



A Beginner's Guide to Representing Federal Employees

Advice for Idaho Attorneys

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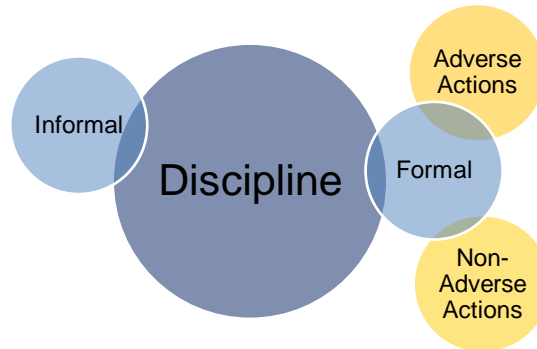
Opportunities to Represent a Federal Employee

- Discipline
- The Merit Systems Protection Board
- EEOC Complaints
- Remedies and Settlements
- Q & A

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Types of Discipline



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Discipline

- **Informal Discipline**
 - Defined by Agency policy only
 - Examples: Notice of counseling or written warning
 - Is not placed in the Official Personnel File (OPF)
- **Formal Discipline**
 - **Non-Adverse Actions**
 - Written Reprimand
 - » Remains in the OPF for two years
 - » No legal right to reply
 - Suspension (14 days or less) – 5 C.F.R. § 7502
 - » Right to notice and an opportunity to respond
 - » Right to representation
 - » Right to a copy of all documents relied upon
 - » Right to a decision in writing
 - » No appeal rights

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Discipline – Adverse Actions

Adverse Actions – 5 C.F.R. § 7512

- Examples:
 - Suspension (more than 14 days)
 - Reduction in grade or pay
 - Removal (a.k.a. termination)

Employee rights

- At least 30 days' advance written notice.
- A copy of documents or materials relied upon
- Representation.
- At least 7 days to answer orally and in writing.
- A written decision.
- Merit System Protection Board appeal rights.

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Charges and Penalties

- The Proposal and Decision must contain:
 - Charges and Specifications
 - Agency must prove every word of the charge label.
 - Some charges require proof of intent.
 - Douglas Factors
 - *Douglas v. V.A.*, 5 MSPR 280 (1981).
 - 12-factor written analysis of the proposed penalty.
- Recommend *MSPB Charges and Penalties* and a subscription to *CyberFeds* to learn these nuances.

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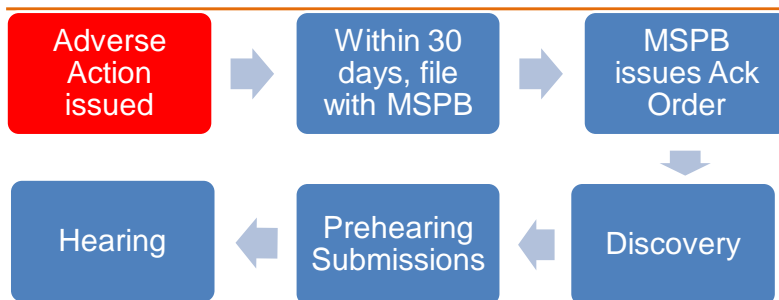
Merit Systems Protection Board

- It's true, the Board stopped functioning for five years.
- The MSPB is a tribunal of limited jurisdiction.
 - Original Jurisdiction (5 C.F.R. § 1201.2)
 - Appellate Jurisdiction (5 C.F.R. § 1201.3)
 - Adverse actions under Chapter 75
 - Performance-based actions under Chapter 43
 - Appeals under the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans Employment Opportunities Act (VEOA).

