

**OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management**

MEMORANDUM ICG 18-06

July 30, 2018

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Beth Tursell, Associate to the General Counsel /s/

SUBJECT: Changes to Case Processing Part 1

On January 29, 2018, the Division of Operations-Management circulated a Case Processing Memo for comment. This memo contained 59 numbered items relating to ways case processing may be changed to improve our efficiency and effectiveness. The content of the memo was developed almost entirely from suggestions received from all levels of the Agency in both the Field and Headquarters, including managers, supervisors, field examiners and attorneys. As stated when circulating the memo, it was a draft summary of suggestions, many of which need further review or refinement.

The substantial input concerning the memo has been reviewed. This input includes comments submitted by the RD Committee, Regional Attorneys Guild, Assistant Regional Directors Association and Field Supervisors Association, the Union representing Field employees and individuals from all levels in the Field offices and Headquarters units. Based on this input, the following changes will be implemented immediately.¹

Decision-Writing Centralization

To streamline the decision-writing process and make it more efficient, we will establish a group of employees whose primary function will be to draft pre-election R-Case decisions arising within a particular District. The goal of centralizing decision-writing is to have a cadre of skilled decision-writers who possess the time, resources, and specialized skills to efficiently draft decisions, the quality of which will be more consistent across Regional and District lines.

Although some have expressed concern that centralization could result in a loss of experience and expertise within an individual Region and deprive Regions of an important training tool, current R Case trends suggest otherwise. In FY 2017, the Agency issued a total of 157 pre-election decisions. As reflected in the following chart, the number of decisions was not evenly distributed among the Districts:

¹ Please note that this is not intended to be a final report with respect to the initial memo. Rather, it focuses on a limited number of the 59 items, with the expectation that some other items in the January 29 memo will be addressed in one of more memos soon to follow.

District 1	District 2	District 3	District 4
35	39	22	61

Moreover, within Districts, the number of decisions was not evenly distributed among the Regions:

Regions 1, 34	Region 2	Region 3	Regions 10, 11, 26	Region 22	Region 29
5	8	6	5	5	6

Region 4	Region 5	Region 6	Region 8	Region 9	Regions 12, 24	Regions 15, 26
9	17	2	2	1	6	2

Region 7	Region 13	Regions 14, 17	Region 16	Regions 18, 30	Regions 25, 33
3	6	2	3	2	6

Regions 19, 36	Regions 20, 37	Region 21	Region 27	Region 28	Region 31	Region 32
13	7	15	1	12	5	8

As these tables reflect, four Regions (5, 19, 21, and 28) wrote 12 or more decisions during FY 2017 (accounting for approximately 36% of the total decisions written nationwide), while nine Regions (6, 7, 8, 9, 14, 15, 16, 18, and 27) wrote 3 or fewer (accounting for approximately 11% of the total decisions nationwide). These figures suggest that a few Regions are carrying a disparate amount of the decision-writing caseload and that, in a significant number of Regions, the opportunity to develop any significant decision-writing expertise is extremely limited. Thus, to the extent there are concerns that centralization would result in a loss of experience and expertise within an individual Region, it appears that under the current system many of these agents do not have a significant opportunity to draft RD decisions. In light of this disparity, additional training in bargaining unit issues would be a more effective way to develop "well-rounded" agents.

Moreover, under the current system, there are wide disparities with respect to the amount of time it takes to draft RD decisions:

Median Days	≤15	16-25	26-35	36-45	46-55	≤56
Number of Regions	2	11	4	5	2	2

The lowest Region median is 14, and the highest median is 68. There are many factors that influence how long it takes to write a decision. Some of these factors, e.g., length of the record and complexity of the issues, are beyond our control. However, other

factors, e.g., workload of the decision-writer, experience of the decision-writer, and number of decisions that arise at any one given time in a Region, can be controlled, and centralization does just that. Under a centralized approach, decision-writers can expect to be called upon to draft decisions on short notice, and they will give that work the highest priority. They will not be expected to perform other significant work, such as complicated trials or lengthy investigations, which could otherwise interfere with the writing assignment. Moreover, because these employees will possess significant experience drafting decisions, it can be expected that they will be able to do so faster than employees with limited experience. This will lead to lower and more consistent medians across Districts and Regions.

