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PB (Ramshaw for EEOC) In Support Of Denial Of Defendant's Motion To Dismiss

Submitting a charge of discrimination to the EEOC and requesting that it be filed with both the EEOC and the relevant state agency is sufficient to comply with section § 706(c) of Title VII even where the charge fails to expressly refer to state law. The failure to institute state proceedings in compliance with § 706(c) does not deprive the district court of subject matter jurisdiction over an ADA claim. If plaintiff's failure to comply with § 706(c) was caused by incorrect legal advice from the EEOC the district court should hold the case in abeyance and give plaintiff an opportunity to comply with the statute.

Flippo v. American Home Products Corp.

No. 3:98CV804 (D.C., E.D. Va. 1999) 12pps. **$25.00**

DB (Schlageter for EEOC) Appeal From D.C., E.D. Missouri

The Commission investigator's charge report was exempt under the freedom of information act as an intra-agency memorandum. The report is a predecisional memorandum which falls within the deliberative process privilege. Courts review de novo whether an agency established that the requested document was exempt under FOIA.

Mace v. EEOC

No. 99-1843 (8th Cir. 1999) 32pps. **$45.00**

AB (Katz for EEOC) In Support of Plaintiff-Petitioners' Petition for Special Action on Appeal from Arizona Superior Court

By submitting a charge to the EEOC alleging employment discrimination in Arizona, plaintiff initiated proceedings with the Arizona Civil Rights Division and was entitled to a 300-day charge filing period under Title VII. It was reasonable for plaintiff to wait until conciliation efforts failed and the EEOC decided it would not file suit on her charge before seeking to amend her complaint.

Perez and Perez v. O'Neil

Nos. 2CA-5A96-0122, CV 940-41966 (Arizona Ct. of Appeal, 2nd Division 1996) 9 pps. **$15.00**

AB (Bruner for EEOC) In Support of Plaintiff's Motion to Reconsider

For charge-filing purposes, plaintiff satisfied the verification requirements of state law, even though the charge was not notarized in accordance with state law, where: the charge was originally filed with the EEOC; the EEOC did not require notarization; the charge conformed to the EEOC's verification requirements; and the purpose of the verification requirement under state and federal law is the same.

Blancett v. Fidelity

No. 94-08281 (Dist. Ct. Dallas 1994) 18 pps. **$25.00**

AB (White for EEOC) Brief *amicus curiae* in Support of Plaintiff-Appellant on Appeal from D.C., W.D. Va.

Complainants in the Commonwealth of Virginia have 300 days to file a discrimination charge with the EEOC because the Virginia Council on Human Rights is a state deferral agency with authority to seek relief for unlawful employment practices. Plaintiff filed a timely Title VII charge because her later execution of a verified charge related back to the date EEOC received her earlier signed statement containing the names of the parties and her allegation.

Tinsley v. First Union Bank

No. 97-2640 (4th Cir. 1998) 20 pps. $**25.00**

AB (Sacher for EEOC) Brief in Support of Appellant on Appeal from 281st Judicial District Court, Harris County, Tex.

The trial court's dismissal of plaintiff's state discrimination claims on jurisdictional grounds was inappropriate because plaintiff's complaint was based on a charge declared under penalty of perjury which satisfies the oath requirement of Texas law, even though the charge was not notarized. Even if state law requires notarization, the trial court should not have terminated plaintiff's discrimination suit because equitable considerations dictate that plaintiff should not be penalized since he innocently complied with the EEOC's regulations governing verification and any fault regarding his failure to notarize lies partially with the EEOC and not at all with plaintiff.

Norwood v. Litwin Engineers & Constructors, Inc.

No. 01-96-01401-CV (Tex. Ct. of Appeals 1997) 39 pps. **$45.00**

AB (Costas and Bruner for EEOC) Brief in Support of Plaintiff-Appellant on Appeal from the 68th D.C. of Dallas County, Tex.
The trial court inappropriately dismissed the Plaintiff's state disability discrimination claim because it was not notarized, even though the claims had been sworn to under oath which satisfies the oath requirement under Texas law. Alternately, even if state law requires notarization, equity dictates that the Plaintiff should be allowed to bring her claim, because she correctly followed the EEOC's procedure under the work share agreement between the EEOC and the Texas Commission on Human Rights.
Zoffuto v. The Richardson Independent School District
No. 05-96-00883-CV (Tex. App. 5th Dist. 1998) 46 pps. **$55.00**

PB (Duplinsky for EEOC) Appeal from D.C., W.D. N.C.
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EEOC v. McLean Trucking Co.
No. 87-3070 (4th Cir. 1987) 22 pps. **$35.00**

PB (White for EEOC) Appeal from D.C., E.D. Pa.
Principles of academic freedom do not create a qualified privilege protecting universities from disclosure of tenure review information relevant to the Commission's investigation of a Title VII charge.
EEOC v. University of Pennsylvania
No. 87-1547 (3rd Cir. 1988) 30 pps. **$35.00**

AB (Marcosson for EEOC) In Support of Motion to Dismiss
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Lichtenberg & Co., v. Clothing and Textile Workers' Union
No. CV 189-107 (D.C., S.D. Ga. 1990) 25 pps. **$35.00**

AB (Keller for EEOC) In Support of Motion for Summary Judgment
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Nevels v. Lyondell Petrochemical Co., et al.
No. 89-022221 (Harris County, Tex. 1991) 16 pps. **$25.00**

AB (Posner for CELA) Brief in Support of Plaintiff on Appeal from California Superior Court, Los Angeles County
Plaintiff who makes a good faith attempt to file a discrimination complaint with the EEOC or DFEH, but whose complaint is flawed due to unfamiliarity with the law or mishandling by the agency, should be allowed to proceed on all basis of discrimination against any party responsible. Not naming an individual defendant in the caption of an administrative charge should not defeat a FEHA claim against the individual where the individual is named in the body of the complaint.
Martin v. Texaco Refining & Marketing
No. B065601 (Cal. Ct. of Appeal, 2nd District 1992) 36 pps. **$45.00**

AB (Posner for CELA) Brief in Support of Plaintiff on Appeal from California Superior Court, Los Angeles County

Plaintiff who makes a good faith attempt to file a discrimination complaint with the EEOC or DFEH, but whose complaint is flawed due to unfamiliarity with the law or mishandling by the agency, should be allowed to proceed on all basis of discrimination against any party responsible.
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AB (Goodman for EEOC) In Opposition to Defendant's Motion to Dismiss
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McCallum v. Employment Security Commission of North Carolina
No. 1:94-CV-47-T (D.C., W.D., N.C. 1995) 29 pps. **$35.00**

PB (Suhre for EEOC) Reply Brief as Appellant
It is valid for a worksharing agreement between a state agency and the EEOC to cause state proceedings to be instituted upon receipt of the charge by the EEOC (the date for the tolling of the statute of limitations will be the same) even if the charge is not physically received by the state agency. Simply because a claimant failed to mark a box on the EEOC form to have her complaint cross-filed with the state agency does not evidence intent to not have her complaint instituted in the state agency as well as the EEOC.
EEOC v. Donald E. Green, Law Offices
No. 95-1571 (1st Cir. 1995) 16 pps. **$25.00**

PB (Marcosson for EEOC) Reply Brief
The court erred in dismissing the complaint which sought a preliminary injunction barring defendants from terminating long term disability benefits of plaintiff pending the completion of the EEOC proceedings on her charge of disability discrimination. Plaintiff is still considered a qualified individual with a disability even though she receives long term disability benefits.
EEOC v. CNA Insurance Co., et al.
No. 96-1304 (7th Cir. 1996) 16 pps. **$25.00**

PB (Suhre for EEOC) Brief as Appellee
The district court was correct in ordering defendant to comply with EEOC's subpoenas because the information requested was manifestly relevant to valid charges of sexual harassment of claimants. In deciding whether to enforce an EEOC subpoena, the court should only consider whether the information sought in the subpoena is relevant to a valid charge of discrimination. *Huttig* does not apply because the claimants have not already filed a private Title VII action which would bar the EEOC from their enforcement action. The EEOC should also have power to enforce violations of Title VII beyond the specific charges made by particular claimants.
EEOC v. Hearst Corp.
No. 96-20042 (5th Cir. 1996) 46 pps. **$55.00**

PB (Coleman for EEOC) Reply Brief as Appellant
The Commission's consent to the withdrawal of a charge does not foreclose the agency from challenging the conduct that was the subject of the charge in a lawsuit based on a different charge. This consent to withdrawal based on the private settlement agreement between claimants and defendant did not constitute a release by the Commission.
EEOC v. Harvey L. Walner & Associates and Walner
No. 95-3524 (7th Cir. 1996) 9 pps. **$15.00**

AB (Starr for EEOC) In Support of Plaintiff-Appellant
Because the Richmond County Human Relations Commission (RCHRC) was the EEOC's agent under a workshare agreement for the purpose of receiving discrimination charges, plaintiff's charge was properly filed with the EEOC when it was received by the RCHRC fewer than 180 days after plaintiff's discharge. Even if the RCHRC filing was not a filing with the EEOC, plaintiff's charge was filed directly with the EEOC within 180 days and was, therefore, timely.
Prescott v. G.I.W. Industries, Inc.
No. 96-8545 (11th Cir. 1996) 40 pps. **$45.00**

PB (Azrael) Memo of Law in Opposition to Motion to Dismiss
There is subject matter jurisdiction over plaintiff's Title VII claims. Plaintiff"s claim was timely filed and the right to sue letter can be issued before 180 days after the filing of the charge. The 60 day period for deferral by the EEOC to the Maryland Commission on Human Relations was properly waived. The court also has diversity jurisdiction, thus an issue of supplemental jurisdiction is moot. The allegations are sufficient to state a claim against defendant for assault and claims under the New York State Human Rights Law.
Vasconcellos v. Lumex, Inc.
No. CV96-2515 (LDW) (D.C., E.D.N.Y. 1996) 73 pps. **$85.00**

PRELITIGATION ACTIVITY - FREEDOM OF INFORMATION ACT REQUESTS

DB (Blackwood for EEOC) In Support of Defendant-Appellant on Appeal from the D.C., W.D. Tenn.
The EEOC conducted an adequate search for material requested under the Freedom of Information Act making an exhaustive search of its New York office in response to the Plaintiff's FOIA request. The EEOC did not print out certain information and turned them over to the Plaintiff's because the information was not part of the file that the Plaintiff's requested, not because the search conducted by the EEOC was inadequate.
GRMI v. EEOC
No. 96-6396 (6th Cir. 1996) 24 pps. **$35.00**

DB (Suhre for EEOC) Reply Brief on Appeal from the D.C., W.D. Tenn.
The standard for awarding attorneys' fees in a FOIA action is where there is a causal connection between the action and the relief obtained, and at least a minimum basis in the law for the relief secured.
GMRI v. EEOC
No. 96-6396 (6th Cir. 1996) 4 pps. **$15.00**

DB (Suhre for EEOC) Appeal from the D.C., W.D., of Tenn.
The Commission conducted an adequate search for the material requested under the FOIA. Because the records were not part of the file GMRI requested, the Commission did not print out records. Thus, the search was not inadequate.
GMRI V. EEOC
No. 96-6396 (6th Cir. 1996) 24 pps. **$35.00**

DB (Stebbins for EEOC) Appeal from D.D.C.
The district court properly dismissed FOIA complaint for lack of subject matter jurisdiction where the agency records, whose disclosure plaintiff seeks under the Freedom of Information Act, have been destroyed according to agency rule and are no longer in defendant's possession.
Stebbins v. Thomas
No. 89-7122 (D.C. Cir. 1989) 30 pps. **$35.00**

AB (Sloan for EEOC) In Support of Plaintiff on Motion for Summary Judgment
The district court properly dismissed plaintiff's claims against the EEOC. The requests for EEOC investigation materials are exempt by one or more of the FOIA exemptions and claims against the EEOC under Title VII, the ADEA or 42 U.S.C.

§ 1985(3) for conspiracy, improper charge processing and investigations are precluded by the doctrines of issue preclusion and res judicata. Neither Title VII nor the ADEA provide federal courts with jurisdiction to hear claims against the EEOC for improper processing and investigation.
Wrenn v. Vanderbilt University Hospital
Nos. 93-5994 & 936181 (6th Cir. 1993) 39 pps. **$45.00**

DB (Starr for D.C. EEOC) Appeal of Dismissal by D.C., S.D. N.Y.
The district court lacked subject matter jurisdiction over plaintiff's Freedom of Information Act request because the document requested of defendant EEOC had either been provided to plaintiff or destroyed prior to the FOIA request. The court did not abuse its discretion by refusing to permit plaintiff to depose EEOC employees prior to making its ruling on subject matter jurisdiction.
Mitchell v. Gallegos
No. 92-6321 (2nd Cir. 1993) 30 pps. **$35.00**

DB (White for EEOC) Brief for Respondent EEOC In Opposition To Petition for Certiorari
EEOC documents are exempt from FOIA requests where the documents fit "Exemption Five" for documents which reflect the pre-decisional deliberative processes of governmental agencies.
Etemad v. EEOC
No. 94-6152 (U.S. Supreme Ct. 1994) 12 pps. **$25.00**
DB (Clark for EEOC) In Response to Plaintiff's Motion for Summary Reversal
The plaintiff's appeal should fail under *Biens* because his complaint alleging a FOIA claim did not include the required heightened pleading standard of intentional violations of constitutional rights in light of the special immunity accorded government officials who act in an objectively reasonable manner.
Wrenn v. Casellas
No. 94-5199 (D.C. Cir. 1994) 15 pps. **$25.00**

EEOC INVESTIGATION/DISCOVERY

PB (Owsley for EEOC) Appeal Of Denial Of Petition For Preliminary Injunction From D.C., N.D. Oklahoma
The Commission is statutorily entitled to an injunction where the employer's lawsuit against a third party who is not an employee threatens the integrity of the Commission's investigation of pending discrimination charges. The employer's suit against third party threatens to impair the investigative process by seeking to discover the substance of the investigation and by discouraging individuals who may have relevant information from coming forward to assist in the investigation. Investigators are entitled to the unchilled testimony of witnesses. Whether the third party can ultimately prevail on his retaliation claim was not relevant as to whether the employer's suit against him had interfered with the investigation or chilled the charging parties or others in the exercise of their Title VII rights. Issuing an injunction would not cause employer to suffer any damage because baseless claims are not protected.
EEOC v. Norris
No. 99-5068 (10th Cir. 1999) 41pps. **$55.00** Addendum 31pps. **$45.00**

PB (Suhre for EEOC) In Support Of Appellee On Appeal
The district court correctly ordered the defendant-appellant to comply with the EEOC's document subpoenas but erred by modifying the subpoenas. Defendant waived its right to challenge the subpoena in court by failing to follow available administrative procedures. Defendant's report on sexual harassment is not protected by the attorney-client privilege because communications between defendant employer's counsel and employees who have an interest adverse to defendant with respect to the matter at issue are not protected. The report is also not protected by work product because it was not prepared in anticipation of litigation.
EEOC v. Lutheran Social Services

Nos. 98-5245, 98-5401 (D.C. Cir. 1999) 36pps. **$45.00**

PB (Ramshaw for EEOC) EEOC brief as Appellee on Appeal from D.C., D.Md.
A description of Lockheed's computerized personnel files is relevant to the EEOC's ADEA investigation because it is reasonably calculated to lead to the discovery of probative evidence with respect to the charges the EEOC is investigating. To enable the EEOC to carry out its responsibilities under the ADEA, Congress gave the agency the authority to require by subpoena the production of all such documentary evidence relating to any matter under investigation.
EEOC v. Lockheed Martin Corp.,
No. 96-1853 (4th Cir. 1996) 27 pps. **$35.00**

PB (Bernstein for EEOC) Brief in support of Appellee on appeal from the D.C., N.D., Ill.
The district court correctly applied the governing legal principles in ordering the defendant-appellant to comply with the EEOC's document subpoenas. The district court properly exercised sound judicial discretion in finding that the EEOC's document subpoena, as modified, seeks information relevant to the investigation of charges of racial discrimination. Defendant-appellants appeal from the ruling on witness fees that its moot because the EEOC's agreement to pay fees and expenses to the subpoenaed witness
afford defendant full relief.
EEOC v. Laidlaw Waste Systems, Inc.
Nos. 96-2869 and 96-3116 (7th Cir. 1996) 55 pps. **$65.00**

PB (Ziegler for EEOC) Appeal from the D.C., E.D.Mo.
The district court did not err as a matter of law in denying intervention pursuant to Fed.R.Civ.P 24 (a)(2) which requires that the application for intervention be timely, demonstrate a direct and substantial interest in the subject matter of the main action that will be impaired or impeded as a practical matter if intervention is not allowed. And that none of the current parties to the action adequately represents that interest. Furthermore the district court's decision is correct because intervention pursuant to Fed.R.Civ.P 24 (a) (2) is not available in a subpoena enforcement action.
EEOC v. Blue Cross Blue Shield of Missouri
No. 96-3419 (8th Cir. 1996) 33 pps. **$45.00**

DB (Blackwood for EEOC) In Support of Defendant-Appellant on Appeal from the D.C., W.D. Tenn.
The EEOC conducted an adequate search for material requested under the Freedom of Information Act making an exhaustive search of its New York office in response to the Plaintiff's FOIA request. The EEOC did not print out certain information and turn them over to the Plaintiff's because the information was not part of the file that the Plaintiff's requested, not because the search conducted by the EEOC was inadequate.
GRMI v. EEOC
No. 96-6396 (6th Cir. 1996) 24 pps. **$35.00**

PB (Gregory for EEOC) Appeal from D.C., M.D. Fl.
The district court improperly concluded that an alleged harasser's diary was work product. The EEOC can demonstrate a "substantial need" for the notes. The decision of the district court should be reversed and the case remanded to permit enforcement of the Commission's subpoena. Otherwise, preventing access to the notes would frustrate Title VII's multi-step enforcement procedure.
EEOC v. Sprint
No. 95-2969 (11th Cir. 1995) 39 pps. **$45.00**

PB (Coleman for EEOC) Appeal from D.C., N.D. Ill.

Summary judgment for defendant employer was granted in error. Charging party alleged that her employer sexually harassed her; upon investigation, the Commission did not find reasonable cause to support her allegation. In the course of the investigation, the Commission found reasonable cause to believe that the employer had sexually harassed other women. The summary judgment award thwarts the Commission's effort to obtain injunctive relief against the employer and to prevent further harassment to other female employees.
EEOC v. Harvey L. Walner and Associates and Harvey L. Walner
No. 95-3524 (7th Cir. 1995) 29 pps. **$35.00**

AB (Smith for EEOC) Appeal from D.C., S.D. of Ill.
EEOC denies allegations of covering up information obtained while investigating Railroad's "local hiring policy." EEOC supplied Railroad with all necessary documents months before trial. There is nothing unethical in the EEOC allowing agents to assist court as amicus technical advisor.
Mister v. Illinois Central Gulf Railroad
No. 86-2381 (7th Cir. 1987) 9 pps. **$15.00**

PB (Bruner for EEOC) Reply Brief on Appeal from D.C., N.D. Ill.
In an action to enforce a subpoena of a state's unemployment records, the state's third party status makes no difference in reviewing the state's privilege to refuse a subpoena; the University of Pennsylvania rule allows the EEOC to obtain all relevant information; balancing competing federal and state interests favors enforcement of the EEOC subpoena; and the Supremacy Clause requires compliance with the subpoena.
EEOC v. Illinois Department of Employment Security
No. 92-3013 (7th Cir. 1993) 15 pps. **$25.00**

AB (Marcosson for EEOC) Opposition to Motion for Injunction
Employer's motion to enjoin the EEOC from investigating a claimant's case because an arbitration agreement barred the claimant from filing her own lawsuit is improper since the EEOC has independent law enforcement responsibilities to combat discrimination on behalf of the public.
ITT Consumer Financial Corp. v. Lowe
No. S92-0518 (D.C., S.D.Miss., 1993) 8 pps. **$15.00**

PB (Gregory for EEOC) Appeal from D.C., S.D. Fla.
District court erred in denying enforcement of an administrative subpoena seeking documents necessary to the EEOC's investigation of charges of discrimination by a foreign employer against U.S. citizens where the employer's base of operations is in the U.S. and the employees reside in and perform work within the U.S. The subpoenas must be enforced so that the EEOC can make the initial decision on coverage under Title VII, and thus the district court improperly inquired into the question of coverage in denying enforcement. In any event, Title VII applies to this case.
EEOC v. Kloster Cruise Ltd.
No. 90-5800 (11th Cir. 1991) 48 pps. **$55.00**
Also available: Reply Brief of Plaintiff-Appellant, on appeal from D.C., S.D. Fla., making similar arguments. 30 pps. **$35.00**

AB (Bruner for EEOC) Appeal from D.C., W.D. Tenn.
The district court erred in limiting the temporal scope of the subpoena against defendant. The request for documents dating back to 1980, relating to discriminatory denials of promotions of other employees, is relevant to plaintiff's case because evidence of past events may show that a continuing Title VII violation has been asserted, and evidence of past discrimination is relevant to assessing the truth of a charge of current discrimination. The district court's reliance on the 300-day statute of limitations period for timely charges as a basis for restricting the temporal scope of the subpoena is erroneous because the 300-day limitations period has no bearing on the temporal scope of an EEOC investigation.

