

## **ADVOCACY SKILLS FOR AGENCY COUNSEL**

Mel Content is a civilian with the Department of Defense (DoD) at a naval station in Virginia. After Content was suspended for 7 days for abusive language, he filed an Equal Employment Opportunity

(EEO) complaint alleging that the suspension was motivated by unlawful age-based discrimination. The DoD investigated the complaint and Content requested a hearing. Agency Counsel Jan Jones, working in Washington, D.C., was assigned the case and received the acknowledgment order from the administrative judge.

1. May Ms. Jones contact Content to speak with him about his allegation of discrimination?
2. May Jones speak with other employees who work in the same office as Content?
3. If while interviewing employees, Jones learns that there may be an employee in whom Content confided about personal matters, may Jones interview that employee? What if the employee refuses to answer any of Jones's questions during an interview?
4. During the employee interviews, Jones also learns that Content's attorney has called employees to speak with them. Can Jones issue a blanket gag order to the employees and forbid them to speak with Content's attorney? Can Jones prohibit the employees from speaking with Content about their potential testimony at a hearing?
5. Despite Jones's objection, the administrative judge orders the government to provide employee personnel information to Content's attorney. Content's servicing personnel office forwarded the answers to the interrogatories with the personnel information to Jones but provided no verification. What do you advise Jones if she asks you whether she should verify the answers.
6. During the preparation of a witness for the hearing, Jones determines that Ms. Brown is a critical government witness. In preparing Brown, Jones believes that Brown needs to be more forceful at the hearing and less hesitant about her facts. Jones wants to encourage Brown to speak with more certainty. Can Jones do that?
7. After discovery closes, Jones prepares a motion for a finding without a hearing. Jones does not find any EEO decisions contrary to her legal arguments, but she discovers a case in the First Circuit concerning age discrimination that somewhat relates to Content's circumstances. Must Jones cite the First Circuit case in her motion?

8. At the hearing, the administrative judge advises counsel that they may have no more than ten minutes for a closing argument. Jones listens to Content's testimony at the hearing and becomes upset because it is apparent that Content is lying. In her closing, Jones is considering calling Content a foul-mouth liar and stating that she does not think that Content deserves to have a job at DoD. Is there a problem with the proposed closing argument of Jones?

### **POST-EMPLOYMENT BLUES**

Jerry Springer was a lawyer in the Equal Employment Opportunity Commission (EEOC) who was responsible for the review of complaints alleging violations of the Age Discrimination in Employment Act. Last year, he left the EEOC and joined a firm in town. Recently, he was asked by the American Association of Retired Persons (AARP) to file an amicus brief in their behalf in the United States Supreme Court. AARP wants to lend its support to the position of the government in this important ADEA case. The case is one Jerry worked on in its early stages for the EEOC. The position he would take for AARP is fully consistent with and supportive of the EEOC's position, so there is no apparent conflict either between AARP and the EEOC, or between Jerry's earlier work for the EEOC and his present representation of AARP. The Commissioner would like to see an amicus brief filed by AARP, and thinks Jerry is just the right person to assist the government in this matter.

1. May Jerry write and sign the brief for AARP consistent with 18 U.S.C. § 207?

How about under the ABA Model Rules of Professional Conduct?

2. What if Jerry never worked directly on the case while he was at the EEOC, although it was assigned for a short time to one of the lawyers he supervised?
3. Does it make a difference if Jerry advises AARP but does not sign any papers or otherwise appear on behalf of AARP in the matter?
4. If Jerry decides that he should not take on the matter, may his partner in the firm, Geraldo Rivera, prepare the brief for AARP?

### **A FEDERAL ATTORNEY'S NIGHTMARE**

You are presented a fact situation regarding the activities of an employee of your agency and asked to analyze them. The undisputed information is that the employee has been practicing law on the outside and has been representing clients before the Immigration and Naturalization Service for a fee. The employee has also printed business cards using his government telephone number and has had his secretary type his legal materials for him.

What are the issues and which statutes and regulations are involved?

After reading your analysis, your supervisor calls you into his office and states that he has reviewed the matter and has counseled the employee not to continue the practice and to destroy the business cards. The supervisor states he believes no further action is necessary and that the matter is now closed.

What are your further obligation, if any?