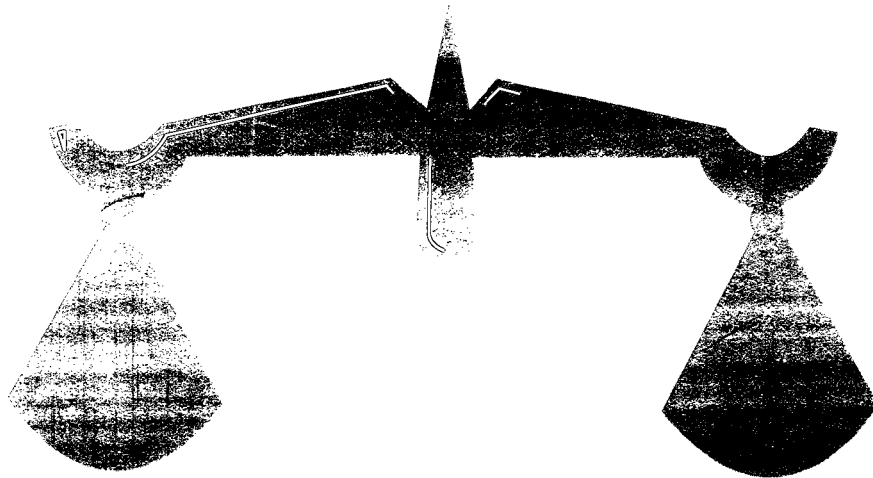


*Annual Report*  
*of the*  
*Personnel Appeals Board*



*1999 - 2000*

164576

February 15, 2001



Personnel  
Appeals  
Board

The Honorable David M. Walker  
Comptroller General  
United States General Accounting Office  
Room 7000  
441 G Street, N.W.  
Washington, D.C. 20548

Dear Mr. Walker:

Attached please find a copy of the Annual Report of the Personnel Appeals Board of the U.S. General Accounting Office for fiscal years 1999-2000. The report describes the activities of the Board, its Office of General Counsel, and its Office of Equal Employment Opportunity Oversight during the last two fiscal years.

Sincerely,

*Michael Wolf*  
Michael Wolf  
Chair

attachment

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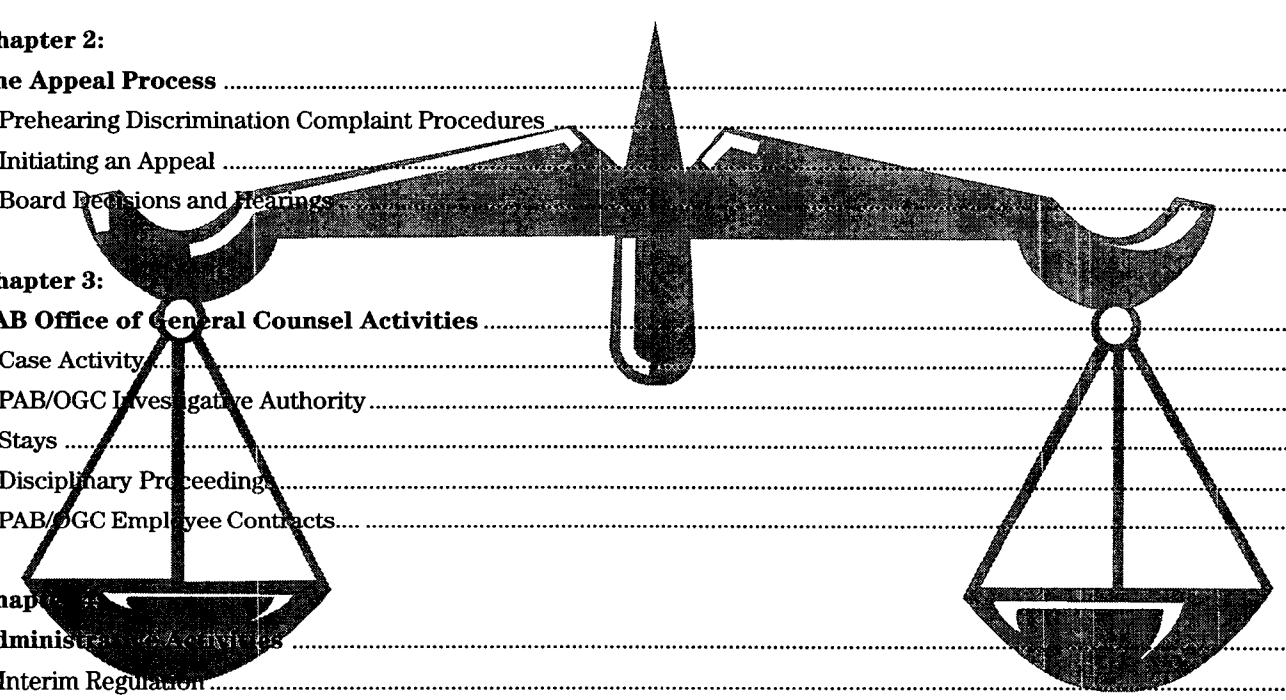
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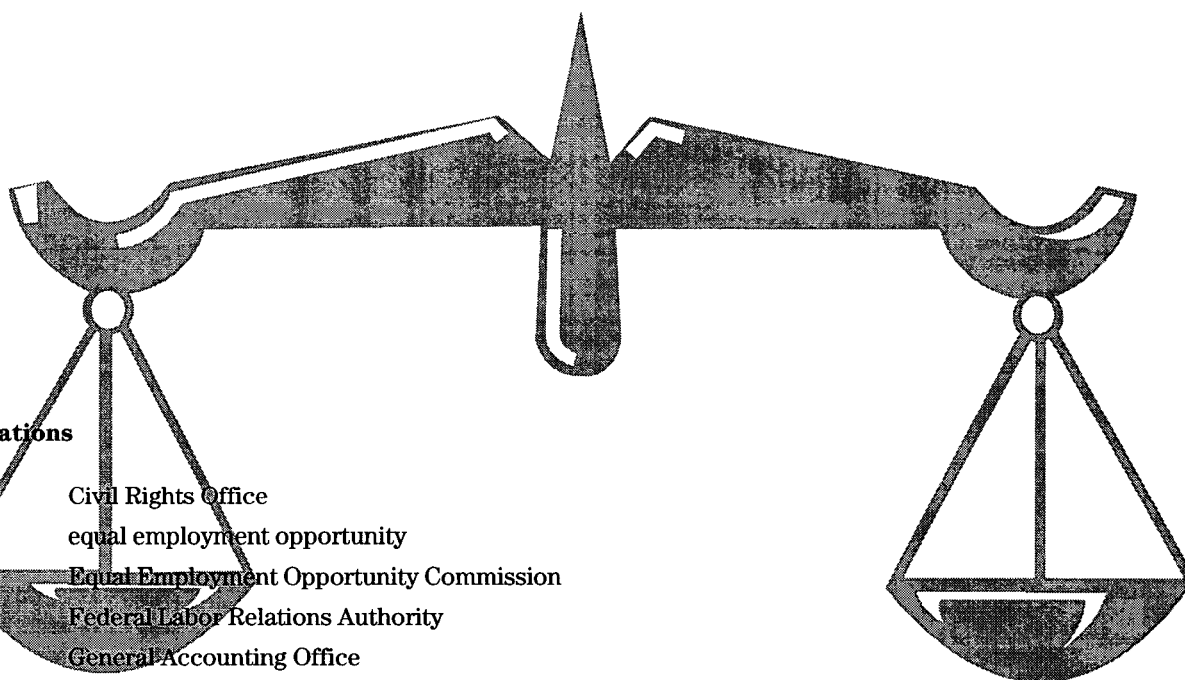
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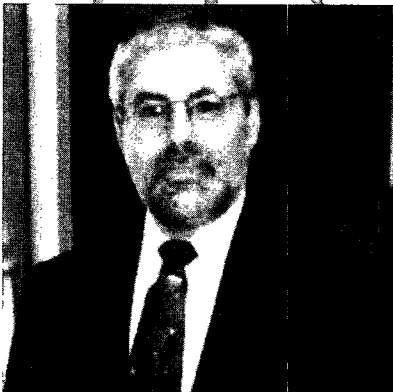
CRO	Civil Rights Office
eeo	equal employment opportunity
EEOC	Equal Employment Opportunity Commission
FLRA	Federal Labor Relations Authority
GAO	General Accounting Office
GAOPA	General Accounting Office Personnel Act
MSPB	Merit Systems Protection Board
PAB/OGC	Personnel Appeals Board Office of General Counsel
PAB	Personnel Appeals Board
RIF	reduction-in-force

## Biographies of Board Members



*Michael Wolf*

Michael Wolf was appointed to the Board in 1997. He was elected Chair for the last five months of fiscal year 1998 and served as Chair in fiscal years 1999 and 2000. He is a graduate of Cornell University and the New York University School of Law. After a judicial clerkship on the U.S. District Court for the District of Columbia, Mr. Wolf practiced labor relations and employment law in private practice for more than 15 years; he also served as a prosecutor in the U.S. Department of Justice. Mr. Wolf is currently an arbitrator for the American Arbitration Association, the National Association of Securities Dealers, and the Federal Mediation and Conciliation Service. He is also the co-author of *Religion in the Workplace: A Comprehensive Guide to Legal Rights and Responsibilities*.



*Jeffrey S. Gulin*

Jeffrey S. Gulin was appointed to the Board in 1998 and elected Vice Chair for fiscal years 1999 and 2000. He is a graduate of New York University and the University of Baltimore School of Law. After a brief period of general law practice, Mr. Gulin has been engaged in administrative adjudication and private arbitration for the past 17 years. From 1989 until early 1997, he served as an administrative law judge for the State of Maryland adjudicating contested cases involving numerous fields of law including employment, disability, and environment. Mr. Gulin continues to serve as a private arbitrator with an emphasis on copyright, telecommunications, and technology. He recently authored major decisions setting copyright royalty rates for retransmission of television broadcasts by American satellite carriers; rates for the use of music contained in programming broadcast by public television and radio stations; and issuance of a permit to the U.S. Department of Energy to dispose radioactive waste at an underground repository in New Mexico.