EEOC v. Ford Motor Credit Company
No. 93-5081 (6th Cir. 1993) 46 pps. **$55.00**

PB (Rees for EEOC) Appeal from D.C., E.D. N.Y.
EEOC has subpoena power to require an employer, charged with race and national origin discrimination, to produce copies of unsuccessful employment applications. EEOC did not violate Title VII's non disclosure provisions when it used the employer's name in the questionnaire to the employer's unsuccessful applicants.
EEOC v. Macy's Kings Plaza
No. 87-6136 (2nd Cir. 1987) 34 pps. **$45.00**

PB (Reams for EEOC) Reply Brief on Appeal from D.C., E.D. N.Y.
EEOC has the subpoena power to require an employer, charged with race and national origin discrimination, to produce copies of unsuccessful employment applications. EEOC did not violate Title VII's non disclosure provisions when it used the employer's name in the questionnaire to the employer's unsuccessful applicants.
EEOC v. Macy's Kings Plaza
No. 87-6136 (2nd Cir. 1987) 10 pps. **$15.00**

PB (Thomas for EEOC) Appeal from D.C., N.D. Ohio
The district court incorrectly concluded that the EEOC was not entitled to enforcement of its administrative subpoena due to latches. The EEOC properly held its investigation of defendant in abeyance pending OFCCP's investigation of Defendant to avoid duplication of OFCCP's discovery efforts.
EEOC v. National City Bank
No. 87-3387 (6th Cir. 1988) 37 pps. **$45.00**

PB (Goodman for EEOC) Appeal of Denial of Subpoena Enforcement from D.C., D. Ariz.
In conducting a directed investigation of age discrimination, the EEOC may subpoena from defendant advertisements placed for attorneys, applications received, and starting salaries and ages of attorneys employed by defendant within a two year period. Defendant must show a substantial interest in non-disclosure in order to obtain a protective order.
EEOC v. North
No. 93-15101 (9th Cir. 1993) 17 pps. **$25.00**

PB (Goodman for EEOC) Appeal of Denial of Subpoena Enforcement by D.C., D. Ariz.
The district court erred in refusing to enforce a subpoena in an ADEA investigation, which requested hiring and recruitment policies, employment ads, and records of applicants, interviewees and hirees. The court improperly considered the merits of possible future claims against defendant.
EEOC v. North
No. 993-15101 (9th Cir. 1993) 33 pps. **$45.00**

PB (Bruner for EEOC) Appeal of Modification of Subpoena by D.C., W.D. Tenn.
In investigating an allegation of discrimination, the EEOC may subpoena employer records covering the entire period of the charging party's employment and of other employees, given the circumstances of the case.
EEOC v. Ford Motor Credit Company
No. 93-5081 (6th Cir. 1993) 19 pps. **$25.00**

PB (Wheeler for EEOC) Appeal of Denial of Subpoena Enforcement by D.C., N.D. Ill.
The standards for subpoena enforcement are the same for third parties as for parties. The federal interest in eradicating employment discrimination outweighs the state interest in confidentiality of unemployment proceedings. Federal

pre-emption under the Supremacy Clause does not require Title VII to explicitly pre-empt a state statutory privilege where the state privilege will frustrate the enforcement of Title VII.
EEOC v. Illinois Department of Employment Security
No. 92-3013 (7th Cir. 1992) 63 pps. **$75.00**

PB (Tufano) Motion to Compel Discovery
Plaintiff's discovery requests should not be denied on grounds that information sought is private and confidential. Defendant refuses to produce information on complaints of sex discrimination filed against them over a five year period. Defendant should not be permitted to use the excuse of third party privacy interests to deny plaintiff's access to information which may be valuable to the case. Gianni v. Trumps Castle Associates Limited Partnership
No. 89-3266 (MHC) (D.C., D. N.J. 1989) 18 pps. **$25.00**

PB (Starr for EEOC) Appeal from D.C., N.D. Cal.
The district court did not abuse its discretion by enjoining defendants from destroying, altering, or removing records relevant to charges of discrimination against them since there was uncontroversial evidence that defendants planned to destroy or alter them. EEOC v. Recruit U.S.A.
No. 89-16095 (9th Cir. 1989) 31 pps. **$45.00**

PB (O'Conner for EEOC) Appeal from D.C., E.D. Pa.
There is no privilege for academic employment decisions which are challenged as violations of federal anti-discrimination law.
EEOC v. Franklin and Marshall College
No. 84-1739 (3rd Cir. 1985) 59 pps. **$65.00**

PB (Bogas for EEOC) Appeal from D.C., N.D. Tex.
The district court abused its discretion when it responded to delays in expert discovery by excluding the EEOC's expert evidence, rather than granting a continuance. The court erred in dismissing claims of class members as a discovery sanction without issuing a discovery order, compelling further response to interrogatories on the identities of class members. The court erred by excluding evidence of defendant's rejection of applicants over age 40, which can be used to prove pretext in an individual's intentional discrimination claim. The court erred by excluding evidence of young hirees. Evidence that an employee filed fifteen charges of discrimination against other employers should be excluded on the basis that the probative value is outweighed by the danger of unfair prejudice.
EEOC v. General Dynamics Corp.
Nos. 92-1156 & 1393 (5th Cir. 1992) 60 pps. **$65.00**

PB (Sloan for D.C. EEOC) In Support of Plaintiff's Motion for Summary Judgment, D.C., M.D. Tenn.
The district court properly dismissed plaintiff's claims against the EEOC. The requests for EEOC's investigation materials are exempt by one or more of the FOIA exemptions. The claims against the EEOC under Title VII, the ADEA or 42 U.S.C. § 1985(3), for conspiracy, improper charge processing and investigations are precluded by the doctrines of issue preclusion and res judicata. Neither Title VII nor the ADEA provide federal courts with jurisdiction to hear claims against the EEOC for improper processing and investigation.
Wrenn v. Vanderbilt University Hospital
Nos. 93-5994 & 936181 (6th Cir. 1993) 39 pps. **$45.00**

EEOC PROCEDURE

AB (Carter for EEOC) In Opposition To Defendant's Motion To Dismiss Plaintiff's Complaint
The plain language of Title VII indicates that the only prerequisites to filing suit are (1) the timely filing of an administrative charge with the EEOC, and (2) the receipt of a notice of right to sue (issued by the EEOC). Congress gave

the EEOC the "authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of [Title VII]." 42 U.S.C. § 2000e-12(a) (§ 713(a) of Title VII). The EEOC's regulation authorizing it to issue early right to sue notices is consistent with the language of Title VII. If the Commission's regulation is invalid, then this Court should waive the 180-day processing requirement in the Plaintiff's case on equitable grounds so as to avoid penalizing her for the EEOC's failure to fulfill its duty.
Bronner v. G.C. Services and Nova Information Systems
No. 98-CV-633 (D.C., E.D., Tenn. 1999) 20pps. **$25.00**

AB (Ramshaw for EEOC) Brief Of The Equal Employment Opportunity Commission As *Amicus Curiae* In Support Of Appellant's Petition For Rehearing And Her Suggestion For Rehearing *En Banc*
The court should give effect to the work-sharing agreement that was executed by the EEOC and the Virginia Council on Human Rights (VCHR) in order to protect charging parties' rights. The provisions of the work-share agreement clearly contemplates that the VCHR deems a charge originally received by the EEOC to have been also filed automatically and simultaneously with the VCHR.
Dodge v. Phillip Morris, Inc., d/b/a Phillip Morris USA
No. 98-1968 (4th Cir. 1999) 22pps. **$35.00**

PB (Starr for EEOC) Brief Of The Equal Employment Opportunity Commission As *Amicus Curiae* In Support Of Appellant
Title VII imposes only two prerequisites to suit: the filing of a timely charge and receipt of a right-to-sue notice from the EEOC. In dismissing Plaintiff's complaint, the district court incorrectly imposed an additional administrative requirement, that the charging party cooperate with the commission's investigative and conciliatory proceedings. The district court has in effect imposed an exhaustion requirement, beyond the statutory requirement to file a charge and receive a notice of right to sue, on complainants who invoke the informal administrative proceedings applicable to claims under § 706.

Holland v. Project Return Foundation
No. 99-7084 (2nd Cir. 1999) 34pps. **$45.00**

PB (Waxman for DOJ) Motion For Leave To File Brief In Reply To Respondent's Post-Argument Brief, And Brief For The United States And The Equal Employment Opportunity Commission
Under EEOC's regulations, an employer may make employment decisions based on physical characteristics without being found to "regard" the employee as having a substantially limiting impairment under the ADA. This occurs when an employer bases its decision on an actual or perceived physical characteristic that is not an impairment within the meaning of the ADA. It would also occur where an employer bases its decision on a characteristic that s an impairment, but that does not substantially limit a major life activity.
Sutton and Hinton v. United Air Lines, Inc.
No 97-1943 (U.S. Supreme Ct. 1999) 7pps. **$15.00**

AB (Ramshaw for EEOC) Supplemental Brief In Support of Plaintiff-Appellant on Appeal from D.D.C.
The court should not address defendant's arguments concerning the validity of plaintiffs right to sue notice and the scope of coverage under § 102(d)(4)(A)) because defendant failed to cross appeal, and neither argument affects the district court's jurisdiction. The EEOC's regulation permitting issuance of notices of right to sue less than 180 days after a charge is filed is consistent with both the letter and spirit of Title VII and is therefore valid. Section 102(d)(4)(A)'s ban on disability-related inquiries protects all employees, not just those with disabilities.
Roe v. Cheyenne Mountain Conference Resort
No. 96-1086 (lath Cir. 1996) 23 pps. **$35.00**

AB (Suhre for EEOC) Brief In Support of Plaintiff's Opposition to Defendants' Motion to Dismiss

Title VII does not require claimants to wait for 180 days before filing suit when the Commission certifies that it is unable to complete its processing of the claimant's charge within that time period. Because, pursuant to a work sharing agreement between it and the EEOC, the Maryland Commission on Human Relations has waived its exclusive right to process charges like the Vasconcellos' that were originally filed with the EEOC, the deferral requirements of 42 U.S.C. § 2000e-5 were met in this case.
Vasconcellos and Vasconcellos v. Lumex. Inc. et al.
No. CV 96-2515 (LDW) (D.C., E.D. N.Y. 1996) 30 pps. **$35.00**
Also available: Attachment - Work sharing Agreement Between Maryland Commission on Human Relations and the EEOC for Fiscal Years 1996. 7 pps. **$15.00**

AB (Gregory for EEOC) In Support of Plaintiff-Appellant on Appeal from the D.C., N.C., Ohio
The district court erred in ruling that the plaintiff's amended complaint did not relate back to the filing of his original complaint, under Fed.R.Civ.P. 15(c), where the amended complaint merely corrected a mistake in the naming of the parties, the party sought to be added in the amended complaint had been properly named and served with the plaintiff's EEOC charge. In addition, the district court erred in ruling that the plaintiff's claim against the other corporate defendant's named in the original and amended complaints were barred because these defendant, while sharing the same address, legal counsel, and similar name as the party named in the plaintiff's EEOC charge, were not themselves named in the charge.
Smith v. Sofco, Inc.,
No. 97-3121 (6th Cir. 1997) 20 pps. **$25.00**

AB (Bogas for EEOC) Appeal from the D.C., W.D. Ark.
The district court erred by holding that the plaintiff's formal charge was untimely where the plaintiff filed a detailed, signed, charge information form with the EEOC within the charge filing period, but the EEOC did not complete preparation of a formal charge for her signature until after the charge filing period expired. In addition, the district court erred by failing to apply equitable tolling to preserve her claim.
Lawrence v. Cooper Communities, Inc.
No. 97-1338 (8th Cir. 1996) 21 pps. **$35.00**

AB (Gregory for EEOC) Opposition to Defendant's Motion for Reconsideration
The EEOC investigator issued a letter in this case that purported to represent the "EEOC's position" on this issue of statutory coverage under the ADEA, yet the position articulated in the letter is not, in fact, the Commission's position. The position is that the ADEA applies to a discriminatory change in post-employment benefits even when the change occurs after the individual has retired from employment.
McKeever v. Ironworker's District Council
No. CIV.A. 996-5858 (D.C., E.D. Penn.) 24 pps. **$35.00**

AB (White for EEOC) Appeal from the D.C., E.D. Mo.
A plaintiff who informs the EEOC that she wishes to file a charge and submits to the agency a signed intake questionnaire that contains all the substantive elements of a charge within the time specified for filing a charge in § 706(e)(1) of Title VII may bring a Title VII action against the respondent named in the questionnaire despite the fact that she did not file a formal, verified charge until after the filing period expired.
Schlueter v. Anheuser-Busch, Inc.
No. 97-1603 (8th Cir. 1997) 19 pps. **$25.00**

AB (Moran, Marcosson for EEOC) In Support of Plaintiff-Appellant
Filing a charge with the Commission and receiving a notice of a right to sue are not jurisdictional prerequisites to filing an ADA or Title VII lawsuit and such requirements may be waived in appropriate circumstances.

Austin v. Owens-Brockway Glass Container, Inc.
Nos. 94-1213 94-1265 (4th Cir. 1994) 21 pps. **$35.00**

AB (White for EEOC) In Support of Plaintiff-Appellant
The district court erred in dismissing this Title VII action since plaintiff filed a timely verified charge with the EEOC. The affidavit submitted by plaintiff in September 1993 was an effective amendment of his prior charge. Alternatively, if the prior charge was ineffective, plaintiff's subsequent submission itself constitutes a timely verified charge.
Balazs v. AT&T Co.
No. 93-2403 (4th Cir. 1994) 17 pps. **$25.00**

PB (Cornish) Motion for Order that Defendant Submit to Mental Examination Pursuant to F.R.Civ.P. 35
The defendant department chairperson should submit to a mental examination for good cause under the Federal Rules to show that plaintiff's gender motivated discriminatory actions.
Klein v. The Colorado College
No. 89-S-1286 (D.C., D.Colo. 1990) 6 pps. **$15.00**

PB (White for EEOC) Brief of Plaintiff-Appellant
The EEOC's administrative subpoena should have been enforced since it seeks information relevant to the investigation of a charge that is timely on its face.
EEOC v. City of Norfolk Police Department
No. 94-1350 (4th Cir. 1994) 15 pps. **$25.00**

PB (Goodman for EEOC) Brief of Plaintiff-Appellee
Defendant has failed to make an adequate showing that compliance with EEOC requests would threaten the normal operations of its business.
EEOC v. Quad/Graphics, Inc.
No. 94-3770 (7th Cir. 1995) 33 pps. **$45.00**

PB (Suhre, Marcosson for EEOC) Brief of Plaintiff-Appellee
The district court properly exercised its discretion by enforcing the Commission's administrative subpoena. Because defendant's appeal is frivolous, the EEOC is entitled to attorney's fees and other expenses.
EEOC v. Superior Temporary Services, Inc.
No. 94-6141 (2nd Cir. 1994) 39 pps. **$45.00**

PB (Brusoski for EEOC) Writ of Certiorari to the 10th Circuit
A state or local fair employment practice agency's decision to waive its right to initially process a charge of discrimination "terminates" its "proceedings" within the meaning of section 706© of Title VII, so as to allow the EEOC to assert immediate jurisdiction over the charge.
EEOC v. Commercial Office Products Co.
No. 86-1696 (U.S. Supreme Court 1987) 44 pps. **$55.00**

AB (Starr for EEOC) In Support of Plaintiff's Opposition to Defendant's Motion to Dismiss
Claimant need not wait 180 days to file suit under the ADA and Title VII once the EEOC certifies it is unable to investigate the charge within that time period.
Parker v. Noble Roman's, Inc.
No. IP 96-0065 C (D.C., S.D.Ind. 1996) 31 pps. **$45.00**

AB (Goldstein for EEOC) In Support of Petition for Certification

The lower court erred in holding that once the plaintiff received an EEOC determination on his Title VII claim, that he could no longer pursue a claim under the New Jersey Law Against Discrimination.
Hernandez v. Region Nine Housing Corp.
No. 41,777 (N.J. Supreme Ct 1996) 22 pps. **$35.00**

PB (Coleman for EEOC) Reply Brief as Appellant
The Commission's consent to the withdrawal of a charge does not foreclose the agency from challenging the conduct that was the subject of the charge in a lawsuit based on a different charge. This consent to withdrawal based on the private settlement agreement between claimants and defendant did not constitute a release by the Commission.
EEOC v. Harvey L. Walner & Associates and Harvey L. Walner
No. 95-3524 (7th Cir. 1996) 9 pps. **$15.00**

PB (Suhre for EEOC) Reply Brief as Appellant
It is valid for a worksharing agreement between a state agency and the EEOC to cause state proceedings to be instituted upon receipt of the charge by the EEOC (the date for the tolling of the statute of limitations will be the same) even if the charge is not physically received by the state agency. Simply because a claimant failed to mark a box on the EEOC form to have her complaint cross-filed with the state agency does not evidence intent to not have her complaint instituted in the state agency as well as the EEOC.
EEOC v. Donald E. Green, Law Offices
No. 95-1571 (1st Cir. 1995) 16 pps. **$25.00**

PB (Sloan for EEOC) Brief as Applicant-Appellee
The district court's decision requiring defendant's compliance with the Commission's subpoena was correct because the Commission is empowered to conduct investigations under the ADEA irrespective of whether a charge is filed. The Commission may conduct such investigations on its own initiative.
EEOC v. Tire Kingdom, Inc.
No. 95-4227 (11th Cir. 1995) 34 pps. **$45.00**

AB (Starr for EEOC) In Support of Plaintiff-Appellant
Because the Richmond County Human Relations Commission (RCHRC) was EEOC's agent under a workshare agreement for the purpose of receiving discrimination charges, plaintiff's charge was properly filed with the EEOC when it was received by the RCHRC fewer than 180 days after plaintiff's discharge. Even if the RCHRC filing was not a filing with the EEOC, plaintiff's charge was filed directly with the EEOC within 180 days and was, therefore, timely.
Prescott v. G.I.W. Industries, Inc.
No. 96-8545 (11th Cir. 1996) 40 pps. **$45.00**

PB (Azrael) Memo of Law in Opposition to Motion to Dismiss
There is subject matter jurisdiction over plaintiff's Title VII claims. Plaintiff"s claim was timely filed and the right to sue letter can be issued before 180 days after the filing of the charge. The 60 day period for deferral by the EEOC to the Maryland Commission on Human Relations was properly waived. The court also has diversity jurisdiction, thus an issue of supplemental jurisdiction is moot. The allegations are sufficient to state a claim against defendant for assault and claims under the New York State Human Rights Law.
Vasconcellos v. Lumex, Inc.
No. CV96-2515 (LDW) (E.D.N.Y. 1996) 73 pps. **$85.00**

SUITS AGAINST THE EEOC

DB (Schlageter for EEOC) Appeal From D.C., E.D. Missouri

The Commission investigator's charge report was exempt under the freedom of information act as an intra-agency memorandum. The report is a predecisional memorandum which falls within the deliberative process privilege. Courts review de novo whether an agency established that the requested document was exempt under FOIA.
Mace v. EEOC
No. 99-1843 (8th Cir. 1999) 33pps. **$45.00**

DB (Friedman for EEOC) Appeal From D.C., E.D. Michigan
District Court did not abuse its discretion when it denied plaintiff's motion for reconsideration. The court already recognized that it lacked jurisdiction to entertain an appeal on the merits. The only issue remaining was whether the district court abused its discretion in denying plaintiff relief from the judgment. Plaintiff failed to carry his burden of establishing that he is entitled to Rule 60(b) relief so the district court acted well within its discretion in denying plaintiff's motion for reconsideration.
Tolbert v. EEOC
No. 98-2086 (6th Cir. 1999) 30pps. **$35.00**

PB (Danis for EEOC) Plaintiff-Appellant's Brief On Appeal From D.C., S.D. New York
The ADA reaches intra-group discrimination based on the particular disability of a group member. Because the language of
the ADA is modeled after earlier civil rights statutes such as Title VII and the ADEA, the Supreme Court has consistently interpreted the ADA to protect individual members of a protected class. Moreover, the ADA's protection must be understood to extend to insurance fringe benefits, such as the long term disability benefit plan in the case at bar.
EEOC v. Chase Manhattan Savings Bank and UNUM Life Ins. Co. of America
No. 99-6035 (2nd Cir. 1999) 87pps. **$90.00**

DB (Owsley for EEOC) Brief Of The EEOC As Appellee From Massachusetts District Court
In a suit against the EEOC, the plaintiff claims that the agency did not adequately investigate and process his charge of discrimination and that it conspired with the other defendants to delay the investigation. The dismissal of plaintiff's case was proper because the district court did not have subject matter jurisdiction over this claim. Furthermore, plaintiff failed to state a claim against the Commission upon which relief can be granted.
Choudhary v. EEOC
No. 98-2078 (5th Cir. 1999) 18pps. **$25.00**

PB (Gregory for EEOC) Brief Of the Equal Employment Opportunity Commission As Plaintiff-Appellant
The district court erred in finding that the EEOC did not make out a prima facie case when the evidence shows that the employer took pregnancy into account in denying modified-duty work to each of the claimants. The Commission showed that the claimants, who were pregnant, were denied modified-duty work made available to any group of non-pregnant employees. This evidence is enough to raise an inference of discrimination, thus requiring the employer to provide a legitimate explanation for its actions.
EEOC v. Horizon/CMS Healthcare Corp.
No. 98-2328 (10th Cir. 1999) 53pps. **$65.00**

PB (Carter for EEOC) Brief Of The Equal Employment Opportunity Commission As Appellee
Plaintiffs were subjected objectively and subjectively to hostile working environments because of their sex. There existed evidence on which the jury could rationally conclude that the employer, Ameritech, negligently failed to prevent and rectify continuous harassment by a co-worker. The jury's award for punitive damages should be affirmed because the evidence establishes that the defendant employer engaged in the discriminatory practice with malice or reckless indifference to the federally protected rights of the plaintiffs. The defendants, in the case at bar, acted with reckless indifference because it failed to act after acquiring knowledge of an employee's long history of sexual harassment of

various women in the workplace. The district court did not abuse its discretion when it excluded the employer's arbitration evidence for purposes of liability and punitive damages. The district court correctly recognized that the employer's arbitration evidence was simply irrelevant to the employer's liability because of the employer's fears about what might happen if the harasser chose to file a grievance after being terminated, did not alter the basic duty of care an employer owed under Title VII to its female employees in this case.
EEOC v. Indiana Bell Tel. Co., Inc., d/b/a Ameritech Indiana, and Ameritech Corp,
No. 99-1155 (7th Cir. 1999) 60pps. **$65.00**

PB (Danis for EEOC) Brief Of Appellant Equal Employment Opportunity Commission
The district court failed to recognize that the ADA's prohibition against disability-based discrimination reaches intragroup discrimination in all aspects of the employment relationship, including disability-based discrimination in the context of insurance fringe benefits. The defendant's long term disability plan furthermore would not be immunized under the ADA's safe harbor provision.
EEOC v. Staten Island Savings Bank, and Guardian Life Ins. Co.
No. 99-6011 (2nd Cir. 1999) 81pps. **$90.00**

DB (Goldstein) Brief Of EEOC As Appellee On Appeal From D.C., N.D, Illinois
There are no cited statutes that permit the plaintiff to file an civil action against the EEOC for its handling of the administrative process. The EEOC was not Plaintiff's employer and thus does not fall under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000 *et seq*., which authorizes suits against certain specified entities. Plaintiff's claim under 42 U.S.C. §1985 failed to allege facts demonstrating a conspiracy between the EEOC and any other entity to deprive him of his rights. This Court should affirm the district's courts dismissal of the complaint for lack of subject matter jurisdiction and failure to state a claim against the EEOC.
Frantz v. EEOC; Mitsubishi Motor Mfg. of America, et al.
No. 98-3147 (7th Cir. 1998) 13pps. **$25.00**

