

A. ISSUANCE OF ULP COMPLAINT, NOTICE OF HEARING TIME, DATE AND PLACE

OVERVIEW:

Absent settlement, an RD issues a complaint in cases where it is found that the charge has merit and advises the OGC HQ of such issuance via an internal transmittal memorandum. See § [2423.10\(a\)\(4\)](#). Section [2423.20\(a\)\(5\)](#) provides that every complaint shall include notice of the date, time and place (city) fixed for the hearing.

OBJECTIVE:

To provide guidance concerning the drafting, processing, and service of a complaint, the internal memorandum transmitting the complaint to the OGC HQ, and an overview of matters concerning the notice of hearing such as scheduling of ULP hearings, including calendar calls and arranging for a court reporter.

1. DRAFTING THE COMPLAINT:

a. *Role of the Agent:*

- The RD assigns an Agent to draft the complaint; and
- When the complaint issues, the case is assigned to an Attorney who prepares the case for trial, absent settlement.

b. *Conforming the charge with the complaint:*

There should be no significant differences between the allegations in the charge and the allegations set forth in the complaint. The complaint should conform to the allegations in the last amended charge that have not been disposed of by other means.

2. ISSUANCE OF COMPLAINT:

The Agent follows the OGC Pleading Manual ([ATTACHMENT 1A1](#)) in drafting the complaint.

a. *Regulatory requirements:*

Pursuant to § [2423.20\(a\)](#), the complaint sets forth:

- The notice of the charge;
- The basis for jurisdiction;
- The facts alleged to constitute a ULP;

(a) The facts are stated clearly and concisely; (b) describe the acts which are alleged to constitute ULPs, including, where known, approximate dates and places of such acts and (c) the names of the Respondent's agents or other representatives allegedly involved in the commission of the ULP(s).

- The statutory and regulatory sections involved;
- The notice of the date, time, and place that a hearing will take place before an ALJ; and
- A brief statement explaining the nature of the hearing.

b. *Other contents and form of complaint:*

- The allegations of the complaint are set forth in numbered paragraphs;
- Normally, the first paragraph states the facts relating to the filing and service of the original charge and of each amended charge;
- The succeeding paragraphs normally identify the Respondent's agents or representatives alleged to be involved, followed by a

chronology of events, or other factual data, and a description of the specific acts alleged to constitute the ULP/s;

- The allegations are sufficiently detailed in order to enable the parties to understand the nature of the alleged violation; and
- The last numbered paragraphs allege that the acts and conduct specified all constitute ULPs within the meaning of § [7116](#) of the Statute (repeating all subsections alleged to have been violated in the preceding paragraphs).
- **The formatting requirements prescribed are followed (arial font; 12 point; 1.5 spaces between lines in each paragraph; 2.0 spaces between paragraphs; 8.5 by 11 inch paper left justification).**

c. *Service of the complaint:*

The complaint and notice of hearing are served by certified mail on all parties and their designated representatives as soon as possible--service by e-mail or fax is **not** permitted. The following are also served:

- The Chief ALJ;
- The OGC HQ;
- The head/s of the labor organization/s involved; and
- In CA cases only:

Director
Center for Partnership and Labor-Management Relations
1900 E Street, N.W.
Washington, D.C. 20415-0001

3. OALJ ISSUANCE OF ORDER UPON RECEIPT OF COMPLAINT:

The OALJ issues an Order and Notice of Date and Time for Pre-hearing Conference Call upon the receipt of a complaint. The OALJ also issues a

Notice of Settlement Judge Program and issues subpoenas upon request. Requests for subpoenas and other pre-hearing motions are separate documents with their own captions but may be covered by a single service sheet. See LM, Part 1, Chapters K, N and Q concerning Subpoenas, Preparing Formal Documents and Pre-hearing Disclosure for discussion of these matters.

4. THE TRANSMITTAL MEMORANDUM:

Upon the issuance of a complaint, the RD sends a copy of the complaint to the OGC Headquarters, along with an internal transmittal memorandum which addresses the following:

Whether the case had been discussed with anyone at OGC Headquarters;


- If negotiability is an issue, include a cite to the lead case or an appropriate arrangements analysis if there is no lead case;
- The proposed remedy and why, if necessary.



In a unilateral change case, if the Region is not asking for a status quo ante remedy, state the reasons. If the Region is proposing a monetary remedy or a nontraditional remedy, state why. See F.E. Warren Air Force Base, 52 FLRA No. 17, 52 FLRA 149, 160-62 (1996) for a list of the factors considered in determining a remedial order and LM, Part 1, Chapter D, concerning Remedy for a more in-depth discussion of remedies, in general.