## Biographies of Board Members



*Anne Wagner*

Anne Wagner was appointed to the Board in 1999. She is a graduate of the University of Notre Dame and the George Washington University Law School. Ms. Wagner began her career as a staff attorney in the Office of the General Counsel for the General Services Administration, where she primarily handled labor and employment issues. From there, she went on to become a litigating attorney for the American Federation of Government Employees, AFL-CIO, the largest federal sector labor union representing more than 600,000 bargaining unit employees throughout the federal government. As AFGE's Assistant General Counsel for Litigation, Ms. Wagner has handled a wide array of cases arising under the comprehensive web of federal personnel and labor laws, and has argued numerous cases before federal district and appellate courts. She has also spearheaded litigation targeted at protecting the constitutional rights of federal employees, including challenges to the honoraria ban and mandatory drug testing.



*Harriet Davidson*

Harriet Davidson was appointed to the Board in 1993 and served as Vice-Chair in fiscal years 1997 and 1998. Her term was extended through the first six months of fiscal year 1999 during which she continued to serve as Vice-Chair. Ms. Davidson is a graduate of the University of Rochester, New York University, and Brooklyn Law School. She was a public interest lawyer, specializing in employment and administrative law, for seven years, and served as a clinical instructor at the Seton Hall University School of Law. She was also Director of the Housing Division of the Philadelphia Redevelopment Authority. Since 1987, Ms. Davidson has been a hearing officer and administrative judge for Federal, state, and county agencies, primarily in employment, real estate and banking matters. In 1993, she was appointed to the Montgomery County Human Relations Commission (Maryland).

**Personnel**

**PERSONNEL APPEALS BOARD**

Michael Wolf	Chair
Jeffrey S. Gulin	Vice-Chair
Harriet Davidson	Vice-Chair*
Anne Wagner	Member

**PERSONNEL APPEALS BOARD STAFF**

Executive Director	Beth L. Don
Director, EEO Oversight	M. Gail Gerebenics
Solicitor to the Board	Susan P. Inzeo
Administrative Operations Assistant & Acting Clerk of the Board	Sarah L. Hollis

**PERSONNEL APPEALS BOARD/OFFICE OF GENERAL COUNSEL STAFF**

General Counsel	Janice M. Reece
Senior Trial Attorney	Barbara Lipsky **
Senior Trial Attorney	Diane R. Williams
Paralegal Specialist	Deborah Y. McKissick
Secretary/Legal Information Assistant	Darian C. Jackson

*\*Term expired on March 31, 1999.*

*\*\* No longer with the Board.*

## The Personnel Appeals Board

### *PAB Anniversary*

Twenty years ago, Congress created the Personnel Appeals Board as part of the independent personnel system for employees of the General Accounting Office. The underlying intent of the Act was to eliminate the possible conflict of interest that existed as the result of GAO's oversight of the same agencies in the Executive Branch that regulated GAO's personnel matters and to ensure that GAO employees would enjoy the same legal protections as their counterparts in the Executive Branch.

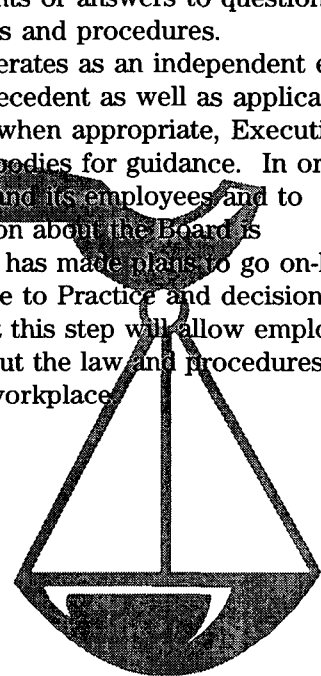
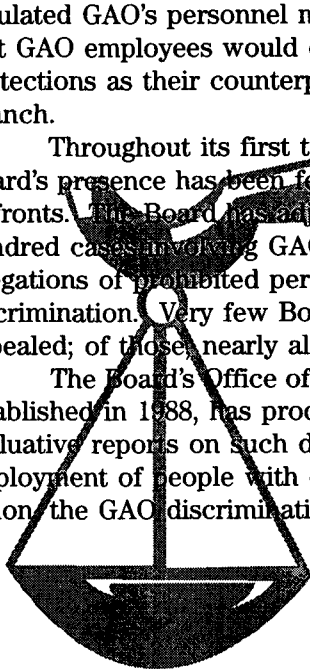
Throughout its first twenty years, the Board's presence has been felt at GAO on a number of fronts. The Board has adjudicated more than a hundred cases involving GAO employees' allegations of prohibited personnel practices or discrimination. Very few Board decisions have been appealed; of those, nearly all have been affirmed.

The Board's Office of EEO Oversight, established in 1988, has produced numerous evaluative reports on such diverse issues as the employment of people with disabilities, affirmative action, the GAO discrimination complaint process

and mediation program, age discrimination, selection into the SES, promotions, downsizing, and alternative work programs. In some of those reports, the Board recommended changes in GAO practices or procedures to the Agency; many of those recommendations have been implemented by the Agency.

In addition, GAO employees have brought hundreds of charges to the Board's Office of General Counsel for investigation. That Office has also provided legal advice and counsel to numerous employees seeking information about their employment rights or answers to questions about GAO's practices and procedures.

The Board operates as an independent entity relying on its own precedent as well as applicable court decisions and, when appropriate, Executive Branch adjudicatory bodies for guidance. In order to better serve GAO and its employees and to ensure that information about the Board is accessible, the Board has made plans to go on-line with its reports, Guide to Practice and decisions. The Board hopes that this step will allow employees to keep informed about the law and procedures governing the GAO workplace.





**About the PAB**

Pursuant to the General Accounting Office Personnel Act of 1980 (GAOPA),<sup>1</sup> Congress created the Personnel Appeals Board (PAB or the Board) to adjudicate disputes, issue decisions and order corrective or disciplinary action, when appropriate. It has jurisdiction over cases involving prohibited personnel practices, prohibited political activity, and discrimination involving employees of the U.S. General Accounting Office (GAO), a legislative branch agency. The Board also has the authority to oversee equal employment opportunity (eoo) at GAO.<sup>2</sup>

The PAB's authority combines the adjudicatory functions of its executive branch counterparts: the Merit Systems Protection Board (MSPB), the Federal Labor Relations Authority (FLRA) and the Equal Employment Opportunity Commission (EEOC). The Board's Office of General Counsel (PAB/OGC) performs the investigatory and prosecutorial functions of its executive branch equivalents: the Office of Special Counsel, the EEOC General Counsel, and the FLRA General Counsel.

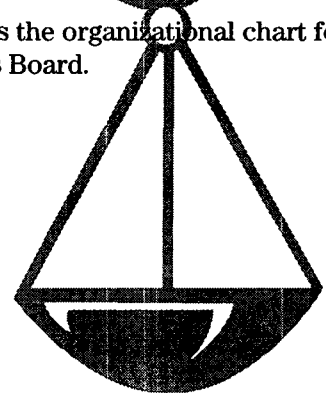
By statute, the Board is comprised of five members who serve five-year, non-renewable terms.<sup>3</sup> Candidates are sought through a process that includes advertising and the distribution of a vacancy announcement to organizations whose members may have relevant experience. Applicants are expected to have extensive professional experience in the area of federal personnel law or have demonstrated ability to arbitrate or adjudicate complex legal matters. GAO establishes a screening panel to interview the candidates it determines to be the best qualified.<sup>4</sup> The panel's recommendations are then forwarded to the Comptroller General who appoints members of

the PAB. The Board elects its own Chair and Vice-Chair for one-year renewable terms.

**Board Staff**

The Executive Director manages Board staff and Board operations. The Solicitor advises the Board members on legal matters and the Director of EEO Oversight conducts studies and produces reports on selected topics involving equal employment opportunity at GAO. The General Counsel, who is selected by the Board and appointed by the Comptroller General, serves at the pleasure of the Board Chair. A new General Counsel was appointed during FY 1999. The General Counsel and her staff investigate charges filed with the office and, if she concludes there is reasonable cause to believe that a violation of law has occurred, offers to represent the employee or applicant for employment before the Board.

Figure 1.1 displays the organizational chart for the Personnel Appeals Board.



<sup>1</sup>31 U.S.C. §731.

<sup>2</sup>The Board also has the authority to certify collective bargaining representatives and to adjudicate unfair labor practices but, in the absence of unions at GAO, has not had the occasion to do so.

<sup>3</sup>The previous Vice-Chair's non-renewable term expired on September 30, 1998. By statute, a term may be extended for six months and the Vice-Chair's term was extended for that period. At the conclusion of that extension, there were two Board members remaining. As a result, the Board did not have a quorum for several months. A new member was appointed in the first quarter of FY 2000. The Board currently operates with a quorum of threemembers.

<sup>4</sup>The voting members of the panel are three or more senior management officials designated by the Comptroller General. The non-voting members are an Executive Secretary appointed by the Comptroller General, and a member from the Women's Advisory Council, the Mid-Level Employee Council, the Advisory Council for Persons with Disabilities, the Career Level Council, the Advisory Council on Civil Rights, and the Administrative Advisory Council.

