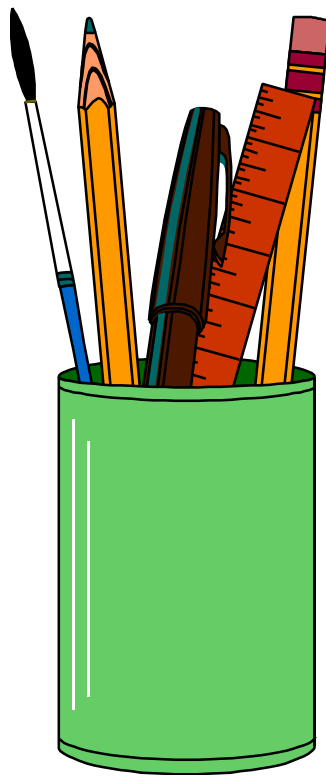


ADMINISTRATIVE RESEARCH AND WRITING



**Presented by: Joe Goldberg, Esq.
Asst. General Counsel
AFGE General Counsel's Office**

LAN #50130

I. LEGAL RESEARCH

A. Introduction: Legal research is a skill which must be practiced and improves with time. One of the keys to building a successful argument is knowing what the tools of the trade are and what they contain. The information provided below gives an introduction to these tools.

B. Where to find "the law"

1. Statutes -- laws passed by Congress and signed by the President

a. Example of statutory citation = 5 U.S.C. §7101

i. First number = title

ii. Middle portion, U.S.C. = the name of the "code" -- stands for United States Code, the official federal code

A. Other statutory codes = United States Code Annotated ("U.S.C.A") and United States Code Service ("U.S.C.S.")

iii. Last number = statutory section of the title; § = abbreviation for the word "section"

b. U.S. Code is divided into titles; each title is divided into chapters and subchapters. Note that most volumes of the code have "pocket-parts" or paperback supplemental volumes that contain updates to the law. Make sure that you are citing current law.

i. Scan the chapter listings to see which seems to apply to the situation

ii. Each chapter has an outline at the beginning -- scan that for applicable sections

2. Regulations -- binding rules, regulations, and guidance written by agencies to implement the law created by statutes. If a rule or regulation has not been subjected to notice and comment (as required by the Administrative Procedure Act [5 U.S.C. § 500, et seq.] it may not be a binding regulation.

a. Example of regulation citation: 5 C.F.R. 1201

- i. **First number = title -- the title number in regulations corresponds to the statutory title the regulations help implement**
 - ii. **C.F.R. = Code of Federal Regulations**
 - iii. **Last number = regulation section -- does not correspond to a specific statutory section**
- b. **The C.F.R. has an index which allows you to search for regulations by topics via top headings. Note: regulations are published in the Federal Register (FR) before they appear in the C.F.R..**

C. **Cases**

1. **Locating cases**

- a. **U.S.C.A. -- contains a listing of court cases, and sometimes MSPB cases, which have interpreted the relevant statutory section**
- b. **FLRA Reporter and Federal Labor Relations Reporter ("FLRR") -- decisions of the Federal Labor Relations Authority; FLRR also contains arbitration awards**
- c. **Merit Systems Protection Reporter ("MSPR") and Federal Merit Systems Reporter -- decisions of the MSPB**
- d. **Other sources for finding cases: computer services and treatises/resource books**

2. **Deciphering case citations**

- a. **Example: Hernandez v. Alexander, 671 F.2d 402, 407 (10th Cir. 1982)**

- i. **First name = party who brought the case; called "plaintiff", "petitioner", "appellant" or "charging party" depending on the forum. Note: this name may change on appeal or remand.**
- ii. **Second name = party against whom action was brought; called "defendant", "respondent", "appellee" or "charged party" depending on the forum. Note: on appeal the parties may switch position in the title depending upon which party is appealing the lower tribunals order.**
- iii. **First number in citation = volume number of reporter**
- iv. **Next, "F.2d" = name of the reporter -- reporter is a series of books containing cases decided by particular court or group of courts**
 - A. **F.2d means Federal Reporter, Second Series -- contains essentially all decisions of the federal courts of appeals**
 - B. **F.Supp. means Federal Supplement--contains a limited number of the decisions of the federal district courts.**
- v. **First word in parentheses = identifies the court deciding the case**
- vi. **Year the case was decided follows name of the court**