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MSPB Procedures



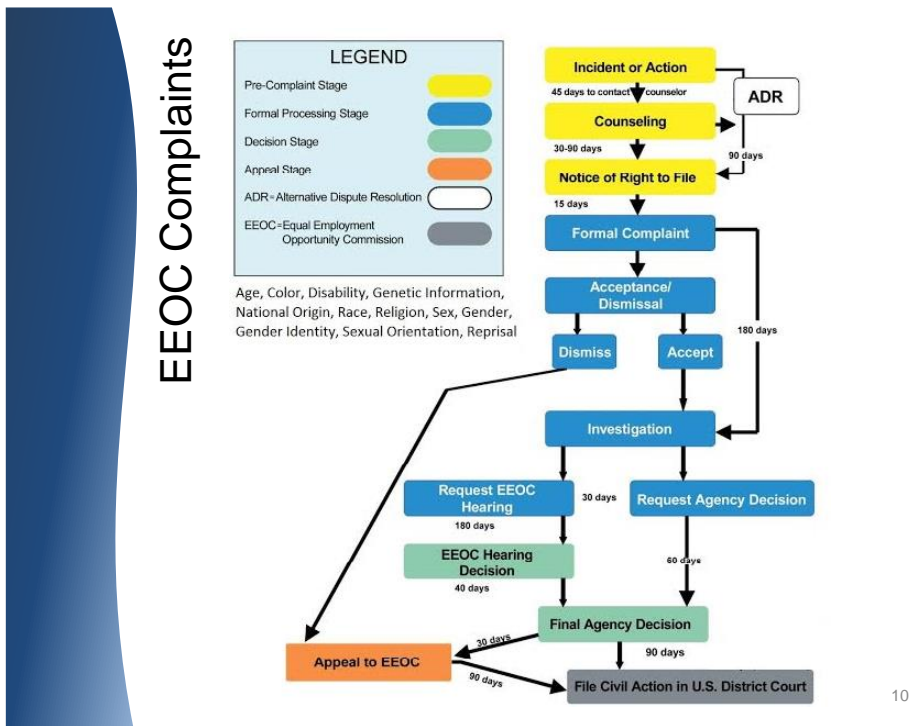
- Right to a hearing, if timely elected on appeal form
- Cases move very fast – 120 days from start to finish
- No dispositive motions

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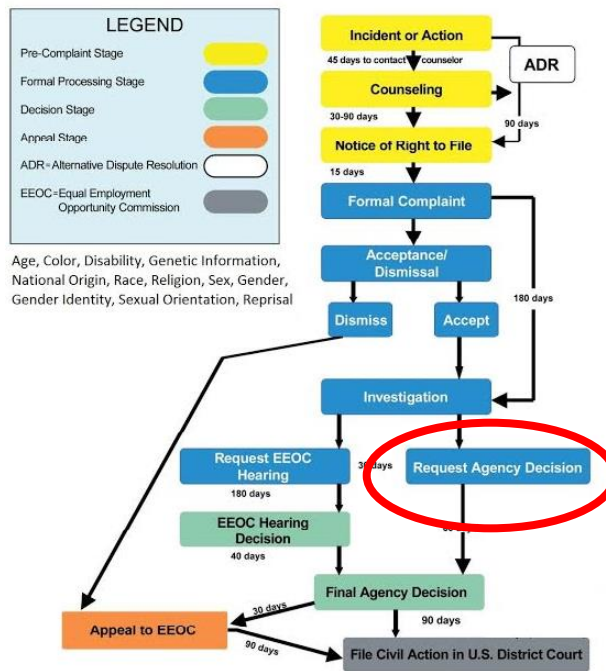
EEOC Administrative Hearings

- If Complainant requests a hearing, Agency counsel (me) will be assigned.
- Typical EEOC Hearing Process:
 - Acknowledgement Order
 - Preliminary Case Information
 - Initial Conference
 - Discovery Order
 - Dispositive motions
 - Hearing (but no subpoenas)
- Removal to federal court
- Appeals to the EEOC's Office of Federal Operations

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EEOC Complaints



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Final Agency Decisions

- Issued by an Agency internal independent body.
- Written decision based on the Report of Investigation.
 - Supplemental investigations can be ordered.
 - Can order corrective action.
- FADs can be requested at **any time**.
- An adverse FAD can be appealed to either OFO or federal district court.

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Remedies and Settlement

- EEOC (see *EEOC Management Directive 110*)
 - Reinstatement
 - Back Pay and Front Pay
 - Compensatory Damages (\$300,000 cap)
 - Attorney Fees
- MSPB
 - *Status Quo Ante*
 - Compensatory Damages? Only for mixed appeals.
- Settlement: many other creative options

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Q&A

