

## ATTACHMENT 3F2

### Exceptions and Outline of a brief to the Authority specifically showing how Exceptions have been incorporated

#### EXCEPTIONS (separate document, see [3F1](#))

**NOTE: This is one example of how exceptions and a brief are organized. Here, the ultimate factual exceptions and legal exceptions are interrelated in the Argument. In another case, the factual exceptions may be intermediate facts, such as exceptions based on credibility, and thus should be set out separately before the Argument relating to the legal exceptions.**

1. To the ALJ's legal conclusion that [union representative] had no right under the Statute to keep confidential any statement he had made in his response to [employee's] proposed admonishment; nor did the employee have any right under the Statute to keep confidential any statement she had made in the response. ALJD at 9-10, lines 24-3.
2. To the ALJ's legal conclusion that any privilege that might have attached to [employee's] communications with [union representative's] were waived by the information disclosed in her signed response to the proposed admonishment. ALJD at 11 lines 15-18.
3. To the ALJ's factual conclusions that the [investigator] did not question [union representative] concerning statements [employee] had made to him in confidence, that there was no indication that [union representative] was subjected to coercive questioning, and that there was no attempt to compel [union representative] to produce any evidence. ALJD at 10, lines 16-18.
4. To the ALJ's legal conclusion, relying upon a defense not asserted at any time by the Respondent, that [employee] or [union] waived the confidentiality of their mutual communications about the proposed admonishment of the employee. ALJD at 11, lines 14-18.
5. To the ALJ's factual conclusion that the transcript shows no claim of privilege by [union representative] and that he asserted no privilege. ALJD at 10, lines 19-20.
6. To the ALJ's factual conclusions that [union representative's] disclosures to [investigator] were voluntary, that the questioning of [union representative] was proper, and that there was no attempt to compel [union representative] to disclose confidential information. ALJD at 10-11, lines 23-5.
7. To the ALJ's failure to make a legal finding that Respondent violated the section 7116(a)(1) of the Statute in the manner in which it sought to procure a settlement of [employee's] EEO complaint.
8. To the ALJ's legal conclusion that the Respondent did not commit the unfair labor practices as alleged in the complaint. ALJD at 11, lines 17-18.
9. To the ALJ's recommended Order dismissing the complaint. ALJD at 11, line 19-20.
10. To the ALJ's failure to issue an Order requiring the Respondent to take the following action: (1) issue the proposed Order and Notice to All Employees and order that Respondent be required to take the actions set forth in the proposed Order and Notice; (2) order Respondent to post the Notice at its facilities nationwide where employees represented by AFGE are located; (3) order that the Notice be signed by the Deputy Assistant Secretary for Resolution Management or other designated Agency official in charge of administering the Agency's EEO program nationwide; and (4) order Respondent to reproduce and submit copies of the attached Notice to the appropriate office for distribution to Respondent's EEO investigators. ALJD at 11.

#### BRIEF (separate document)

Table of Contents

Table of Authorities if more than 25 pages

- I. Statement of the Case
- II. Issues
- III. Statement of Facts

**IV. ARGUMENT**

**A. THE ALJ ERRED IN CONCLUDING THAT RESPONDENT DID NOT VIOLATE SECTION 7116(a)(1) OF THE STATUTE BY THE MANNER IN WHICH IT INVESTIGATED [EMPLOYEE'S] EEO COMPLAINT (Exceptions 1, 3)**

- 1. [Union representative] had a right under the Statute to keep confidential any statement that he had made to the employee while representing the employee in preparing the response to [employee's] proposed admonishment

ARGUMENT (1)

- 2. [Employee] had a right under the Statute to keep confidential any statement she had made to the [union representative] while he was representing her in preparing the response to [employee's] proposed admonishment.

ARGUMENT (1)

- 3. [Investigator] questioned [union representative] concerning statements [employee] made to him in confidence; there was an indication that the [union representative] was subjected to coercive questioning, and that there was an attempt to compel the [union representative] to produce evidence.

ARGUMENT (3)

**B. THE ALJ ERRED IN RELYING ON A DEFENSE NOT RAISED BY RESPONDENT (Exception 4)**

At no time did Respondent raise as a defense that either [employee] or [union representative] waived the confidentiality of the communications each made to the other during the course of [union representative] representation of [employee] in the written response to the proposed admonishment.

ARGUMENT

**C. THE ALJ ERRED IN CONCLUDING THAT [UNION REPRESENTATIVE] WAIVED THE CONFIDENTIALITY OF EMPLOYEE [NAME] STATEMENTS TO HIM (Exceptions 2, 5, 6)**

- 1. The transcript shows that [union representative] asserted the privilege of confidentiality in his representation of [employee] in preparing a response to the proposed admonishment of [employee].

ARGUMENT (5)

- 2. [Union representative's] disclosures to [investigator] concerning statements [employee] had made to him in confidence were not made voluntarily, nor was the questioning proper, and the investigator attempted to compel [union representative] to disclose confidential information.

ARGUMENT (6)

**D. THE ALJ ERRED IN FAILING TO ADDRESS THE ALLEGATION IN THE COMPLAINT THAT RESPONDENT VIOLATED SECTION 7116(a)(1) OF THE STATUTE BY ITS SETTLEMENT OFFER TO [EMPLOYEE] (Exception 7)**

Respondent violated section 7116(a)(1) of the Statute when it attempted to settle [employee's] EEO complaint and forestall continuation of the EEO investigation by having [union representative] waive his right to engage in protected activity.

ARGUMENT

**V. CONCLUSION (Exceptions 8, 9 and 10)**

ALJ erred in recommending dismissal of complaint. . . .