DB (Suhre for EEOC) EEOC As Appellee
The district court properly dismissed defendant's suit against the EEOC because it is well established that Title VII does not create a cause of action against the EEOC for discrimination.
Beasley v. I.T. Davy, EEOC, Texas Employment Comm'n
No. 98-4106 (10th Cir. 1998) 10pps. **$15.00**

DB (Goldstein for EEOC) Appeal From D.C., W.D. Texas
Title VII does not provide for suits against the EEOC by individuals who are dissatisfied with the handling of their charge. Plaintiff is not entitled to monetary relief under any other federal statute, including Section 2071 of the Criminal Code.
Minton v. Wooten
No. 99-20352 (5th Cir. 1999) 20pps. **$25.00**

DB (Coleman for EEOC) Brief in Support of Defendants-Appellees on Appeal from the D.C., D.Colo.
The district court correctly dismissed plaintiff's claims against an EEOC employee, in connection with his processing of defendant's claim, because the plaintiff failed to state a claim upon which relief could be granted.
Richardson v. Albertson's, Inc., et al.
No. 98-1198 (10th Cir. 1998) 22 pps. **$35.00**

PB (Suhre for EEOC) Reply Brief on Appeal from D.D.C.
The Commission is challenging the district court's order sealing the consent decree and other portions of the record in this action. The reasons given by the district court for sealing portions of the record were insufficient to overcome the

presumption in favor of public access to judicial records. The court's restriction on the use of the depositions in this case unjustifiably prevents the Commission from using the information therein in subsequent administrative or judicial proceedings or to meet its obligation to share material with other governmental agencies.
EEOC v. National Children's Center, Inc.
No. 95-5408 (D.C. Cir. 1996) 17 pps. **$25.00**

DB (Suhre for EEOC) Brief of the EEOC as Appellee on Appeal from the D.C., E.D. Mich.
The district court abused its discretion in denying plaintiff's motion for leave to amend complaint which was presented after discovery was completed and after defendant's motion for summary judgement was briefed. In addition, the district court correctly dismissed plaintiff's employment discrimination claims because she failed to present any evidence that the defendant's nondiscriminatory explanations for the challenged decisions were pretextual.
Wheeler v. EEOC
No. 96-1821 (6th Cir. 1996) 27 pps. **$35.00**

DB (Goldstein for EEOC) Appeal from the D.C., E.D. Pa.
A right of action against the EEOC for its handling of charges of discrimination is not provided under Title VII.
Benjamin v. EEOC
No. 97-1020 (3rd. Cir. 1997) 12 pps. **$25.00**

DB (Starr for EEOC) In Support of Defendant-Appellees on Appeal from the D.C., W.D. Tenn.
The district court property dismissed an action against District Director of the Memphis Office of the EEOC alleging violations of 42 U.S.C. §§ 2000e-5 and 1985(3), as well as the Fourteenth Amendment to the U.S. Constitution, for improper handling of plaintiff's administrative charge of retaliation where subject matter jurisdiction was lacking and where the complaint failed to state a claim upon which relief could be granted because there is no remedy against the EEOC or its officials. Further plaintiff's request for monetary damages from the EEOC challenging the processing and investigation of Title VII charges is barred because of sovereign immunity has not been waived.
Ruff v. Federal Express
No. 96-6462 (6th Cir. 1996) 14 pps. **$25.00**

DB (Suhre for EEOC) Appeal from the D.C., W.D. of Tenn.
The Commission conducted an adequate search for the material requested under the FOIA. Because the records were not part of the file GMRI requested, the Commission did not print out any records. Thus, the search was not inadequate.
GMRI V. EEOC
No. 96-6396 (6th Cir. 1996) 24 pps. **$35.00**

DB (Quinto for EEOC) Brief of the EEOC as Appellee on Appeal from D.C., M.D. Tenn.
The district court properly dismissed plaintiff's complaint against the EEOC for failure to state a claim. There is no cause of action under Title VII for alleged improper investigation or determination of a case, nor under the Administrative Procedure Act to challenge an EEOC determination. Milhous failed to state a claim under 42 U.S.C. §§ 1983, 1985, and 1986. There is no cause of action against EEOC employees in their individual capacities. The district court lacked subject matter jurisdiction over plaintiff's claim against the EEOC and its employees. Because plaintiff never effected service pursuant to rule 4(e) on EEOC employees, the district court lacked jurisdiction over them in their individual capacities.
Milhous v. EEOC
No. 97-5242 (6th Cir. 1997) 42 pps. **$55.00**

DB (Marcosson for EEOC) Appeal from D.C., N.D. Cal.

District court was correct in dismissing plaintiff's Title VII race and sex discrimination complaint after plaintiff's case in chief because plaintiff failed to demonstrate that he was qualified for the position and failed to raise any inference of discriminatory intent by employer.
Edwards v. EEOC
No. 88-15217 (9th Cir. 1990) 35 pps. **$45.00**

DB (O'Rourke) Appeal from D.C., E.D. Mich.
Summary judgment was proper for defendant EEOC. Title VII is the exclusive remedy for federal employment discrimination claims, and plaintiff did not seek administrative relief. Plaintiff's reprisal and tort claims against EEOC were properly dismissed. These claims arose under the Civil Service Reform Act which preempts independent private civil actions. The only conceivable basis for his tort claims for assault and slander claims is the Federal tort claims act, which requires filing of an administrative claim.
Tolbert v. Vidaurri
No. 87-1163 (6th Cir. 1987) 54 pps. **$65.00**

DB (Goldstein for EEOC) Appeal from D.C., D. Mass.
Appellate jurisdiction is lacking where the district court did not enter a final decision adjudicating all claims against all parties. Title VII does not authorize suits by individuals challenging the EEOC's handling of discrimination charges.
Gorczakoski v. EEOC
No. 93-1101 (1st Cir. 1993) 13 pps. **$25.00**

DB (Sloan for EEOC) Appeal of Dismissal by D.C., S.D. Tex.
The district court properly dismissed plaintiffs suit against the EEOC under Rule 4 (j) of the Federal Rules of Civil Procedure, where plaintiff did not serve the EEOC with a copy of the summons and complaint or otherwise notify the EEOC of the suit. Federal courts do not have subject matter jurisdiction over suits by charging parties against the EEOC.
Brinac v. EEOC
No. 93-2118 (5th Circuit 1993) 34 pps. **$45.00**

DB (Wheeler) Appeal from D.C., D. Mt.
Dismissal of conclusory amended complaint was correct because plaintiff failed to comply with Rule 8 of Federal Rules of Civil Procedure, and because the district court lacked subject matter jurisdiction over claims asserted against the EEOC. A federal employee who does not work for the EEOC can not sue the EEOC under Title VII, or the Administrative Procedure Act or the Declaratory Judgment Act.
Burris v. Hiaring
No. 89-35128 (9th Cir. 1989) 33 pps. **$45.00**

DB (White) Appeal from D.C., M.D. Fla.
The district court did not abuse its discretion by denying plaintiff's motion for default judgment against EEOC because plaintiff had not served her complaint on the U.S. attorney, and thus the time for the EEOC to file its answer had not begun to run.
Wayno v. D.S.G. Corp.
No. 89-3137 (11th Cir. 1991) 14 pps. **$25.00**

PB (Ramshaw for EEOC) Appeal from D.C., S.D. Ohio
The district court acted properly in dismissing plaintiff's request for petition to review the MSPB decision because his appeal is not a mixed case, and plaintiff is estopped from seeking a second judicial determination. Plaintiff's request to amend his complaint under the Privacy Act was properly denied since it involved modification of a significant legal determination made by the EEOC, not a mere correction of historical or biographical fact.

Edwards v. Rozzi
No. 92-3008 (6th Cir. 1992) 38 pps. **$45.00**

DB (Suhre for EEOC) Appeal from D.C., W.D. Pa.
The district court correctly refused to permit plaintiff to proceed with her sexual harassment claim. The fact that a rumor was circulating as to an alleged affair does not tend to establish that anyone made any sexual advances or requested sexual favors. The court also acted properly in excluding evidence of alleged loans as immaterial and highly prejudicial. Finally, the court acted properly in dismissing plaintiff's case for failure to prosecute on her remaining racial discrimination and retaliation claims.
Spain v. Gallegos, Chairman of EEOC
No. 93-3467 (3rd Cir. 1993) 69 pps. **$75.00**

DB (White for EEOC) Appeal from D.C., D. N.J.
The district court did not abuse its discretion in restricting an employee's right to file additional lawsuits and EEOC charges.
Becker v. Sherwin Williams and EEOC
No. 92-5220 (3rd Cir. 1993) 27 pps. **$35.00**

DB (Moran for EEOC) Appeal from D.C., C.D. Cal.
The district court properly dismissed claimant's complaint against the EEOC charging it improperly investigated and processed her charges since the court lacked subject matter jurisdiction and claimant failed to state a claim for which relief could be granted.
Etemad v. EEOC
No. 92-55735 (9th Cir. 1992) 14 pps. **$25.00**

DB (Moran for EEOC) Appeal of Dismissal by D.C., S.D. Ohio
Title VII, the Civil Rights Act of 1871, and the Administrative Procedure Act do not provide federal courts with jurisdiction over a suit by a charging party dissatisfied with the EEOC's administrative actions.
Verboom v. Department of Defense
No. 93-3005 (6th Cir. 1993) 19 pps. **$25.00**

DB (Clark for EEOC) Appeal of Dismissal by D.C., S.D. N.Y.
The district court lacked subject matter jurisdiction over plaintiff's claim that the EEOC conspired with plaintiff's attorney to deprive plaintiff of equal protection under the 14th Amendment or due process under the 5th Amendment. Title VII does not provide a cause of action against the EEOC to a plaintiff dissatisfied with the handling of a discrimination charge.
Jackson v. Manhattan and Bronx Surface Transit
No. 93-6102 (2nd Cir. 1993) 21 pps. **$35.00**

DB (Suhre for EEOC) In Support of Summary Judgment, D.C., W.D. Ok.
The district court's order to dismiss plaintiff's complaint against the EEOC should be upheld. Plaintiff-Appellant offers no challenge to the district court's order dismissing his claim pursuant to Fed. R. Civ. Proc. 12(b)(6). Plaintiff's brief does not mention the EEOC, mishandling of charges of discrimination, or the district's court order.
Cecil Cooper v. Holiday Inn and EEOC
No. 92-6412 (10th Cir. 1993) 18 pps. **$25.00**

DB (Bruner for EEOC) Appeal of Dismissal by D.C., N.D. Ga.

Plaintiff's suit against the EEOC for alleged conspiracy with plaintiff's former employers to deprive plaintiff of employment is barred by the doctrine of sovereign immunity. Moreover, there is no right of action under Title VII or the ADEA against the EEOC for misfeasance or malfeasance in its investigation and processing of charges. There is no basis for a 42 U.S.C. Section 1983 suit against federal officials acting under color of federal law.
Traylor v. EEOC
No. 93-8349 (11th Cir. 1993) 29 pps. **$35.00**

DB (Starr for EEOC) Appeal of Dismissal by D.C., S.D. Tex.
Title VII does not provide a right of action by which individuals can challenge the EEOC for the manner in which it processes employment discrimination claims. Under traditional principles of sovereign immunity, the EEOC is immune from suit by claimant.
Hurman v. Port of Houston Authority
No. 92-2038 (5th Cir. 1992) 21 pps. **$35.00**

DB (Bruner for EEOC) Brief of EEOC as Defendant-Appellee on Appeal from D.C., E.D. N.Y.
The EEOC should be dismissed from appeal because the appellant failed to specify in his notice of appeal that he contests the district court's dismissal of the EEOC from this action. The district court properly dismissed the EEOC because Title VII does not provide a cause of action against the EEOC for allegedly improper handling of charges of discrimination. Appendix includes complaint, answer and memo and order.
Peavey v. Polytechnic Institute of New York, et al.
No. 91-6023 (2nd Cir. 1991) 52 pps. **$65.00**

DB (Starr for EEOC) Appeal from D.C., E.D. Va.
The EEOC is entitled to summary judgment because the EEOC is not subject to suit by a party who is dissatisfied with the administrative resolution of a charge. Neither Title VII nor Equal Pay Act create right of action against EEOC. The EEOC's initial reasonable cause determination, erroneously processed in accordance with private sector procedures in this public sector case, is not judicially enforceable as a final and binding decision.
Nealon v. Stone and Thomas
No. 91-2347 (4th Cir. 1991) 71 pps. **$75.00**

PB (White for EEOC) Appeal from D.C., W.D. Ok.
Plaintiff's claims against EEOC officials (for alleged bias in processing her Title VII charge) were properly dismissed because officials are protected by sovereign immunity and alternately because plaintiff failed to state a claim under §1981 or Title VII.
Scheerer v. Rose State College and EEOC
No. 91-6180 (10th Cir. 1991) 21 pps. **$35.00**

PB (Marcosson for EEOC) Appeal from D.C., W.D. Tex.
District court's dismissal of employer's counterclaim against EEOC for improprieties is not appealable under 28 U.S.C. §§1291 or 1292. The dismissal was correct because employer failed to state a claim against EEOC, and even if it had, such claims would be barred by sovereign immunity. Sanctions should be imposed on employer and its counsel pursuant to Rule 38, Fed.R.Civ.Pro.
Kerrville Bus Company, Inc. v. EEOC
No. 90-5577 (5th Cir. 1990) 45 pps. **$55.00**

DB (Sloan for EEOC) Brief of EEOC in Support of Summary Judgment Against Plaintiff, D.C., M.D. Tenn.

The district court properly dismissed plaintiff's claims against the EEOC. The requests for EEOC investigation materials are exempt by one or more of the FOIA exemptions and claims against the EEOC under Title VII, the ADEA or 42 U.S.C. § 1985(3) for conspiracy, improper charge processing and investigations are precluded by the doctrines of issue preclusion and *res judicata*. Neither Title VII nor the ADEA provide federal courts with jurisdiction to hear claims against the EEOC for improper processing and investigation.
Wrenn v. Vanderbilt University Hospital, et al.
Nos. 93-5994 & 936181 (6th Cir. 1993) 39 pps. **$45.00**

PB (Ramshaw for EEOC) Appeal from D.C., S.D. Ohio
Title VII does not grant a right to action to challenge the EEOC for the manner in which it conducts its administrative processing of charges of discrimination or petitions for review.
Edwards v. Rozzi
No. 92-3008 (6th Cir. 1992) 38 pps. **$45.00**

DB (Ramshaw for EEOC) Brief of the EEOC as Defendant-Appellee on Appeal from D.C., C.D. Cal.
The district court properly dismissed Garcia's action against the Commission pursuant to Fed.R.Civ.Pr. 12(b)(6). Only present or former employees of the EEOC (or applicants for employment) who allege an unlawful employment practice committed by the EEOC as an employer may bring a Title VII action against the EEOC. Plaintiff's claim for negligent processing of his charge of discrimination does not fall under Title VII.
Garcia v. International Rehabilitation Associates, et al.
No. 93-55880 (9th Cir. 1994) 14 pps. **$25.00**

DB (Sloan for EEOC) Brief of Defendant-Appellee
The judgment of the district court should be affirmed because plaintiff can not state a claim against the EEOC for improper processing of his charge of discrimination under any of the various statutory and constitutional provisions he has cited.
Anderson v. Mile High Child Care
No. 94-1596 (10th Cir. 1995) 42 pps. **$55.00**

DB (Clark for EEOC) Respondent's Brief
An ADEA claimant does not have a cause of action against the EEOC based on its allegedly improper processing of an employment discrimination complaint.
Doe v. Gallegos
No. 94-6115 (U.S. Supreme Ct. 1994) 14 pps. **$25.00**

DB (White for EEOC) Brief of Defendant-Appellees
The EEOC and its officials were correctly dismissed as defendants by the district court because the plaintiff failed to serve them properly within the time allowed. Plaintiff does not state a claim against the EEOC officials upon which relief can be granted and the district court lacked subject matter jurisdiction.
Hernandez v. Public Defender Department, State of New Mexico
No. 94-2287 (10th Cir. 1995) 26 pps. **$35.00**

DB (Goodman for EEOC) Brief of Defendant-Appellee
The district court properly dismissed this action against the EEOC as enforcement agency because subject matter jurisdiction is lacking and the complaint fails to state a claim on which relief can be granted.
Phillips v. EEOC
No. 95-1123 (3rd Cir. 1995) 32 pps. **$45.00**

DB (Gregory for EEOC) Brief of Defendant-Appellee
A plaintiff in a refusal to hire case is not required to prove that the person hired was from outside the protected class. Nonetheless, summary judgment should be granted in cases such as this where plaintiff's evidence is insufficient to raise a question of fact as to pretext.
Salas v. Gallegos
No. 94-50379 (5th Cir. 1994) 20 pps. **$25.00**

DB (Sloan for EEOC) Brief on Behalf of EEOC, Janet Reno and Donna Shalala as Appellees on Appeal from D.C., M.D. Tenn.
The district court properly dismissed as moot plaintiff's motion for leave to file a reply to defendant's motion to dismiss or for summary judgment, given the case was already on appeal. The district court properly denied plaintiff's motion for sanctions since the plaintiff did not prevail on any issue and there was no finding that the defendant's conduct was improper. The district court did not abuse its discretion in ordering the plaintiff to pay defendant's attorney's fees and costs reasonably incurred as a sanction for plaintiff's pursuing a frivolous and vexatious lawsuit.
Wrenn v. Vanderbilt University Hospital, et al.
Nos. 94-5453, 94-5593 (6th Cir. 1994) 58 pps. **$65.00**

PB (Starr for EEOC) In Support of Plaintiff-Appellee
The district court properly refused to award attorney's fees to the defendant because the Equal Access to Justice Act does not apply to this case since Title VII contains its own, pro-enforcement, fee-shifting provision. Alternatively, defendant is not entitled to fees because the Commission's position was substantially justified.
EEOC v. Consolidated Service Systems
No. 94-1135 (7th Cir. 1994) 34 pps. **$45.00**

PB (Goldstein for EEOC) In Opposition to Defendant's Amended Application for Award of Fees
Defendant's request for fees under Title VII is untimely given this court's requirement that fees be requested within 60 days after the entry of a final judgment. In addition, fees are not justified in this case.
EEOC v. Northwest Structural Components, Inc.
No. 6:91CV00052 (D.C., M.D. N.C. 1994) 13 pps. **$25.00**

DB (Bernstein for EEOC) Defendant-Appellee's Brief
The district court properly dismissed a suit against the EEOC for lack of subject matter jurisdiction and failure to state a claim. There is no cause of action against the EEOC to challenge its investigation of a charge and the federal courts have no jurisdiction to challenge such investigations.
Reed v. EEOC
No. 95-1275 (6th Cir. 1996) 20 pps. **$25.00**

DB (Bruner for EEOC) Brief of the EEOC as Defendant-Appellees on Appeal from D.C., W.D. Wash.
The district court properly dismissed the claim against the EEOC for failure to state a claim and for lack of subject matter jurisdiction. The plaintiff has no cause of action directly against particular employees of the EEOC who were acting under the color of state law or against the EEOC for allegedly mishandling her claim. The federal courts also had no jurisdiction to hear this case.
Hovda v. Gregoire, et al.
No. 96-35312 (9th Cir. 1996) 18 pps. **$25.00**

DB (Moran for EEOC) Amended Brief of Appellees on Appeal from D.C., D. Colo.

The district court properly dismissed the claim as frivolous because the complaint fails to state a claim upon which relief can be granted. There is no claim stated because a claimant can not bring a claim against the EEOC or its officials if he is unhappy with the way his claim is handled. Further, the district court has no jurisdiction over such claims.
Bell v. Flores and the EEOC
No. 95-1455 (10th Cir. 1996) 14 pps. **$25.00**

DB (Moran for EEOC) Brief of Appellees
The district judge correctly denied plaintiff's recusal motion because the only basis for such a demand is that the judge was too new and her earlier rulings manifest a personal bias against plaintiff. This is not sufficient justification. The district court properly dismissed plaintiff's charge against the Commission because a plaintiff can not bring a claim against the EEOC or its employees because he is unhappy with the way it is handled. Plaintiff failed to state a claim upon which relief can be granted and the federal court lacked subject matter jurisdiction over the claim.
Forbes v. Attorney General Janet Reno, et al.
No. 95-3470 (3d Cir. 1996) 24 pps. **$35.00**

DB (Sloan for EEOC) Brief as Defendant-Appellee
The district court properly dismissed plaintiff's charge against the Commission for improper investigation and resolution of her charge of discrimination. Plaintiff fails to state a claim upon which relief can be granted and the federal court lacks subject matter jurisdiction over the claim.
Baba v. Warren Management Consultants, Inc., et al.
No. 95-6100 (2nd Cir. 1995) 23 pps. **$35.00**

DB (Days for EEOC) Brief for the Respondent in Opposition
The district court was correct in holding that petitioner had presented insufficient evidence of national origin, sex and age discrimination to survive a motion for summary judgment. The district court did not abuse its discretion in refusing to consider Petitioner's unsworn affidavits as evidence. Petitioner's right to a *de novo* right of action in federal court is the sole remedy for any alleged errors in the Commission's handling of an administrative complaint.
Salas v. Casellas
No. 95-463 (U.S. Supreme Ct. 1995) 11 pps. **$25.00**

TITLE VII

TITLE VII - GENERAL

PB (Gregory for EEOC) Appeal from N.D. Ohio
The EEOC was the prevailing party with respect to the recordkeeping and reporting requirements instituted pursuant to Local 120's violation of Title VII. Although intervening plaintiffs filed a motion to alter or amend under Fed. R. Civ. P., that motion focused solely on the intervenors' claim for additional monetary relief. In disposing of this claim, the district court did not address the prior orders on record-keeping and reporting and would have abused its discretion had it done so. Under the circumstances, Local 120 was required to file a timely appeal to preserve any argument with respect to the recordkeeping and reporting issues. Because Local 120 failed to do so, the previous orders remain in full effect.