D. Helpful Resources -- books, databases, etc.

1. **Broida's guides to MSPB and FLRA practice**
2. **Online services:**
 - a. **Personnet -- specific to federal sector employment law**
 - b. **FEDS -- specific to federal sector employment law**
 - c. **LEXIS -- a legal research data base, contains MSPB decisions, does not contain FLRA decisions**
 - d. **WESTLAW--will shortly be merged with LEXIS**

E. Abbreviations for Some Common Reporters

1. Court decisions (in order of descending authority)

a. Supreme Court decisions:

- i. U.S.: United States Reports - Supreme Court cases (official reporter)**
- ii. S. Ct.: Supreme Court Reporter (unofficial but most often cited)**
- iii. L.Ed.2d: Lawyers' Edition, 2nd Edition- Supreme Court cases (seldom cited)**

b. United States Court(s) of Appeal:

- i. F.2d: Federal Reporter, Second Edition - decisions of federal courts of appeals until mid-1993.**
- ii. F.3d: Federal Reported, Third Edition - decisions of federal courts of appeals after mid-1993.**

c. United States District Court:

F.Supp.: Federal Supplement - selected decisions of federal district courts

2. Agency decisions

- a. FLRA - official cite to decisions of the FLRA; 35 FLRA 185 (1992)**
- b. FLRR: Federal Labor Relations Reporter - unofficial FLRA reporter; 4 FLRR 1-8088 (1989).**
- c. MSPR: Merits Systems Protection Reporter - official cite to decisions of the MSPB; 32 MSPR 678 (1994).**

- d. **FMSR: Federal Merit Systems Reporter - unofficial cite to decisions of the MSPB; 4 MSPR 3-4002 (1984).**
- 3. **Arbitration decisions**
 - a. **LAA: Labor Arbitration Awards - arbitration decisions**
 - b. **LAR: Labor Arbitration Reports - arbitration decisions**

II. LEGAL BRIEF WRITING

A. What are you there for?

B. What is the *prima facie* case?

C. Necessary steps before putting pen to paper:

1. Ascertain the facts:

- a. **Investigation-Anatomy of a Murder**
- b. **Discovery**
- c. **Hearing**

2. Do the research (before 1(b-c))

D. Preparation for conducting a hearing/writing the brief

- 1. **Develop the central theory of your case -- based upon the facts & research-be prepared to repeat this cycle before a hearing-be very reluctant to change theories after a hearing or during an appeal from the initial decision.**
 - a. **At this point issues present in the case should be well-defined in advocates mind**
 - b. **Know why your there, but keep an open mind/ear.**
- 2. **Outline the brief (this could be your opening statement at the hearing)**

- a. **Outline the facts with a coherent theme**
 - i. **Develop a story of what happened**
 - ii. **List relevant facts and support in record for each**
- b. **Outline then expand your legal theory of the case supporting your legal arguments with the facts developed at the hearing.**
 - i. **Write heading for each legal argument**
 - ii. **Under each heading -- list the statutes, contract provisions, regulations and cases supporting each argument-provide exact text in brief if practical.**

C. Writing and Organizing the Brief

- 1. **Know the forum you are writing for & comply with its requirements**
 - a. **MSPB & FLRA have very specific requirements for elements of briefs before those bodies**
 - i. **Know page limitations**
 - ii. **Know specific topics which must be addressed**
 - b. **Failure to comply with the forum's rules -- brief could be rejected as insufficient (standard FLRA exceptions to arbitration awards) or untimely (MSPB appeals of hearing officer initial decisions).**
- 2. **Basic format and features of a brief**
 - a. **Caption -- states forum case is in; names parties and case number**
 - b. **Statement of issue(s)**
 - i. **Correctly allocate the burden of proof from the beginning-force the Agency to walk up-hill.**

Compare:

-Did Charley punch-out Frank?

-Did the Agency prove, by a preponderance of the evidence, that Charley battered Frank, on the work-site, and without provocation?

