

Y. DIFFICULT REPRESENTATIVES

OVERVIEW:

Establishing a good working relationship with the Charging Party's representative and a cordial relationship with the Respondent's representative helps the Trial Attorney to effectively present the GC's case.

OBJECTIVE:

To provide guidance to the Trial Attorney in dealing with a difficult Charging Party representative and/or a difficult Respondent representative.

1. DIFFICULT RESPONDENT REPRESENTATIVE:

a. *Minor attacks on Trial Attorney:*

On occasion, opposing counsel attempts to harass the Trial Attorney by making inappropriate personal comments, criticizing the Trial Attorney's motives, or generally impugning the integrity of OGC employees and, in particular, the RO. The best defense the Trial Attorney has is to keep a sense of humor and to stay calm. Such attacks are usually tactics and the Trial Attorney should recognize them as such. Minor attacks can usually be brushed aside.

b. *Serious attacks on Trial Attorney:*

If a serious attack is made, the Trial Attorney upholds his/her integrity and that of the FLRA, and makes a short reply statement. Such a statement should not be taken personally and should not lead to argument on the points of the attack. The remarks are directed through the ALJ, not directly to the opposing party, with the Trial Attorney asking the ALJ to instruct opposing counsel to refrain from such statements. Indulging in petty bickering damages the Trial Attorney's own credibility, impugns the integrity of the OGC, obfuscates the issues, and directs the Trial Attorney's attention away from the essential elements of the case.

2. DIFFICULT CHARGING PARTY REPRESENTATIVE:

a. *At pre-trial:*

The best way to avoid problems with a difficult Charging Party representative during the course of a trial is through careful pre-trial preparation. If the Trial Attorney includes the Charging Party representative in pre-trial preparation of witnesses, the representative will understand how each witness contributes to the GC's theory of the case. Where the Charging Party's theory differs from that of the GC, the Trial Attorney discusses these differences with the representative and, if necessary, explains the limits of the role of the Charging Party representative. Where it is not possible or desirable for the Charging Party representative to be present during the preparation of witnesses, it is essential that the Trial Attorney have a pre-trial discussion with the Charging Party representative concerning the GC's theory of the case and planned method of trial presentation. The Trial Attorney can explain to the representative that disputes during the trial between the Trial Attorney and the Charging Party are likely to benefit only the Respondent.

b. *At trial:*

If despite pre-trial discussion, the Trial Attorney encounters a difficult Charging Party representative at trial, the Trial Attorney maintains a professional demeanor and continues with the planned presentation of the GC's case. The Trial Attorney ensures that the ALJ understands the GC's theory of the case, and any significant differences between the GC's position and the position presented by the Charging Party representative.

 *The Trial Attorney can object to the Charging Party's witnesses, exhibits, and line of questioning of a witness.*

Q [Part 1, Chapter I](#) concerning Relationship with Charging Party Representative.