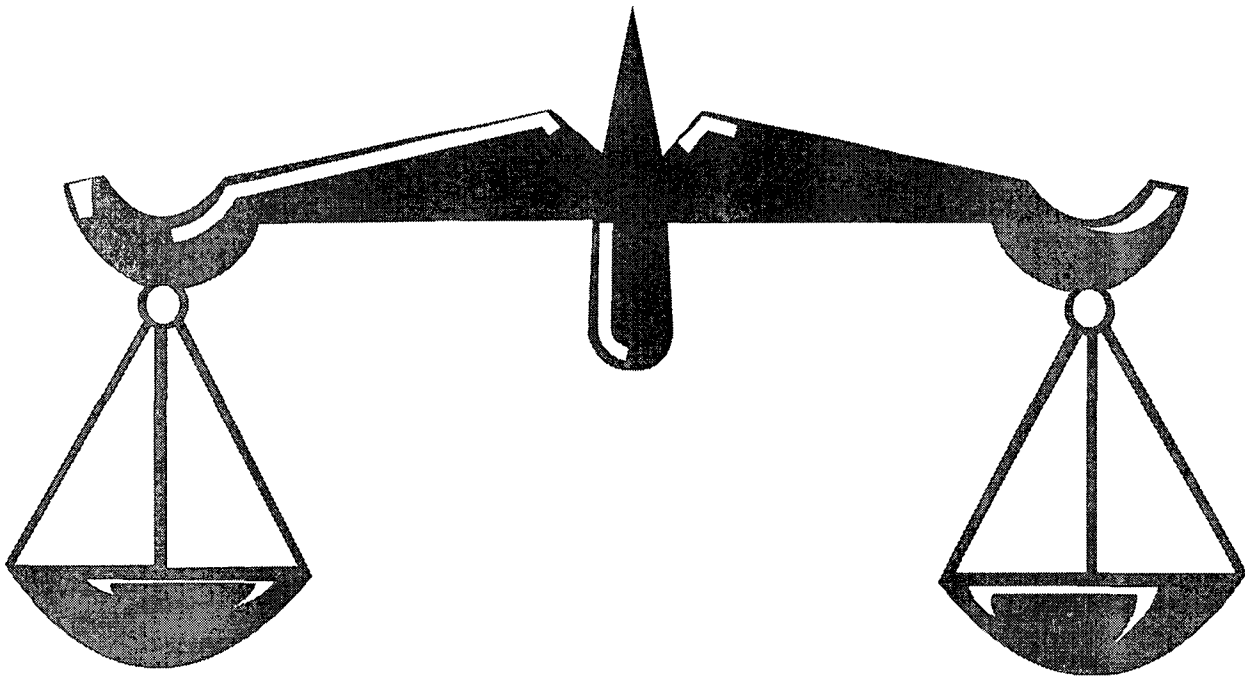
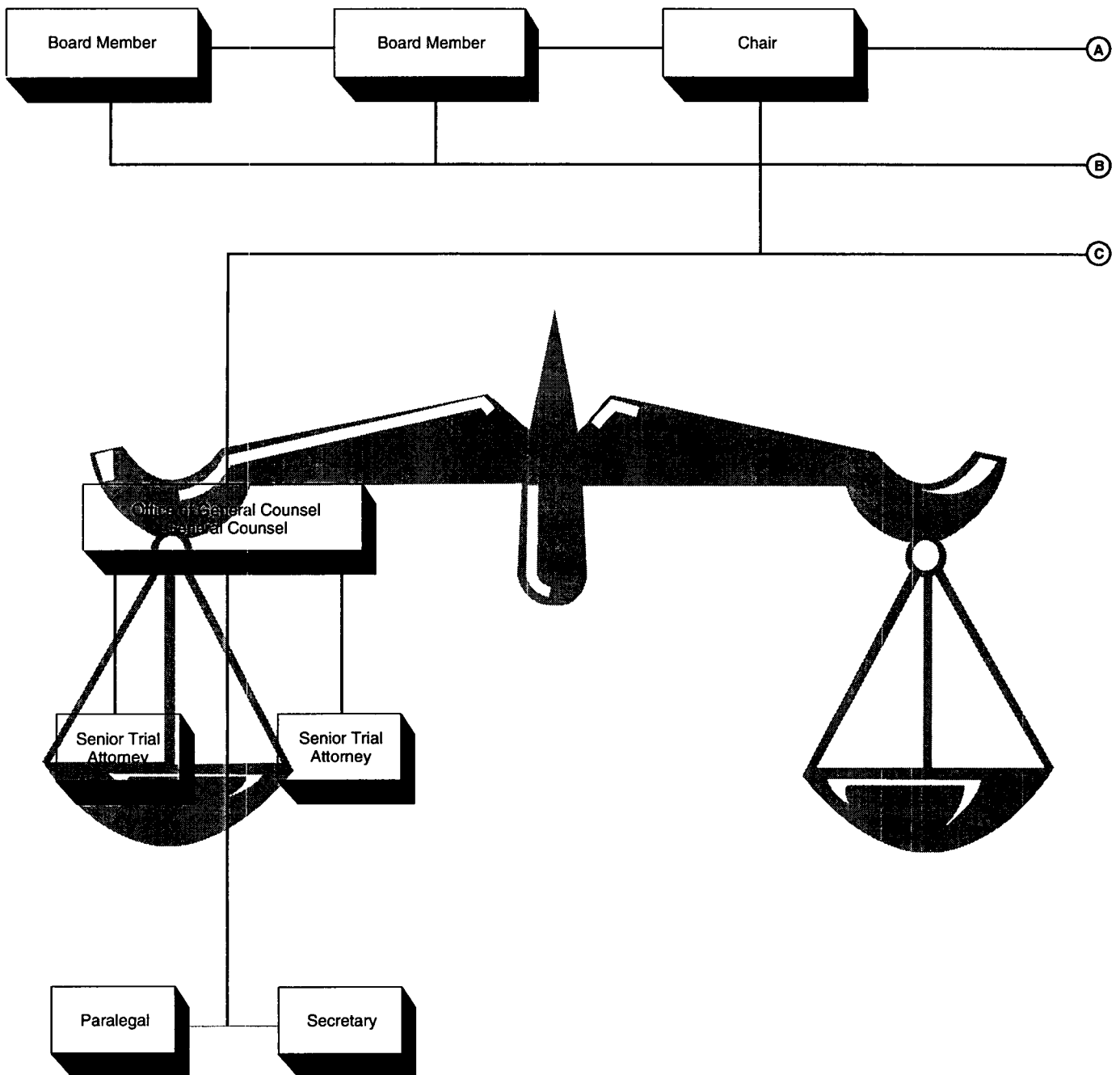
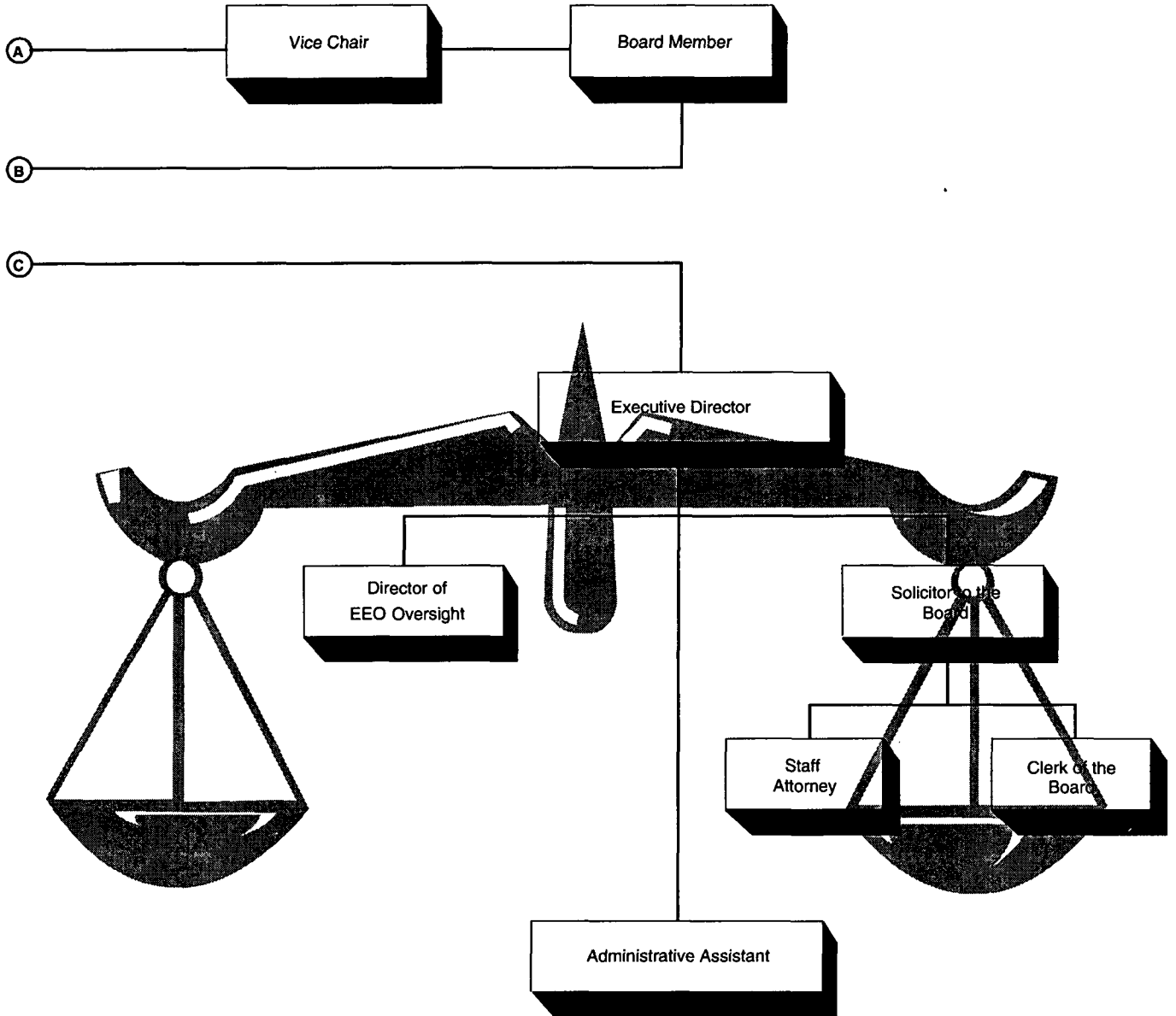


Figure 1.1: Organizational chart for the Personnel Appeals Board



Chapter 1



## The Appeal Process

An employee, a group of employees, a labor organization or an applicant for employment at GAO may file an appeal with the Board, which can hear individual complaints as well as class actions. An appeal by a GAO employee may arise from (1) a removal, a suspension for more than 14 days, a reduction in grade or pay, or a furlough of not more than 30 days; (2) a prohibited personnel practice; (3) an unfair labor practice or other labor relations issue; (4) an action involving prohibited discrimination; (5) prohibited political activity; and, (6) any other personnel issues that the Comptroller General, by regulation, determines that the Board should hear.

