

ATTACHMENT 1M

INDEX TO TRIAL NOTEBOOK

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 13. Jencks Materials (Affidavits, etc.)
 14. Counsel for the General Counsel Subpoena Requests
 15. Law

Digests/copies of applicable statutory provisions, case law, and regulatory cites relevant to case divided by subject area applicability (e.g., case-in-chief, subpoena sanctions, procedure [timeliness, § 7116(d), sufficiency of complaint, relationship of charge to complaint, due process, in camera review], remedy)
 16. Evidentiary Assistance Materials
 - a. Objections Checklist
 - b. Past Recollection Recorded Outline
 - c. Past Recollection Refreshed Checklist
 - d. Hostile witness outline/FRCP 611 (c)

17. Closings

- a. Closing Argument Outline
- b. Blank pages for notes during trial
- c. Blank pages for notes on Respondent's closing argument

CHRONOLOGICAL TRIAL PREPARATION CHECKLIST

CHECK AS DONE

**STAGE I: INITIAL ACTIONS UPON TRIAL ASSIGNMENT
(60-30 DAYS BEFORE THE HEARING)**

- _____ If a "trial team" is assigned to the litigation, work out trial assignments (60 days before the hearing)
- _____ Review FIR, Agenda Minute, Evidence
- _____ Discuss case, as necessary, with investigator, Trial Specialist and RD/RA/DRD (this is an on-going factor)
- _____ Review Complaint/MUI (e.g.)
 - ___ Theory of violation
 - ___ Timeliness of underlying charge
 - ___ Correctly identified parties (correct caption)
 - ___ Relationship of charge to complaint
 - ___ Relationship of amended charge(s) to complaint
 - ___ Legal sufficiency of complaint
 - ___ Correct date/time of hearing
 - ___ Location for hearing has been procured (and is still available)
 - ___ Reporting service has been contacted
 - ___ Is amendment required (60-30 days before hearing)
 - ___ Before answer filed by RD now
 - ___ After answer, by motion to ALJ
 - ___ Remedy to be sought/evidence
- _____ Review Answer (in relation to Complaint) (60-30 days before the hearing)
 - ___ Itemize denials
 - ___ Itemize admissions (actual or constructive)
 - ___ Itemize affirmative defenses
 - ___ Address procedural and substantive issues raised by Answer
 - ___ Does Respondent raise any Motions as part of the Answer? (if so, address)
 - ___ Is GC Motion for Summary Judgment possible
 - ___ Should Stipulation of Facts in lieu of hearing be pursued? (if so, begin now)

- _____ Review prior settlement attempts
- _____ Contact Respondent/CP for settlement attempt
- _____ Make Motion for Settlement Judge, if appropriate
- _____ Insure that addresses and telephone numbers are available for GC witnesses (especially those who might be subpoenaed)
- _____ Insure availability of all GC witnesses on trial date/Contact each witness and schedule pre-trial preparation meeting
- _____ Service of subpoenas
- _____ Make request for Travel Order issuance for GC witnesses, if necessary
- _____ Make travel and lodging reservations for witnesses, if necessary
- _____ Contact Respondent representative about release of GC witnesses for pre-trial
- _____ Begin TRIAL NOTEBOOK preparation

Develop "elements of proof" section

Develop response to affirmative defenses

Draft "theory of case" section

Prepare "Complaint/Answer" analysis

Analyze evidence and arguments on behalf of it
introduction

Prepare witnesses folder

(Statements/Exhibits)

Prepare exhibits folder

Prepare folder of Jencks materials

Prepare digest of applicable case law on trial issues
(e.g., § 7116(d), timeliness, complaint/charge
relationship, subpoena sanctions, remedy, any
other Motion issues)

Check on service of subpoenas (obtain green certified mail return receipt cards)

STAGE II: 30 DAYS BEFORE HEARING

_____ Motion for Pre-hearing Conference and Pre-hearing Order

STAGE III: 14 DAYS BEFORE HEARING

_____ Prepare for Pre-hearing Conference (default date for Pre-hearing Disclosure is 7 days before hearing)

STAGE IV: 1-2 WEEKS BEFORE TRIAL

_____ 7 days before hearing (default date for pre-hearing conference)

Continue TRIAL NOTEBOOK preparation:

Begin opening statement preparation

Begin direct examination preparation

Begin cross-examination preparation

Create document exchange file (§xxx)

Create witness list for exchange

Turn in TRIAL NOTEBOOK TO Regional Attorney (Regional option)

Discuss testimony with witnesses (by telephone if necessary)

If Charging Party will have an attorney or “active” representative at counsel table coordinate activities

STAGE V: WEEK OF TRIAL

Check out location/adequacy of hearing room

Prepare in person/on-site with all witnesses

Construct order of presentation list

Refine order of your witnesses

Refine exhibits list

Refine planned cross-examinations

Rehearse your opening statement

Refine basis for and arguments on behalf of the introduction of GC exhibits

Refine basis for and arguments on behalf of objecting to Respondent exhibits

Respondent contact

Exchange exhibits

Exchange witness lists

Obtain subpoenaed documents

Finalize any partial stipulations of fact

CASE SUMMARY

Case name:

Case number:

Courtroom address:

GC Assigned lawyer:

Charging Party:

Respondent:

Respondent Representative (name/phone/address):

Short summary of allegations in complaint:

Short summary of Respondent defenses:

Short summary of General Counsel's Theory of Case:

ORDER OF PRESENTATION CHECKLIST

Preliminary Matters

Motion to Amend (Scripted out Motion, if necessary)

Motion for Sequestration (Scripted, if necessary, including addressing issues of Respondent "Technical Advisor" and Charging Party representative/witness)

Respondent's compliance with subpoena(s) (Noting whether Respondent has complied, the adequacy of compliance, and restating any negative responses from Respondent about the existence of subpoenaed documents)

Motion for Sanctions and basis (if necessary)

Introduction of Formal Exhibits

Introduction of Joint Exhibits

Opening statement

Introduction of GC Evidence

Witness #1

Exhibit(s) __, __, __, __ to be introduced through witness

Witness #2

Exhibit(s) __, __, __, __ to be introduced through witness

CHRONOLOGY OF EVENTS IN CASE

Outline in chronological order the salient events in the case up to the filing of the charge(s)

WITNESS LIST - GENERAL COUNSEL

[Name, addresses, telephones, subpoenaed, and purpose in trial]

1.

WITNESS LIST - RESPONDENT

[Name, addresses, telephones, subpoenaed, and purpose in trial]

1.

PROOF LIST

Elements of violation:
(Statute §/Case Cite)

Sources of proof:
(Witness/Exhibit)

[Allegation: complaint paragraph]

1. () 1. ()

2. () 2. ()

[Allegation: complaint paragraph]

1. () 1. ()

2. () 2. ()

Affirmative defense elements:
(Case Cites)

Sources of proof:
(Witnesses/Exhibits)

[Allegation: complaint paragraph

]

- | | | | | | |
|----|---|---|----|---|---|
| 1. | (|) | 1. | (|) |
| 2. | (|) | 2. | (|) |

Elements of violation:
(Statute §/Case Cite)

Sources of proof:
(Witness/Exhibit)

[Allegation: complaint paragraph]

- | | | | |
|----|----|---|---|
| 1. | 1. | | |
| (|) | (|) |
| 2. | 2. | | |
| (|) | (|) |

[Allegation: complaint paragraph]

- | | |
|----|----|
| 1. | 1. |
| 2. | 2. |

Affirmative defense elements:
(Case Cites)

Sources of proof:
(Witnesses/Exhibits)

[Allegation: complaint paragraph__]

- | | | | | | |
|----|---|---|----|---|---|
| 1. | (|) | 1. | (|) |
| 2. | (|) | 2. | (|) |

**EXAMPLE
PROOF ANALYSIS CHECKLIST**

ELEMENT OF PROOF FOR § 7114(A)(2)(B) VIOLATION

Elements of Violation

1. **Examination** (para. XX of Complaint)

Source(s) of Proof:

- a. (Possible) Admission of Respondent in Answer para. XX
- b. Testimony of employee Q (the subject of the meeting) about what happened in the meeting
- c. (Possible) Proposed/Final disciplinary letter introduced through employee Q that refer to the meeting in question and what occurred

2. **of an employee in the bargaining unit** (para. XX of Complaint)

Source(s) of Proof:

- a. Article XX of CBA describing unit
- b. (Possible) Admission of Respondent in Answer para. XX
- c. Testimony of Union President about employee Q's inclusion in the unit
- d. Testimony of employee Q about inclusion in the bargaining unit

3. **by a representative of the agency** (para. XX of Complaint)

Source(s) of Proof:

- a. (Possible) Admission of Respondent in Answer para. XX
- b. Testimony of employee Q concerning how investigator identified him/herself (title/role/position)
- c. (Possible) Proposed/Final disciplinary letter introduced through employee Q that might identify that the investigator was acting as an agent for or on behalf of the Respondent
- d. (Possible) Statement taken from employee Q may be introduced through that employee showing the title/role/position of the investigator

4. **in connection with an investigation** (para. XX of Complaint)

Source(s) of Proof:

- a. Testimony of employee Q describing the meeting and what he/she was told during the meeting about its purpose as an investigation.
- b. (Possible) Proposed/Final disciplinary letter introduced through employee Q describing that it is based upon an investigation (which the meeting involved in this case was a part)
- c. (Possible) Admission of Respondent in Answer para. XX

5. **employee reasonably believed that the examination may result in disciplinary action** (para. XX of Complaint)

Source(s) of Proof:

- a. Testimony of employee Q about how he/she was called into the meeting, any prior experience in such meetings, what was said or done in the meeting to make the employee believe that discipline could result
- b. (Possible) Introduction of the statement taken from the employee, through employee Q, which in some agencies who use forms might say that the employee is a suspect of wrongdoing

6. **employee requested "union" representation** (para. XX of Complaint)

Source(s) of Proof:

- a. Testimony of employee Q that he/she asked for a union representative

b. Introduction of statement from employee Q that indicated he/she asked for a union representative

[If an element of the statutory proof has been interpreted or defined in a specific way by the Authority or a Court the revised element should be used and the citation to the Authority or Court used.]

[Affirmative defenses of Respondent would be listed in the same way as the elements above, but followed by the Sources of Proof to be used by Counsel for the General Counsel to rebut the affirmative defense.]

OBJECTIONS CHECKLIST

Objections to questions:

calls for irrelevant answer
calls for immaterial answer
witness is incompetent
violates best evidence rule
calls for a privileged communication
calls for a conclusion
calls for an opinion (by incompetent witness)
calls for a narrative answer
calls for a hearsay answer
leading / counsel is testifying
repetitive / asked and answered
beyond the scope (of direct, cross, redirect)
assumes facts not in evidence
confusing / misleading / ambiguous / vague / unintelligible
speculative
compound question / double question
argumentative
improper characterization
misstates evidence / misquotes witness
cumulative
improper impeachment
calls for testimony barred by pretrial ruling
calls for evidence already admitted by pretrial order/stipulation

Objections to answers:

irrelevant
immaterial
privileged
conclusion
opinion

hearsay / self-serving

narrative

improper characterization

violates parol evidence rule

violates best evidence rule

no question pending

unresponsive / volunteered

Objections to exhibits:

irrelevant

immaterial

no foundation

no authentication

contains hearsay / double hearsay

violates best evidence rule

prejudice outweighs probative value

contains inadmissible matter (insurance, etc.)

reading from exhibit not in evidence

reading from exhibit unfairly or out of context

Objections to opening statements:

arguing law

argumentative

mentions inadmissible evidence

mentions unprovable evidence

gives personal opinions

anticipates defendant's evidence

Objections to closing arguments:

misstates evidence

misstates law / misquotes instructions

uses impermissible per diem damages argument

gives personal opinions

appeals to jury's bias, prejudice, or pecuniary interests

personal attacks on parties or counsel

improper argument (golden rule, etc.)

argues facts not in evidence

uses exhibits not in evidence