

C. ANALYSIS OF THE CASE FILE


OVERVIEW:


After issuance of the complaint, the Trial Attorney's first step in preparing for litigation is to conduct a complete analysis of the case file.


OBJECTIVE:

To provide guidelines for analyzing the case file in order to:

- Familiarize oneself with the legal theory and evidence in the file;
- Determine Respondent's defenses;
- Determine whether an amendment to the charge and/or complaint is necessary;
- Determine whether any additional investigation or legal research needs to be undertaken;
- Determine what witnesses or documents need to be subpoenaed; and
- Consider whether any alternatives to a trial may be appropriate, e.g., settlement, stipulation, summary judgment.

 (1) *It should have been determined during the investigation of the charge, i.e., before the complaint issued, whether an amendment to the charge was necessary. Nevertheless, the Trial Attorney reviews the case file, which includes the complaint, to determine the sufficiency of the charge.*

 (2) *If a trial team is assigned to the litigation, the team works out trial assignments.*

 (3) *During the initial review of the case file, the Trial Attorney is aware of the need not only to determine the sufficiency of the evidence in the file as to each and every element of the alleged violation(s) but of the need to identify which specific witness or witnesses will present through their testimony the specific evidence to establish each and every element. Consequently, the Trial Attorney not only considers whether additional investigation or legal research must be conducted, but whether additional witnesses must be contacted.*

1. CASE FILE ANALYSIS:

a. *Review the Complaint, including Transmittal Memo, and the Charge:*

- Is the underlying charge timely?
- What are the allegations?
- What are the elements of the violation?
- Does the charge properly relate to the complaint?
- Is the complaint legally sufficient?
- Is the date and time of the hearing correct?
- Has a proper location for the hearing been reserved?
- Is it still available?
- Has the reporting service been contacted?


b. *Review of Charge, Amended Charge, Complaint, Amended Complaint*

i. *Review of Charge and Amended Charge*

(1) *Charge*

Pursuant to § [2423.9](#), the Charging Party may amend the charge prior to issuance of complaint. There is no provision for amendment of the charge after the complaint issues.

However, once the complaint issues, in reviewing the case file, the Trial Attorney ensures that the charge, or amended charge, conforms with the allegations of the complaint, and that the allegations of the complaint conform with the regional determination.

 *The charge and complaint need not be identical. The complaint need only bear a relationship to the charge and closely relate to the events cited in the charge. A charge is sufficient if it informs the alleged violator of the general nature of the violation charged; a complaint will be dismissed if defects in a charge prejudice a Respondent. U.S. Department of Justice, Office of Justice Programs, 50 FLRA No. 67, 50 FLRA 472, 476-77 (1995) (charge put Respondent on notice that it had allegedly violated the Statute by failing to provide names of employees receiving awards and outstanding appraisals, even though at time charge was filed, Respondent had not yet denied the union's request); U.S. Department of Justice, Bureau of Prisons, Allenwood Federal Prisons Camp, Montgomery, Pennsylvania, 40 FLRA No. 42, 40 FLRA 449, 455 (1991) (citations omitted) (Respondent understood scope of the allegations concerning its refusal to furnish crediting plan and addressed those allegations in its submission before the Authority).*

(2) *Amended Charge--when to obtain:*

After a complaint has issued, the Trial Attorney obtains an amended charge if:

- The charge does not cover the allegations in the complaint; there is a significant discrepancy between the complaint and the charge; or the amended charge could result in the Respondent raising valid due process or notice objections; and
- The amended charge may be timely made, i.e., within six months after the events complained of.

- (3) *If amended charge is necessary:*
- The complaint is withdrawn;
 - The Charging Party files an amended charge; and
 - The RD reissues the complaint.



Again, be careful about obtaining an amended charge alleging violative conduct occurring more than six months prior to the date of the amended charge. If the amended charge does not also include conduct encompassed by the original charge a complaint based on allegations in the amended charge may be found untimely. Amended charges that are closely related to events or matters complained of in the charge and are based on events occurring within the six-month period preceding the charge are not barred by § 7118(a)(4)(A) of the Statute. United States Department of Veterans Affairs, Washington, D.C., Veterans Administration Medical Center, Amarillo, Texas, 42 FLRA No. 27, 42 FLRA 333, 340 (1991), rev'd on other grounds sub nom. United States Department of Veterans Affairs Medical Center, Amarillo, Texas v. FLRA, 1 F.3d 19 (D.C. Cir. 1993).