### Prehearing Discrimination Complaint Procedures

At GAO, the discrimination complaint process begins with a consultation with a civil rights counselor, contact with whom must occur within 45 days of the alleged incident.<sup>5</sup> If the matter cannot be resolved, a formal written complaint may be filed with the Civil Rights Office (CRO) within 15 days of receipt from the counselor of notice of the right to file a complaint. The Director of CRO can either accept or dismiss the complaint.<sup>6</sup> If the complaint is accepted, it is investigated and a report of the investigation is submitted to the Director of CRO. If the complaint cannot be resolved through negotiation with GAO management, the Director submits a recommended decision to the Comptroller General who issues a final agency decision. The decision of the Comptroller General may be appealed to the

Board, as may CRO's decision to dismiss a complaint.

### Initiating an Appeal

A GAO employee, group of GAO employees or an applicant for a job at GAO may file a Charge with the PAB/Office of General Counsel to initiate the appeal process. The PAB/OGC has the authority to investigate and to prosecute alleged violations of the law over which the Board has jurisdiction. A person may file a complaint that does not involve discrimination with the PAB/OGC within 30 calendar days after the effective date of a personnel action or within 30 calendar days after the complainant knew or should have known of the action. A person may file an appeal involving alleged discrimination with the PAB/OGC either within 30 calendar days after receipt of the agency's dismissal of the complaint in favor of the employee, 30 calendar days after receipt of the agency's final decision, or when more than 120 days has elapsed since the complaint was filed and GAO has not issued a final decision.

Once an individual complaint is filed with the PAB/OGC, the complainant is advised of appeal rights and settlement options. The PAB/OGC then conducts an independent investigation of the matters raised in the Charge to determine whether there are reasonable grounds to believe that the employee's rights under the GAO Personnel Act have been violated. The investigation may include obtaining documents and taking oral statements from persons with knowledge of the allegations.

Upon conclusion of the investigation, and if no settlement occurs, PAB/OGC issues a Right To Appeal letter notifying the complainant that the investigation

<sup>5</sup>The complete procedures for filing a complaint may be found at U.S. General Accounting Office Operations Manual, Order 2713.2, "Discrimination Complaint Process" (December 2, 1997) (hereafter GAO Order 2713.2).

<sup>6</sup>Reasons for dismissal of a complaint include that it fails to state a claim; that it was not filed in a timely manner; that it alleges a matter that was not raised in pre-complaint counseling; that it contains allegations not within the jurisdiction of the CRO; that it sets forth matters that are contained in a pending complaint or are the basis of a petition for review before the PAB or of a pending civil action in a Federal Court in which the complainant is a party; or that it is a matter that has been finally decided. A complaint may also be dismissed at any time during the process for failure of the complainant to prosecute the complaint. GAO Order 2713.2, ch. 3, §5.

has been completed and that he/she has the right to file an appeal with the Board. The PAB/OGC also issues a confidential Report and Recommendation to the complainant that includes the results of the investigation and the PAB/OGC's conclusions with regard to the legal and factual issues.

If the General Counsel concludes that reasonable grounds exist to believe that a violation of the law has occurred, the General Counsel will offer to represent the complainant in an evidentiary hearing before the Board at no expense to the employee. When the complainant accepts the PAB General Counsel's offer of representation, the PAB/OGC assumes responsibility for the entire case even if the employee has retained private counsel. If, on the other hand, the PAB General Counsel concludes that there are no reasonable grounds to support a claim, the complainant retains the right to file an appeal with the Board and seek an evidentiary hearing. The complainant may represent him/herself or retain private counsel in the appeal.

If an employee chooses to pursue an appeal, the employee must file a Petition for Review with the Board within 30 calendar days after service of the Right To Appeal letter from the PAB/OGC. Upon receipt of the Petition for Review, the Chair may either appoint a single Board member to hear and decide the case or determine that the Board will hear the case en banc (by all Board members).

A Board member's decision is final unless (1) the Board member grants a party's motion to reconsider; (2) the Board, on its own motion, decides to review the initial decision; or (3) a party requests full Board review. With few exceptions, final decisions are appealable to the U.S. Court of Appeals for the Federal Circuit.

## Board Decisions and Hearings

In a fiscal year 1998 decision, the Personnel Appeals Board, by two to one vote, held that the terms of a 1992 settlement agreement reached between the Agency and an individual employee did not bar the Agency from applying its Reduction-in-Force (RIF) regulations to Petitioner in the Agency-wide RIF of support staff that occurred in 1996. The Board's decision affirmed the conclusion reached by a Board member in an initial decision issued in fiscal year 1997, following an evidentiary hearing (Docket No. 96-06). On April 20, 1999, the U.S. Court of Appeals for the Federal Circuit reversed the Board and concluded that the Agency breached the settlement agreement when it removed Petitioner pursuant to the RIF. The Court remanded the case to the Board for corrective action. The case was settled in FY 2000.

During fiscal year 1999, an individual Board member concluded a hearing in a case involving a performance-based removal. The Petitioner challenged her ratings as flawed and inaccurate in three performance appraisals, the last of which evaluated her performance during an opportunity period. That appraisal formed the basis for a proposal to remove her. The petitioner also alleged that GAO failed to follow its own procedural requirements before and during her placement in the opportunity period. The Administrative Judge who presided at the evidentiary hearing issued a decision upholding the removal. In that decision, he found that Petitioner had been provided with a fair chance to improve her performance during the opportunity period and that the quality and quantity of her work assignments complied with GAO Orders. The Administrative Judge further concluded that there was substantial evidence to support Petitioner's ratings of "unacceptable" that formed the basis for the removal notice. Petitioner appealed that decision to the full Board. (Docket No. 98-01).

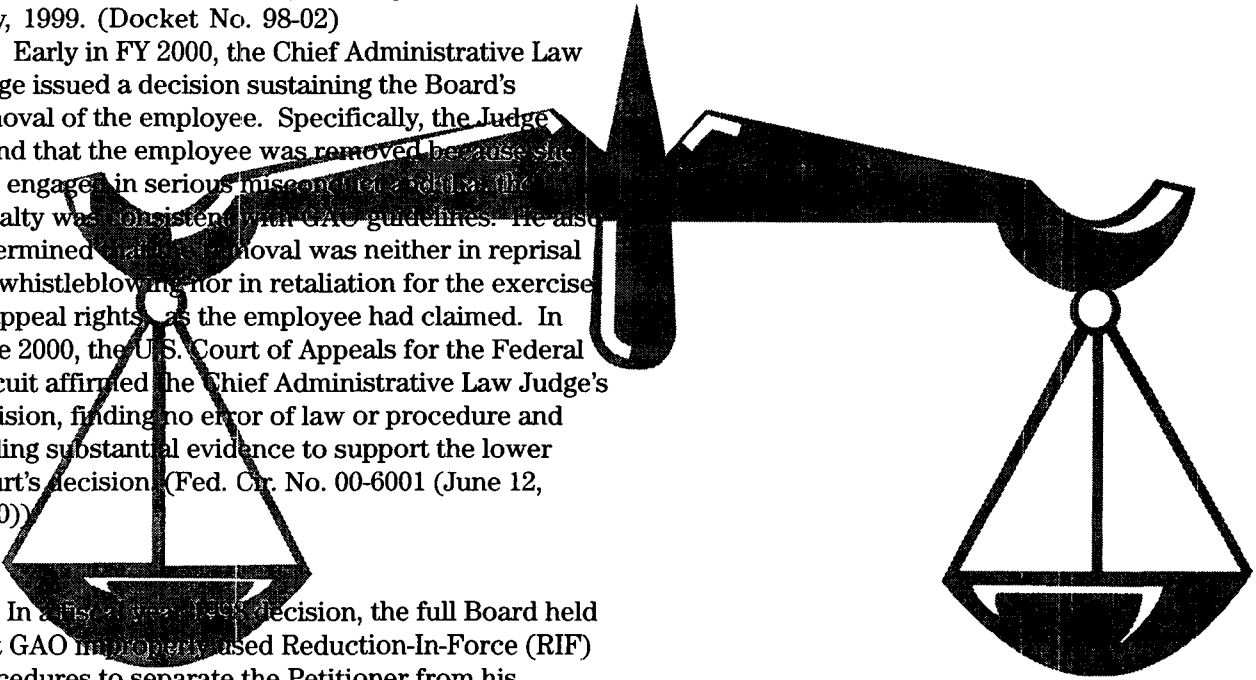
In fiscal year 2000, the full Board affirmed the decision below. The employee appealed the full Board's decision to the U.S. Court of Appeals for the Federal Circuit. That appeal was pending at the end of fiscal year 2000. (Fed. Cir. No. 00-6003).