- ii. State in a way that answer will be favorable**
- iii. Include key facts in the statement of the issue**

c. Statement of facts

- i. Develop a theme that highlights facts favorable to your case**
- ii. Do not omit unfavorable evidence -- you cannot ignore unfavorable evidence (your opponent won't)- distinguish, explain, mitigate, attack**
- iii. Cite to the record- SWARTZ 105/23, P/Ex. 2; Resp/Ex. A; Jt/Ex. 2**
- iv. Start at the beginning and be clear -- assume reader is unfamiliar with case**

d. Legal argument

- i. Give each argument a separate heading**
 - A. One or two sentence statement stating position on point being argued**
- ii. Strongest argument first**
 - A. Exception -- if there is a jurisdictional issue -- jurisdictional argument goes first**
- iii. Organization of argument**
 - A. State legal standards**
 - B. Tie standards to your facts -- show how law,**

coupled with your facts supports your case

C. Rebut agency's argument-careful (don't give the other side ideas)

iv. Preserve matters for appeal-if you don't preserve you may waive

e. Conclusion

i. Summarize argument -- short & sweet

ii. State the decision you want the forum to reach

iii. State explicitly the desired remedy or corrective action

f. Mechanics

i. file by the correct date

ii. file by the correct method

iii. file at the correct place

iv. file the requisite copies

v. include a certificate of service

BASIC BRIEF FORMAT

BEFORE ROGER HEALEY, ARBITRATOR

NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION,

Agency,

AND

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 0000,

Union.

Anthony Nelson
Grievant
FMCS No. 95-00000

UNION BRIEF

I. INTRODUCTION

II. FACTS

III. ARGUMENT-Outline of argument

A. First argument -- strongest argument

B. Second argument -- next strongest argument

IV. CONCLUSION

summarize arguments and state nature of relief wanted

Respectfully submitted,

(Name of representative),
Representative for (name of
grievant)
Representative's address and phone
number

Date: _____

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing (name of document) were sent this _____
day of (month), 199 , by (specify type of delivery), to the following:

(state names and addresses of all parties to be
served)

(signature of representative &
address)

HYPOTHETICAL #1

Anne has had problems getting along with Marie, a co-worker, for several months. One day several employees hear Anne shout "If you keep getting in my way you might fall over hard someday!" at Marie. The next day Marie accuses Anne of deliberately tripping her when she walked down the hall. Anne denies the charges. There are no witnesses to the event. After conducting an investigation, the agency gives Anne notice of a proposed one day suspension. The union files a grievance on Anne's behalf. The parties are unable to resolve the matter and it is referred to arbitration.

The arbitrator issues a decision in favor of the union. The award states in part:

The grievant and the alleged injured party testified to different versions of the events that transpired. After weighing all of the evidence that was presented at the hearing, I conclude that the grievant's version is more credible. I therefore sustain the grievance and order that the agency rescind the suspension.

The agency files timely exceptions to the arbitration award with the Federal Labor Relations Authority. In its exceptions, the agency argues that the arbitrator erred in concluding that Anne's version of the story was correct because the arbitrator failed to consider the legal significance of the statement that Anne made before the incident. Draft a brief responding to the agency's exceptions.

Relevant law

In the case of National Gallery of Art and AFGE Local 1831, 39 FLRA 226 (1991), the FLRA stated:

In our view, the Agency's contention constitutes nothing more than disagreement with the Arbitrator's findings of fact and his evaluation of the evidence and testimony and an attempt to relitigate the merits of the case before the Authority. As such, the contention provides no basis for finding the award deficient.

HYPOTHETICAL #2

Tim is the local president of XYZ agency. Relations between the local and the agency are very poor. The local currently has eighteen grievances that are scheduled to go to arbitration and nine cases before the MSPB in which employees are challenging discipline taken against them or their performance appraisals. The local has also filed twelve unfair labor practice charges against the agency in the past year.

Tim is a security guard. The agency claims that the frequent late arrival of law enforcement officers has made it difficult to provide continuous security services. The agency therefore has decided to dock law enforcement officers in hour increments when they arrive for work, instead of 15 minute intervals as had been previously done. Tim arrives twenty-two minutes late for work one morning because he waited a long time in line at the drug store while purchasing medication. Almost immediately after arriving, he receives a phone call from the director of personnel who informs him that he will be docked one hour of pay because of his late arrival. Tim tries to convince the personnel director that the agency should not do this. Tim becomes increasingly frustrated during the conversation. Finally he shouts "Drop dead!" into the phone and hangs up.

Three days later, Tim passes the personnel director in the hall. Tim looks at him and says "You ain't dropped dead yet." The personnel director does not respond. Later that day, Tim receives a notice of proposed suspension for 30 days for threatening a supervisor.