- If the facts have an interesting twist, explain it;
- If the case is not a “routine type” of violation, explain why;
- If there is a defense that the Respondent has already raised or that the Region is aware of, state it, and explain why it was rejected (e.g., “covered by”);
- If there is a special trial strategy (hostile witness, subpoena, etc.), explain;


- If there was an issue that was discussed at length at an Agenda, provide these details in the memo;
- If there is controlling OGC Advice or OGC Guidance, provide these citation/s; and
- Cite any particular case that supports the complaint, **excluding** acknowledged precedent.

 *A transmittal memorandum is not subject to disclosure under the Freedom of Information Act as it is exempted from disclosure under Exemption 5. See 5 U.S.C. § 552(b)(5). A transmittal memorandum comes within the deliberative process privilege which has the purpose of “prevent[ing] injury to the quality of agency decisions.” NLRB v. Sears, Roebuck, & Co., 421 U.S. 132, 151 (1975).*

5. SETTING THE HEARING TIME, DATE AND PLACE:

Hearings are set on a date which is within 60 days of the date that the complaint is issued.

- a. *Ordinarily, hearings are:*
 - i. Set by the ALJ and noticed in the complaint; if not, a separate notice of hearing is sent to the ALJ and parties;
 - ii. Set in the city where the alleged violation occurred or in the closest major city to that location;
 - iii. Not set sooner than 25 days after issuance of complaint to provide time for receipt of Respondent’s answer in accordance with §§ [2423.20\(b\)](#) and [2429.22](#); and
 - iv. Set to begin at 9:00 a.m. unless a later time is required to accommodate the ALJ or parties.

 *The notice of hearing need not indicate the exact location or site within the city where the hearing is scheduled to take place. Upon approval by the ALJ, the RD announces the location in a notice that is issued before the hearing or at the pre-hearing conference. See [ATTACHMENT 1A2](#) for an example of a Notice.*

b. *Changes in hearing location, date and time:*

- i. An ALJ may, in his/her discretion or upon motion of a party, change the date, time, or place of the hearing.
- ii. To effect changes in dates or city where hearing is to take place, a party files a motion with Chief ALJ. (See [Part 1, Chapter L](#) on Motions for applicable criteria for filing this motion).

c. *Calendar call:*

Calendar call is a method of scheduling two or more cases for a hearing on the same date and time, at the same location, and in the same city. The ALJ calls each case at a pre-hearing conference at which time the parties discuss and enter into factual stipulations and settlements. At the end of the pre-hearing conference, the ALJ sets the location, order and dates for hearing the remaining cases. Hearings commence and continue in order until all cases are heard.

6. COURT REPORTER:

Section [2423.30\(f\)](#) provides that an official reporter shall make the only official transcript of a hearing. The Trial Attorney ensures that the following take place:

- a. *After complaint issues, Regional staff calls reporting service to arrange for court reporting coverage at hearing.*
- b. *Send confirmation letter by fax.*

- c. *In the event of settlement before hearing, notify reporting service at least 24 hours before hearing, if possible, otherwise a late cancellation fee is charged.*

7. ANSWER TO COMPLAINT:

Pursuant to § [2423.20\(b\)](#), Respondent has 20 days to file an answer to a complaint.

A Respondent makes an admission when the answer does not deny any allegation in the complaint.

[U.S. Department of the Air Force, Air Force Materiel Command, Wright-Patterson Air Force Base, Ohio](#), 55 FLRA No. 159, 55 FLRA 968 (1999) (existence of past practice found where Respondent's **answer** makes clear that existence of past practice of smoking was not in dispute – pursuant to [Fed. R. Civ. P. 8\(d\)](#), “[a]verments in a pleading . . . are admitted when not denied in the responsive pleading” . . . “An admission that is not withdrawn or amended cannot be rebutted by contrary testimony or ignored by the district court simply because it finds the evidence presented by the party against whom the admission operates more credible” . . . “A judge may not simply ignore an admission and find to the contrary, without explaining his disregard of the pleadings).

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[Part 1, Chapter D](#) concerning Remedy;

[Part 1, Chapter K](#) concerning Subpoenas;

[Part 1, Chapter L](#) concerning Motions;

[Part 1, Chapter N](#) concerning Preparing Formal Documents; and

[Part 1, Chapter Q](#) concerning Pre-hearing Disclosure.

RESERVED