

If the letter or the response is to be submitted less than 5 business days prior to oral argument, submission and service shall be by overnight mail delivery or by more expeditious means to allow the Court and all parties adequate time to consider the authorities cited before oral argument.

Comments:

Current Rule 27(b) regarding writ-appeal petitions does not contain a page limit. The proposed change amends this oversight.

The recommendation to change Rule 30(e) would modify the word "working" to "business" days for consistency with new Rule 36A.

Current Rule 36A provides for the citation of supplemental authority by letter both before and after oral argument. The letter must explain why the citations are being provided "without argument" and identify the page of the brief or the point argued orally to which the supplemental citation refers. Opposing counsel may respond, but is similarly limited. The current rule is comparable to Federal Rule of Appellate Procedure 28(j) as it existed prior to being amended in 2002. The amended rule, like the current version of Rule 28(j), allows counsel a limit of 350 words to state the reasons why the cases are being cited as supplemental authorities. It also removes the restriction in the current rule that prohibited counsel from including argument in the letter. The prohibition was dropped because the line between a statement explaining the reasons for the filing "without argument" and a comparable statement "with argument" is, for practical purposes, non-existent. The requirement that counsel identify why the supplemental authority is "pertinent and significant" is a better formulation that may eliminate marginal or ill-advised filings. By limiting the response to 350 words, there is little chance that the Rule 36A letter will become a vehicle for unauthorized supplemental briefing.

The amended rule adds three requirements that are not in the Federal Rules of Appellate Procedure: 1) the proposed rule specifically directs counsel to use the 350 words to explain why the supplemental authorities are pertinent and significant; 2) counsel is required to attach a copy of each authority to the letter and all copies; and 3) when filing the letter less than 5 business days before oral argument, the letter must be transmitted to counsel by overnight mail or more expeditiously to allow for appropriate consideration.

DEPARTMENT OF EDUCATION

**Arbitration Panel Decision Under the
Randolph-Sheppard Act**

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: The Department of Education (Department) gives notice that on July 18, 2007, an arbitration panel rendered a decision in the matter of *Frank Malone*

v. *Ohio Rehabilitation Services Commission, Bureau of Services for the Blind* (Case No. R-S/04-8). This panel was convened by the Department under 20 U.S.C. 107d-1(a), after the Department received a complaint filed by the petitioner, Frank Malone.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the full text of the arbitration panel decision from Suzette E. Haynes, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5022, Potomac Center Plaza, Washington, DC 20202-2800. Telephone: (202) 245-7374. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: Under section 6(c) of the Randolph-Sheppard Act (the Act), 20 U.S.C. 107d-2(c), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

Frank Malone (Complainant) alleged violations by the Ohio Rehabilitation Services, Bureau of Services for the Blind, the State Licensing Agency (SLA), regarding the Act, the implementing regulations in 34 CFR part 395, and State rules and regulations. Specifically, Complainant alleged that these violations led to his resignation as manager of the cafeteria at the Verne Riffe Center for Government and the Arts (Riffe Center) in Columbus, Ohio.

Additionally, Complainant alleged that the SLA improperly administered the Randolph-Sheppard Vending Program with respect to the SLA's rules and regulations concerning rent payments owed by him to the Ohio Building Authority (OBA), and the SLA's alleged failure to maximize Complainant's cafeteria facility, thus limiting his vocational potential.

Summary

Complainant filed a grievance against the SLA on this matter. A hearing on the grievance was held on August 20, 21, 22, and 26, 2003. Complainant's grievance was denied. On October 14, 2003, the hearing officer sustained the SLA's decision concerning the revocation of Complainant's vending

license and ordered that the SLA collect from Complainant all monies due regarding outstanding rent payments to OBA. On November 19, 2003, the SLA adopted the hearing officer's order as final agency action. Complainant sought review by a Federal arbitration panel of that decision.

Arbitration Panel Decision

After reviewing all of the records and hearing testimony of witnesses, the panel ruled that the SLA failed in its responsibilities toward Complainant in violation of the Act, implementing regulations, and State rules and regulations. Specifically, the panel directed the SLA to restore Complainant's vending operator's license and reinstate him in the Business Enterprise program with full seniority.

Further, the panel concluded that Complainant had been deprived of employment as a licensed vendor for four years, in part as a result of the SLA's omissions. Therefore, the panel also directed the SLA to offer Complainant the first available vending facility consistent with his ability and comparable in size, responsibility, and income potential as that of his previous assignment at the Riffe Center cafeteria facility.

Additionally, the panel awarded Complainant damages in the amount of \$93,202.01 for lost profits that he would have earned at the Riffe Center cafeteria facility less the amount of rent payments owed by Complainant to the SLA in the amount of \$19,254.30. The total amount of the damage award to be paid by the SLA to Complainant is \$73,947.71. The panel also found insufficient evidence to award further damages based upon Complainant's claim that he was entitled to an ATM machine and to have a priority for catering.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the Department.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: November 26, 2007.

William W. Knudsen,

Deputy Assistant Secretary for Special Education and Rehabilitative Services.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05-72-004]

Dynegy Midwest Generation, Inc.; Notice of Filing

November 21, 2007.

Take notice that on November 13, 2007, Dynegy Midwest Generation, Inc. filed its Reactive Supply and Voltage Control from Generation Sources Service rate schedule in compliance of the Commission Order issued October 12, 2007, Initial Decision, *Dynegy Midwest Generation, Inc.*, Opinion No. 498, 121 FERC ¶ 61,025 (2007).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the