A former employee of the Personnel Appeals Board filed an appeal in fiscal year 1998, alleging that her removal constituted a prohibited personnel practice. Because this case involved a former employee of the Board, the Chief Administrative Law Judge of the MSPB was appointed to act in place of the Board.<sup>7</sup> An evidentiary hearing was held in May, 1999. (Docket No. 98-02)

Early in FY 2000, the Chief Administrative Law Judge issued a decision sustaining the Board's removal of the employee. Specifically, the Judge found that the employee was removed because she had engaged in serious misconduct. The penalty was consistent with GAO guidelines. He also determined that the removal was neither in reprisal for whistleblowing nor in retaliation for the exercise of appeal rights, as the employee had claimed. In June 2000, the U.S. Court of Appeals for the Federal Circuit affirmed the Chief Administrative Law Judge's decision, finding no error of law or procedure and finding substantial evidence to support the lower Court's decision. (Fed. Cir. No. 00-6001 (June 12, 2000))

In a fiscal year 2000 decision, the full Board held that GAO improperly used Reduction-In-Force (RIF) procedures to separate the Petitioner from his employment. The Agency appealed the Board's decision to the U.S. Court of Appeals for the Federal Circuit. While the case was pending in the Circuit Court, the parties agreed to settle the matter. The settlement agreement provided, in part, that GAO

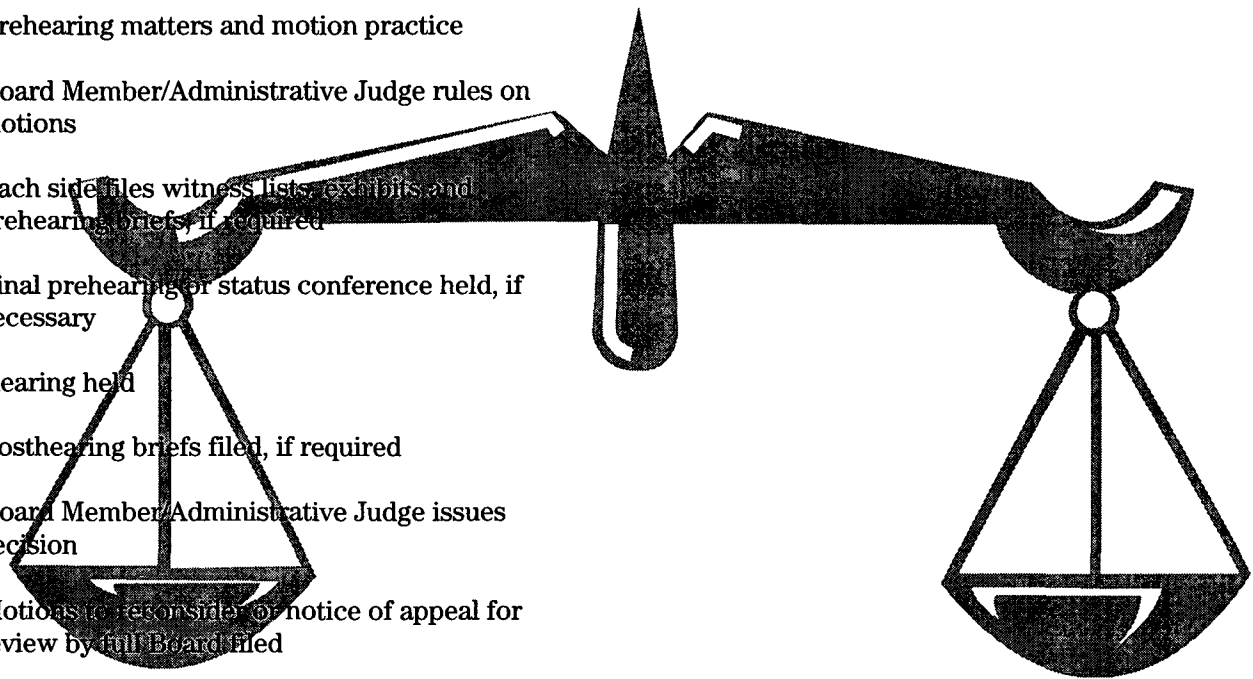
would ask the Circuit Court to vacate the Board's decision that was the subject of the appeal. Instead, the Court remanded the case to the Board to allow it to consider vacating the decision. In fiscal year 1999, GAO filed a motion with the Board asking it to dismiss the original petition for review and to vacate its final decision. The Board denied both requests, finding that the Board's decision could serve as valuable precedent and that vacating it would be contrary to the public interest. (Docket No. 96-08).



<sup>7</sup>The Board's regulations provide for the appointment of an administrative law judge from the MSPB or the EEOC to perform the Board's adjudicative functions in the event of an appeal from a Board employee. 4 C.F.R. §28.17.

The steps to process cases before the Board are:

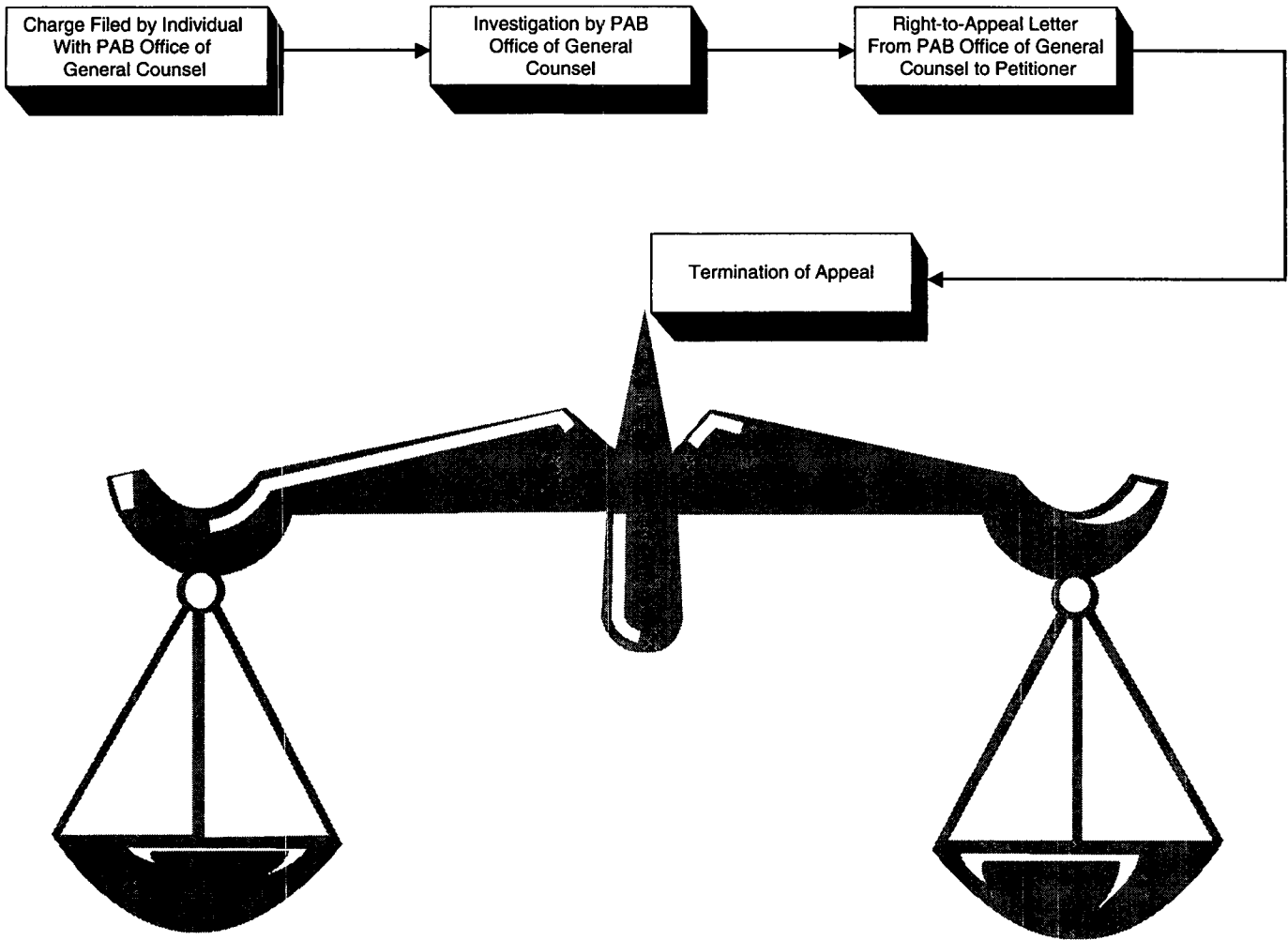
- Petition for review filed
- Notice of petition for review sent out by Board (with service list)
- Board Member/Administrative Judge assigned
- GAO responds to the petition for review
- Discovery
- Prehearing matters and motion practice
- Board Member/Administrative Judge rules on motions
- Each side files witness lists, exhibits and prehearing briefs, if required
- Final prehearing or status conference held, if necessary
- Hearing held
- Posthearing briefs filed, if required
- Board Member/Administrative Judge issues decision
- Motions to reconsider or notice of appeal for review by full Board filed
- Final decision issued by full Personnel Appeals Board
- Appeal to the U.S. Court of Appeals for the Federal Circuit (as appropriate)



Figures 2.2 through 2.5 show the process of cases once a charge is filed.