Of course, the most important consideration remains the quality of the decisions the Agency produces. Centralizing decision-writing should enhance quality and consistency by ensuring that decisions are written by employees who regularly do this work and have detailed knowledge of the types of issues that typically arise in Agency pre-election decisions. This approach will also result in more timely decisions.

Finally, while we expect these decision-writers to perform the bulk of R-case decision writing work in a District, as discussed below, Regions may decide to keep particular matters in-house.

Number of Decision-Writers in Each District: Based on the number of decisions in each District as noted in the previous section, and assuming that (1) a minimum reasonable workload for a decision-writer is two decisions per month and (2) the Regions will choose to retain some decision-writing assignments in house, initially Districts 1 and 2 will each have 2 decision-writers, District 3 will have 1 decision-writer, and District 4 will have 3 decision-writers.

Process for Selecting Decision-Writers: After any required consultation/bargaining has been fulfilled, the Division of Operations will solicit volunteers from field professionals to serve as decision-writers for an initial term of one year.² The solicitation will be via e-mail and describe the duties and expectations of the position, including the expectation that decision-writers will be expected to draft pre-election R-Case decisions on short notice for several Regions under the direct supervision of supervisors and managers in the Region where the cases arise. The solicitation will advise candidates that, during the time period they serve in this position, their C-case investigation/trial workload will be adjusted to accommodate their decision-writing duties.

A committee consisting of the District AGC and two field managers from the District (if there is no agreement as to who these two field managers should be, they will be selected from the two Regional offices with the greatest number of RD decisions in FY 2017) will review the applications and, after consulting with the RD, select the District decision-writer(s). In making the selection, the committee will consider a candidate's

² The Agency will solicit volunteers each year. By doing so, other employees wishing to do so will have a meaningful chance to develop decision-writing skills through repetition, as opposed to the current system, in which few employees have the opportunity to become immersed in decision-writing.

previous decision-writing experience, writing skills, and ability to work quickly and independently. If there are an insufficient number of qualified candidates in a particular District, candidates from other Districts may be considered.

Process for Writing Decisions: Working together, the ACG and Regional Directors in each District will designate one manager to coordinate the assignment of decision-writing. Initially, the manager will work with the AGC/Deputy in the District to establish procedures for the District. It is expected that once the system is in place, the manager will take over full responsibility for assignment of decision-writing and the AGC/Deputy will provide assistance as needed.

As soon as a Region identifies the need for a pre-election decision, it will notify its AGC/Deputy and the decision-writing manager at the earliest opportunity. A Region may decide that it does not wish to have a particular matter assigned to the District decision-writer and, if so, consults its AGC/Deputy and the decision-writing manager. A Region may keep a decision in house for a variety of reasons, e.g. the Region has particular experience with the parties or issues, the writing assignment is part of a PIP, etc. If Region, AGC/Deputy and decision-writing manager decide to assign the matter to a District decision-writer, the AGC/Deputy and decision-writing manager designee (and, later, only the decision-writing manager) will select the particular decision-writer and notify that person and his or her Director. If the assignment creates a work flow problem in the Region, the AGC or Deputy will assist the Region, which may include transferring other work to the Region receiving decision-writing assistance.

For purposes of the decision-writing assignment, the decision-writer's work will be supervised by the Region receiving the decision-writing assistance. The decision-writer will be expected to report to that Region's managers and supervisors to discuss the assignment and progress. When the project is completed, the Region will draft a short narrative of the work performed for inclusion in the employee's annual appraisal.

By adopting a system in which there exists a cadre of experienced and motivated decision-writers who do not have to worry about conflicting assignments, we hope to make the decision-writing process more effective and efficient.

