



THE EEOC'S GUIDE TO APPEAL BRIEF WRITING
CHAPTER 10
(entire chapter)

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

Chapter 10: Glossary of Terms

E: TextBookDiscrimination@gmail.com
W: www.TextBookDiscrimination.com

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EEOC HANDBOOK
GUIDE TO APPEAL BRIEF WRITING

AUTHOR: EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

CHAPTER: 10 GLOSSARY OF TERMS

SECTIONS: 10



10.0 | GLOSSARY OF TERMS

Administrative Judge	An EEOC employee who independently decides discrimination complaints of federal employees. An administrative judge will issue a variety of orders designed to ensure fair and expeditious processing of a complainant's case, will analyze the applicable law and the evidence and issue a decision.
Affidavit	A written statement that is signed under the penalty of perjury and sworn to before a person who is officially permitted by law to administer an oath.
Affirm	When the EEOC Office of Federal Operations says that a previous decision was right.
AJ	An acronym for an EEOC Administrative Judge.
Appeal	A review by the EEOC Office of Federal Operations of what happened in a previous decision to determine if any mistakes happened and if the mistakes are significant enough to reverse or remand the decision.
Appellate	Having to do with appeals.



Argument	Section of the brief that explains your side of the case. A brief in support of the appeal uses this section to show how the previous decision made a mistake in deciding the case. A brief in opposition to the appeal uses this section to respond to the opposing party's arguments, and show why the previous decision is correct.
Attorney's Fees	If the complainant wins the appeal and is represented by an attorney, the EEOC Office of Federal Operations may order the losing federal agency to pay all or part of the attorney's fees.
Brief	A written statement that each side may give to the EEOC Office of Federal Operations that explains why the EEOC should decide that they are right. A brief presents a party's arguments about the issues on appeal and cites to legal authorities (such as statutes, regulations, or case law) to support their positions. A brief in support of the appeal argues why the previous decision was an error or mistake; a brief in opposition to the appeal argues why the previous decision was correct.
Case law	Legal propositions that are based on administrative appellate and judicial decisions rather than on statutes. You can read published administrative appellate decisions at https://www.eeoc.gov/federal-sector/appellate-decisions . Particularly noteworthy administrative appellate decisions are listed at https://www.eeoc.gov/federal-sector/selected-noteworthy-federal-sector-appellate-decisions .
Citation	This term can have two meanings. First, it is a reference to a legal authority, such as a case that has already been decided by EEOC, a court, a statute, or the United States Constitution. Second, it is a reference to the record or the hearing transcript in the case.



Civil Action	A noncriminal lawsuit that begins with a complaint. The plaintiff is the party filing the complaint, and the defendant is the party defending against the complaint's allegations. The complaint describes the plaintiff's damages or injury, explains how the defendant caused the harm, shows that the court has jurisdiction, and asks the court to order relief.
Complaint File	An electronic document assembled by an agency that includes all various documents and information acquired during fact-finding. The complaint file should include, when applicable: • the EEO Counselor's report and all documents generated in the informal process, including the notice of right to file a complaint • the formal EEO complaint and documents submitted by the complainant. • the agency's notice of claims to be investigated; copies of any other documents bearing on delineation of the claims to be investigated; documents pertaining to the partial dismissal of claim(s) and/or the notice of late investigation • documented attempts at resolution, including any settlement agreement reached on any aspect of the complaint; however, documentation should not include the substance of such attempts. • any documentation of appellate activity and any decisions affecting the processing of the complaint if any • the summary of investigation/summary analysis of the facts. The summary should cite to exhibits and evidence and be signed and dated by the investigator. • the investigative evidence and documents. • all pre-hearing submissions, including those relevant to summary judgment, and all discovery documentation, and motions, orders, exhibits, and transcripts.



	• all submissions from an administrative hearing, including motions, exhibits, and transcripts. • the decision(s) of the Commission's Administrative Judge. • the Final Agency Action and any documentation related to service on the parties. • any miscellaneous material.
Compliance	An administrative process to make sure a federal agency complies with the orders of EEOC's federal sector administrative appellate decisions.
De novo	A standard of review used by the EEOC Office of Federal Operations when reviewing decisions or actions issued by other federal agencies. The EEOC Office of Federal Operations will consider the issues by taking a fresh look at the case and review the evidentiary documents, statements, and testimony of record, including any timely and relevant submissions of the parties. The Commission will issue its decision based on its own assessment of the record and its interpretation of the law.
Decision	A judgment or order that settles a dispute and decides an issue.
Deposition	An out-of-court statement given under oath by any person involved in the case. Commonly used during the discovery process in preparation for a hearing. Depositions usually consist of an oral examination, followed by cross-examination by the opposing side.



