

## OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 00-02

May 1, 2000

**TO:** All Regional Directors, Officers-in-Charge, and Resident Officers**FROM:** Leonard R. Page, General Counsel**SUBJECT:** Investigative Subpoenas

In our ongoing effort to ensure the consistent high quality and thoroughness of our investigations, it is critical that our field offices make the most effective use of all tools at their disposal. One important tool for achieving these objectives is the investigative subpoena.

The authority of field offices to issue investigative subpoenas without clearance from Washington has grown steadily. Most recently, Memorandum GC 94-9, dated August 12, 1994, greatly expanded the Regions' authority to utilize investigative subpoenas without first obtaining Washington approval. This enhanced delegation of authority was designed to allow field personnel to issue investigative subpoenas without Washington clearance in those circumstances where a charge would otherwise be dismissed for insufficient evidence.

In light of our experience since the issuance of GC 94-9, I believe that it is appropriate to give the Agency's field staff full discretion to issue investigative subpoenas, subject only to limited clearance and record-keeping requirements. Accordingly, Directors and their designees are authorized to issue investigative subpoenas *ad testificandum* and *duces tecum* to charged parties and third-party witnesses whenever the evidence sought would materially aid in the determination of whether a charge allegation has merit and whenever such evidence cannot be obtained by reasonable voluntary means.<sup>1</sup> Clearance is required only where the Region wishes to issue the subpoena post-complaint or where a serious claim of privilege is likely to be raised.<sup>2</sup>

In order to facilitate Agency oversight of the use of investigative subpoenas, GC 94-9 instructed Regions to submit to Operations-Management a copy of each investigative subpoena issued, together with a copy of any memorandum or other file document that explained the basis for issuance. While it is necessary to maintain a reporting system that allows for the oversight and review of the field's performance in this area, I believe that a less burdensome reporting system can meet these objectives. Accordingly, as an alternative to the reporting requirements of General Counsel 94-9, Regions may maintain chron files, which may be in an electronic format, that list, for each investigative subpoena issued, the name of the case, the name of the party or witness to whom the subpoena is directed, the evidence sought, the date of issuance, a brief description of the basis for issuance, and a notation of any petition to revoke and/or enforcement proceedings.

Any questions regarding the application of this memorandum may be directed to the Division of Advice.

/s/  
L. R. P.

cc: NLRBU

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<sup>1</sup> Subpoenas *ad testificandum* may compel testimony by affidavit, deposition, or response to written interrogatory. See Case Handling Manual, Part 3, Compliance, § 10590.2. Field staff are reminded of ethical restrictions against bypassing counsel that may mandate the notification of counsel to a party or witness who is subject to a subpoena. However, there is no general requirement that counsel for a party be notified of a subpoena to a neutral witness. See, *S.E.C. v. O'Brien*, 467 U.S. 735 (1984).

<sup>2</sup> Because of the high probability of a serious claim of privilege being raised, the clearance requirement for subpoenas issued to members of the press is being maintained. In addition, staff are reminded that certain subpoenas to financial institutions for financial records of individuals and small partnerships are subject to the Right to Financial Privacy Act. See Compliance Manual § 10593.6.