EEOC v. United Assoc. of Journeymen and Apprentices, Local 120
Nos. 98-3935, 98-3986 (6th Cir. 2000) 38 pps. **$45.00**

PB (Gregory for EEOC) Reply Brief of the EEOC On Appeal From the United States District Court for the Eastern District of North Carolina

Nothing in the First Amendment precludes a court from at least inquiring into whether the duties of an employment position are ministerial. The ministerial exception does not depend upon the label given to the job but upon the function of the position. The critical factor is whether the actual functions of the job itself have spiritual and pastoral significance. Applying Title VII in this case will not create excessive government entanglement in violation of the establishment clause of the First Amendment. The charges can be thoroughly investigated and litigated without in any way implicating the doctrine of the Catholic Church.
EEOC v. The Roman Catholic Diocese of Raleigh, North Carolina and Sacred Heart Cathedral
No. 99-1860 (4th Cir. 1999) 23 pps. **$35.00**

AB (Gregory for EEOC) In Support of Plaintiffs-Appellees
Title VII applies to the alleged discrimination in the operation of West's stock purchase program. The opportunity to participate in an employer's stock purchase program, made available to employee as an incident of the employment relationship, implicates an individual's compensation, terms, conditions, or privileges of employment. The EEOC charge of the lead plaintiff was timely under either the continuing violation or equitable tolling doctrine. The class was properly certified under Fed. R. Civ. P. 23(b)(3).
Carter, et al. v. West Publishing Company, et al.
No. 99-11959-E (11th Cir 1999). 39 pps. **$45.00**

PB (Gregory for EEOC) Final Reply Brief
The prior orders on record-keeping and reporting have not been vitiated as a result of the trial court's order finding there to be no pattern and practice of discrimination. The district court did not have authority to revisit its prior liability findings in the context of a Rule 59 motion because it failed to provide notice and made no finding that the prior ruling was clearly erroneous.
EEOC v. United Assoc. of Journeymen and Apprentices, Local 120
Nos. 98-3935, 98-3986 (6th Cir. 2000) 15 pps. **$25.00**

AB (Sloan for EEOC) Appeal from S.D.N.Y.
Where a hiring party exercises nearly complete control over when, where and how long an individual works, as well as what she does at the workplace, the individual is an "employee," covered by Title VII, whether the hiring party chooses to withhold taxes from her or provide her with employee benefits. Under the common law "totality of the circumstances test" as expressed in *Nationwide Mutual Ins. Co. v. Darden*, plaintiff, who was subject to "nearly complete control" by defendant established that plaintiff was an "employee" for Title VII coverage purposes. Plaintiff's tasks were as the district court acknowledged "central" to defendant's business functioning as a moving and storage company. Further, defendant supplied all the instrumentalities for the job, required plaintiff to wear a T-shirt embossed with the company name, required plaintiff to work at its cite, controlled plaintiff's work schedule and paid plaintiff an hourly wage. Therefore, plaintiff was an "employee" and defendant should not be permitted to avoid compliance with Title VII, simply by failing to withhold taxes or pay out employee benefits.
Eisenberg v. Advance Relocation & Storage Inc.
No. 00-7216 (2nd Cir. 2000) 29 pps. **$35.00**

PB (Sloan) Brief As Appellant
The district court erred in dismissing the EEOC's suit alleging a racially hostile work environment at defendant's airport service center. The court also erred in holding that the EEOC is bound by a private agreement to arbitrate. Arbitration is a question of contract, and the EEOC cannot be compelled to arbitrate unless it has agreed to do so. The EEOC under Title VII is all but proxy for alleged victims and can bring enforcement actions in federal court to seek full range of remedies. Summary judgment should be granted, as the district court improperly refused to consider the major part of the EEOC's evidence, and that the evidence, as a whole, was sufficient to withstand summary judgment.

EEOC v. Northwest Airlines, Inc.
No. 98-1667 (6th Cir. 1998) 62pps. **$75.00**
Also available: Plaintiff's Reply Brief, making similar arguments. 30pps. **$35.00**

PB (Sloan) Reply Brief
The district court erred in assuming the EEOC was litigating plaintiff's claim and thereby dismissing the claim in light of an arbitration "policy" defendant had in force. Title VII gives the EEOC an independent claim and empowers it to sue in the public interest in its own federal court and obtain a full range of legal and equitable relief. An employee cannot restrict the EEOC's authority to litigate a claim, to rely on relevant evidence, and to recover all appropriate relief, merely by adopting a policy requiring its employees to arbitrate claims if they choose to assert them at all. The EEOC is not appealing from the arbitration "order" but rather from the dismissal of the commission's claims and the judgment for defendant. The Court should reverse the judgment and remand the case for further proceedings on the merits.
EEOC v. Northwest Airlines, Inc.
No. 98-1667 (6th Cir. 1998) 30pps. **$35.00**
Also available: Plaintiff's Brief as Appellant, making similar arguments. 62pps. **$75.00**.

AB (Posner for CELA) In Support Of Petitioner's Petition For Review
A discrimination plaintiff is only required to prove qualification for the position in question. Plaintiff did not have to prove that he was the most qualified, and the court of appeals should not have held him to that standard.
Green v. City of Los Angeles
No. S075226 (CA Supreme Ct. 1998) 5pps. **$15.00**

PB (Gillespie and Aguilar) Appeal From D.C., N.D. Texas
Defendant is vicariously liable for the racial discrimination suffered by plaintiffs because there exists an agency relationship between defendant and its branded stores. Employee's discriminatory comments and acts were within the scope of her employment. Defendant would be vicariously liable for discrimination by employee and its agents because discrimination against consumers violates nondelegable duty. Defendant would also be liable due to ratification, when it failed to develop any sort of policy or training program to prevent discrimination despite awareness of numerous complaints. Because numerous issues of material fact were presented, summary judgment was improper.
Arguello, Escobedo, Govea et al., v. Conoco Inc.
No. 98-11280 (5th Cir. 1998) 57pps. **$65.00**
PB (Gagliardo) Petition For Writ Of Certiorari From 4th Circuit
Congress intended the protection of the ADEA and Title VII to apply broadly. The First Amendment's Free Exercise Clause does not require that Congress' intent be diminished by depriving classroom elementary school teachers in religious schools of the protections of federal civil rights statutes. Similarly, the Free Exercise Clause does not require the abrogation of such teachers' contract with their religious employer. The court needs to resolve the conflict between the Fourth Circuit's analysis and that of at least three other circuits.
Clapper v. Chesapeake Conference of Seventh-Day Adventists
No. 98-1566 (U.S. Supreme Ct. 1999) 48pps. **$55.00**

PB (Ramshaw for EEOC) In Support Of Denial Of Defendant's Motion To Dismiss
Submitting a charge of discrimination to the EEOC and requesting that it be filed with both the EEOC and the relevant state agency is sufficient to comply with section § 706(c) of Title VII even where the charge fails to expressly refer to state law. The failure to institute state proceedings in compliance with § 706(c) does not deprive the district court of subject matter jurisdiction over an ADA claim. If plaintiff's failure to comply with § 706(c) was caused by incorrect legal advice from the EEOC the district court should hold the case in abeyance and give plaintiff an opportunity to comply with the statute.
Flippo v. American Home Products Corp.

No. 3:98CV804 (D.C., E.D., Va. 1999) 12pps. **$25.00**

AB (Carter for EEOC) In Support Of Defendant's Exception Of No Cause Of Action
This court should dismiss plaintiff's premature declaratory judgment action for lack of jurisdiction. There was no justiciable controversy when plaintiffs filed this suit since the Commission had not issued a right to sue notice to the defendant when plaintiffs initiated this action. Congress intended that as the aggrieved individual, defendant, by right, was entitled to have the Commission completely review his case (as appropriate) and to file a private action in a forum of his choosing, not the plaintiffs choosing.
Callais & Sons, Inc. v. Frazier
No. 85293 (D.C., 17th Parish of Lafourche, La. 1999) 17pps. **$25.00**

AB (Owsley for EEOC) On Appeal From D.C., N.D. Illinois
The district court erred in finding that the word "nigger" did not create a racially hostile work environment as a single severe incident can be sufficient to create a hostile environment. The district court also erred in dismissing the entire cause of action because Plaintiff was not on notice that he had to allege issues of fact on his asserted claim of discriminatory suspension that was not addressed by defendant in their summary judgment motion. These clear factual disputes on material issues prohibit summary judgment and the district court's judgment should be reversed.
Sanders v. Village of Dixmoor
No. 98-3728 (7th Cir. 1998) 22pps. **$35.00** Addendum 9pps. **$15.00**

AB (Owsley for EEOC) On Appeal From D.C., N.D. Illinois.
The district court erred in finding that employment testers did not have standing to assert Title VII claims where the plaintiffs established cognizable injuries for which Title VII provides a remedy. As the Supreme Court found in *Havens Realty Corp. v. Coleman* that housing discrimination testers had standing to challenge violations under the FHA, so too should employment testers, since courts have found that Title VII and the FHA have similar language and pursue similar goals. In light of the public interest preventing employment discrimination, there are public policy considerations which warrant holding testers have standing.
Kyles and Pierce v. J.K. Guardian Security Services, Inc.
No. 98-3652 (7th Cir. 1998) 22pps. **$35.00** Addendum 7pps. **$15.00**
Also Available under: K & J Management, Inc. v. Kyles, Pierce, and Legal Assistance Found. of Chicago. Brief of the EEOC as Amicus Curiae in support of Defendant's Motion to Dismiss in the Cir. Ct. of Cook County, Ill., making similar arguments.
29pps. **$35.00** *Appendix 114pps.* **$105.00**

AB (Gregory for EEOC) On Appeal From D.C. Arizona
This Court should reject the Tribe's belated attempt to interpose a requirement of tribal court exhaustion. Tribal court exhaustion is not an absolute requirement in all cases. The Tribe permitted this case to proceed to a decision in the court of appeals without raising the exhaustion issue, it invoked it for the first time in the Tribe's *amicus* brief on rehearing, this is simply too late. It would be futile to require plaintiff to rehash the jurisdictional issues before the tribal courts, thus tribal court exhaustion is not required. Additionally, the Tribe lacks "legislative jurisdiction" over the plaintiff's Title VII claim. Lastly, requiring the plaintiff to pursue his claim in the tribal courts would be inconsistent with the enforcement procedures under Title VII as the statute does not require the putative claimant to exhaust administrative remedies.
Dawavendewa v. Salt River Project
No. 97-15803 (9th Cir. 1998) 20pps. **$25.00**

AB (Carter for EEOC) On Appeal From D.C., N.D. Illinois.

The district court erred when it granted the defendant's motion to dismiss this Title VII action for lack of subject matter jurisdiction because plaintiff did not complete administrative proceedings before the state "deferral" agency . Title VII by its terms states that employees must only meet two administrative prerequisites before filing suit. These prerequisites are: (1) timely filing an administrative charge with the EEOC; and (2) receiving a right to sue letter from the EEOC. Also, under Title VII plaintiff was only required to commence a state proceeding allowing at least 60 days to expire before commencing with the EEOC. Plaintiff satisfied this requirement by allowing 77 days before voluntarily withdrawing the charge. Plaintiff also satisfied the two Title VII requirements before commencing the Title VII action and therefore should be allowed to proceed with the claim.

Zuay v. Progressive Care, et al.

No. 98-3037 (7th Cir. 1998) 16pps. **$25.00**

AB (Goldstein for EEOC) Amicus Brief In Support Of Petition For Rehearing With Suggestion For Rehearing *En Banc*
The panel's decision that informal complaints are not protected under the anti-retaliation provision of the FLSA, a remedial statute, conflicts with this Court's ruling in *Mackowiak* and with the ruling of the Supreme Court's instructions for interpreting statutory language in two other retaliation cases, *Mitchell* and *Robinson*. The panel's decision is also in direct conflict with the holdings of the 6th, 7th, 8th, 10th, 11th Circuits and with the decisions of the 1st, 3rd, and 4th Circuits on analogous statutes. Permitting employers to retaliate against employees who make informal complaints about FLSA violations discourages employees from making such complaints and gives employers an unfair competitive advantage over other employers who are subject to broad prohibition against retaliation. This Court should vacate and rehear the case, *en Banc* if necessary.

Lambert, et al. v. Ackerly et al.

Nos. 96-36017, 96-36266 & 96-3667 (9th Cir. 1998) 19pps. **$25.00**

DB (Gregory) Brief Of EEOC As Defendant-Appellee On Appeal From D. C., E.D. Virginia
This Court's decision in *Generator Corp*. mandates dismissal of plaintiff's action as the issues are squarely similar. In *Generator* this Court held that Title VII did not provide an employer with a cause of action for declaratory or injunctive relief stemming from the Commission's investigation of a Title VII charge. This court specifically rules that the Commission's reasonable cause determinations do not constitute "final agency action" and thus, are not reviewable under the APA. This Court also rejected the very argument the Plaintiff advances in this case -- that the employer's lawsuit was justified by "unreasonable delay" in the investigative process. Public policy mandates that suits of this nature not be permitted as they will open the floodgates to unnecessary and in many cases, frivolous litigation. The district court's decision should be affirmed.

Bell Atlantic Cash Balance Plan, et al. v. EEOC

No. 97-2382 (4th Cir. 1998) 20pps. **$25.00**

PB (Owsley for EEOC) Appeal Of Denial Of Petition For Preliminary Injunction From D.C., N.D. Oklahoma
The Commission is statutorily entitled to an injunction where the employer's lawsuit against a third party who is not an employee threatens the integrity of the Commission's investigation of pending discrimination charges. The employer's suit against a third party threatens to impair the investigative process by seeking to discover the substance of the investigation and by discouraging individuals who may have relevant information from coming forward to assist in the investigation. Investigators are entitled to the unchilled testimony of witnesses. Whether the third party can ultimately prevail on his retaliation claim was not relevant as to whether the employer's suit against him had interfered with the investigation or chilled the charging parties or others in the exercise of their Title VII rights. Issuing an injunction would not cause employer to suffer any damage because baseless claims are not protected.

EEOC v. Norris

No. 99-5068 (10th Cir. 1999) 41pps. **$55.00** Addendum 31pps. **$45.00**

AB (Bogas for EEOC) In Support of Defendant on Appeal from the D.C., S.D. Ind.

The district court correctly held that the mandatory arbitration provisions contained in the collective bargaining agreement (CBA) did not divest the court of subject matter jurisdiction over the plaintiff's employment discrimination action. In *Alexander v. Gardner - Denver* a unanimous Supreme Court held that while "a union may waive certain statutory rights related to collective activity, the rights conferred by Title VII can form no part of the collective bargaining agreement. Therefore the CBA in this case could not waive the defendant's statutorily created right to pursue his Title VII, § 1981, and ADA claims in court.
Pryner v. Tractor Supply Company, Inc.
No. 96-2437 (7th Cir. 1996) 20 pps. **$25.00**

PB (Gregory for EEOC) Brief in Response to the Appellee's Petition for Rehearing and Suggestion for Rehearing*En Banc* Court should reject the defendant's petition for rehearing because the panel decision is dictated by the Supreme Court precedent and is consistent with the views of every circuit court of appeals and the defendant does not raise an issue of exceptional importance, namely that the district court erred in dismissing the case at the *prima facie* stage.
EEOC v. Avery Dennison
Nos.95-3060 & 94-4320 (6th Cir. 1995) 10 pps. **$15.00**

DB (Goldstein for EEOC) Appeal from the D.C., E.D. Pa.
A right of action against the EEOC for its handling of charges of discrimination is not provided under Title VII.
Benjamin v. EEOC
No. 97-1020 (3rd Cir. 1997) 12 pps. **$25.00**

AB (Starr for EEOC) In Support of petition for rehearing on Appeal from the D.C., E.D. Pa.
The federal law prohibits enforcement of a collective bargaining agreement provision requiring an individual, as a condition of employment, to forego the statutory right of action provided under Title VII if the agreement permits both the individual and the union to initiate grievance procedures.
Martin v. Dana Corp.
No. 96-1746 (3rd Cir. 1996) 22 pps. **$35.00**

AB (White for EEOC) Appeal from the D.C., E.D. Mo.
A plaintiff who informs the EEOC that she wishes to file a charge and submits to the agency a signed intake questionnaire that contains all the substantive elements of a charge within the time specified for filing a charge in § 706(e)(1) of Title VII may bring a Title VII action against the respondent named in the questionnaire despite the fact that she did not file a formal, verified charge until after the filing period expired.
Schlueter v. Anheuser-Busch, Inc.
No. 97-1603 (8th Cir. 1997) 19 pps. **$25.00**

PB (Bernstein for EEOC) On Appeal from the D.C., E.D. La.
Defendant failed to file a timely motion requesting fees or sanctions in the district court and thereby waived any claim for costs or attorneys' fees under Title VII or Rule 11. The EEOC's investigation and suit caused Pat O'Brien's Bar to correct its discriminatory waiter hiring practices. The bar was not a "prevailing party" within the meaning of Title VII's fee provision.
EEOC v. Pat O'Brien's Bar
No. 96-30786 (5th Cir. 1996) 40 pps. **$55.00**

AB (Mastroianni for EEOC) Appeal from D.C., N.D. Ala.
Undocumented alien workers are employees under Title VII's definitions of "employee" and "individual."
Patel v. Sumani Corp.
No. 87-7411 (11th Cir. 1988) 18 pps. **$25.00**

PB (Sedey) In Opposition to Defendant's Motion to Dismiss
Although as state officials the individual curators can not be sued in their official capacity, the court should not dismiss the claim against them since they can be ordered to rehire plaintiff, and are liable for any unlawful action for which they are personally responsible. The fact that state officials sued in their individual capacity are not "persons" under U.S.C. § 1983 is not a sufficient basis for dismissing the claim.
Fotoohighiam v. The Curators of the University of Missouri
No. 90 Jan 87 423867 (Mo. Boone County, 1992) 22 pps. **$35.00**

AB (Marcosson for EEOC) Petition for Rehearing
Agents of an employer can be held individually liable for damages under Title VII and the ADEA.
Miller v. Maxwell's International, et al.
No. 90-16286 (9th Cir. 1993) 22 pps. **$35.00**

AB (Posner for NELA) In Support of Plaintiff-Appellant
Congress specifically intended in enacting the 1964 Civil Rights Act that both the states and the federal government share enforcement responsibilities in order to eradicate illegal discrimination. Plaintiffs have a right to seek relief under either federal or state anti-discrimination statutes. Subsequent employment rights legislation also demonstrates a joint federal-state purpose to eradicate certain evils, from which banks are not exempted.
Marques v. Bank of America
No. CV 966157 (Cal. Ct. of Appeal, 1st Dist. 1996) 22 pps. **$35.00**

TITLE VII - EVIDENCE

PB (Geller) Brief For Petitioners
Under Rule 702 of the Federal Rules of Evidence, and the Supreme Court's decision in *Daubert v. Merrell Dow Pharmaceuticals, Inc*., all expert testimony must be screened for reliability and relevance before it may be admitted in a federal trial. The Eleventh Circuit was wrong in holding that a trial judge is barred from considering the four factors of evidentiary reliability set forth in *Daubert* if the expert purports to be testifying based on his "experience." The Eleventh Circuit was equally mistaken in suggesting that the*Daubert* factors are limited to "scientific" expert testimony. The text of FRE 702 indicates that the types of knowledge about which a qualified expert may testify are broad and overlapping.
Kumho Tire Co., Ltd., Kumho U.S.A., Inc., and Hercules Tire & Rubber Co., Inc. v. Carmichael
No. 97-1709 (U.S. Supreme Ct. 1997) 62pps. **$75.00**

PB (Selbin) Plaintiffs' Consolidated Opposition to Defendant Home Depot's Four Daubert Motions to Exclude Expert Testimony
This motion urges the court to deny each of Home Depot's four motions to exclude plaintiffs' expert testimony given the reliability of the theories and methods underlying the testimony offered by plaintiff's four experts, and that this testimony will assist the jury and the Court in determining whether Home Depot has discriminated against its women employees and applicants.
Butler, et al., and Frank et al., v. Home Depot, Inc.
Nos. C 94-4335-SI & C95-2182-SI (D.C., N.D. Cal. 1994, 1995) 41 pps. **$55.00**

PB (Ewing and Foley) Plaintiff's Brief in Opposition to Defendant's Letter-Motion to Compel Psychological Records
Communication between patients and psychotherapists are privileged according to the United States Supreme Court and the Federal Psychotherapist-Patient Privilege. Thus, the defendant's request for discovery is improper. Even if the

plaintiff put her mental state "in issue" to some degree, the court nonetheless would have to balance the likely value of this evidence against invading the plaintiff's private consultations.
Rybakoff v. Connolly Bove Lodge & Hutz
No. 96-79JJF (Del. District Ct. 1996) 15 pps. **$25.00**
Also available: Plaintiff's Sur-Reply Brief in Opposition to Defendant's Motion to Compel Psychological Records. 5 pps. $15.00

AB (Smith, for NELA, NJELA, NOW-NJ) Brief In Support of Plaintiff-Appellee on Appeal
The court should affirm the appellate division's ruling preventing the defendant from seeking a special discovery rule that would allow only one party in litigation (the employer) to have witness statements and other information about the employer's response to an employee's discrimination complaint. Such a rule thwarts New Jersey's public policy promoting the eradication of discrimination. Although an employer should provide as much confidentiality as possible during an investigation, the internal process should not be immune from discovery in future litigation. An employer's litigation counsel cannot ethically pretend to be a "neutral" investigator and materials relating to the investigation should not be subject to the attorney-client privilege.
Payton v. New Jersey Turnpike Authority, et al.
Nos. 42,685 A-001995-95T3, A-001996-95T3 (N.J. Supreme Ct. 1996) 19 pps. **$25.00**

PB (Gage) Memorandum In Support of Motion to Compel Answers to Interrogatories and Production of Documents
The Whole Person, Inc.'s failure to file timely objections to interrogatories served upon it amounted to a waiver of the rights to assert any objection to such interrogatories. In the absence of an extension of time, failure to object within the time fixed by the rule is a waiver of any objection. Defendant's lack of diligence in seeking an extension precludes any finding of excusable neglect or good cause to extend the time for response.
Herr v. The Whole Person, Inc.
No. 95-0376-CV-W-1 (D.C., W.D. Mo. 1995) 17 pps. **$25.00**

PB (Heitland) Plaintiff's Response to Motion for Summary Judgment on a Sex Discrimination Count
The issue to be determined on the hostile environment theory of sex discrimination is whether there existed at Guardian, because the plaintiff's gender, "conduct which had the purpose or effect of unreasonably interfering with Silva's work performance or creating an intimidating, hostile or offensive working environment." Determination of the issue rests upon inferences to be drawn from evidence and on assessment of credibility of witnesses. Such decisions cannot be made on a motion for summary judgment.
Carol Silva v. Northern Arizona Health Care, Inc. and Flagstaff Medical Center, Inc.
No. CIV 96-369 PCT PGR (Ariz. Dist. Ct. 1996) 16 pps. **$25.00**
Also available: Plaintiff's Response to Motion for Summary Judgment on Counts of Reprisal/Retaliation and Wrongful Discharge. 9 pps. **$15.00**

AB (Goldstein for EEOC) Appeal from D.C., D. S.C.
Evidence that an employer's explanation of discrimination is false, combined with evidence of a *prima facie* case, is sufficient to place the ultimate question of discrimination before a fact finder.
Moore v. J.P. Stevens & Co., Inc.
No. 97-1278 (4th Cir. 1997) 20 pps. **$25.00**

PB (Renner & Hamilton) Brief of Appellee on Appeal from the D.C., N.D. Ind.
Statements of female employees of the defendant reported by two non-declarant witnesses are not hearsay by definition under Rule 801(d)(2)(D). Any statement that is properly objected to by way of a motion *in limine*, if hearsay, is harmless given the overwhelming body of evidence produced at trial.

