OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 98-7 **May 22, 1998**

TO: All Regional Directors, Officers-in-Charge, Resident Officers, Division and Office Heads, and Branch Chiefs

FROM: Fred Feinstein, Acting General Counsel

SUBJECT: Delegation of Section 102.118 Authorization

Section 102.118 of the Board's Rules and Regulations, as amended, requires that any party seeking to obtain the contents of files under the General Counsel's control in Washington or in the Regional Offices, or the testimony of any Board agent or attorney there employed, must secure the authorization of the General Counsel. Over the years, certain Section 102.118 requests have been routinely granted when made. In order to speed consideration of these requests and eliminate layers of review, several classes of Section 102.118 requests have been granted blanket General Counsel authorizations or the General Counsel has delegated the authority to the Regional Directors to decide whether to approve certain requests (*see*, February 2, 1972; March 21, 1974; March 20, 1992; and November 2, 1994 General Counsel Memoranda). These blanket authorizations and delegations of authority have proven beneficial to the efficiency of the agency.

The Special Litigation, Contempt, and Appellate Court Branches regularly engage in litigation in courts where affidavits from, and testimony by, Board agents or Attorneys, or production of agency records is necessary and/or beneficial. In other instances the agency finds it beneficial to share information with other government agencies, U.S. Trustees in bankruptcy, trustees in bankruptcy, or other creditors of a debtor. On other occasions the agency is responding to a third party subpoena. Currently, in these cases, written authorization by the General Counsel is required, on a case-by-case basis, to enable the submission of affidavits, testimony or production of documents to a court or others. Generally, these requests have been routinely granted.[1]

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1 For example, the General Counsel granted the following recent requests: (a) December 14, 1994 Special Litigation request for authorization to permit Board agents to provide the Department of Justice with necessary evidence to defend against criminal trespass and state bar grievance charges; (b) November 14, 1994 Special Litigation request for authorization to disclose charging party's affidavits; (c) June 19, 1995 Special Litigation request for authorization to disclose an investigatory document that would settle a FOIA case; (d) April 21, 1998 Special Litigation request for authorization to supply affidavits and testify to support Board's exclusive jurisdiction on backpay claims; and (e) April 23, 1998 Special Litigation request for authorization to supply affidavits and possible testimony of resident officer in opposition to plaintiff's motion for

In litigation involving the enforcement branches, time is frequently of the essence in meeting court-imposed deadlines. Further, the litigating branches tend to be in the best position to evaluate the need, in each case, for §102.118 authorization and to weigh the advantages and disadvantages of disclosure against the costs of litigation concomitant with nondisclosure. Delegation of §102.118 authorization to the Associate General Counsel for Enforcement Litigation will further promote internal agency efficiency, allow the litigating branches to react more quickly to short deadlines, and incorporate one of the many proposals for streamlining the agency.

Accordingly, I hereby delegate to the Associate General Counsel for Enforcement Litigation the final authority to grant authorization under Section 102.118 of the Board's Rules and Regulations for any member of the staff of the General Counsel, whether in headquarters or in the field, to write affidavits, to testify, or to provide other evidence in ongoing litigation, or otherwise to disclose information where the matter is being handled by or with the assistance of one of the litigating branches of the Division of Enforcement Litigation and where:

1. Affidavits from, and testimony by, Board agents or attorneys, or production of agency records would be necessary and/or beneficial;
2. The agency finds it beneficial to share information with other government agencies, U.S. Trustees in bankruptcy, trustees in bankruptcy, or other creditors of a debtor; or
3. The agency is responding to a third party subpoena.[2]

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cc: NLRBU

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preliminary injunction and in support of the Board's motion to dismiss or for summary judgment; (f) September 22, 1992 Contempt Litigation request for authorization to call a supervisory compliance officer and a field examiner as witnesses in a contempt case; and (g) Appellate Court requests on various occasions for authorization to submit affidavits from regional personnel regarding circumstances which would require sequestration of assets under §10(e).

2 Pursuant to GC Memo 94-14, subpoenas (other than NLRB subpoenas) served upon Regional offices should be brought to the attention of the Special Litigation Branch.