal* request for counseling *must be in writing, and* [(1)] shall be *made* filed pursuant to the requirements of section 2.03(a) of these Rules *with the Office of Compliance at Room LA-200, 110 Second Street, S.E., Washington, D.C. 20540-1999; telephone 202-724-9250; FAX 202-426-1913; TDD 202-*

426-1912, not later than 180 days after the alleged violation of the Act.//;//
//(2) may be made to the Office in person, by telephone, or by written request; (3) shall be directed to: Office of Compliance, Adams Building, Room LA-200, 110 Second Street, S.E., Washington, D.C. 20540-1999; telephone 202-724-9250; FAX 202-426-1913; TDD 202-426-1912.//

Discussion: This amendment conforms to the amendment at section 2.03(a).

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(l) *Conclusion of the Counseling Period and Notice.* The Executive Director shall notify the employee in writing of the end of the counseling period, by certified mail, return receipt requested, **or by personal delivery evidenced by a written receipt.** The Executive Director, as part of the notification of the end of the counseling period, shall inform the employee of the right and obligation, should the employee choose to pursue his or her claim, to file with the Office a request for mediation within 15 days after receipt by the employee of the notice of the end of the counseling period.

Discussion: Because of the increase in time required to process mail through the U.S. Postal Service since 9-11, the Office has determined that additional flexibility of personal delivery is needed, as long as that delivery can be verified.

(m) *Employees of the Office of the Architect of the Capitol and the Capitol Police.*

(1) Where an employee of the Office of the Architect of the Capitol or of the Capitol Police requests counseling under the Act and these rules, the Executive Director may recommend that the employee use the grievance procedures of the Architect of the Capitol or the Capitol Police. The term ‘grievance procedures’ refers to internal procedures of the Architect of the Capitol and the Capitol Police that can provide a resolution of the matter(s) about which counseling was requested. Pursuant to section 401 of the Act and by agreement with the Architect of the Capitol and the Capitol Police Board, when the Executive Director makes such a recommendation, the following procedures shall apply:

.....

(ii) After having contacted the Office and having utilized the grievance procedures of the Architect of the Capitol or of the Capitol Police Board, the employee may notify the Office that he or she wishes to return to the procedures under these rules:

(A) within //10// 60 days after the expiration of the period recommended by the Executive Director, if the matter has not //been resolved// **resulted in a final decision**; or

(B) within 20 days after service of a final decision resulting from the grievance procedures of the Architect of the Capitol or the Capitol Police Board.

(iii) The period during which the matter is pending in the internal grievance procedure shall not count against the time available for counseling or mediation under the Act. If the grievance is

resolved to the employee's satisfaction, *the employee shall so notify the Office within 20 days after the employee has received service of the final decision resulting from the grievance procedure.* *[[or i]] If no request to return to the procedures under these rules is received within [[the applicable time period]] 60 days after the expiration of the period recommended by the Executive Director, the Office will [[consider the case to be closed in its official files]] issue a Notice of End of Counseling, as specified in section 2.04(i) of these Rules.*

Discussion: Section 401 of the Act authorizes the Executive Director, “after receiving a request for counseling . . . [to] recommend that the employee use the grievance procedures of the Architect of the Capitol or the Capitol Police for resolution of the employee’s grievance for a specific period of time, which shall not count against the time available for counseling or mediation.” The extension of the grace period in the case of a matter which has not been concluded in 60 days provides the parties additional time to complete the grievance process. The issuance of a Notice of End of Counseling rather than the administrative closure of a matter ensures that no employee inadvertently loses the opportunity to continue to pursue a matter, which has not been successfully concluded through the agency grievance procedure. If an employee notifies the Office of a desire to return to the Office dispute resolution procedure pursuant to subsection (ii) above, the time remaining in counseling shall not include any time between the filing of the request for counseling, and the date of issuance by the Executive Director of a recommended referral. Thus, for instance, if the Executive Director recommends referral 5 days after the filing of a Request for Counseling, the time remaining in counseling as of the date the Office receives a notification of return would be 25 days.

2.04 Mediation.

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(e) Duration and Extension.

(1) The mediation period shall be 30 days beginning on the date the request for mediation is received, unless the Office grants an extension.

(2) The Office may extend the mediation period upon the joint *written* request of the parties *or of the appointed mediator on behalf of the parties to the attention of the Executive Director*. The request *[[may be oral or]] shall be written and [[shall be noted and]]* filed with the Office no later than the last day of the mediation period. The request shall set forth the joint nature of the request and the reasons therefor, and specify when the parties expect to conclude their discussions. Request for additional extensions may be made in the same manner. Approval of any extensions shall be within the sole discretion of the Office.

Discussion: This amendment authorizes a mediator or both parties to submit a request for extension. The Office will accept joint requests by the parties in which the signature of a party has been authorized to be executed by the other party, as long as that authorization is stated in the submission.