Prior to reissuance of the complaint, Respondent is given an opportunity to respond to the amended charge.

ii. *Review of Complaint:*

Pursuant to § 2423.20(c), the RD may amend a complaint at any time before the answer is filed. The Trial Attorney reviews the complaint to determine the following:

- Are the right parties named, including whether the correct level of the agency or union is named?
- Are the allegations of the complaint found in the charge?
- Are there typographical errors or misspellings?
- Are the allegations specific to put the Respondent on notice of the alleged violations?

- Does the complaint contain all allegations the RD found to be violations?
 - Are there additional violations not alleged in the complaint?
- iii. *Amended Complaint:*

(1) *Answer not filed:*

(a) *Issue an amendment to the complaint when:*

changes **are not complicated or extensive** (e.g., correction to a numerical allegation, a minor change in a date, or a misspelling) and the Respondent has not yet filed an answer. The RD issues an **amendment to the complaint** setting forth only the desired changes. An amendment to the complaint replaces only those portions of the complaint identified in the amendment. Answer period begins to run anew (see § [2423.20](#)(c) and subsection c.iii. below).

(b) *Issue an amended complaint when:*


the **changes are complicated, extensive, or raise additional allegations**, and the Respondent has not yet filed an answer. The RD issues an **amended complaint**, which restates the entire complaint including the desired changes. An amended complaint, like an amended charge, supersedes the original complaint. Answer period begins to run anew (see § [2423.20](#)(c) and subsection c.iii. below).

(2) *Answer has been filed:*

Whether or not the changes are complicated, the Trial Attorney files a Motion to Amend the complaint with the

ALJ which sets forth the details of the proposed amendment.

See example of [Motion to Amend Complaint](#) at end of Chapter.

 *If review of the complaint discloses a discrepancy between the regional decision and/or theory of the case and the allegations of the complaint, the RD amends the complaint, if an answer has not yet been filed, or the Trial Attorney files a Motion to Amend Complaint with the ALJ, if an answer has been filed. (It is not necessary, nor advisable, to file a notice of intent to file a motion to amend complaint at the hearing.) In either instance, a Respondent may not claim lack of notice or violation of due process because there has been a disclosure of the "matters of fact and law at issue." See 5 U.S.C. § 554(b)(3); U.S. Department of Labor, Washington, D.C., 51 FLRA No. 41, 51 FLRA 462, 467 (1995) ("[d]ue process considerations are basic to American jurisprudence. . ."). What constitutes adequate notice will depend on the circumstances of each case. In every instance, however, this notice must afford the Respondent "a meaningful opportunity to litigate the underlying issue." Road Sprinkler Fitters Local Union No. 669 v. NLRB, 778 F.2d 8, 16 (D.C. Cir. 1985). A party's due process concerns are more persuasive if the opposing party has not complied with the pre-hearing disclosure requirements.*

Case Cites--Lack of Notice

American Federation of Government Employees, Local 2501, Memphis, Tennessee, 51 FLRA No. 139, 51 FLRA 1657, 1660 (1996) (Authority found complaint did not allege the specific statements that allegedly violated the Statute, and there was no evidence that union was on notice that statements were encompassed by complaint, even though union did not contend on exception that it was prejudiced at hearing by the absence of the allegations in the complaint); U.S. Department of Labor, Washington, D.C., 51 FLRA No. 41, 51 FLRA 462, 467-68 (1995) (where sole basis of complaint was alleged violation of Statute in failing to provide unsanitized data, violation may not be found for failing to provide sanitized data); see also U.S. Department of the Air Force, 56th Support Group, MacDill Air Force Base, Florida, 51 FLRA No. 93, 51 FLRA 1144, 1157 (1996) (to the same effect).

Case Cite--Adequate Notice Given

F.E. Warren Air Force Base, Cheyenne, Wyoming, 52 FLRA No. 17, 52 FLRA 149, 150-51 (1996) (complaint was sufficient to put Respondent on notice of alleged liability for all formal discussions related to subject of RIF that manager had in his office during the month).

c. Review of Answer to Complaint:

- What was denied?
- What was admitted (actual or constructive)?
- What are the affirmative defenses, if any?
- Do any procedural or substantive issues raised by the Answer need to be addressed?
- Does Respondent raise any motions as part of the Answer?

i. *Answer filed in 20 days*

Section [2423.20](#)(b) provides that "[w]ithin 20 days after the date of service of the complaint, but in any event, prior to the beginning of the hearing, the Respondent shall file and serve . . . an answer with the Office of Administrative Law Judges."

ii. *Requirements of Answer*

Any Answer must admit, deny, explain, or deny knowledge as to each of the allegations in each paragraph of the complaint, or Respondent may admit to all allegations of the complaint. Failure to plead specifically to, or explain any allegation, shall constitute an admission of such allegation. If Respondent does not file an Answer, the Authority will find that the Respondent has admitted each allegation. § [2423.20](#)(b).