Figure 2.2: Process of Case From Charge to Termination of Appeal



**Chapter 2**

**Figure 2.3: Process of Case to Final Board Member's Decision With No Appeal**

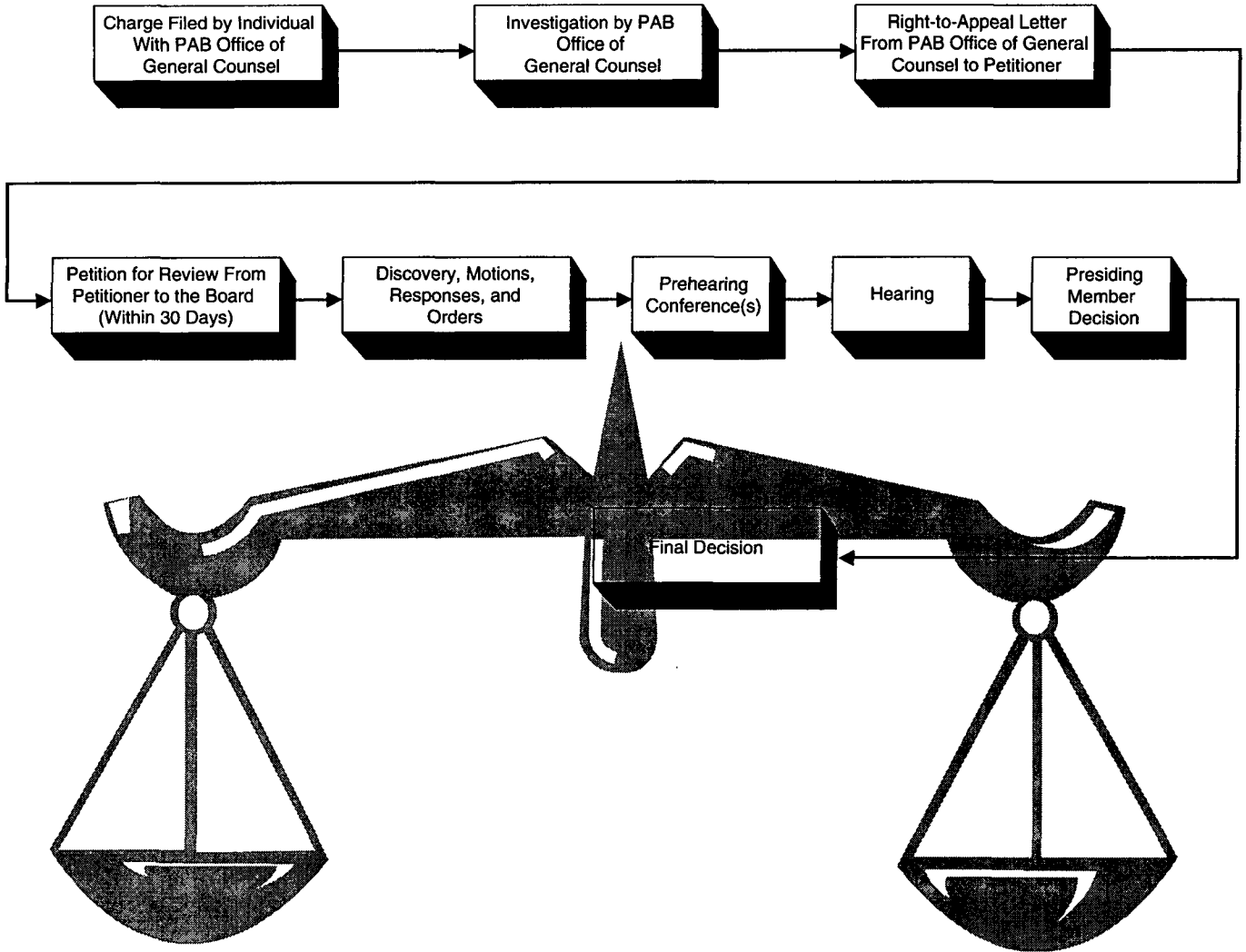


Figure 2.4: Process of Case From Charge to Judicial Review

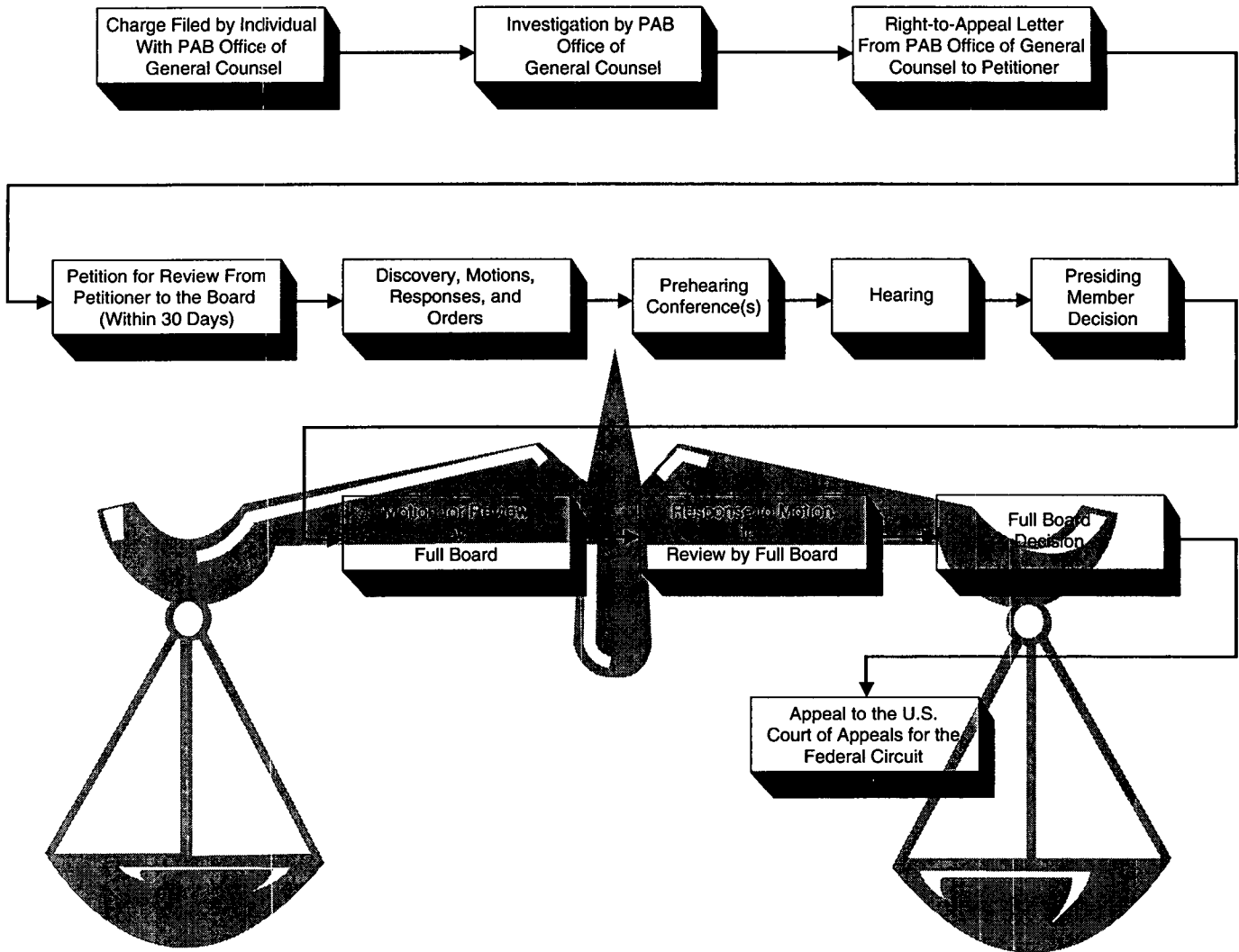
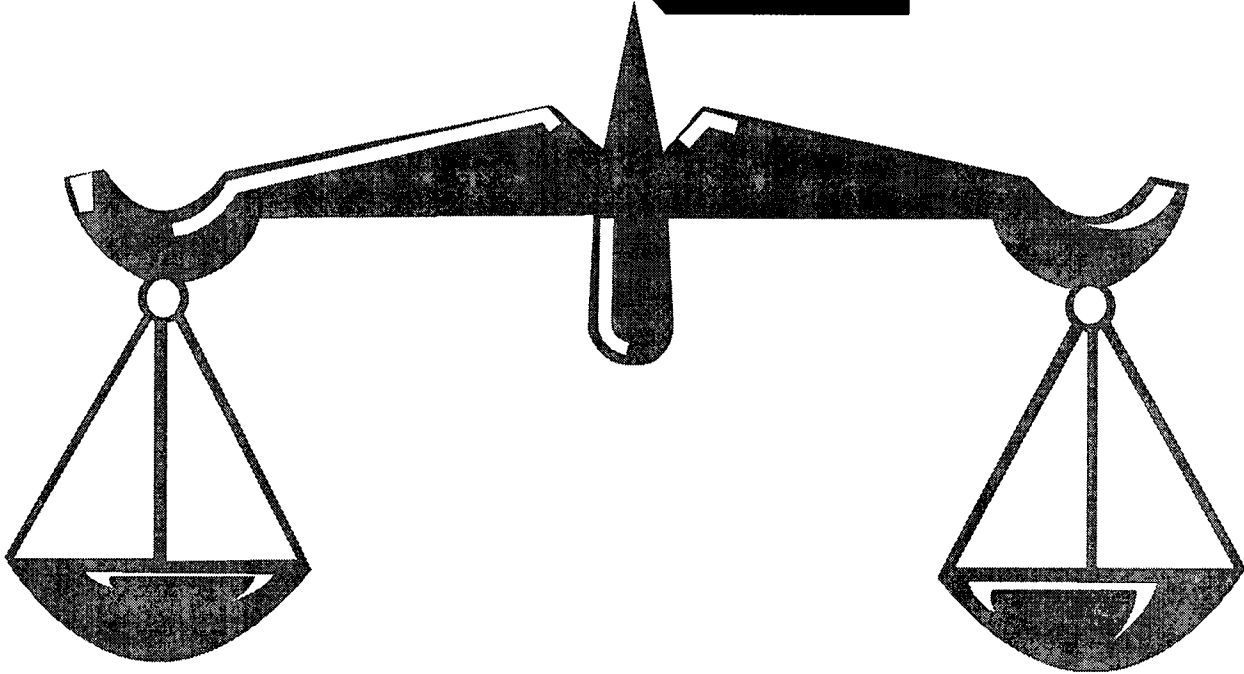
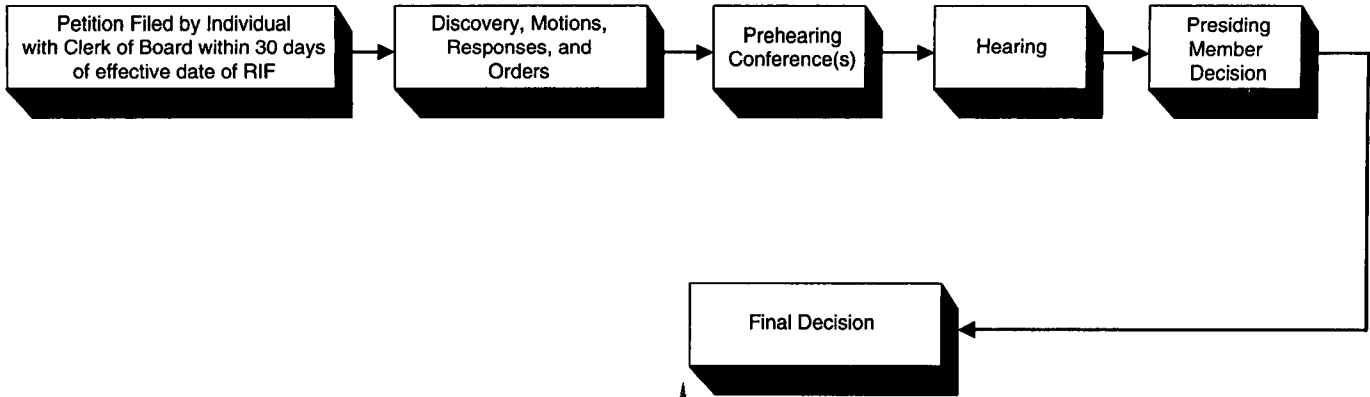