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(i) *Conclusion of the Mediation Period and Notice.* If, at the end of the mediation period, the parties have not resolved the matter that forms the basis of the request for mediation, the Office shall provide the employee, and the employing office, and their representatives, with written notice that the mediation period has concluded. The written notice to the employee will be sent by certified mail, return receipt requested, ***or will be [[hand]] personally delivered, evidenced by a written receipt***, and it will also notify the employee of his or her right to elect to file a complaint with the Office in accordance with section 405 of the Act and section 5.01 of these rules or to file a civil action pursuant to section 408 of the Act and section 2.06 of these rules.

Discussion: Because of the increase in time required to process mail through the U.S. Postal Service since 9-11, the Office has determined that additional flexibility of personal delivery is needed, as long as that delivery can be verified.

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2.06 Filing of Civil Action.

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(c) Communication Regarding Civil Actions Filed with District Court. The party filing any civil action with the United States District Court pursuant to sections 404(2) and 408 of the Act shall provide a written notice to the Office that the party has filed a civil action, specifying the district court in which the civil action was filed and the case number.

Discussion: The Office of Compliance is required by the Act to educate Members of Congress, employing offices, and employees regarding their rights and responsibilities under the Act (section 301(h)); to ensure that an employee has not filed both a District Court and an administrative complaint in violation of section 404; and to monitor any judicial interpretation of the Act or review of Office regulations pursuant to sections 408 and 409. Requiring such notice by a party to a matter which has been processed through counseling and mediation before this agency pursuant to a duly promulgated rule of this agency does not violate any applicable attorney rule of professional conduct.

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§5.03 Dismissal, Summary Judgment, and Withdrawal of Complaints.

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(d) Summary Judgment. A Hearing Officer may, after notice and an opportunity for the parties to address the question of summary judgment, issue summary judgment on some or all of the complaint.

Discussion: This amendment clarifies the existing authority of Hearing Officers to issue

summary judgment or partial summary judgment.

([d]e) Appeal. A *[[dismissal]] final decision* by the Hearing Officer made under section 5.03(a)-*[[c)] (d)* or 7.16 of these rules may be subject to appeal before the Board if the aggrieved party files a timely petition for review under section 8.01. *A final decision under section 5.03(a)-(d) which does not resolve all of the claims or issues in the case(s) before the Hearing Officer may not be appealed to the Board in advance of a final decision entered under section 7.16 of these rules, except as authorized pursuant to section 7.13 of these rules.*

Discussion: This amendment clarifies that any final decision which does not completely dispose of a matter will be treated as an interlocutory appeal.

([e]f)

([f]g)

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§7.02 Sanctions

(a) The Hearing Officer may impose sanctions on a party’s representative necessary to regulate the course of the hearing.

Discussion: This rule is procedural. The Office of Compliance is required by section 405(d)(3) of the Act to conduct its hearings “to the greatest extent practicable, in accordance with the principles and procedures set forth in sections 554 through 557 of [the Administrative Procedure Act found at] title 5, United States Code.” The phrase “necessary to regulate the course of the hearing” is derived from section 556(c)(5) of the Administrative Procedure Act, 5 U.S.C. 556(c)(5). Agency tribunals operated under the Administrative Procedure Act possess broad authority to regulate the practice and conduct of attorneys and other representatives appearing on behalf of parties to proceedings before them.

(b) The Hearing Officer may impose sanctions upon the parties under, but not limited to, the circumstances set forth in this section.

([a]I) Failure to Comply with an Order. When a party fails to comply with an order (including an order for the taking of a deposition, for the production of evidence within the party’s control, or for production of witnesses), the Hearing Officer may:

([1]a)

([2]b)

([3]c)

([4]d)

([5]e)

([6]f)

([7]g)

[[b]]2)
[[c]]3)

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§8.01 Appeal to the Board.

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(b)(1) Unless otherwise ordered by the Board, within 21 days following the filing of a petition for review to the Board, the appellant shall file and serve a supporting brief in accordance with section 9.01 of these rules. That brief shall identify with particularity those findings or conclusions in the decision and order that are challenged and shall refer specifically to the portions of the record and the provisions of statutes or rules that are alleged to support each assertion made on appeal.

(2) Unless otherwise ordered by the Board, within 21 days following the service of the appellant’s brief, the opposing party may file and serve a responsive brief. Unless otherwise ordered by the Board, within 10 days following the service of the appellee’s responsive brief, the appellant may file and serve a reply brief.

(3) Upon written delegation by the Board, the Executive Director is authorized to determine any request for extensions of time to file any post-petition for review document or submission with the Board in any case in which the Executive Director has not rendered a determination on the merits. Such delegation shall continue until revoked by the Board.

Discussion: This ministerial delegation is not a “substantive” rule. The extension of filing deadlines is limited to the parameters of a written authorization from the Board, and cannot affect the requirement of section 406(a) that a party must “file a petition for review by the Board not later than 30 days after entry of the decision in the records of the Office.”

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§9.01 Filing, Service and Size Limitations of Motions, Briefs, Responses and other Documents.