Williams v. Pharmacia, Inc., et al.
No. 96-4221 (7th Cir. 1996) 52 pps. **$65.00**

AB (Hedin for NELA) In Support of Plaintiffs/Appellants on Appeal from the D.C., D. Minn.
Expert testimony on causation and prognosis was excluded by the Special Master and trial court, while only the testimony of the plaintiff was considered. By excluding the plaintiffs experts from testifying about the causes of their alleged psychological harm, the trial court departed from rulings of other federal district and appeals courts encouraging and almost mandating expert testimony on causation of such damages. The trial court disregarded the Minnesota Supreme Court's instruction that the Minnesota Human Rights Act "broadly allow punitive damage" in employment discrimination cases by refusing to award punitive damages to the plaintiffs.
Jenson v. Eveleth Taconite Company
No. 97-1147 (8th Cir. 1997) 8 pps. **$15.00**
Also available: Reply Brief on Appeal From D.C.,D. Minn, making similar argument. 23 pps. **$25.00**
Appellants' Addendum to Reply Brief. 4 pps. **$15.00**

DB (Herzog) Brief of Appellees on Appeal from the D.C., D. Minn.
The Special Master's finding that the data and methodology that plaintiffs' experts used to formulate their opinions lacked scientific validity is not clearly erroneous, and his decision to exclude their opinions was not an abuse of discretion.
Jenson v. Eveleth Taconite Company
No. 97-1147 (8th Cir. 1997) 55 pps. **$65.00**

DB (Sheran) Appellees Reply Brief on Appeal from D.C., D. Minn.
A Special Master's alleged gender bias which was not raised in a timely fashion and not raised on appeal by the parties whose interest would be adversely affected should not be addressed. Yet if examined, an allowance of the Special Master's alleged "bias" based on statements made after he had heard the evidence must be made for the fact that the Special Master's judicial functions include drawing conclusions and forming opinions that may be adverse, or even hostile to the individual plaintiffs or their claims.
Jenson v. Eveleth Taconite Company
No. 97-1147 (8th Cir. 1997) 22 pps. **$25.00**

PB (Gregory for EEOC) Brief of Plaintiff-Appellant
The exclusion of comments made by a high-ranking official of defendant regarding defendant's racist promotion practices constituted reversible error. The district court abused its discretion in excluding the EEOC's cause determination.
EEOC v. Ford Motor Co.
No. 95-3019 (6th Cir. 1995) 38 pps. **$45.00**

PB (Coleman for EEOC) Reply Brief of Plaintiff-Appellant
Defendant misstated the summary judgment standard to apply in this case and the court erroneously weighed the evidence. The EEOC has not waived its right to challenge the court's reliance on an unsworn statement of defendant's attorney. The EEOC preserved its right on the record. Defendant offers no valid reason to prevent the EEOC from pursuing a claim regarding facially neutral grooming standards as possible religious discrimination.
EEOC v. United Parcel Service
No. 96-1258 (7th Cir. 1996) 10 pps. **$15.00**

AB (Marcosson for EEOC) In Support of Rehearing *En Banc*
After finding defendant's reasons for denying plaintiff tenure pretextual, the court correctly considered all the evidence, including the finding of pretext and the supporting evidence in finding plaintiff was discriminatorily denied tenure. The

court also correctly considered the challenged actions as discrimination not just because plaintiff is a woman, but because she is a married woman. Principles of academic freedom do not warrant any different Title VII analysis or evidentiary rules.
Fisher v. Vassar College
Nos. 94-7737 94-7785 (2nd Cir. 1996) 48 pps. **$55.00**

PB (Bernstein for EEOC) Brief as Cross-Appellee and Reply Brief as Appellant
The *McDonnell Douglas* framework is not appropriate here because the trial court credited direct evidence of discriminatory intent after a full trial on the merits. Title VII's prohibition against religious discrimination protects plaintiff from hiring decisions based on her religious beliefs. The finding that plaintiff was qualified to be hired is amply supported by substantial evidence. There was no clear err in allowing another employee's testimony that she did not hire plaintiff due to certain religious factors and this is direct evidence of unlawful religious discrimination. Because the district court based its denial of relief based solely on precedent that is now overruled, a remand is required.
EEOC v. Wiltel, Inc.
Nos. 94-5131, 94-5132, & 95-5065 (10th Cir. 1995) 46 pps. **$55.00**

DB (Gregory for EEOC) Brief of Defendant-Appellee
A plaintiff in a refusal to hire case is not required to prove that the person hired was from outside the protected class. Nonetheless, summary judgment should be granted in cases such as this where plaintiff's evidence is insufficient to raise a question of fact as to pretext.
Salas v. Gallegos
No. 94-50379 (5th Cir. 1994) 20 pps. **$25.00**

AB (Marcosson for EEOC) In Support of Plaintiff-Appellant's Petition for Rehearing *En Banc*
A rehearing en banc should be granted to determine the level of deference due district court factual findings based on the testimony of expert witnesses and to review the panel majority's analysis of the statutory evidence of hiring discrimination.
Anderson v. Douglas & Lomason Co., Inc.
No. 92-7554 (5th Cir. 1994) 20 pps. **$25.00**

PB (Clark for EEOC) Plaintiff-Appellant's Brief
The district court erred in accepting defendant's hypothetical reason as the articulation of a legitimate non-discriminatory reason. Even if defendant's hypothetical reason satisfied its burden of production, the district court erred in granting summary judgment because the Commission raised triable questions of fact as to the pretextuality of the defendant's proffered reason.
EEOC and Braddy v. Our Lady of the Resurrection Medical Center
No. 95-2302 (7th Cir. 1995) 55 pps. **$65.00**

PB (Coleman for EEOC) Brief as Appellant
The district court clearly erred by rejecting the Commission's statistical evidence of sex discrimination for reasons that were not supported by the record evidence. The record demonstrates that the defendant engaged in a pattern or practice of intentional discrimination against women.
EEOC v. The Turtle Creek Mansion
Nos. 95-10637 & 95-10696 (5th Cir. 1995) 27 pps. **$35.00**

AB (Bruner for EEOC) In Support of Plaintiff-Appellant
A picture of gorillas with plaintiff's name written on it when he was the only black employee in the office was sufficient

evidence of racial harassment to overcome summary judgment, particularly when plaintiff complained about it to his supervisor, his supervisor laughed at him and refused to take it down for a week after the complaint. This evidence was also sufficient to overcome summary judgment on claims of discriminatory discharge and retaliation when plaintiff was fired four days after his complaint.
Oates v. Discovery Zone
No. 96-1205 (7th Cir. 1996) 36 pps. **$45.00**

DB (Days for EEOC) Brief for the Respondent in Opposition
The district court was correct in holding that Petitioner had presented insufficient evidence of national origin, sex and age discrimination to survive a motion for summary judgment. The district court did not abuse its discretion in refusing to consider Petitioner's unsworn affidavits as evidence. Petitioner's right to a *de novo* right of action in federal court is the sole remedy for any alleged errors in the Commission's handling of an administrative complaint.
Salas v. Casellas
No. 95-463 (U.S. Supreme Ct. 1995) 11 pps. **$25.00**

PB (Schnapper) Petition for Writ of Certiorari to the 6th Circuit
It is important for the Court to decide whether a "strong inference" of non-discrimination in employment necessarily arises as a matter of law whenever a defendant employer establishes that the official alleged to have discriminated against the plaintiff was the same official who originally hired the plaintiff. Petitioner claims that such a strong presumption conflicts with other circuits and decisions of this court and is an important issue of substantial importance to the enforceability of federal anti-discrimination laws.
Buhrmaster v. Overnite Transportation Co.
(U.S. Supreme Ct. 1995) 31 pps. **$45.00**

PB (Gregory for EEOC) Reply Brief
If a supervisor prepares notes of an employee to defend himself in litigation, the notes do not constitute work product. Alternatively, if the notes are made during the course of supervisory duties, the notes are again unprotected because materials prepared in the ordinary course of business fall outside the scope of the rule. However, should a supervisor's diary notes qualify as work product, the protections still do not apply because the supervisor is not a party to this action.
EEOC v. Sprint Communications, Inc.
No. 95-2969 (11th Cir. 1995) 26 pps. **$35.00**

TITLE VII - STATUTE OF LIMITATIONS

AB (Gregory for EEOC) In Support of Plaintiffs-Appellees
Title VII applies to the alleged discrimination in the operation of West's stock purchase program. The opportunity to participate in an employer's stock purchase program, made available to employee as an incident of the employment relationship, implicates an individual's compensation, terms, conditions, or privileges of employment. The EEOC charge of the lead plaintiff was timely under either the continuing violation or equitable tolling doctrine. The class was properly certified under Fed. R. Civ. P. 23(b)(3). Carter, et al. v. West Publishing Company, et al.
No. 99-11959-E (11th Cir 1999). 39 pps. **$45.00**

PB (Goldstein for EEOC) Appeal From D.C., E.D. Florida
Where there is considerable evidence that appellant's employment practices caused the absence of women it is appropriate to use labor market data to estimate the relevant labor market and it is appropriate to award "make whole" relief to qualified claimants who were discouraged from applying or rejected on the basis of their sex. A finding of discrimination based on disparate impact should be upheld where that finding encompasses both recruitment and interviewing practices. It is appropriate for the court to hold employer accountable for continuing to rely on word-of-mouth recruitment where that practice has led to a reputation for not hiring women. Even though it was a facially neutral

practice it operated to perpetuate disparities. Where the court finds that applicant flow data does not represent an accurate picture of the relevant labor market it may rely on statistics based on labor force data. An employer's post-charge actions will not relieve it from pre-charge liability. Charges of discrimination not derived from subjective interviewing, but from recruitment practices, are timely if filed within 300 days from said recruitment action.
EEOC v. Joe's Stone Crab, Inc.
No. 98-5367 (11th Cir. 1999) 71pps. **$85.00**

AB (White for EEOC) Brief in Support of Plainitff-Appellant on Appeal from D.C., W.D. Virg.
The district court erred in holding that the Virginia Council on Human Rights (VCHR) does not qualify as a deferral agency under Title VII because the VCHR is authorized to investigate and resolve claims by way of conciliation. This satisfies Title VII's requirement that the deferral agency be authorized to "seek relief" for unlawful practices. The district court's determination is counter to the statute and the EEOC's regulations, and would interfere with effective enforcement of Title VII in Virginia. Moreover, submission of a charge which plainly states a violation of the Virginia Human Rights Act is sufficient to commence state proceedings even though the charge refers only to Title VII.
Dearing v. Thor, Inc., et al.
No. 97-2570 (4th Cir. 1998) 20 pps. **$25.00**

AB (White for EEOC) Brief in Support of Plaintiff-Appellant on Appeal from the D.C., W.D. Virg.
To qualify as a state deferral agency, the Virginia Council on Human Rights (VCHR) is not required to have enforcement authority. The EEOC's determination that the VCHR meets title VII's requirements for a deferral agency by seeking relief of unlawful employment practices is a question of reasonable interpretation of a federal statute and involves no disputed issue of state law and is therefore entitled to deference.
Tokuta v.Reynolds and James Madison University
No. 97-2445 (4th Cir. 1998) 17 pps. **$25.00**

AB (Bernstein for EEOC) Brief in Support of Plaintiff-Appellant on Appeal from D.C., W.D. Ill.
The district court erred in judicially estopping Plaintiff's Title VII claim of retaliatory discharge because her receipt of disability benefits was not a judgment, or assertion on her part, that she was unable to return to work. The district court further erred in not applying the continuing violation exception to Title VII's 300 day limitations period, and thus only considering one harassing incident, despite that the Plaintiff complains of hostile environment harassment.
Wilson v . Chrysler Motors Corp.
No. 98-1833 (7th Cir. 1998) 25 pps. **$35.00**

PB (Alterman) Memo In Opposition to Partial Summary Judgment
Defendant's motion should be denied because under the "single employer doctrine" defendant and Golf Digest are a single employer. The Civil Rights Act of 1991 is by its express language applicable to pending cases, and plaintiff's claims under Title VII, and § 1981 and the New York State Human Rights Law are not time barred due to the continuous practice and policy of discrimination perpetrated.
Harris v. The New York Times and Golf Digest
No. 90 Civ. 5235 (CSH) (D.C., S.D. N.Y 1990) 69 pps. **$75.00**

AB (White for EEOC) Appeal from D.C., N.D. Ill.
Complainant's charge is timely filed under Section 706(e) of Title VII because her later execution of a verified charge related back to the date of the original submission of a written and signed statement of her allegations of discrimination to EEOC.
Philbin v. General Electric Credit Auto Lease, Inc.
No. 90-2945 (7th Cir. 1990) 22 pps. **$25.00**

AB (Ramshaw for EEOC) Appeal from D.C., N.D. Ill.
The work-sharing agreement between the Illinois Division of Human Rights (IDHR) and the District Office of EEOC failed to include charges that would be untimely under state law in the list of charges to which IDHR waived its right to initial processing. Despite such failure, the court should give effect to the parties' intent that IDHR had waived the right as to those charges so that such charges could be filed by the EEOC upon receipt.
Marlowe v. Bottarelli
No. 90-2858 (7th Cir. 1990) 28 pps. **$35.00**

AB (Marcosson for EEOC) Appeal from D.C., N.D. Ala.
Plaintiff's Title VII charge was timely. The charge was filed within 180 days. Even if plaintiff's charge was untimely, the filing of plaintiff's lawsuit tolled the charge-filing period for other affected employees, making the charge of another plaintiff timely.
Beavers v. American Cast Iron Pipe Co.
Nos. 90-7900 & 7087 (11th Cir. 1991) 30 pps. **$35.00**

AB (Suhre for EEOC) Appeal from D.C., E.D. Tenn.
The district court erred in dismissing plaintiff's complaint as untimely because its ignored the controlling worksharing agreement between the EEOC and the state fair employment agency. The intent of the worksharing agreement (in which the state agency waived its right to process the charge upon receipt) controls the outcome of this case, despite irregularities in processing.
Brown v. Crowe & Martin Marietta Energy Systems
No. 91-6071 (6th Cir. 1990) 54 pps. **$65.00**

AB (Starr for EEOC) Appeal from D.C., N.D. Ill.
A recommendation to deny tenure, followed by the recommending official's re-examination merits of the candidate's merits, did not trigger the running of the charge-filing period in a discrimination claim. An employer's assurances that the time for internal appeal would not begin to run until the re-examination of the tenure candidate was completed, equitably estops the employer from later arguing that the initial recommendation was final.
Lever v. Northwestern University
No. 91-3571 (7th Cir. 1991) 25 pps. **$35.00**

AB (Marcosson for EEOC) Appeal from D.C., N.D. Cal.
Plaintiff's Title VII charges sufficed to permit her to maintain a civil action against the defendants despite her failure to name them as respondents, and challenge employment decisions made after the filing of her charges. The court erred by dismissing the claim that some of the defendants retaliated by refusing to write letters of recommendation, and by dismissing ADEA claim as untimely. Miller v. Maxwell's International, et al.
No. 90-16282 (9th Cir. 1990) 42 pps. **$55.00**

PB (Hornberger) Post Trial Brief
The magistrate's conclusion that plaintiff failed to notify the EEO counselor within 30 days of the date of discrimination is erroneous. The magistrate concluded had the claim been timely filed, he would have found handicap discrimination. Plaintiff, a handicapped black janitor alleged that the Post Office discriminated on the basis of race and disability by constructively discharging him, by not following EEO procedures, by violating its own return to work and seniority rules, and by revising its job description to exclude plaintiff.
Haithcock v. Frank
No. C-3-89-291 (D.C., S.D. Ohio 1991) 78 pps. **$85.00**
Also available: Plaintiff's Motion to Review making similar arguments. 72 pps. **$75.00**

AB (Starr for EEOC) Appeal from D.C., M.D. Ga.
The district court's order, holding that it did not have subject matter jurisdiction to hear this case because Title VII requires charging parties to wait 180 days after filing their discrimination charges with the EEOC is contrary to law. Expiration of 180 days is not a condition precedent to suit, but even if it is, the requirement is subject to waiver when the conditions set forth in 29 C.F.R. § 1601.28(a)(2) are met.
Sims v. Trus Joist Macmillan
No. 93-8256 (11th Cir. 1993) 27 pps. **$35.00**

PB (Fitzpatrick) Writ of Certiorari to 4th Circuit
In a Title VII action involving a federal employee, the thirty day statute of limitations of 42 U.S.C. § 2000e-16(c) can be extended for equitable reasons to permit an amendment to change the name of a defendant to relate back under Rule 15(c) of Fed. R. Civ. Pro. Young v. National Center For Health Services Research
No. 89-1010 (U.S. Supreme Ct. 1989) 16 pps. **$25.00**

AB (Black for EEOC) Appeal from D.C., N.D. Ohio
Title VII plaintiffs did not delay inexcusably in bringing suit by merely exercising their right to rely on the EEOC's administrative process. Plaintiff's failure to sue for 10 years, while awaiting the outcome of the EEOC investigation, did not support the application of laches.
Cleveland Newspaper Guild Local v. The Plain Dealer
No. 86-3140 (6th Cir. 1987) 28 pps. **$35.00**

AB (Ramshaw for EEOC) In Support of Plaintiff
Plaintiff has 300 days to file her charge of sexual discrimination with the EEOC where plaintiff initially instituted proceedings with the Anti-Discrimination Unit of the Puerto Rico Department of Labor and Human Resources. The Anti-Discrimination Unit has authority to grant or seek relief for sexual discrimination under Puerto Rican law.
Silva v. Universidad de Puerto Rico
No. 93-1022 (D.C., D.P.R. 1993) 13 pps. **$25.00**

AB (Bogas for EEOC) Appeal of Summary Judgment by D.C., N.D. Tex.
A discrimination charge initially filed with the EEOC, more than 180 days after the alleged discriminatory employment practice occurred, is timely filed where a worksharing agreement between a state agency and the EEOC prospectively waives any right of the state agency to process the charge. Upon filing with the EEOC, the charge was automatically cross-filed with, and terminated by, the state agency. Hence, the 300 day filing period applies. Where failure to meet the dual-filing requirement was caused by the EEOC's failure to transmit a copy of the charge to the state agency, equity demands that the charge be considered cross-filed.
Griffin v. City of Dallas
No. 93-1390 (5th Cir. 1993) 27 pps. **$35.00**

AB (Coleman for EEOC) Appeal of Dismissal by D.C., W.D. Tenn.
Pursuant to a worksharing agreement between the EEOC and the Tennessee Human Rights Commission, plaintiff's charge was filed with the EEOC more than 180 days after the alleged discriminatory employment practice occurred, was automatically filed simultaneously with the THRC, and hence timely filed. Alternatively, equity demands that plaintiff's claims be reinstated where he reasonably relied on the EEOC to satisfy Title VII's dual filing requirements.
Tate v. Shelby County Road Department
No. 93-5358 (6th Cir. 1993) 32 pps. **$45.00**

PB (Foreman for EEOC) Appeal from D.C., D. Md.
Employee timely filed with EEOC, even though she did not timely file under state statutes.

EEOC v. Hansa Products, Inc.
No. 87-3070 (4th Cir. 1987) 24 pps. **$35.00**
Also available: Plaintiff's Reply Brief making similar arguments. 18 pps. **$25.00**

AB (White for EEOC) Appeal from D.C., N.D. Ill.
Because plaintiff's Title VII charge fell within the waiver provision of EEOC's worksharing agreement with the Illinois Department of Human Rights, it was properly filed under Title VII when the EEOC received it less than 300 days after plaintiff's discharge.
Sofferin v. American Airlines
No. 89-2662 (7th Cir. 1990) 52 pps. **$65.00**

AB (White for EEOC) Appeal from D.C., D. Kan.
Plaintiff filed a timely charge. Plaintiff's later execution of a verified charge related back to the date of the original submission of a written, signed charge, to the EEOC under Title VII.
Peterson v. City of Wichita
No. 89-3088 (10th Cir. 1989) 20 pps. **$25.00**

AB (Mastrioanni for EEOC) Appeal from D.C., D. Md.
The 300-day filing period granted to complainants who initially instituted proceedings with a state agency is available to plaintiff even where the state agency has waived its exclusive right to process her charge.
Dixon v. Westinghouse Electric
No. 89-2033 (4th Cir. 1985) 21 pps. **$35.00**

AB (O'Rourke for U.S. and EEOC) Writ of Certiorari to 7th Circuit
Petitioners contend that respondent AT&T violated Title VII by demoting them pursuant to a seniority policy which, while facially neutral, intentionally discriminates against women. The unlawful practice did not "occur" when AT&T first adopted the seniority policy, nor did it occur when the policy was made known to each petitioner that her seniority rights would be determined under the new policy. Rather, the unlawful practice occurred on the date of petitioners' demotion, and their filings with the EEOC were therefore timely.
Lorance v. AT&T Technologies
No. 87-1428 (U.S. Supreme Ct. 1988) 23 pps. **$35.00**

AB (Marcosson for EEOC) Appeal from D.C., N.D. N.Y.
Defendant's argument that plaintiff's Title VII claims regarding events that occurred in 1986 were untimely because these allegations were filed 90 days after receiving the notice of right to sue on her second administrative charge, is erroneous. The second notice of right to sue was unnecessary, and it makes no difference whether plaintiff moved to amend the complaint within 90 days of that notice.
Cornwell v. Robinson
No. 93-7618, 7646 (2nd Cir. 1993) 14 pps. **$25.00**

AB (Starr for EEOC) In Support of Plaintiff-Appellant
Plaintiff's charge was timely filed with the EEOC because the express terms of Title VII and the worksharing agreement between the EEOC and the Indiana Civil Rights Commission enabled Plaintiff to file his charge within 300 days of the alleged violation. Plaintiff is not precluded from appealing the trial court's plain legal error in applying a shorter statute of limitations because he recognized this error after the summary judgment proceeding.
Russell v. Delco Remy Division, et al.
No. 94-2896 (7th Cir. 1994) 32 pps. **$45.00**

PB (White for EEOC) Reply Brief of Plaintiff-Appellant
Where the charge is not untimely on its face, a district court must enforce the subpoena without further inquiry into timeliness. Furthermore, since the charge was based on the failure to reinstate the employee and not the original decision to suspend, the charge is timely.
EEOC v. City of Norfolk Police Department
No. 94-1350 (4th Cir. 1994) 12 pps. **$25.00**

AB (Coleman for EEOC) In Support of Plaintiff-Appellant
When an alleged sexual harasser begins his offensive conduct prior to Title VII's limitations period but continues it into the limitations period, the entire course of conduct is legally cognizable as a continuing violation.
Galloway v. G.M. Service Parts Operations
No. 94-3993 (7th Cir. 1995) 30 pps. **$35.00**

PB (Suhre for EEOC) Reply Brief as Plaintiff-Appellant's Brief
Plaintiff's charge was timely filed within 300 days as required by the state agency and the charge was received by the EEOC.
EEOC v. Green
No. 95-1571 (1st Cir. 1995) 29 pps. **$35.00**

AB (Sloan for EEOC) In Support of Plaintiffs-Appellants
Plaintiff's challenge to defendant's ongoing hiring policy was timely because the policy was applied to plaintiff as well as other potential class members within the limitations period. The Title VII class members are not barred from seeking relief in federal court for alleged sex discrimination merely because the class representatives chose to litigate their individual state law claims in a private state court action.
Sondel v. Northwest Airlines, Inc.
No. 94-2524 (8th Cir. 1994) 47 pps. **$55.00**

TITLE VII - STANDING

AB (Starr for EEOC) Brief *amicus curiae* of EEOC on Appeal from D.C., E.D. Va.
Title VII prohibits employers from discriminating with respect to any individual's terms or conditions of employment, not strictly with respect to an employer's own employees. Thus defendant law firm can be sued under Title VII for directing plaintiff's removal from her supply room job on the basis of her national origin, even though she was directly employed by an employment agency.
Bishop v. Hazel & Thomas, P.C.
No. 97-2284 (4th Cir. 1998) 16 pps. $**25.00**

PB (Sloan for EEOC) Brief for the Plaintiff-Appellant on Appeal from the D.C., E.D. Mich.
In bringing a suit on behalf of an individual alleging discrimination under Title VII, where the individual is not a party to the suit, the EEOC was not bound by the mandatory arbitration provisions in the aggrieved individual's application for employment, and therefore should not have been prevented from bringing suit to challenge alleged discrimination and to obtain an award of substantive relief. The EEOC is not a proxy for aggrieved individuals in such cases, instead, it has independent power to bring suit and obtain a full range of relief in the public interest.
EEOC v. Frank's Nursery & Crafts, Inc.
No. 97-1698 (6th Cir. 1998) 30 pps. **$35.00**

AB (Reilly for EEOC) Appeal from D.C., N.D. Fla.
Initial plaintiff who charged promotional and discipline discrimination had standing to sue for hiring discrimination.