Figure 2.5: Process of Reduction-in-Force Case (employee's option)



## PAB Office of General Counsel Activities

### Case Activity

Nineteen new cases were filed with PAB/OGC office during fiscal year 1999. Of the nineteen new cases, four involved Title VII discrimination claims (eeo) and fifteen involved claims of prohibited personnel practices (ppp). The subject matter breakdown of the eeo cases was: one handicapping condition discrimination charge, two age discrimination charges and one race discrimination charge. The subject matter breakdown of the fifteen prohibited personnel practice charges was: eight reprisal allegations of prohibited personnel practices in the promotion/pay-for-performance process; two removals; three performance evaluations; and two denials of promotion. The PAB/OGC negotiated and finalized two settlement agreements and closed nine cases during the fiscal year.

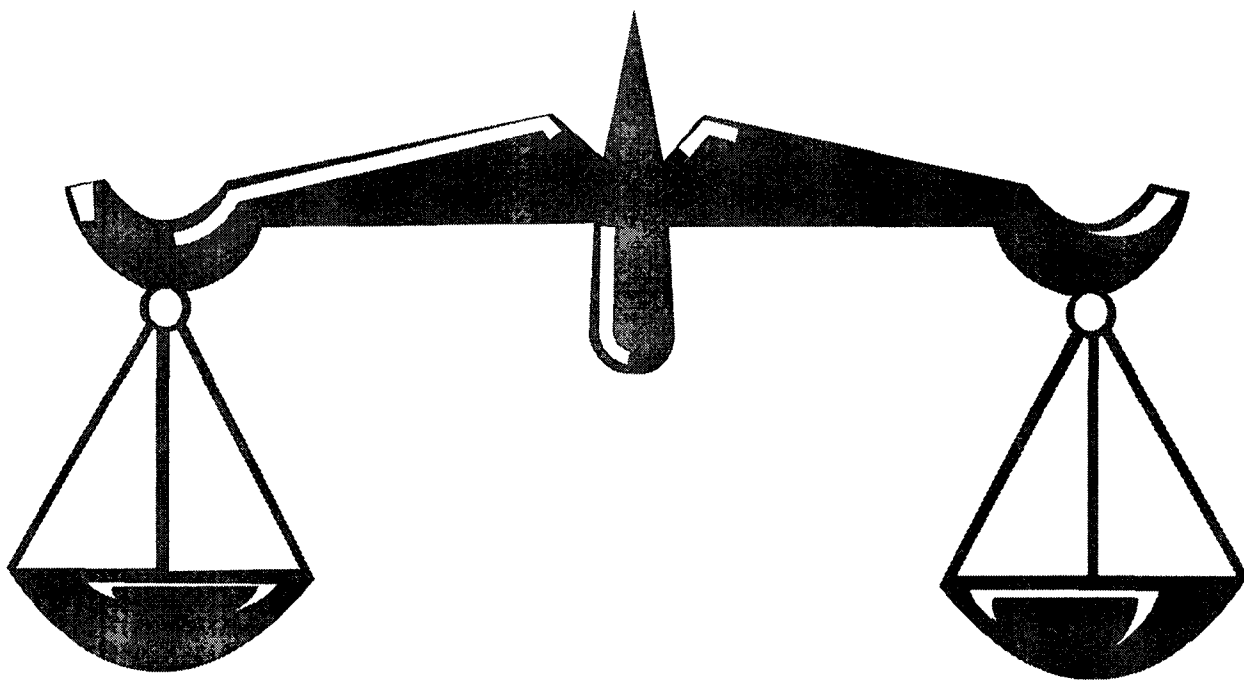
Seventeen new cases were filed with the Board's Office of General Counsel in FY 2000. Of those, two involved discrimination claims and 15 involved claims of prohibited personnel practices. Of the discrimination cases, one was a race discrimination charge and the other was based on age. Of the ppp charges, seven alleged reprisal in the promotion/pay-for-performance process; one involved a removal; six were related to performance evaluations; and one involved a denial of promotion. The PAB/OGC closed 17 cases during FY 2000 and filed one Petition for Review before the Board.

### PAB/OGC Investigative Authority

The PAB Office of General Counsel is authorized to conduct independent investigations into matters raised and presented in Charges filed by GAO employees or applicants for employment. This investigative authority represents the vast majority of investigations conducted by the Office of General Counsel. During fiscal year 1999, all of the investigations conducted by the Office of General Counsel were initiated by charges filed by employees.

In addition to investigations generated by individual or class charges, the Office of General Counsel may initiate its own investigations, otherwise known as informational or GC investigations.<sup>8</sup> The General Counsel may initiate an investigation when information comes to his/her attention suggesting that a prohibited personnel practice has occurred, charge is occurring, or will occur, regardless of whether a charge has been filed. If an individual brings an allegation to the attention of PAB/OGC, that individual may remain anonymous. Upon the conclusion of an investigation, if PAB/OGC finds insufficient evidence that there are reasonable grounds to believe that violation of the law has occurred or is about to occur, a confidential summary is forwarded to the complainant. The agency and the Board are notified that the case is closed. When it is determined that there are sufficient grounds to believe that violation of the law has occurred or is about to occur, the PAB/OGC will contact the agency with the findings and its recommendation. If the recommended action is not followed within a reasonable period, PAB/OGC may petition the Board to order corrective action. PAB/OGC did not initiate any information investigations or recommend any corrective action in FY 1999; in fiscal year 2000, the office initiated an information investigation.

<sup>8</sup> 4 C.F.R. §28.131



## Stays

PAB/OGC may request that the Board issue an *ex parte* stay, not to exceed 30 calendar days, of any proposed personnel action that, in the General Counsel's judgment, may constitute a prohibited personnel practice. If the request for an *ex parte* stay is granted, the General Counsel may request either a further temporary stay or a permanent stay of the proposed action. The Board may grant or deny the requested stay, require further briefing and/or oral argument or conduct an evidentiary hearing. When PAB/OGC seeks a stay of a personnel action, it conducts an investigation into the allegations of prohibited personnel practices.

In both fiscal years, PAB/OGC requested *ex parte* stays and investigated allegations of prohibited personnel practices concerning the proposed removals of two employees. The Board granted the stays. The parties involved in the FY 99 stay agreed to settle the matter before the expiration of the stay.

## Disciplinary Proceedings

The PAB General Counsel is authorized to initiate a disciplinary action against an employee where it is determined, after an investigation, that such action is warranted. In such cases, the PAB General Counsel will provide a written summary of the determination to the employee and the Board.<sup>9</sup> However, if the employee is in a confidential, policy-making, policy-determining, or policy-advocating position appointed by the President, PAB/OGC will forward the written summary to the employee and the Congress, not the Board. The PAB/General Counsel may also propose disciplinary action against any employee engaging in prohibited political activity.

After a hearing, the Board decides whether discipline is warranted and what punishment is appropriate. The Board may order removal, reduction in grade, debarment from GAO

employment, reprimand, or an assessment of civil penalty not to exceed \$1,000. There is no administrative appeal from an order of the Board. Judicial review of the Board's order may be obtained in the U.S. Court of Appeals for the Federal Circuit. PAB/OGC did not institute disciplinary proceedings in FY 1999 or FY 2000.

## PAB/OGC Employee Contacts

In addition to its investigative and prosecutorial authority, the PAB/OGC also provides oral advice to employees about their personnel and equal employment rights. This is accomplished by responding to questions about diverse issues such as performance appraisals, grievances, and the complaint process, and presentations to GAO's employee council to update them on recent changes in the Board procedures. Sixty-six informational inquiries were held in FY 99 by the staff of the PAB's Office of General Counsel; the office handled 39 in FY 2000.