(a) *Filing with the Office; Number.* One original and three copies of all motions, briefs, responses, and other documents must be filed, whenever required, with the Office or Hearing Officer. However, when a party aggrieved by the decision of a Hearing Officer ***or a party to any other matter or determination reviewable by the Board*** files an appeal ***or other submission*** with the Board, one original and seven copies of ***[[both]] any [[appeal brief]] submission*** and any responses must be filed with the Office. ***The Office[[r]], Hearing Officer, or Board may also request a party to submit an electronic version of any submission [[on a disk]] in a designated format, with receipt confirmed by electronic transmittal in the same format.***

Discussion: The addition of the phrase “or other matter or determination reviewable by the

Board” references those controversies over which the Board has jurisdiction, but which are not initially determined before a Hearing Officer. These other matters or determinations include collective bargaining representation and negotiability determinations made by the Board pursuant to Part 2422 of the Office of Compliance Rules, review by the Board of arbitration decisions pursuant to Part 2425 of the Rules, determination of bargaining consultation rights under Part 2426 of the Rules, requests for statements of policy or guidance by the Board under Part 2427 of the Rules, enforcement of standards of conduct decisions and orders by the Assistant Secretary of Labor of Labor Management Relations pursuant to Part 2428 of the Rules, and determinations regarding collective bargaining impasses pursuant to Part 2470 of the Rules. Some of these matters are addressed to the Board in the first instance. Submission by electronic version is an option in addition to the existing methods for filing documents. *See also* amended rule 1.03(a), *supra*. This addition reflects the decision of this agency to begin migrating toward electronic filing of submissions. Because of the limitations in current capabilities, this authorization is optional, and provides for a designation of the format to be utilized. The Rule does not contemplate that a party will be involuntarily required to file electronically. The authorization for such filing must be made by the official(s) before whom the filing is pending.

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§9.03 Attorney’s fees and costs.

(a) *Request.* No later than 20 days after the entry of a Hearing Officer’s decision under section 7.16 or after service of a Board decision by the Office, the complainant, if he or she is a prevailing party, may submit to the Hearing Officer who heard the case initially a motion for the award of reasonable attorney’s fees and costs, following the form specified in paragraph (b) below. ***All motions for attorney’s fees and costs shall be submitted to the Hearing Officer. The Hearing Officer, after giving the respondent an opportunity to reply, shall rule on the motion. Decisions regarding attorney’s fees and costs are collateral and do not affect the finality or appealability of a final decision issued by the Hearing Officer . A ruling on a motion for attorney’s fees and costs may be appealed together with the final decision of the Hearing Officer. If the motion for attorney’s fees is ruled on after the final decision has been issued by the Hearing Officer, the ruling may be appealed in the same manner as a final decision, pursuant to section 8.01 of these Rules.***

Discussion: This amendment clarifies the rules to exclude the filing of motions for attorney’s fees with the Board of Directors.

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§9.05 Informal Resolutions and Settlement Agreements

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(b) *Formal Settlement Agreement.* The parties may agree formally to settle all or part of a disputed matter in accordance with section 414 of the Act. In that event, the agreement shall be in writing and submitted to the Executive Director for review and approval. ***If the Executive Director does not approve the settlement, such disapproval shall be in writing, shall set forth the grounds therefor, and shall render the settlement ineffective.***

(c) *Requirements for a Formal Settlement Agreement.* ***A formal settlement agreement requires the signature of all parties or their designated representatives on the agreement document before the agreement can be submitted to the Executive Director. A formal settlement agreement cannot be rescinded after the signatures of all parties have been affixed to the agreement, unless by written revocation of the agreement voluntarily signed by all parties, or as otherwise permitted by law.***

(d) *Violation of a Formal Settlement Agreement.* ***If a party should allege that a formal settlement agreement has been violated, the issue shall be determined by reference to the formal dispute resolution procedures of the agreement. If the particular formal settlement agreement does not have a stipulated method for dispute resolution of an alleged violation of the agreement, the following dispute resolution procedure shall be deemed to be a part of each formal settlement agreement approved by the Executive Director pursuant to section 414 of the Act: Any complaint regarding a violation of a formal settlement agreement may be filed with the Executive Director no later than 60 days after the party to the agreement becomes aware of the alleged violation. Such complaints may be referred by the Executive Director to a Hearing Officer for a final decision. The procedures for hearing and determining such complaints shall be governed by subparts F, G, and H of these rules.***

Discussion: The Act empowers the Executive Director to exercise final approval over any settlement agreement. Otherwise, no settlement agreement shall “become effective.” See 2 U.S.C. 1414. This procedural rule provides a dispute resolution procedure which is designed to preserve the confidentiality of any settlement agreement to the maximum extent possible, should the parties not include another dispute resolution mechanism in the settlement agreement which is approved by the Executive Director.

§9.06 Payments required pursuant to Decisions, Awards, or Settlements under section 415(a) of the Act. Whenever a decision or award pursuant to sections 405(g), 406(e), 407, or 408 of the Act, or an approved settlement pursuant to section 414 of the Act, require the payment of funds pursuant to section 415(a) of the Act, the decision, award, or settlement shall be submitted to the Executive Director to be processed by the Office for requisition from the account of the Office of Compliance in the Department of the Treasury, and payment.

Discussion: This rule memorializes existing practices authorized under section 415(a) of the Act.

§9.07 Revocation, Amendment or Waiver of Rules.

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END