Subsequent plaintiffs could join later.
Griffin v. Dugger
No. 85-3831 (11th Cir. 1987) 12 pps. **$25.00**

AB (Marcosson for EEOC) In Opposition to Motion to Dismiss
Plaintiffs, alleging that defendant's employment agency denied them employment referrals because of Plaintiffs race, have standing to assert Title VII claims, even though they registered with defendant for the sole purpose to test defendant's compliance with Title VII.
Fair Employment Council of Greater Washington, Inc., et al. v. BMC Marketing Corp.
No. 91-0989-NHJ (D.D.C. 1992) 21 pps. **35.00**
Also available: Amicus Brief for Plaintiff on Appeal from D.D.C. making similar arguments. 28 pps. **$35.00**

AB (Penner for EEOC) In Support of Plaintiff-Appellant
The district court erred in granting summary judgment for defendants when it found that the material facts regarding plaintiff's status as an employee were undisputed. Such a decision may allow employers to avoid their Title VII responsibilities by mislabeling employees as contractors when in fact there is a material factual dispute about their status.
Cilecek v. Inova Health System Services
No. 96-1317 (4th Cir. 1996) 27 pps. **$35.00**

AB (Marcosson for EEOC) In Support of Plaintiff-Appellant
The fact that an individual is not entitled to work in the U.S. under the immigration laws (Immigration Reform and Control Act) does not preclude him from establishing a *prima facie* case of discrimination under Title VII.
Egbuna v. Time-Life Libraries, Inc.
No. 95-2457 (4th Cir. 1995) 18 pps. **$25.00**

PB (Azrael) Memo of Law in Opposition ot Motion to Dismiss
There is subject matter jurisdiction over plaintiff's Title VII claims. Plainitiff"s claim was timely filed and the right to sue letter can be issued before 180 days after the filing of the charge. The 60 day period for deferral by the EEOC to the Maryland Commission on Human Relations was properly waived. The court also has diversity jurisidiction, thus an issue of supplemental jurisdiction is moot. The allegations are sufficient to state a claim aginst defendant for assault and claims under the New York State Human Rights Law.
Vasconcellos v. Lumex, Inc.
No. CV96-2515 (D.C., E.D.N.Y. 1996) 73 pps. **$85.00**

TITLE VII - EXTRATERRITORIALITY

PB (Randels) Opposition to Motion to Dismiss
The legislative intent to apply Title VII abroad is sufficiently clear to overcome the presumption against extraterritoriality. The limited application of Title VII to American citizens working overseas for U.S. companies would be workable, reasonable, and consistent with international law.
Akgun v. Boeing Co.
No. C89-1319D (D.C., W.D. Wash. 1990) 40 pps. **$45.00**

PB (Marcosson for EEOC) Writ of Certiorari to 5th Circuit
Title VII of the Civil Rights Act of 1964 prohibits employment discrimination outside the United States by an American corporation against an American citizen.
EEOC v. Arabian American Oil Co.

(U.S. Supreme Ct. 1989) 87 pps. **$95.00**

TITLE VII - PROCEDURES & JUDICIAL REVIEW

Petition For Writ Of Certiorari
The D.C. Circuit's decision invalidating the EEOC's early right-to-sue regulation directly conflicts with decisions of the Eleventh and Ninth Circuits. This conflict is of great importance in light of the number of individuals covered by Title VII, as well as the thousands of cases now pending in the federal courts which are predicated on early right-to-sue letters. Without the early right-to-sue provision employees would suffer a six month backlog in the adjudication of their claims and employers would be forced to pay an addition six months in back pay if they were found to be liable. The EEOC is unable to process most charges within the 180-day period. Thus, the early right to sue regulation is rational way of furthering the essential purposes of Title VII. If the EEOC regulation is invalidated, courts with pending Title VII cases predicated on early right to sue notices will be forced to decide whether those cases must be dismissed or maintained despite the invalidity of the regulation. Courts will also have to determine whether pendent jurisdiction of state claims can be maintained if the federal claims are dismissed due to the invalidity of the regulation.
Martini v. Federal National Mortgage Assoc
No.___ (U.S. Sup. Crt. 2000) 38 pps. **$45.00**

PB (Gregory for EEOC) Appeal From the United States District Court for the Northern District of Ohio
Appellants' were given a full opportunity to be heard on the issue of joinder. Therefore, their due process argument is without merit. Appellants were not subjected to liability for any past conduct by means of the joinder. It was proper to join appellants as parties because full relief could not be granted in their absence. Innocent third parties can be required to share the burden of remedying the effects of illegal discrimination.
EEOC v. United Assoc. of Journeymen and Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada Nos. 98-3987, 98-3988 (6th Cir. 1999) 20 pps. **$25.00**

AB (Posner for CELA) Brief In Support of Plaintiffs-Appellants on Appeal from California Superior Court, Los Angeles County
The jury's unanimous verdict in the case below should be upheld. Most discrimination cases involve subtle, not blatant evidence. A small but increasing number of judges refuse to acknowledge existing discrimination, forcing plaintiffs over unnecessary hurdles and taking away just verdicts. Unless such judicial undermining of civil rights law enforcement is stopped, there will never be effective, vigorous enforcement of what the Legislature has decreed to be important public policy.
Lane and Villalpando v. Hughes Aircraft Co.
Nos. B090258, BC0755I9 & BC083355 (Cal. Ct. of Appeal, 2nd District 1996) 16 pps. **$25.00**

PB (Banks for EEOC) Reply Brief of the EEOC on Appeal from D.C., D. N.M.
The district court's failure to tender the parties' stipulated jury instruction on retaliation substantially prejudiced the Commission's case and was an abuse of discretion because the jury was unable to evaluate properly the evidence before it. The objection to the jury instruction on retaliation was properly made and preserved the Commission's right to appeal on this issue.
EEOC v. Lockheed Martin Corp.
No. 97-2350 (10th Cir. 1998) 19 pps. **$25.00**

PB (Roseman) Plaintiff-Appellant's Opening Brief on Appeal from D.C., D. Colo.
The district court erred in applying a deferential standard of review in connection with United's employment decisions. There exist genuine issues of material fact on plaintiff's claims of sex and age discrimination, and retaliation, precluding the grant of summary judgment. United's representation's concerning promotional opportunities for its current employees supported a claim for a breach of unilateral contract or promissory estoppel. The district court erred in

dismissing plaintiff's claims of sex and age discrimination for defendant's 1993 hiring decision.
Bullington v. United Airlines, Inc.
No. 98-1125 (10th Cir. 1998) 97 pps. **$105.00**

AB (Kearney for NELA) Appeal from a Final Judgment Issued by D.C., D. Colo.
The unequal use of objective criteria, coupled with the use of subjective criteria disadvantaging plaintiff as a member of a protected group, warrants the use of an inference of discriminatory intent of which plaintiff was deprived at the summary judgment stage. The court's order applied an erroneous summary judgment standard for discrimination cases by making credibility determinations and disregarding inconsistent objective criteria.
Bullington v. United Airlines, Inc.
No. 98-1125 (10th Cir. 1998) 30 pps. **$35.00**

AB (Parker for Equal Rights Advocates) Brief *amicus curiae* in Support of Plaintiff on Appeal from D.C., D. Colo.
The district court erred in giving defendant deference in its hiring decisions. The district court improperly weighed the evidence and determined the truth of the matter. Plaintiff's disparate treatment claim should survive summary judgment because plaintiff established a prima facie case and showed pretext. The district court erroneously weighed the ultimate issues that are for a trier of fact. The district court improperly granted summary judgment on plaintiff's disparate impact claim because plaintiff met her *prima facie* case, established with statistical evidence and defendant failed to present any evidence that its subjective interviewing criteria was job-related and justified by business necessity.
Bullington v. United Airlines, Inc.
No. 98-1125 (10th Cir. 1998) 28 pps. **$35.00**

AB (Gregory for EEOC) In Opposition to Defendant's Motion to Compel Arbitration and Stay Proceedings
A plaintiff can not be compelled to arbitrate her Title VII claims pursuant to an initial employment agreement where the agreement provides only 180 days for filing the complaint, limits the plaintiff's recovery to out of pocket damages, and precludes any attorney's fees.
Johnson v. Hubbard Broadcasting
No. 4-96-107 (D.C., D. Minn. 1996) 20 pps. **$25.00**

AB (Marcosson for EEOC) In Support of Plaintiff-Appellant's Petition for Rehearing *En Banc*
A rehearing *en banc* should be granted to determine the level of deference due district court factual findings based on the testimony of expert witnesses and to review the panel majority's analysis of the statutory evidence of hiring discrimination.
Anderson v. Douglas & Lomason Co., Inc.
No. 92-7554 (5th Cir. 1994) 20 pps. **$25.00**

PB (Clark for EEOC) Plaintiff-Appellant's Brief
The district court erred in accepting defendant's hypothetical reason as the articulation of a legitimate non-discriminatory reason. Even if defendant's hypothetical reason satisfied its burden of production, the district court erred in granting summary judgment because the Commission raised triable questions of fact as to the pretextuality of the defendant's proffered reason.
EEOC and Braddy v. Our Lady of the Resurrection Medical Center
No. 95-2302 (7th Cir. 1995) 55 pps. **$65.00**

PB (Coleman for EEOC) Brief as Appellant
The district court clearly erred by rejecting the Commission's statistical evidence of sex discrimination for reasons that were not supported by the record evidence. The record demonstrates that the defendant engaged in a pattern or practice of intentional discrimination against women.

EEOC v. The Turtle Creek Mansion
Nos. 95-10637 & 95-10696 (5th Cir. 1995) 27 pps. **$35.00**

AB (Bruner for EEOC) In Support of Plaintiff-Appellant
A picture of gorillas with plaintiff's name written on it when he was the only black employee in the office was sufficient evidence of racial harassment to overcome summary judgment, particularly when plaintiff complained about it to his supervisor, his supervisor laughed at him and refused to take it down for a week after the complaint. This evidence was also sufficient to overcome summary judgment on claims of discriminatory discharge and retaliation when plaintiff was fired four days after his complaint.
Oates v. Discovery Zone
No. 96-1205 (7th Cir. 1996) 36 pps. **$45.00**

DB (Sloan for EEOC) Brief on Behalf of EEOC, Janet Reno and Donna Shalala as Appellees on Appeal from D.C., M.D. Tenn.
The district court properly dismissed as moot plaintiff's motion for leave to file a reply to defendant's motion to dismiss or for summary judgment, given the case was already on appeal. The district court properly denied plaintiff's motion for sanctions since the plaintiff did not prevail on any issue and there was no finding that the defendant's conduct was improper. The district court did not abuse its discretion in ordering the plaintiff to pay defendant's attorney's fees and costs reasonably incurred as a sanction for plaintiff's pursuing a frivolous and vexatious lawsuit.
Wrenn v. Vanderbilt University Hospital, et al.
Nos. 94-5453 & 94-5593 (6th Cir. 1994) 58 pps. **$65.00**

PB (Kaplan) Brief For Appellant on Appeal from D.D.C.
Plaintiff-Appellant asks the court to review the district court's decision to grant the Army's motion for summary judgment. The crux of the issue is that the Army may only cancel a complaint for failing to accept an offer of full relief, and the appellant asserts that the remedy in this case did not constitute "full relief," thus the district court erred as a matter of law.
Allen v. Department of the Army
No. 91-5207 (D.C. Cir. 1993) 51 pps. **$65.00**

PB (Bruner for D.C. EEOC) Reply Brief on Appeal of Attorney's Fee Award by D.C., E.D. Tenn.
The EEOC's allegations of discrimination and disparate treatment were neither groundless nor unreasonable at the time suit was filed. Dismissal of the suit due to information gathered in discovery does not detract from *prima facie* evidence of a Title VII violation when suit was filed. District court abused its discretion by relying on facts not in the EEOC's possession at the time it brought suit.
EEOC v. Shoney's, Inc.
No. 93-5583 (6th Cir. 1993) 30 pps. **$35.00**

AB (Collazo for EEOC) Appeal from D.C., E.D. Va.
The district court properly allocated the burden of proof and correctly concluded that Plaintiff was discharged and was not rehired in violation of the Pregnancy Discrimination Act. Defendant's arguments regarding latches and failure to conciliate are frivolous. The district court abused its discretion in computing plaintiff's back pay award by basing it on erroneous views of plaintiff's past earnings.
EEOC v. Old Dominion Security Corp.
Nos. 86-2121 & 86-2156 (4th Cir. 1986) 61 pps. **$75.00**

AB (Goodman for EEOC) Appeal from D.C., E.D. N.C.
The district court erred in removing this case to a federal court because (1) the court did not have original federal

jurisdiction over the dispute; (2) the OAH Hearings Division is not a "State Court," within the meaning of 28 U.S.C. Section 1441(a); and (3) the court lacked subject matter jurisdiction over the case because only state claims were pending before the OAH.
Davis v. North Carolina Department of Corrections
No. 93-2640 (4th Cir. 1994) 30 pps. **$35.00**

AB (Marcosson for EEOC) Appeal from D.C., N.D. N.Y.
Defendant's argument that plaintiff's Title VII claims regarding events that occurred in 1986 were untimely because these allegations were filed 90 days after receiving the notice of right to sue on her second administrative charge, is erroneous. The second notice of right to sue was unnecessary, and it makes no difference whether plaintiff moved to amend the complaint within 90 days of that notice.
Cornwell v. Robinson
Nos. 93-7618, 7646 (2nd Cir. 1993) 14 pps. **$25.00**

AB (Moran for EEOC) Appeal from D.C., D. Md.
In dismissing plaintiff's Title VII suit before trial because she rejected a settlement offer that the court believed constituted full relief for the charged discrimination, the court impermissibly imposed an additional administrative requirement on the plaintiff and improperly denied her the right to have her case heard on its merits.
Long v. Ringling Brothers-Barnum & Bailey Combined Shows, Inc.
No. 92-2336 (4th Cir. 1992) 45 pps. **$55.00**

PB (O'Leary) Writ of Certiorari to the 7th Circuit
Writ of Certiorari should be granted where the 7th Circuit erred in reversing the district court's judgment for plaintiff. The district court's findings of pretext were fully supported by record and can not be overturned under Rule 52(a). The 7th Circuit exceeded its scope of review by substituting its opinion for that of district court by finding, weighing, and making inferences from facts, and by failing to seek support in the record for district court's credibility determination.
Heerdink v. Amoco Oil Co.
No. 90-1518 (U.S. Supreme Ct. 1990) 116 pps. **$125.00**

PB (Keller for EEOC) Reply Brief on Appeal from D.C., E.D. Va.
Where the district court made a clearly erroneous factual finding, the case must be remanded because only the district court can say how much impact its mistake had on its credibility assessment or on its ultimate finding of no discrimination.
EEOC and Downing v. Gilbert/Robinson, Inc.
No. 90-3196 (4th Cir. 1991) 13 pps. **$25.00**

DB (White) Appeal from D.C., M.D. Fla.
The district court did not abuse its discretion by denying plaintiff's motion for default judgment against EEOC because plaintiff had not served her complaint on the U.S. attorney, and thus the time for the EEOC to file its answer had not begun to run.
Wayno v. D.S.G. Corp.
No. 89-3137 (11th Cir. 1991) 14 pps. **$25.00**

PB (Wheeler for EEOC) Appeal from D.C., D. Ariz.
District court's finding of civil contempt can stand despite the improper imposition of a criminal sanction ($10,000 unconditional fine). Imposition of a conditional fine of $10,000 for any future court order violation, and award of costs and fees to the EEOC do not constitute an abuse of court's discretion.

EEOC v. Townley Manufacturing Co.
No. 88-2566 (9th Cir. 1990) 29 pps. **$35.00**

PB (White for EEOC) Reply Brief as Cross-Appellant
The court should not consider defendant's challenge to the adequacy of the court's findings under Fed. R. Civ. P. 52(a), because defendant did not address this issue in its opening brief.
EEOC v. Delight Wholesale Company
No. 91-3661/3786 (8th Cir. 1991) 9 pps. **$15.00**

PB (Goldstein for EEOC) Appeal from D.C., D. N.M.
The district court abused its discretion in enforcing a settlement agreement where there was undisputed evidence that the EEOC had not agreed to settle, and by interfering with settlement negotiations by entering a confidentially order. Confidentiality was one of the key points of dispute between the parties in the settlement negotiations.
EEOC v. General Electric Company
No. 93-2064 (10th Cir. 1993) 37 pps. **$45.00**

AB (Goodman for EEOC) Appeal from D.C., E.D. N.C.
Defendant filed a petition for removal to this court from the Office of Administrative Hearings Divisions ("OAH"). The district court lacks removal jurisdiction because two requirements of the removal statute, 28 U.S.C. § 1441**,** are not satisfied. First, the district court lacks original federal jurisdiction over the dispute; and second, the OAH is not a "state court" within the meaning of the statute. Davis v. North Carolina Department of Corrections
No. 93-144-CIV-5-D (D.C., E.D. N.C. 1993) 33 pps. **$45.00**

DB (Wheeler) Appeal from D.C., D. Mt.
Dismissal of conclusory amended complaint was correct because plaintiff failed to comply with Rule 8 of Federal Rules of Civil Procedure, and because the district court lacked subject matter jurisdiction over claims asserted against the EEOC. A federal employee who does not work for the EEOC can not sue the EEOC under Title VII, or the Administrative Procedure Act or the Declaratory Judgment Act.
Burris v. Hiaring
No. 89-35128 (9th Cir. 1989) 33 pps. **$45.00**

PB (Franklin for EEOC) Brief of Plantiff-Appellant on Appeal from D.C., W.D. Wash.
The district court abused its discretion by sealing the consent decree. There was no evidence of a likelihood of improper use resulting from disclosure to overcome the strong presumption favoring disclosure of judicial records.
EEOC v. The Erection Company
No. 89-35131 (9th Cir. 1989) 23 pps. **$25.00**
Also available: Reply Brief of Plaintiff-Appellant on Appeal from D.C., W.D. Wash., making similar argument. 15 pps. **$25.00**

AB (Wheeler) Appeal from D.C., S.D. Tex.
Title VII claims are not subject to arbitration, therefore a predispute arbitration clause in a stock exchange registration certificate is not valid. The defendant has no authority to impose an exhaustion requirement or request a stay pending arbitration. Legislative history of Title VII indicates that a presumption in favor of arbitration would conflict with the underlying purposes of Title VII.
Alford v. Dean Witter Reynolds
No. 89-2599 (5th Cir. 1989) 37 pps. **$45.00**

AB (Oakley for PELA,Georgia) Appeal from D.C., N.D. Ga.