iii. *Answer to Amendment to Complaint or Amended Complaint*

Pursuant to § [2423.20](#)(c), Respondent has an opportunity to file an Answer or amended Answer to an amendment to a complaint or an amended complaint.

iv. *No Timely Answer Filed*

Be sure to determine if an Answer to the complaint or amended complaint has been filed. In appropriate cases, summary judgment may be sought when Respondent has not timely answered. See [Part 1, Chapter F](#) concerning Motions for Summary Judgment.

d. *Review of Evidence:*

- Read affidavits, statements, position papers, memoranda, documents, investigative report and agenda minute;
- Review prior settlement attempts;
- Discuss case with investigator, if necessary; and
- Verify potential witnesses's addresses and telephone numbers.

2. TRIAL ATTORNEY'S CASE FILE ANALYSIS TASK LIST:

Upon completion of the case file analysis, the Trial Attorney has completed the following tasks:

- Determined if an amendment of the complaint is necessary;
- Determined what the Respondent's defense(s), if any, will be;
- Determined if additional investigation (including the need for additional witnesses) or legal research needs to be undertaken in order to address issues raised in the GC's case-in-chief or Respondent's defenses;
- Determined who will be witnesses and what documents need to be entered into evidence (including what witnesses and documents must be subpoenaed); and

- Decided whether the case is a candidate for settlement, motion for summary judgment or stipulation. If stipulation is a possibility, begin now.

3. SETTLEMENT EFFORTS AND POTENTIAL FOR SETTLEMENT:

After completing the case file analysis, serious consideration is given to settlement possibilities. **It is the GC's policy to continue to actively pursue settlement after the complaint has issued.** In essence, post-complaint settlement efforts are an extension of, and consistent with, the pre-complaint settlement policy and practice. See Part 1, Chapter H below concerning Post Complaint/Pre-hearing Settlements and [ATTACHMENT 1H](#).

Because settlement efforts are attempts to bring the parties together on a common ground, and because the GC does not represent the Charging Party, it is entirely appropriate for the Trial Attorney to assume a facilitator-mediator role when engaging in settlement efforts.

a. *Initial settlement efforts:*

The Trial Attorney contacts the parties by telephone to explore the parties' interest as well as settlement options. The Trial Attorney is prepared to set forth a bilateral settlement agreement, including one without a posting, if appropriate. In addition, it is appropriate to explore other possible settlements, including those suggested by the parties.

b. *Continued settlement efforts:*

If initial settlement efforts are unsuccessful, conference calls with the parties may encourage settlement.

c. *On-site settlement meeting:*

This option may be appropriate especially if the parties are willing and there is an expectation of success. The Trial Attorney considers whether settlement possibilities would be enhanced in a meeting with all parties or in separate meetings.

d. *Conference calls with the OALJ:*

This option may be productive. However, prior to seeking the assistance of the OALJ, the Trial Attorney advises the RA. The OALJ has its own formal settlement program. The Trial Attorney makes a motion for the Settlement Judge, if appropriate. In addition, the ALJs continue to engage in informal trilateral settlement conference calls.

Settlement efforts may also be made during the pre-hearing conference call. See Part 1, Chapter Q concerning conference calls.

- Q **Part 1, Chapter F** concerning Motions for Summary Judgment;
Part 1, Chapter H concerning Post-Complaint/Pre-Hearing Settlements;
Part 1, Chapter I concerning Relationship with Charging Party ;
Part 1, Chapter L concerning Motions;
Part 1, Chapter Q concerning Pre-hearing Conferences; and
Part 2, Chapter X concerning Violations not Plead in the Complaint.



**UNITED STATES OF AMERICA
BEFORE THE FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF ADMINISTRATIVE LAW JUDGES**

VA Eastern Idaho
Healthcare System
Boise, Idaho

Respondent

-AND-

Service Employees International Union,
AFL-CIO, Local 999-M

Charging Party

Case No. SF-CA-70586

MOTION TO AMEND
COMPLAINT

On May 3, 1997, a Complaint and Notice of Hearing issued in this matter. Counsel for the General Counsel moves to amend the complaint to include the following new paragraph:

- 7(a). On or about March 6, 1997, in the Respondent's cafeteria, Supervisor, John James told a group of bargaining unit employees that too many grievances were being filed and if the employees knew what was good for them they would start behaving like adults instead of children.

Respectfully submitted,

Counsel for the General Counsel

June 5, 1997

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