



THE EEOC'S GUIDE TO APPEAL BRIEF WRITING
CHAPTER 6
(entire chapter)

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*"Guide to Appeal Brief Writing for Unrepresented Complainants
before the EEOC Office of Federal Operations"*

Chapter 6: What To Focus on in Your Brief

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EEOC HANDBOOK
GUIDE TO APPEAL BRIEF WRITING

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CHAPTER: 6 WHAT TO FOCUS ON IN YOUR BRIEF

SECTIONS: 6.0 through 6.4



6.0 | BRIEFS INVOLVING APPEALS FROM PROCEDURAL DISMISSALS

If the Agency or AJ dismissed a complaint on “procedural” grounds (such as untimely EEO Counselor contact, failure to state a claim, etc.), rather than making a determination as to whether or not discrimination occurred (on the “merits”), you should not argue the merits of the complaint in your brief. Rather, you should focus on what you believe is improper about the Agency’s procedural dismissal.

For example, if the agency dismissed your complaint on the grounds that the formal complaint was not filed within 15 days of receipt of the Notice of Right to File, you should clearly state in your brief why your formal complaint should be considered timely by clearly identifying significant dates, such as receipt of the Notice of Right to File and the manner and date that the formal complaint was filed. If you have proof of those dates (such as a certified-mail receipt or a copy of an e-mail), attach a copy to your brief and “cite” or reference it in the brief.

Please refer to Attachment I for a sample brief involving an appeal from a procedural dismissal.

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6.1 | BRIEFS INVOLVING APPEALS FROM FINAL AGENCY DECISIONS/FINAL ORDER ON THE MERITS

If you are appealing a final agency decision or final order on the merits of the complaint that found that discrimination did not occur, your brief should focus on why you believe the agency's/Administrative Judge 's (AJ's) finding is incorrect. For example, if you believe that the agency/AJ overlooked or misinterpreted a significant fact, the brief should discuss, in detail, what specific facts were overlooked or misinterpreted and should reference specific documents or testimony in the record that support your position. If you believe the agency/AJ misapplied the law, the brief should set forth in detail the agency's/ AJ's error. If the decision involved an AJ issuing a merits decision without a hearing (summary judgment), the brief should set forth why the matter should be sent back for a hearing, such as if the AJ needs to make specific credibility determinations or if the record is not adequately developed.

Please refer to Attachment II for a sample brief involving an appeal from a final agency decision on the "merits."

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6.2 | BRIEF IN OPPOSITION TO APPEAL

If an AJ reached a decision that was partly or entirely in your favor, and the agency disagrees with that decision, the agency must file an appeal with the EEOC. The agency will then submit a brief in support of its appeal, and you will have the opportunity to respond by submitting an opposition brief. Your brief should address each of the arguments raised by the agency in its brief.

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6.3 | BRIEFS INVOLVING APPEALS FROM FINAL DETERMINATIONS FINDING NO BREACH OF SETTLEMENT AGREEMENTS OR AGENCY'S FAILURE TO IMPLEMENT ITS OWN DECISION

If you are appealing a final determination finding no breach of an EEO Settlement Agreement or an agency's own decision finding discrimination, your brief should clearly identify what specific provisions of the settlement agreement or agency decision you believe to have been breached and why you believe the agency's reasoning finding no breach is incorrect; or what remedy the agency promised in its decision that it has not provided.

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6.4 | BRIEFS IN SUPPORT OF REQUESTS FOR RECONSIDERATION

If you are submitting a brief in support of a request for reconsideration, your brief should focus on: a) that OFO's initial decision involved a clearly erroneous interpretation of material fact or law; or b) OFO's initial decision will have a substantial impact on the policies, practices, or operations of the agency.

A fact or point of law is "material" if changing it would affect the outcome of the case. You should clearly specify what material facts/law were misinterpreted in OFO's initial decision and reference documents and/or testimony in support of your argument. A request for reconsideration is not a second chance at an appeal and you must identify and address what you believe are errors in the original appellate decision upon which reconsideration is sought.

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APPENDIX



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