Local Rule 920-2 of the Northern District of Georgia which provides for across the board delegation of Title VII cases to United States Magistrate is an unconstitutional delegation of authority under Article III, is a denial of equal protection, and is contrary to the provisions of Title VII.
Donald v. U.S. Department of Education
No. 88-8592 (11th Cir. 1989) 26 pps. **$35.00**

PB (Lardiere) Appeal from 10th Appellate District, Franklin County
State courts have concurrent subject matter jurisdiction with federal courts over Title VII actions.
Manning v. State Library Board
No. 89AP-1304 (Ohio Supreme Ct. 1990) 27 pps. **$35.00**

PB (Duplinsky for EEOC) Appeal from D.C., W.D. N.C.
The EEOC's ADEA and race discrimination charges should not be stayed during the employer's bankruptcy proceedings.
EEOC v. McLean Trucking Co.
No. 87-3070 (4th Cir. 1987) 22 pps. **$35.00**

PB (Sloan for EEOC) Answer of the EEOC as Respondent On Petition for Section 1292(b), Interlocutory Appeal from D.C., D. N.M.
Immediate appeal of the district court's unpublished order, which held that part-time employees listed on payroll should be counted in determining whether defendant is an "employer" within the meaning of 701 (b) of Title VII, should be denied where no exceptional circumstances exist.
EEOC v. De Anza Motor Lodge
No. 93-604 (10th Cir. 1993) 10 pps. **$15.00**

DB (Sloan for EEOC) Appeal of Dismissal by D.C., S.D. Tex.
The district court properly dismissed plaintiffs suit against the EEOC under Rule 4 (j) of the Federal Rules of Civil Procedure, where plaintiff did not serve the EEOC with a copy of the summons and complaint or otherwise notify the EEOC of the suit. Federal courts do not have subject matter jurisdiction over suits by charging parties against the EEOC.
Brinac v. EEOC
No. 93-2118 (5th Circuit 1993) 34 pps. **$45.00**

DB (Goldstein for EEOC) Appeal from D.C., D. Mass.
Appellate jurisdiction is lacking where the district court did not enter a final decision adjudicating all claims against all parties. Title VII does not authorize suits by individuals challenging the EEOC's handling of discrimination charges.
Gorczakoski v. EEOC
No. 93-1101 (1st Cir. 1993) 13 pps. **$25.00**

PB (Marcosson for EEOC) Reply of Plaintiff-Intervenor-Appellant on Appeal from D.C., D. Neb.
Application of the 1991 Civil Rights Act to employer's conduct after the effective date of the Act where no back pay will be awarded is not a retroactive application of the Act. The district court abused its discretion in not allowing the EEOC an opportunity on remand to present additional arguments and evidence in order to meet the Wards Cove standard, which was decided after the case was first tried.
Bradley v. Pizzaco of Nebraska, Inc.
No. 92-3781NEO (8th Cir. 1993) 22 pps. **$25.00**

PB (Franklin for EEOC) Appeal from D.C., M.D. Fla.
The district court did not abuse its discretion in refusing to set aside the default judgment entered against defendant

in the discrimination suit filed by the EEOC. Defendant has not shown a meritorious defense, a lack of prejudice to the EEOC, or a reasonable explanation for the delay.
EEOC v. Mike Smith Pontiac GMC
No. 89-3036 (11th Cir. 1989) 42 pps. **$55.00**

PB (Bogas for EEOC) Opposition to Defendant's Petition for Writ of Prohibition and/or Writ of Mandamus
The EEOC opposes Writ of Mandamus seeking to 1) prohibit the district court from allowing the EEOC to publish notice to identify potential victims in race discrimination action until after the court determines how much back pay is appropriate and 2) direct the district court to reverse its finding of liability and reverse the lawsuit. Mandamus is a drastic and extraordinary remedy that should not be available here because the company may pursue the relief it seeks on appeal following a final judgment, and the district court was acting within its broad discretion in fashioning the remedy.
O & G Spring and Wire Forms Specialty Co. v. Leinenweber
No. 90-2209 (7th Cir. 1990) 43 pps. **$55.00**

AB (Coleman for EEOC) In Support of Plaintiff-Appellant on Appeal from D.C., N.D. Ill.
Because Title VII authorizes an award of money damages against an individual supervisor, the district court erred in dismissing defendant.
Hennessy v. Penril DataComm Networks, Inc.
Nos. 94-3475, 94-3565 & 94-3868 (7th Cir. 1995) 19 pps. **$25.00**

AB (Goodman for EEOC) In Opposition to Defendant's Motion to Dismiss
Dismissal is inappropriate because, by operation of a worksharing agreement, the deferral requirements were waived automatically or, in the alternative, because the circumstances justify abeyance of this action while any technical failure to perfect the waiver is cured.
Henderson v. Employment Security Commission of North Carolina
No. 3:92-CV-283-P (D.C., W.D. N.C. 1995) 29 pps. **$35.00**

AB (Gregory for EEOC) In Support of Plaintiff-Appellant
The plaintiff's workshare agreement is properly interpreted as having effected an automatic waiver of the state's deferral rights under Title VII upon plaintiff's filing of the charge with the Commission and even if it did not effect such a waiver, the claim should not have been dismissed.
Henderson v. Employment Security Commission of North Carolina
No. 96-114 (4th Cir. 1996) 30 pps. **$35.00**

AB (Moran for EEOC) In Support of Plaintiff-Appellee
The district court erred in holding that individual supervisors may not be held personally liable for race discrimination in violation of Title VII and in failing to give plaintiff the opportunity to amend her complaint to name the proper employer. The supervisors are agents of the defendant and are therefore "employers" who are liable.
Carter v. Lutheran Medical Center
No. 95-2262 (8th Cir. 1995) 24 pps. **$35.00**

AB (Marcosson for EEOC) In Support of Plaintiff-Appellant
The fact that an individual is not entitled to work in the U.S. under the immigration laws (Immigration Reform and Control Act) does not preclude him from establishing a prima facie case of discrimination under Title VII.
Egbuna v. Time-Life Libraries, Inc.
No. 95-2457 (4th Cir. 1995) 18 pps. **$25.00**

PB (Cotiguala) Response to Defendant's Motion to Bifurcate the Liability and Damages Phases of the Trial

Defendant does not satisfy any factor for bifurcation. Bifurcation does not further convenience, avoid prejudice, and is not conducive to expedition or economy. Bifurcation is so prejudicial to plaintiff that it violates the right the right to trial by jury.
Wagner v. Kestler Solder Co.
No. 94 C 6039 (D.C., N.D. Ill. 1995) 26 pps. **$35.00**

AB (Goldstein for EEOC) In Support of Plaintiff-Appellant's Petition for Rehearing
The district court erred in its finding that the §1 exclusion of the Federal Arbitration Act applies only to employees directly involved in the movement of goods in interstate commerce rather than all employment contracts with employers subject to regulation under Title VII.
Asplundh Tree Expert Co. v. Bates
No. 94-5563 (6th Cir. 1995) 25 pps. **$35.00**

AB (Gregory for EEOC) In Support of Plaintiff-Appellant on Appeal from D.C., D. N.J.
The district court erred in granting the defendant's motion to compel arbitration since the Federal Arbitration Act excludes employment contracts. Even if the employment contract does not fall within the exclusion, the arbitration agreement is only enforceable if Plaintiff would be able to vindicate the statutory remedy through arbitration.
Great Western Mortgage Corp. v. Peacock
No. 96-5273 (3rd Cir. 1996) 40 pps. **$45.00**

AB (Gregory for EEOC) In Opposition to Defendant's Motion to Dismiss & Compel Arbitration
The district court should deny defendant's motion to dismiss and compel arbitration where the National Association of Securities Dealers (NASD) rules failed to provide for the arbitration of employment disputes at the time plaintiff signed the document reinforcing the fact that plaintiff could not have agreed to arbitrate any Title VII and ADEA claims. Federal law further prohibits the enforcement of an agreement that requires anyone to forego their statutory rights of action.
Nieminski v. John Muveen & Co., Inc.
No. 96C1960 (N.D. Ill. 1996) 16 pps. **$25.00**

PB (Suhre for EEOC) Brief of Plaintiff-Appellant
The decision to seal judicial records should be based upon a demonstration that justice requires denial of access. The district court erred in considering the defendant's willingness to settle the case as a basis for sealing the record.
EEOC v. The National Children's Center
No. 95-5408 (D.C. Cir. 1995) 30 pps. **$35.00**

TITLE VII - BURDEN OF PROOF - EVIDENCE

PB (Feagins for Plaintiff) Appeal From W.D. Oklahoma
Pursuant to the summary judgment standard articulated in *Reeves v. Sanderson Plumbing Products, Inc.*, it was improper for the district court to resolve the disputed fact issue of pretext for race discrimination at the summary judgment stage. Motivation is itself a factual question best left for trial to be decided by a jury. The district court correctly determined that the plaintiff had presented enough circumstantial evidence to establish a prima facie case of race discrimination. The same circumstantial evidence also created a genuine issue of material fact regarding pretext which mandates a jury trial. Under Reeves, any evidence in the record establishing "a prima facie case and sufficient evidence to reject the employer's explanation" enables a plaintiff to survive a summary judgment motion.
Watts v. City of Norman
(10th Cir. 2000) 36 pps. No. 00-6208 **$45.00** Order attached 14 pps. **$25.00**

AB (Carter for EEOC) Appeal From the United States District Court for the Eastern District of Pennsylvania

There is no qualifications prerequisite in a Title VII case and thus no basis for dismissing a Title VII claim where the evidence is sufficient to sustain a finding that race played a role in an adverse employment action. Plaintiff can prevail under a direct evidence theory even where the plaintiff is unable to satisfy the qualifications element of the *McDonnell Douglas* prima facie case. The critical question is whether the evidence supports a finding that the protected trait was a determinative factor in the employer's decision. Plaintiff can withstand summary judgment regardless of the legal theory (direct, mixed-motives, or pretext) under which he proceeds.
Hankins v. City of Philadelphia
No. 98-1327 (3rd Cir. 1999) 30 pps. **$35.00**

PB (Gregory for EEOC) Reply Brief On Appeal From D.C. New Mexico
The Commission met its prima facie burden of showing that the charging parties were qualified for modified duty and were capable of performing that work. The fact that employer made pregnant employees ineligible for modified duty does not prevent them from making out a prima facie case of discrimination under Title VII.
EEOC v. Horizon/CMS Healthcare Corp.
No. 98-2328 (10th Cir. 1999) 34pps. **$45.00**

AB (Carter for EEOC) Letter Brief As *Amicus Curiae*
The Supreme Court's holding in *Kolstad v. American Dental Ass'n*, 119 S.Ct. 21118 (1999) that employers may present, as a defense to punitive damages, evidence of their good faith efforts to comply with the law, does not warrant a remand. Defendant had the opportunity to present such evidence at the original trial. Therefore, the jury's finding and the existing evidentiary recor preclude as a matter of law any additional arguments defendant might present.
Deffenbaugh-Williams v. Wal-Mart
Nos. 97-10685, 97-10706 (5th Cir. 1999) 13pps. **$25.00**

AB (Butler for NELA) Opening Brief in Support of Plaintiffs-Appellants
The trial court erred in refusing to consider the burden shifting method of proof that the United States Supreme Court established for indirect proof of race discrimination (the *McDonnell Douglas* test) in considering whether the plaintiff established a *prima facie* case of race-based wrongful discharge under Virginia Law. Since the *McDonnell Douglas* test has been accepted as the standard for proof of discriminatory intent in the federal courts, and was recognized by the Virginia Court of Appeal, it was error for the trial court to sanction a discharged employee and her counsel for asserting a wrongful discharge claim based on the *McDonnell Douglas* test.
Jordan v. Clay's Rest Home, Inc.
No. 96-1320 (Va. Supreme Ct. 1996) 16 pps. **$25.00**

AB (Sloan for EEOC) Brief on Rehearing En Banc for EEOC as *amicus curiae* on appeal from D.C., D.C.
Under *Hicks*, a court not grant summary judgment where the plaintiff has made out a *prima facie* case of discrimination and produced evidence sufficient to show that the employer's proffered reason for the challenged employment decision is unworthy of credence. The collective bargaining agreement in this case does not relieve the hospital of its obligation to reasonably accommodate plaintiff's disability.
Aka v. Washington Hospital Center
No. 96-7089 (D.C. Cir. 1997) 55 pps. **$65.00**

PB (Sloan for EEOC) Appeal from D.C., E.D. Pa.
The district court erred in granting summary judgment to defendant. Defendant did not articulate a legitimate non-discriminatory reason for treating female and male employees differently. The court incorrectly required the EEOC to prove pretext on a summary judgment motion, erred in requiring plaintiff to prove pretext on a summary judgment motion, and inappropriately resolved material issues of fact.

EEOC v. Brown Printing Co.
No. 89-1780 (3rd Cir. 1989) 38 pps. **$45.00**

PB (Gallegos for EEOC) Appeal from D.C., D. Md.
The district court erred in granting summary judgment against the EEOC on a claim of sex-based wage discrimination. The court compared male and female sales managers' gross earnings, but not commission rates, and disregarded statements of sexual animus by defendant's rate maker.
EEOC v. Kettler Bros.
Nos. 87-3069 & 87-3083 (4th Cir. 1987) 33 pps. **$45.00**

PB (Foreman for EEOC) Appeal from D.C., W.D. Va.
Defendant discharged plaintiff because of her sex. The EEOC proved sex discrimination indirectly by showing that plaintiff, who was fired for using offensive language, was treated more harshly than a male employee who was merely sent home to "cool down" for more offensive conduct.
EEOC v. FLC & Brothers
No. 87-2643 (4th Cir. 1988) 40 pps. **$45.00**

PB (Scanlan for EEOC) Petition for Rehearing With Suggestion for Rehearing *En Banc*
The court's rejection of the EEOC's claim regarding Sears's sex discrimination against women is founded on an incorrect view of statistical proof of discrimination. The EEOC took into account the fact that male and female applicants were neither qualified nor interested in commission sales positions, yet enormous disparities remained between men and women which could not be explained by defendant.
EEOC v. Sears, Roebuck and Co.
Nos. 86-1519 & 86-1621 (7th Cir. 1988) 18 pps. **$25.00**

PB (Scanlan for EEOC) Appeal from D.C., N.D. Ill.
The district court erred in holding that defendant had not discriminated against women with respect to hiring and promotion into commission sales positions between 1973-1980. Defendant paid women in "checklist management" positions less than similarly situated men.
EEOC v. Sears, Roebuck and Co.
Nos. 86-1519 & 86-1621 (7th Cir. 1987) 215 pps. **$125.00**

PB (Mastroianni for EEOC) Appeal from D.C., W.D. Wash.
Dispositive evidence, showing discriminatory assignments of women with same job interests as men, was ignored by both courts. The key issue should be whether women with same job interests as men were treated differently; admitting the employer's affirmative action efforts were an abuse of discretion.
EEOC v. General Telephone Co.
Nos. 85-4422, 85-4437 & 86-3732 (9th Cir. 1988) 11 pps. **$25.00**

AB (Larkin for NELA) Appeal from D.C., S.D. Ind.
Reversal of the district court's sex discrimination award was erroneous because it was based on non-dispositive burden of proof principles which did not prejudice defendant. The fact that the magistrate's opinion inadvertently speaks of a "burden of proof" rather than a "burden of production" should not upset plaintiff's award based on pretext evidence.
Heerdink v. Amoco Oil Co.
No. 89-2596 (7th Cir. 1991) 8 pps. **$15.00**

PB (Misicka for EEOC) Appeal from D.C., M.D. Fla.
The district court erred in holding defendant to a lesser burden on rebuttal than is required in a direct evidence case by

incorrectly analyzing the EEOC claim of race discrimination under a *McDonnell-Douglas* framework.
EEOC v. Alton Packaging Corp.
No. 89-3484 (11th Cir. 1989) 53 pps. **$65.00**

PB (Misicka for EEOC) Appeal from D.C., D. Ariz.
Plaintiff submitted sufficient evidence to establish that defendant was engaged in an industry affecting commerce under Title VII.
EEOC v. Ratliff
No. 89-15017/15184 (9th Cir. 1989) 28 pps. **$35.00**

AB (McMahon for Lawyers' Committee for Civil Rights Under Law) Writ of Certiorari to the 8th Circuit
Under *McDonnell Douglas* and *Burdine*, plaintiffs may prove intentional discrimination by demonstrating that the employer's reason for a personnel action is pretextual. Requiring plaintiffs to do more than prove pretext in order to prevail, would put Title VII plaintiffs on a slippery slope toward a direct evidence requirement, would deny plaintiffs a full and fair opportunity to prove pretext, and would unduly complicate the trial of Title VII cases.
St. Mary's Honor Center v. Hicks
No. 92-602 (U.S. Supreme Ct. 1992) 39 pps. **$45.00**

AB (Johnson for NELA) Writ of Certiorari to the 8th Circuit
The burden of proof scheme established by *McDonnell Douglas* and *Burdine* is well grounded in law, fair in application and sound public policy. Lower court judges should not be allowed to substitute hypothetical conjecture or their own business judgment for reasons for employment actions actually proffered by defendant employers. Change in the burden shifting scheme would undercut the ability of plaintiffs to use circumstantial evidence and to obtain legal representation.
St. Mary's Honor Center v. Hicks
No. 92-602 (U.S. Supreme Ct. 1992) 36 pps. **$45.00**

AB (Livingston for EEOC) Writ of Certiorari to the 8th Circuit
Plaintiff is entitled to judgment as a matter of law on the basis of his *prima facie* case and proof that all nondiscriminatory reasons proffered by defendants to justify their actions were unworthy of credence. The *McDonnell Douglas* order of proof properly requires the employer to frame the factual issues for decision by identifying the nondiscriminatory explanations that the plaintiff must refute.
St. Mary's Honor Center v. Hicks
No. 92-602 (U.S. Supreme Ct. 1992) 34 pps. **$45.00**

PB (Misicka for EEOC) Reply Brief on Appeal from D.C., M.D. Fla.
The *McDonnell Douglas* test is inapplicable where direct discrimination evidence of racial slurs is produced. Business records containing hearsay are inadmissible unless each of the foundational requirements set forth in Fed. R. Evid. 803 (6) are met. The district court abused its discretion by failing to issue an injunction for defendant's violation of Title VII recordkeeping provisions.
EEOC v. Alton Packaging Corp.
No. 89-3483 (11th Cir. 1989) 19 pps. **$25.00**

PB (Goodman for EEOC) Appeal from D.C., E.D. N.C.
The district court properly excluded evidence of employee's prior convictions for writing bad checks where the employer failed to preserve the issue for appeal, and where the exclusion was harmless error. The district court properly awarded relief for the entire back pay period (from suspension to trial) where the employer did not object to the award, offered no evidence to satisfy its burden of proving employee's failure to mitigate, and where the evidence adduced supported

a determination that the employee made diligent efforts to find work.
EEOC v. Pizza Hut of Roanoke Rapids, Inc.
No. 92-2083 (4th Cir. 1992) 35 pps. **$45.00**

PB (Reams for EEOC) Appeal from D.C., D. Kan.
The district court erred in excluding factual evidence obtained during the EEOC investigation outside of any conciliation or settlement proceedings.
EEOC v. Gear Petroleum Co.
No. 90-3024 (10th Cir. 1990) 50 pps. **$55.00**
Also available: Reply Brief on Appeal from D.C., D. Kan., making similar arguments. 19 pps. **$25.00**

AB (Bernstein for EEOC) In Support of Plaintiff-Appellant
Prima facie proof of discrimination and evidence that the employer's proffered explanation for its challenged employment action is unworthy of credence is sufficient to defeat a motion for summary judgment in a Title VII case.
LaPierre v. Benson Nissan, Inc.
No. 93-3802 (5th Cir. 1994) 25 pps. **$35.00**

PB (Sloan for EEOC) Brief of Plaintiff-Appellee
The district court properly concluded that it could base a finding of discrimination on the prima facie case and proof that the proffered reasons were unworthy of belief.
EEOC v. Yenkin-Majestic Paint Corp.
No. 94-4087 (6th Cir. 1995) 79 pps. **$80.00**

AB (Bernstein for EEOC) In Support of Suggestion for Rehearing *En Banc*
A rehearing en banc should be granted to determine whether a verdict of unlawful employment discrimination should be upheld under the *Hicks* standard when it is supported by prima facie proof of discrimination, coupled with the jury's disbelief of the employer's proffered explanation.
Rhodes v. Guiberson Oil Tools
No. 92-3370 (5th Cir. 1994) 27 pps. **$35.00**

AB (Goldstein for EEOC) In Support of Plaintiff-Appellant
Plaintiff presented sufficient evidence of pretext by showing that the employer's explanation was implausible and by producing evidence that defendant's owners repeatedly made racial slurs. The district court erred in determining that plaintiff--who satisfied the requirements of the 4-prong test for a prima facie case--nonetheless failed to establish a prima facie case because he could not show the existence of similarly situated, yet better treated employees.
Talley v. Bravo Pitino Restaurant, Ltd.
No. 94-5708 (6th Cir. 1995) 24 pps. **$35.00**

AB (Suhre for EEOC) In Support of Plaintiff-Appellant
Defendant's threats to interfere with plaintiff's efforts to obtain employment as an attorney because she filed a discrimination charge violated Title VII regardless of whether he acted on his threats. Defendant's statement that he had discretion to select whomever he wished as bartender did not satisfy defendant's burden of articulating a legitimate nondiscriminatory reason for replacing plaintiff.
Gnadt v. Castro
No. 95-1369 (4th Cir. 1995) 25 pps. **$35.00**

PB (Coleman for EEOC) Reply Brief of Plaintiff-Appellant

Defendant misstated the summary judgment standard to apply in this case and the court erroneously weighed the evidence. The EEOC has not waived its right to challenge the court's reliance on an unsworn statement of defendant's attorney. The EEOC preserved its right on the record. Defendant offers no valid reason to prevent the EEOC from pursuing a claim regarding facially neutral grooming standards as possible religious discrimination.
EEOC v. United Parcel Service
No. 96-1258 (7th Cir. 1996) 10 pps. **$15.00**

AB (Gregory for EEOC) In Support of the Plaintiff-Appellant's Suggestion of Rehearing *En Banc*
The court's interpretation of the *Hicks* decision is contrary to controlling precedent regarding the amount of evidence necessary to sustain a finding of unlawful discrimination. The court also misinterprets *Hicks* by holding that the jury's rejection of the employer's proffered explanation is not sufficient by itself to sustain a finding of discrimination. The court's decision also effectively nullifies the *McDonnell Douglas* framework by requiring plaintiffs to produce specific evidence of a discriminatory bias as well as proof of pretext to prevail.
Isenbergh v Knight-Ridder Newspaper Sales, Inc.
No. 94-4769 (11th Cir. 1996) 18 pps. **$25.00**

AB (Ballard, Burr for NELA) In Support of Plaintiff-Appellant
The adoption of a "pretext-plus" rule for proving employment discrimination is contrary to settled precedent and the district court erred in interfering with the jury's verdict and granting a new trial. The *prima facie* case retains its probative value even after the presumption of discrimination is rebutted. The rebuttal by plaintiff of defendant's proffered reason for the adverse employment action does not impermissibly shift the burden of proof. There is no basis in law to require a plaintiff to rebut an undisclosed reason for the adverse employment action.
Sheridan v. E.I. Pont De Nemours and Co.
No. 94-7509 (3d Cir. 1996) 36 pps. **$45.00**