The PAB Office of General Counsel may make presentations to employee groups and may participate in outside speaking engagements in an effort to promote employee and management awareness of employee personnel-related rights. In addition, the Office of General Counsel submits written comments on proposed GAO rule changes to GAO regulations to insure the protection of rights afforded employees under the GAO Personnel Act. In FY 99, the PAB/OGC provided written comments on two draft personnel-related GAO Orders. In FY 2000, the PAB/OGC submitted written suggestions for topics for Oversight reports.

<sup>9</sup>*Id.* §28.132

## Administrative Activities

### Interim Regulation

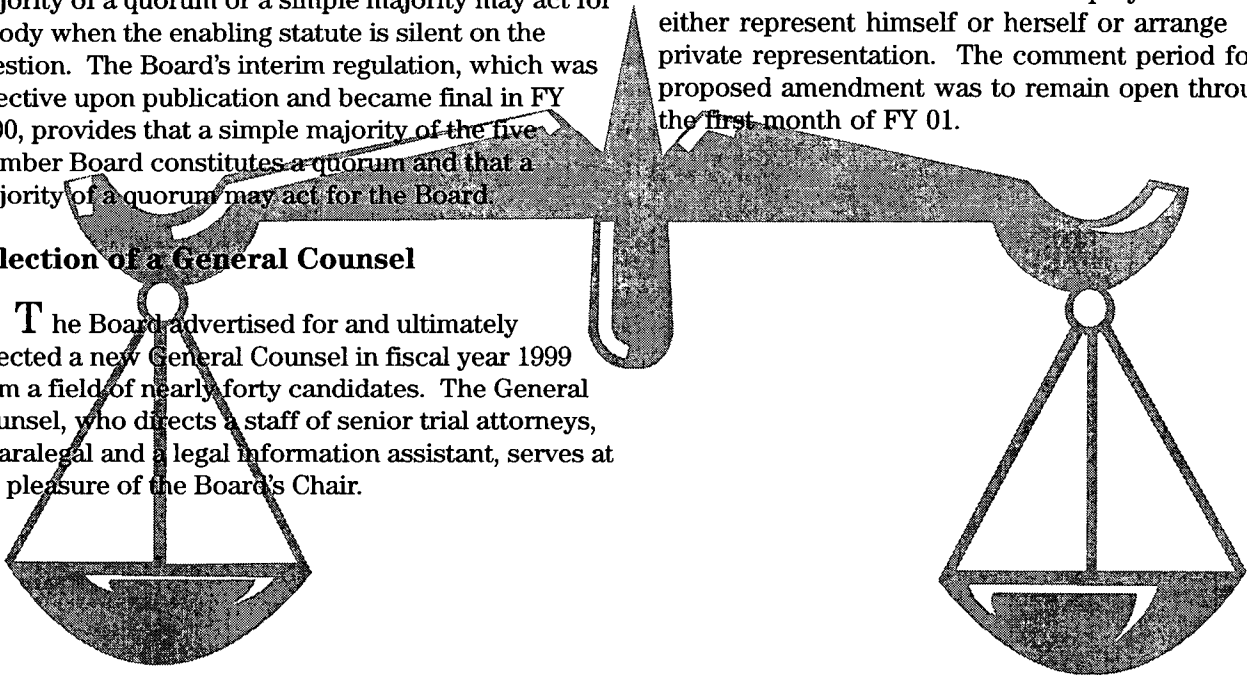
During fiscal year 1999, the Board amended its regulations, on an interim basis, to conform to Board policy with regard to actions requiring a quorum.<sup>10</sup> By statute, the Board is composed of five members. The Board's authorizing statute, however, does not have a provision to govern Board procedures when there are vacancies. As a matter of policy and practice, the Board has been following the common law rule that a majority of a quorum or a simple majority may act for a body when the enabling statute is silent on the question. The Board's interim regulation, which was effective upon publication and became final in FY 2000, provides that a simple majority of the five member Board constitutes a quorum and that a majority of a quorum may act for the Board.

### Selection of a General Counsel

The Board advertised for and ultimately selected a new General Counsel in fiscal year 1999 from a field of nearly forty candidates. The General Counsel, who directs a staff of senior trial attorneys, a paralegal and a legal information assistant, serves at the pleasure of the Board's Chair.

### Proposed Regulation

In fiscal year 2000, the Board published a proposal to amend its regulations.<sup>11</sup> The amendment would permit a charging party to bring his or her case directly to the Board after the passage of 180 days from the filing of the charge, if the Board's General Counsel has not completed the investigation of the charge and issued a Right to Appeal Letter. An employee who "opts out" of the investigation and files directly with the Board would forego the opportunity to have the General Counsel present his or her case to the Board. That employee could either represent himself or herself or arrange private representation. The comment period for the proposed amendment was to remain open through the first month of FY 01.



<sup>10</sup>64 Fed. Reg. 15,125 (1999) (to be codified in 4 C.F.R. §27.1).

<sup>11</sup>65 Fed. Reg. 52,674 (August 30, 2000).



## Oversight Projects

The GAO Personnel Act directs the Board to oversee equal employment at GAO through review and evaluation of GAO's procedures and practices.<sup>12</sup> Pursuant to this mandate, the Board's Office of Oversight conducts studies of selected issues and prepares evaluative reports that often contain specific recommendations to the agency. The Office of Oversight's focus in fiscal years 1999 and 2000 was on promotions of Banded employees and the use of the alternative work schedules program (maxiflex and part-time) and the alternative workplace arrangements program (flexiplace) at GAO.

### Promotion Study

During FY 1999, the Board published its report on promotions of Banded employees at GAO from 1991 through 1995. The purpose of the study was to examine the median time to promotion and rates of promotion to determine whether any statistically significant differences based on race, gender, national origin, age, or disability could be discerned.

For the first part of the study, the Board looked at all promotions for Banded employees during a five year period to determine the median time to promotion. The effects of race, age, gender and disability status were factored in separately at each promotion point.

For the second prong of the study, the Board compared the promotion rates of males and females, by age, and by race, national origin, and disability status, after adjusting for the composition of the "Best-Qualified" (BQ) lists for each promotion competition. For this part of the analysis, all employees were pooled and then disaggregated by age, by regional office versus headquarters, and by an age-region/headquarters combination.

The Board found several disparities based on race, gender, and age. The Board recommended that the Agency investigate the disparities and

institute appropriate changes if improper selection methods, rather than merit, are found to be the cause.

### Alternative Workplace Arrangements

The Board also began an eeo oversight study during FY 1999 on the use of the alternative work schedules program (maxiflex and part-time) and the alternative workplace arrangements program (flexiplace) at GAO. The study included an analysis of data on participation in each of the three programs, a history of the programs in the Federal government and at GAO, an examination of the criteria for participation, and a comparison of the relevant GAO Orders with Executive Branch procedures.

During the first phase of the study, a questionnaire was developed and distributed to the entire GAO workforce. The survey was designed to assess the employees' level of knowledge about the three programs, including eligibility requirements and restrictions; discern perceptions about how these programs operate at GAO; and identify any barriers that may be limiting employee participation in any of the three programs.

In its report, the Board concluded that some of the study's findings were positive and some bear further investigation by the Agency. Specifically, the Board determined that GAO's structure, during the time of the Board's study, was conducive to a flexiplace program. Although the Board received some anecdotal reports from employees who were dissatisfied with their inability to obtain flexiplace arrangements, those complaints generally did not raise eeo issues. The Board's survey also revealed that although participation in the maxiflex program was roughly split between males and females, 73 percent of the survey respondents whose requests for maxiflex were denied were female. Because GAO does not maintain data on the maxiflex program, the Board was unable to determine whether this denial rate reflected an impermissible bias by decision-makers.

<sup>12</sup>31 U.S.C. § 732(f)(2)(A); See applicable regulations at 4 C.F.R. § 28.91 and 28.92.

The Board was also informed by the Agency that 333 employees worked part-time during the course of the study and 90 percent were female. Only 14 of the part-time employees were promoted during the five-year period of this study. None of the promotional opportunities offered during that period was designated for part-time employment. Because GAO does not maintain data on denials of requests for part-time schedules, the Board does not have sufficient data to conclude that this disparity signifies an eeo problem. The Board recommended that the Agency undertake an inquiry to determine whether the lower promotion rate for part-time employees is a product of bias against those employees or exists for non-discriminatory reasons. If the inquiry reveals that the low number of part-time promotions is a result of a lower application rates, then the Agency should ascertain the causes of the reduced application rate and decide whether additional education of employees is necessary to ensure that employees are fully informed about their rights in the part-time employment program.

Finally, based on the survey results, the Board found that there was a general lack of information about all three alternative work arrangements and a lack of data about applications for and rejections of employee requests for participation in the three programs. The Board recommended that the Agency maintain such data and monitor participation in the programs.

### Minority Recruitment Study

The Board approved an oversight study for FY 01 that is designed to determine whether GAO has implemented a minority recruitment program as mandated by statute.<sup>13</sup> GAO is required to maintain a continuing program for the recruitment of members of minority groups as part of an overall anti-discrimination policy. In its report, the Board will consider whether GAO maintains an up-to-date equal employment opportunity recruitment program for positions at all organizational levels and geographic locations. The Board will also attempt to ascertain whether minority recruitment programs are incorporated into GAO recruitment plans; whether any particular group is underrepresented within a particular grade, occupational category, or geographic area; whether information on GAO employment opportunities is targeted to reach qualified candidates from underrepresented groups; and whether GAO redirects, expands or modifies its recruitment efforts when the applicant pool does not adequately provide candidates from any underrepresented group.

<sup>13</sup>31 U.S.C. §732(f)(1)(B).