Discovery	A process of exchanging information between the parties about the witnesses and evidence they will present at a hearing. One of the most common methods of discovery is to take depositions. A deposition is an out-of-court statement given under oath by any person involved in the case. It is to be used at a hearing or in preparation for a hearing.
EEO	An acronym that stands for Equal Employment Opportunity
Evidence	Any proof legally presented during an investigation or an administrative hearing through witnesses, records, and exhibits.
Exhibit	A paper, document, or other physical object received by an EEOC administrative judge as evidence during an administrative hearing. Or it can mean a document or an object shown and identified in an investigation or administrative hearing as evidence in a case.
FAD	An acronym for Final Agency Decision.
File	When a person officially gives a paper to a federal agency or the EEOC Office of Federal Operations and that paper becomes part of the record of a case.



Final Action	An agency final action involves agency issuance of a final order to the complainant. The final order informs the complainant whether the agency will fully implement the decision of an EEOC Administrative Judge and contains notice of the complainant's right to appeal to the Commission. The term "fully implement" means that the agency adopts without modification the decision of an EEOC Administrative Judge. If the agency's final order advises the complainant that the agency will not fully implement the decision of the Administrative Judge, the agency must file an appeal of the decision with the Commission simultaneously with issuing the final order to the complainant. In this way, an agency will take final action on a complaint referred to an Administrative Judge by issuing a final order, but it will not be provided with the opportunity of introducing new evidence or writing a new decision in the case.
Final Agency Decision	A decision issued by an agency that either (1) dismisses an EEO complaint on procedural grounds, or (2) examines the evidence after completing an investigation and determines whether complainant was subjected to discrimination.
Final Judgment	Final decision by an EEOC Administrative Judge. This judgment resolves all of the issues that were presented in the administrative hearing.
Final Order	The final order informs the complainant whether an agency will fully implement the decision of an EEOC Administrative Judge and contains notice of the complainant's right to appeal to the Commission. The term "fully implement" means that the agency adopts without modification the decision of an EEOC Administrative Judge. If the agency's final order advises the complainant that the agency will not fully implement the decision of the Administrative Judge, the agency must



	file an appeal of the decision with the Commission simultaneously with issuing the final order to the complainant.
Finding	When a factfinder, such as a federal agency, an administrative judge, or the EEOC Office of Federal Operations, says something is a fact.
Formal Complaint	A formal discrimination complaint that is filed with an agency's EEO office. The formal complaint must be a signed statement from the complainant or the complainant's attorney, containing the complainant's (or representative's) telephone number and address, and must be sufficiently precise to identify the complainant and the agency, and describe generally the action or practice which forms the basis of the complaint.
Hearing	An administrative proceeding with an EEOC Administrative Judge and opposing sides present. The purpose of a hearing is to make a full and accurate record of the events a complainant raised in the EEO complaint. The EEOC Administrative Judge will then use this record to decide whether discrimination occurred.
IF	An acronym for Investigative File.
Interrogatory	A list of questions one party sends to another as part of the discovery process. The recipient must answer the questions under oath.



Investigation	An investigation of a formal complaint of discrimination is an official inquiry into claims raised in an EEO complaint. EEO investigations may include a variety of fact-finding methods such as interviews, a fact-finding conference, requests for information, interrogatories, and/or affidavits.
Investigative File	A factual record assembled by an EEO investigator that will allow a fact finder to determine whether discrimination occurred. This record is sometimes also called a "Report of Investigation." The Investigative File should include: • a summary of the investigation, • informal counseling documents, • the formal EEO complaint, • all statements, affidavits, and declarations from the investigation, • all documents submitted by the parties.
Lawyer	A person licensed to practice law. Every state has a Bar Association, which can provide a lot of useful information about the lawyers in its state. Additionally, the National Employment Lawyers Association may have members who can help complainants.
Motion	The document a party files to ask an EEOC Administrative Judge to do something or to permit one of the parties to do something. Typically, one party files a motion. Then the opposing party files an opposition. After reviewing both, the EEOC administrative judge will make a decision on the motion.
Notice of Appeal	A document filed in the EEOC Office of Federal Operations that states you are appealing the previous decision. This document starts the appeal. Complainants should use EEOC Form 573, Notice of Appeal/Petition, available at https://www.eeoc.gov/federal-sector/management-directive/notice-appealpetition-complainant . Federal agencies must attach copies of EEOC Form 573 to all final actions and dismissals of equal employment complaints.



