

## Government Accountability Office

## § 28.16

Counsel may request permission to intervene with regard to any issue in which the General Counsel finds a significant public interest with respect to the preservation of the merit system.

(g) If 180 days have elapsed since the filing of the charge, and the Office of General Counsel has not completed the investigation and issued a Right to Petition Letter, the charging party may bring his or her case directly to the Board by filing a petition in accordance with § 28.18. If a charging party exercises this option to file a petition with the Board without waiting for the completion of the investigation, the Office of General Counsel shall not represent the charging party in proceedings before the Board. The charging party may represent him- or herself or obtain other representation. The Office of General Counsel shall close the investigation of the charge upon being notified by the Clerk of the Board that the charging party has filed a petition with the Board under this paragraph (g).

(h) *Office of General Counsel settlement*: Where the General Counsel under paragraph (a) of this section transmits a settlement which has been agreed to by the parties, the settlement agreement shall be the final disposition of the case.

(i) *Confidentiality*: (1) It is the Office of General Counsel's policy to protect against the disclosure of documents obtained during the investigation, as a means of ensuring that Office's continuing ability to obtain all relevant information. However, if the Office of General Counsel files a petition with the Personnel Appeals Board on behalf of a charging party pursuant to this section, that Office may disclose the identity of witnesses and a synopsis of their expected testimony. Documents to be offered into evidence at the hearing may be disclosed as required by the prehearing disclosure requirements of § 28.56.

(2) Unless so ordered by a court of competent jurisdiction, no employee of the Personnel Appeals Board Office of General Counsel shall produce or disclose any information or records acquired as part of the performance of his/her official duties or because of his/her official status. Before producing or

disclosing such information or records pursuant to court order, an employee shall notify the General Counsel.

[58 FR 61992, Nov. 23, 1993, as amended at 65 FR 80280, Dec. 21, 2000; 68 FR 69299, Dec. 12, 2003]

### § 28.13 Special procedure for Reduction in Force.

In the event of a Reduction in Force (RIF) resulting in an individual's separation from employment, an aggrieved employee may choose to file a petition directly with the Personnel Appeals Board, without first filing the charge with the PAB's Office of General Counsel pursuant to § 28.11. Pursuant to § 28.98, individuals raising discrimination issues in connection with a RIF action need not file a complaint with GAO's Office of Opportunity and Inclusiveness before pursuing a RIF challenge alleging discrimination, either by filing directly with the PAB or by filing a charge with the Board's Office of General Counsel.

[68 FR 69299, Dec. 12, 2003]

### HEARING PROCEDURES FOR CASES BEFORE THE BOARD—GENERAL

### § 28.15 Scope and policy.

The rules in this subpart apply to actions brought by any person, except as otherwise provided in § 28.17 (concerning internal petitions of Board employees). These rules also apply to actions brought by the General Counsel, except as otherwise provided in subpart G (concerning corrective action, disciplinary and stay proceedings). It is the policy of the Board that these rules shall be applied in a manner which expedites the processing of each case, but with due regard to the rights of all parties.

[58 FR 61992, Nov. 23, 1993, as amended at 68 FR 69299, Dec. 12, 2003]

### § 28.16 Revocation, amendment or waiver of rules.

(a) The Board may revoke or amend these regulations by publishing proposed changes within GAO and providing for a comment period of not less than 30 days. Following the comment period, any changes to the rules are final once they are published in the

## § 28.17

## 4 CFR Ch. I (1–19 Edition)

FEDERAL REGISTER. Notice of publication in the FEDERAL REGISTER must be published throughout GAO.

(b) An administrative judge or the Board may waive a Board regulation in an individual case for good cause shown if application of the regulation is not required by statute.

### § 28.17 Internal petitions of Board employees.

(a) The provisions of the GAO Personnel Act, its implementing regulations, and the Board's procedural rules apply in the same manner to employees of the Board as they do to other GAO employees, with the following exceptions.

(1) The General Counsel serves at the pleasure of the Chair. The General Counsel may not bring any complaint or charge concerning his or her own employment except to allege that he or she has been the victim of prohibited discrimination or a prohibited personnel practice as defined in 31 U.S.C. 732 (b)(2) or (f)(1).

(2) When an employee of the Board believes that he or she has been denied his or her right to equal employment opportunity, the employee shall bring this matter to the attention of the Board's Executive Director or General Counsel. If the matter cannot be resolved within 10 days, the Executive Director shall notify the employee of his or her right to file an EEO complaint. The employee may consult with either the Board's Solicitor or General Counsel and seek advice with regard to procedural matters concerning the filing of an EEO charge. The employee shall have 20 days from service of this notice to file an EEO charge with the PAB Office of General Counsel. Upon receipt of an EEO charge, the General Counsel shall arrange with the Executive Director for processing in accordance with paragraph (b) of this section. If the EEO allegations involve challenge to a RIF-based separation, the employee may choose to expedite the procedures by filing a petition directly with the Board.

(3) When an employee of the Board wishes to raise any other issue that would be subject to the Board's jurisdiction, the employee shall file a charge with the General Counsel and

the General Counsel shall arrange with the Executive Director for processing in accordance with paragraph (b) of this section. If the challenged action is a RIF-based separation from employment, the employee may choose to expedite the procedures by filing a petition directly with the Board.

(b) The responsibilities and functions of the Board's General Counsel will be assumed by an attorney who is not a current or former employee of the Board or the GAO. The services of that attorney, who shall be knowledgeable in federal personnel matters, will be paid for by the Board. The attorney will be selected by an impartial body as described below.

(1) If agreed to by the Office of Special Counsel or the EEOC, as appropriate, that body will appoint and detail a person from among its attorneys to perform the functions of the General Counsel.

(2) If the Special Counsel or the EEOC does not agree to such a procedure, an appointment of an attorney will be sought from the Federal Mediation and Conciliation Service (FMCS).

(3) In any event, whoever is so appointed shall possess all of the powers and authority possessed by the General Counsel in employee appeal cases.

(c) The adjudication responsibilities and functions of the Board will be assumed by a person who is not a current or former employee of the Board or the GAO. The services of that person, who shall be knowledgeable in federal personnel matters, will be paid for by the Board. The person will be selected by an impartial body as described below.

(1) If agreed to by the MSPB or the EEOC, as appropriate, that body will appoint and detail one of its administrative law judges (ALJ) or administrative judges (AJ) to perform the Board's adjudicative functions.

(2) If neither the MSPB nor the EEOC agrees to such a procedure, an appointment of an arbitrator will be sought from the FMCS.

(3) In any event, whoever is so appointed shall possess all of the powers and authority possessed by the Board in employee cases. The decision of the administrative law judge, administrative judge or arbitrator shall be a final decision of the Board. The procedure