Streamlining Advice Branch Submissions

Delays in processing cases submitted to Advice has been a cause of criticism within and without the Agency. Some cases have taken months to process. Although the reasons for delay are variable and not always within the control of those working on the submission, reducing required paperwork can be a way to reduce paperwork delay while maintaining quality. The Regions are encouraged to adhere to the following. Regions may submit short form memos to Advice. The form that a short form submission may take will vary depending on the particular matter. In some cases, e.g., questions about work rules, the submission may be as simple as an e-mail, as explained in GC 18-04. In other cases, where all the necessary evidence can be found in the FIR or Agenda Minute, a memo incorporating those documents, and emphasizing

any factual or legal issues that the Region believes are important, may suffice. Operations and Advice will schedule roundtables or similar events, as needed, to (1) discuss best practices with regard to Advice submissions and (2) provide training on how to search Advice Branch memos currently stored on the Knowvation database.

Additionally, Regions should continue to communicate directly with the Advice Branch in appropriate cases, which sometime obviates the need for a formal submission or narrows the scope of a formal submission. This practice should continue.

Streamlining Ethics Issues

Going forward, legal ethics guidance memos that could be useful in other cases (redacted as appropriate) will be categorized and posted on SharePoint by subject matter, and prior memos will be added to SharePoint as time permits. In addition, all of the Ethics Branch's Legal Ethics Tips of the Month will be categorized and posted on Sharepoint by subject matter.

While we recognize that each situation is different, state-specific, and a conversation with the Ethics Branch is required, we believe the ability to review these memos will increase effectiveness and efficiency by providing Regional personnel with examples of real-life ethical issues faced by Board agents and information necessary to frame any issues that arise for discussion with Ethics counsel.

Team-Decisions

Regional Directors will be expected to delegate appropriate case-handling decision-making authority to supervisors. Such decision-making authority may include approving dismissals, withdrawals, or settlements in appropriate situations. Approximately 17 of our regional offices have already been engaged in delegating such case handling decisions with great success. For example, in one Region, if the supervisor and agent agree on the merit or lack thereof in a case, this is the final decision. If the supervisor and agent disagree or if either wish to fully agenda the case, an agenda is scheduled with the Director. In another Region, the agent and supervisor meet and discuss, based upon which the supervisor authorizes the agent to solicit a withdrawal. If the charging party agrees to withdraw, the withdrawal could be processed with a brief summary/minute, subject to review by the ARD or designee. If the charging party does not agree to withdraw, again, a brief summary/minute would be prepared along with a dismissal letter subject to review by the designee. Both Regions report that these processes are working smoothly. In some offices this is not happening or happens only infrequently and has created unnecessary barriers to efficient decision making. Appropriately delegating case-handling decision making reduces the number of cases a Regional Director or manager must review thus providing increased efficiency inasmuch as managers, now free from the more mundane case-handling decisions, are able to focus on higher priority, more complex case-handling matters. For obvious reasons, the team decisions must be documented in the file using the following naming convention: FIR.XX-XX-XXXXX.Team Decision. Once final, the status of the document should be

Final Version. Delegation is appropriate in most Category 1 cases and some Category 2 and 3 cases. All merit decisions should be made by the Regional Director or his/her designee.

The extent of this delegation will be left to a Director's discretion. Directors should be recognized for developing the next generation of managers who will exercise decision-making authority and carry out the mission of the Agency. Likewise, managers and supervisors should be recognized for stepping up and assuming these significant responsibilities. Therefore, a Director's appropriate delegation of authority to supervisors and managers will be positively noted in their annual appraisals under Critical Element 2 (Leading People 10%). Similarly, the extent to which a supervisor or manager steps up and assumes these responsibilities will be positively noted in their appraisals. Permitting our supervisors and managers to engage in decision-making is imperative, because these individuals will be tomorrow's managers and Directors, and must gradually begin taking on responsibility for case decision-making.³

/s/
B.T.

cc: NLRBU

³ A vast majority of our managers, supervisors and agents have been rated commendable or above. To the extent there is concern that managers, supervisors and agents, performing at the commendable level or above are not sufficiently trained or skilled to decide relatively straight-forward cases these concerns should be addressed through training and improvement plans in the Region.