Oath	All people must swear or affirm to tell the truth if they want their statement or testimony to be considered as evidence. All written statements must be submitted as affidavits to be considered as evidence.
Order	A written or oral decision by an EEOC administrative judge, federal agency, or EEOC Office of Federal Operations that resolves a matter and/or directs the parties to do something.
Party	The technical legal word for the people who are part of a legal case and have a right to ask the EEOC Office of Federal Operations to make a decision on a dispute.
Precedent	A published administrative appellate or court decision in an earlier case with facts and legal issues similar to the dispute currently before the EEOC Office of Federal Operations. The EEOC Office of Federal Operations will generally "follow precedent," meaning that it uses the principles established in earlier cases to decide new cases dealing with similar facts and legal issues. The EEOC Office of Federal Operations will overlook precedent if a party can show that the earlier case was decided incorrectly or that it differed in some significant way from the current case.
Preponderance of evidence	A type of evidentiary standard. Under this standard, a complainant satisfies the burden of proof by offering evidence that demonstrates their claim of employment discrimination has a greater than 50% chance to be true. In other words, if a complainant can convince a fact finder that discrimination more likely than not occurred, the complainant meets his or her burden of proof.
Prevailing party	The party that wins the case.



Pro se	Latin for “for oneself, on one’s own behalf.” A pro se complainant is a person who does not have an attorney and is representing himself or herself in a case.
Public Portal	The Public Portal is EEOC’s secure, web-based application that allows individuals with discrimination complaints against the federal government to submit and receive documents supporting their appeal.
Record	All of the paperwork filed in the EEO process, which the EEOC Office of Federal Operations will review in the appeal. This usually includes the report of investigation, exhibits, the hearing transcript, motions, orders, and the final decision or action from the case.
Remand	When the EEOC Office of Federal Operations sends an EEO complaint back to a federal agency or EEOC administrative judge for further proceedings.
Report of Investigation	A factual record assembled by an EEO investigator that will allow a fact finder to determine whether discrimination occurred. This record is sometimes also called an “Investigative File.” The Report of Investigation should include: • a summary of the investigation, • informal counseling documents, • the formal EEO complaint, • all statements, affidavits, and declarations from the investigation, • all documents submitted by the parties.
Reverse	When the EEOC Office of Federal Operations sets aside the previous decision. A reversal may be accompanied by a remand to the federal agency or an EEOC administrative judge for further proceedings.



ROI	An acronym for Report of Investigation.
Standard of review	The standard of review is how much weight (or deference) the EEOC Office of Federal Operations gives to the previous decision when reviewing that decision on appeal. There are different standards of review for different kinds of decisions.
Statute	A law passed by the U.S. Congress.
Substantial evidence	A standard of review in which the Commission will give deference to an administrative judge's post-hearing factual findings based on evidence in the record. For example, an administrative judge finds a management witness' testimony credible based on the demeanor or tone of voice during the hearing. The Commission will accept the administrative judge's credibility determination, unless documents or other objective evidence so contradicts the testimony of the witness or the testimony of the witness otherwise so lacks in credibility that a reasonable fact finder would not credit it.
Summary judgment	Summary judgment (also known as a decision without a hearing) is a judgment entered by an EEOC Administrative Judge for one party and against another party without a full hearing. Summary judgment indicates there is sufficient evidence to declare one party the clear winner. In other words, an EEOC Administrative Judge has reviewed the undisputed facts of the case, along with any acceptable evidence provided by each party to



	support their argument, and sees no point in having an administrative hearing. The EEOC Administrative Judge will then rule on the case based on the facts and evidence.
Testimony	The words spoken during an administrative hearing by witnesses that is evidence.
Transcript	Written version of everything that was said by the parties, the EEOC administrative judge, and any witnesses at the administrative hearing.
U.S. Supreme Court	Located in Washington, D.C., it is the highest court in the United States; the U.S. Supreme Court has final appellate jurisdiction and has jurisdiction over all other courts in the nation.
Witness	A person called by a party to speak under oath about what he or she knows or has observed that is relevant to the case. There are no witnesses used in appeals.

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APPENDIX



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CONTACT INFORMATION

E: TextBookDiscrimination@gmail.com

W: www.TextBookDiscrimination.com

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