PB (Bruner for EEOC) Brief as Appellant on Appeal from D.C., N.D. Ill.
The district court properly placed the burden of proof on defendant to prove it is exempt from Title VII coverage, but erred in concluding it is a private membership club. The defendant did not meet the burden of proof that it has meaningfully selective membership practices or standards.
EEOC v. The Chicago Club
No. 95-2323 (7th Cir. 1995) 94 pps. **$105.00**
PB (Bruner for EEOC) Reply Brief as Appellant on Appeal from D.C., N.D. Ill.
The defendant bears the burden of proof to prove it is exempt from Title VII coverage. The associational interests of a club are significant to the determination of whether it is private and genuinely selective. Substantial evidence shows the club is not private. The defendant also does not have meaningfully selective membership.
EEOC v. The Chicago Club
No. 95-2323 (7th Cir. 1995) 27 pps. **$35.00**

AB (Ramshaw for EEOC) In Support of Plaintiff-Appellee
The district court properly found no need for a plaintiff, who met the statutory standard for an award of punitive damages under Title VII, to also show that defendant's conduct was "extraordinarily egregious." The district court also correctly held that reduction of the total damage award is based solely on the size of the defendant and not a re-evaluation of the egregiousness of the conduct.
Luciano v. Olsten Corp.
No. 96-7262 (2nd Cir. 1996) 25 pps. **$35.00**

TITLE VII - AFTER ACQUIRED EVIDENCE

AB (Goldstein for EEOC) Appeal from D.C., W.D. Tex.
The district court's view that a failure to rehire can not be separately actionable is contrary to well-settled precedent. The court's invocation of the after-acquired evidence doctrine was improper in this case since the employer had knowledge of plaintiff's misconduct (income tax evasion) long before it took discriminatory actions. In any event, this court should reject the after-acquired evidence doctrine because it seriously undermines enforcement of anti-discrimination statutes. Plaintiff alleges that defendant discriminated against her by failing to promote her on the basis of age, and by firing her on the basis of sex and age.
Redd v. Controls
No. 92-8702 (5th Cir. 1993) 25 pps. **$35.00**
Also available: Brief in Support of Plaintiff-Appellant on Appeal from D.C., W.D. Tex., making similar arguments. 38 pps. **$45.00**

AB (Quackenbush) Appeal from California Superior Court, Los Angeles County
An employer may not use after-acquired evidence to avoid liability under federal and state employment discrimination laws. While some federal courts have limited plaintiff's remedies based on after-acquired evidence, California discrimination law is broader than federal law, and hence plaintiff's remedies under FEHA should not be limited.
Cooper v. Rykoff-Sexton, Inc.
No. B069065 (Cal. Ct. of Appeal, 2nd District 1993) 33 pps. **$45.00**

AB (Moran for EEOC) Appeal of Summary Judgment from the D.C., D. Md.
An individual fired because of her sex may not be denied relief under Title VII because she misstated her educational background on the resume submitted to her employer, when this information was not known to the employer until after the discharge.
Rich v. Westland Printers, Inc.
No. 93-1872 (4th Cir. 1993) 31 pps. **$45.00**

AB (Sloan for EEOC) Appeal from D.C., D. Pa.
It was improper to base summary judgment, and bar relief under Title VII and the ADEA, solely on affidavits of defendants that they would not have hired and would have fired plaintiff had they known that she misstated her job experience and academic credentials on her resume and job application.
Mardel v. Harleysville Life Insurance Co.
No. 93-3258 (3rd Cir. 1993) 36 pps. **$45.00**

AB (Bernstein for EEOC) In Support of Petitioner On Writ of Certiorari to the 6th Circuit
An employee who has been the victim of sexual harassment and sexual discriminatory conduct is not barred from obtaining remedy under Title VII if, solely as a result of the unlawful dismissal and the litigation challenging it, the employer discovers that the employee failed to reveal on her employment application that she had been convicted for driving while intoxicated, a lawful basis for dismissal.
Milligan-Jensen v. Michigan Technological University
No. 921214 (U.S. Supreme Court, 1993) 17 pps. **$25.00**

AB (Moran for D.C. EEOC) Appeal of Summary Judgment from D.C., E.D. Va.
A plaintiff subjected to a hostile working environment, who is denied a promotion and salary increases because of her sex, should not be denied relief under Title VII because the employer found that plaintiff had misrepresented her prior work history on her employment application.
Russell v. Microdyne Corporation
Nos. 93-1895 & 93-2078 (4th Cir. 1993) 38 pps. **$45.00**

AB (Moran for EEOC) In Support of Plaintiff-Appellant
An individual may not be denied all Title VII relief for unlawful employment actions based on information that the employer acquires after the challenged actions are taken and which do not motivate those actions.
Kuchler v. Bechtel Corp.
No. 94-40598 (5th Cir. 1994) 25 pps. **$35.00**

PB (Bernstein for EEOC) Brief of Appellant
After-acquired evidence that applicant submitted a false reference letter with her job application does not bar all relief under Title VII for defendant's discriminatory refusal to hire applicant because of her religion.
EEOC and Jordan v. Wiltel, Inc.
Nos. 94-5131, 94-5132 & 95-5065 (10th Cir. 1995) 60 pps. **$65.00**

PB (Bernstein for EEOC) Motion for Summary Disposition and Remand
It was improper for the district court to hold that an employer is entitled to judgment on a claim of unlawful discrimination if it can prove, based on evidence of employee misconduct discovered after the alleged discrimination occurred, that it would have taken the same action had it earlier been aware of the misconduct.
EEOC and Jordan v. Wiltel, Inc.
Nos. 94-5131 & 94-5132 (10th Cir. 1994) 33 pps. **$45.00**

AB (Lynn for NELA) In Support of Plaintiff-Appellant's Petition for Rehearing
The Summers after-acquired evidence doctrine is contrary to federal precedent as well as established employment principles.
Welch v. Liberty Machine Works, Inc.
No. 93-2670 (8th Cir. 1994) 21 pps. **$35.00**

TITLE VII - RETALIATION

AB (Sloan for EEOC) Appeal from D.C. Md.
Title VII's anti-retaliation provision prohibits any retaliatory conduct by an employer that is reasonably likely to deter protected activity even if it does not take the form of an "ultimate employment decision." Otherwise an employer would be free to retaliate against an employee for engaging in protected activity in ways that are likely to discourage the activity, such as; downgrading performance evaluations, harassment, papering files with negative reports and transfer. Because plaintiff was harassed, received negative performance evaluations, and was assigned to a less interesting and more strenuous position after filing a sexual harassment complaint, she had an actionable retaliation claim under Title VII. The district court erred in limiting retaliation claims to those that involve an "ultimate employment decision," specifically, "hiring, granting leave, discharging promoting and compensating."
Von Gunten v. State of Maryland
No. 00-1058 (4th Cir. 2000) 39 pps. **$45.00**

PB (Coleman for EEOC) Plaintiff's Reply As Appellant On Appeal From The United States District Court for the Middle District of Georgia
After *Faragher*, the EEOC's ability to enforce Title VII will be seriously compromised unless courts extend the reach of Title VII's Participation Clause. The language of Title VII does not bar courts from extending Participation Clause coverage to employees who participate in an internal, pre-charge investigation. Title VII's ban on retaliation overrides an employer's generalized interest in workplace discipline. Employer violated Title VII's Opposition Clause when it fired its employee for truthfully opposing conduct that was actually illegal, regardless of her subjective beliefs and regardless of the employer's erroneous conclusion that she had lied. The Opposition clause will be rendered meaningless if an

employee can be fired for engaging in activities that the clause allegedly protects. For this reason the relevant question should be whether the employee told the truth.
EEOC v. Total Systems Services, Inc.
No. 99-13196-J (11th Cir. 2000) 24 pps. **$35.00**

PB (Coleman for EEOC) Brief of The Equal Employment Opportunity Commission on Appeal From the United States District Court for the Middle District of Georgia
After *Faragher v. City of Boca Raton* the protections of Title VII's participation clause extend to participation in an employer's internal investigation of sexual harassment prior to the filing of an EEOC charge. Furthermore, an employer violates Title VII's opposition clause when it fires an employee based on its erroneous belief that she lied during an internal investigation of sexual harassment.
EEOC v. Total Systems Services, Inc.
No. 99-13196-J (11th Cir. 1999) 29 pps. **$35.00**

PB (Gregory for EEOC) Appeal From D.C., E.D. North Carolina
The district court erred in granting defendant's motion to dismiss and in ruling that the "ministerial" exception to Title VII applied to a choir director and part-time teaching positions occupied or sought by the charging party, where the positions were not essentially religious in nature. Since the "ministerial" exception does not apply, the establishment clause does not provide an independent basis for dismissing the EEOC's case.
EEOC v. Roman Catholic Diocese of Raleigh, North Carolina
No. 99-1860 (4th Cir. 1999) 34pps. **$45.00**

AB (Owsley for EEOC) In Support Of Appeal From Order Granting Defendant's Motion To Dismiss From D.C., N.D. Indiana
It is possible for both males and females to be sexually harassed by an "equal opportunity harasser." As a matter of law both a man and a woman may be sexually harassed by the same individual as long as each can still prove harassment on the basis of sex. The claims of individuals of the opposite sex are not mutually exclusive. It is possible that both were harassed or that only one was harassed and the other retaliated against. At a minimum, because they are allowed to make inconsistent statements in their complaint, they should be afforded the opportunity to discover evidence to support one or both of their claims.
Holman and Holman v. State of Indiana and Indiana Dept. of Transp.
No. 99-1355 (7th Cir. 1999) 24pps. **$35.00** Addendum 6pps. **$15.00**

PB (Owsley for EEOC) Appeal Of Denial Of Petition For Preliminary Injunction From D.C., N.D. Oklahoma
The Commission is statutorily entitled to an injunction where the employer's lawsuit against a third party who is not an employee threatens the integrity of the Commission's investigation of pending discrimination charges. The employer's suit against a third party threatens to impair the investigative process by seeking to discover the substance of the investigation and by discouraging individuals who may have relevant information from coming forward to assist in the investigation. Investigators are entitled to the unchilled testimony of witnesses. Whether the third party can ultimately prevail on his retaliation claim was not relevant as to whether the employer's suit against him had interfered with the investigation or chilled the charging parties or others in the exercise of their Title VII rights. Issuing an injunction would not cause employer to suffer any damage because baseless claims are not protected.
EEOC v. Norris
No. 99-5068 (10th Cir. 1999) 41pps. **$55.00** Addendum 31pps. **$45.00**

AB (Carter for EEOC) In Support Of Defendant's Motion To Dismiss
Defendant, employer's action against employee should be dismissed because it is barred by the doctrine of federal

preemption; it undercuts Title VII's goal of preventing and eliminating employment discrimination, and it cannot be reconciled with Title VII's provisions expressly prohibiting retaliation against individuals who participate in Title VII proceedings. Defendant's action against employee should be dismissed because it is retaliatory on its face and violates public policy.
Trade Fixtures, Inc. v. Petrillo
No. 99-229 (3rd Cir. Ark. 1999) 22pps. **$35.00**

DB (Franklin) Appellant's Opening Brief
A retaliation plaintiff must show an adverse employment decision occurred. To satisfy this element, a retaliation plaintiff must show a significant or tangible detriment of some kind. When the verdict is so great as to require a finding of passion
or prejudice, *remittitur* is not sufficient, and a new trial is required because the prejudice might have affected the verdict as to
liability as well. To be entitled to punitive damages, a plaintiff must show an evil motive on the part of defendant, and a deliberate disregard for plaintiff's federally-protected right against discrimination. The district court erred as a matter of law
in awarding attorney's fees and expenses for distinct claims on which the plaintiff did not prevail. Washington law apportions attorney's fees between successful and unsuccessful employment claims. Here, plaintiff only prevailed on one of six of her claims. Her fees should be adjusted accordingly.
Passantino v. Johnson & Johnson Consumer Prod., Inc.
Nos. 97-36191, 98-35036 (9th Cir. 1998) 89pps. **$90.00**
Also available: Brief Of Amicus Curiae, Chamber Of Commerce Of The United States, In Support Of Appellant, making similar arguments on Damages. 84pps. **$90.00**
Also available: Brief Amicus Curiae Of The Equal Employment Advisory Council In Support Of Defendant-Appellant ,making similar arguments on Requirement Of Retaliation For a Claim Of Retaliation Under Title VII. 27pps. **$35.00**

AB (Reesman) Brief *Amicus Curiae* Of The Equal Employment Advisory Council In Support Of Appellant-Defendant
Without a materially adverse employment action, a claim of retaliation fails as a matter of law. To be materially adverse, an action must materially alter the employment relationship, it cannot just be treatment that the plaintiff doesn't like. Important policy reasons, such as running a business, and not being subjected to frivolous suits for every subsequent employer's action, dictate that an employment action be materially adverse before Title VII retaliation can be proven.
Passantino v. Johnson & Johnson Consumer Prod., Inc.
Nos. 97-36191, 98-35036 (9th Cir. 1998) 27pps. **$35.00**
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Passantino v. Johnson & Johnson Consumer Prod., Inc.
Nos. 97-36191, 98-35036 (9th Cir. 1998) 27pps. **$35.00**
Also Available: Appellant's Opening Brief, making similar arguments. 89 pps. **$90.00**
Also available: Brief Of Amicus Curiae, Chamber Of Commerce Of The United States, In Support Of Appellant, making similar arguments on Damages. 84pps. **$90.00**

PB (Bernstein) In Support Of Rehearing *En Banc*
The participation and opposition clauses of Title VII §704 (a) prohibit an employee from retaliating against an employee because she has cooperated in an internal investigation of workplace discrimination alleged in a pending administrative charge. The panel majority has narrowly interpreted §704 (a) and its findings are inconsistent with the expansive language and protective purpose of the provision, impeding the effective enforcement of Title VII. This Court should grant rehearing *en banc* and affirm the judgment on the jury verdict.
Clover v. Total System Services, Inc.
No. 97-9229 (11th Cir. 1998) 27pps. **$35.00**

AB (Bernstein for EEOC) In Support Of Suggestion For Rehearing *En Banc*
The participation and opposition clauses of Title VII §704 (a) prohibit an employer from retaliating against an employee because she has cooperated in an internal investigation of workplace discrimination alleged in a pending administrative charge. An employee who in good faith provides information relevant to an internal investigation has opposed an employment practice unlawful under Title VII. Because the panel's majority's narrow interpretation of §704 (a) is inconsistent with the expansive language and protective purpose of the provision, and would seriously impede the effective enforcement of Title VII, we urge the Court to grant rehearing *en banc* and affirm the judgment on the jury verdict for Plaintiff.
Clover v. Total Systems Services, Inc.
No. 97-9229 (11th Cir. 1998) 30pps. **$35.00**

AB (Lewis for NELA) Supporting Respondents On Writ Of Certiorari From 9th Circuit
The Ninth Circuit did not err in reversing the district court's dismissal under Rule 12(b)(6) of the employees' complaint for two reasons: First, the terms of the governing plan instrument expressly prohibit use of the surplus funds for any purpose other than to benefit the contributing employees. Under the common law of trust and ERISA, where trust contains such prohibitions, a settlor's amendment of those instruments to advance its own interest and diminish the beneficial interest of other persons who have contributed to the trust must be given effect. Defendant in addition violated four sections of ERISA, §208, 403, 404, and 4044.
Hughes Aircraft, et al. v. Stanley Jacobson, et al.
No. 97-1287 (US Supreme Ct. 1998) 33pps. **$45.00**

AB (Butler for NELA) In Support For Plaintiff's Petition For Rehearing, On Appeal From D.C., E.D. Louisiana
Title VII requires from employers an affirmative duty to prevent discrimination from occurring. The record in this case is silent as to whether defendant tried to prevent harassment from occurring. Numerous circuit courts have remanded sexual harassment cases for development of the evidence on the affirmative defense. A remand is thus appropriate to avoid requiring employee to disprove preventive measures and, instead properly require the employer to prove the affirmative defense set forth in *Faragher*.
Indest v. Freeman Decorating Inc., et al.
No. 96-30212 (5th Cir. 1999) 9pps. **$15.00**

DB (Kelly) Writ Of Certiorari From 7th Circuit
Congress has not waived sovereign immunity from awards of compensatory damages in administrative proceedings under Title VII. Neither §717 nor §102 of the Civil Rights Act of 1991 provide the unequivocal statement required to accomplish a waiver of sovereign immunity from administrative awards of compensatory damages. Assuming arguendo that the EEOC did have authority to award compensatory damages, respondent submits his appeal should be affirmed on alternate grounds. Respondent exhausted his administrative remedies and petitioner should be estopped from asserting the bar of exhaustion. The Court should affirm the judgment of the court of appeals.
Togo D. West, Jr., Secretary, Dept. of Veterans Affairs v. Gibson
No. 98-238 (U.S. Supreme Ct. 1998) 50pps. **$55.00**

DB (Owsley for EEOC) Brief Of The Equal Employment Opportunity Commission As *Amicus Curiae* In Support Of Defendant's Motion To Dismiss

Testers, who were denied a job offer as a result of their race have standing to bring a racial discrimination claim under Title VII. Furthermore, participation in a legitimate employment discrimination testing program does not constitute fraud and supporting a discrimination lawsuit arising from a testing program does not constitute maintenance. The reason for this is because testers were not committing fraudulent acts, but striving to achieve the important policy objective of preventing and eliminating employment discrimination. The plaintiff's lawsuit asserting common law claims of fraud is preempted by Title VII. In *Hines v. Davidowitz,* the Supreme Court held that "state law is preempted because the state law stand as an obstacle to the accomplishment and execution of the full purposes of Congress." The Court should dismiss plaintiff's lawsuit against the testing program because it constitutes retaliation against it for engaging in protected activity. Furthermore, the court should dismiss the plaintiff's claims under the unclean hands doctrine.

K & J Management, Inc. v. Kyles, Pierce, and Legal Assistance Found. of Chicago

No. 98 L 12726 (Cir. Ct. of Cook County, Ill. 1999) 29pps. **$35.00** Appendix 114pps. **$105.00**

Also Available under: Kyles and Pierce v. J.K. Guardian Security Services, Inc. Brief of the EEOC as Amicus Curiae On Appeal from D.C., N.D. Ill., making similar arguments. 22pps. **$35.00** *Addendum 7pps.* **$15.00**

AB (Englert) Brief Of *Amicus Curiae* Of National Organization For Women Foundation, *et al*. In Support Of Petitioner

Plaintiff was entitled to the benefit of the Supreme Court's ruling in *Robinson v. Shell Oil Co.,* issued while her case was on appeal, that post-employment retaliation claims are cognizable under Title VII. Plaintiff had no chance to litigate her post-employment claims and the 4th Circuit's affirmance of the district court's dismissal of those claims, as harmless error, is inconsistent with *Robinson*.

Polsby v. Shalala, Secretary Of Health And Human Services

No. 99-53 (U.S. Supreme Ct. 1999) 26pps. **$35.00**

PB (Heitland) Plaintiff's Response to Motion for Summary Judgment on a Sex Discrimination Court

The issue to be determined on the hostile environment theory of sex discrimination is whether there existed at Guardian, because of the plaintiff's gender, "conduct which had the purpose or effect of unreasonably interfering with Silva's work performance or creating an intimidating, hostile or offensive working environment." Determination of the issue rests upon inferences to be drawn from evidence and on assessment of credibility of witnesses. Such decisions cannot be made on a motion for summary judgment.

Silva v. Northern Arizona Health Care, Inc. and Flagstaff Medical Center, Inc.

No. CIV 96-369 PCT PGR (Ariz. District Ct., 1996) 16 pps. **$25.00**

Also available: Plaintiff's Response to Motion for Summary Judgment on Counts of Reprisal/Retaliation and Wrongful Discharge. 9 pps. **$15.00**

DB (Starr for EEOC) In Support of Defendant-Appellees on Appeal from the D.C., W.D. Tenn.

The district court properly dismissed an action against District Director of the Memphis Office of the EEOC alleging violations of 42 U.S.C. §§ 2000e-5 and 1985(3), as well as the Fourteenth Amendment to the U.S. Constitution, for improper handling of plaintiff's administrative charge of retaliation where subject matter jurisdiction was lacking and where the complaint failed to state a claim upon which relief could be granted because there is no remedy against the EEOC or its officials. Further plaintiff's request for monetary damages from the EEOC challenging the processing and investigation of Title VII charges is barred because of sovereign immunity has not been waived.

Ruff v. Federal Express

No. 96-6462 (6th Cir. 1996) 14 pps. **$25.00**

PB (Gregory for EEOC) Reply Brief of EEOC as Appellant on Appeal from the D.C., W.D. Pa.

The district court erred by suggesting that the Commission was required to produce specific evidence of sexual bias to

state a viable claim of pretext-based discrimination, and in holding that the Commission could not state a claim of post-employment retaliation absent specific evidence that intervenor would have received the job with defendant if not for defendants refusal to provide a reference.
EEOC v. L.B. Foster Company
No. 96-3469 (3rd Cir. 1996) 19 pps. **$25.00**

AB (Bernstein for EEOC) Appeal from the D.C., D.S.C.
Based on statements made in support of plaintiff's application for disability benefits that she was disabled and unable to work, the district court erred in applying judicial estoppel to preclude the plaintiff from pursuing her ADA claim of failure to accommodate her Title VII charge of retaliatory discharge.
Hindman v. Greenville Hospital
No. 9-2784 (4th Cir. 1996) 46 pps. **$45.00**

AB (Sloan for EEOC) Appeal from the D.C., N.D., Miss.
An employer is liable under Title VII for the sexual harassment of an employee by her supervisor where he used or was aided by his delegated authority in harassing her. If an employee proves that her shift was changed and she was assigned different job duties because she objected to her supervisors sexual harassment, then the employer would be liable under Title VII because of the retaliatory acts.
Watts v. The Kroger Co., et al.
No. 96-60077 (5th Cir. 1996) 20 pps. **$25.00**

AB (Gregory for EEOC) In Support of the Plaintiff's Objection to the Magistrate's Report and Rec. for Motion to Dismiss
A valid claim of unlawful retaliation under Title VII by a plaintiff alleged that the employer orchestrated the filing of two lawsuits against the plaintiff in retaliation for her exercise of protected activity. The employer took steps to make it impossible for the plaintiff to collect on her judgement in a Title VII sexual harassment case in retaliation for her exercise of protected activity.
Llampallas v. Mini-Circuits Labs
No. 96-2776 CIV-Atkins (S.D. Fla. 1996) 18 pps. **$25.00**

AB (Sloan for EEOC) In Support for Petitions for Rehearing and Suggestion of Rehearing *En Banc*
The panel's holding that Title VII permits employer retaliation unless it takes the form of an "ultimate employment decision" has
no basis in the language of § 704, undermines enforcement of Title VII and conflicts with case law. Eastman Kodak violated § 704 of Title VII when it retaliated against plaintiff for filing a charge with the EEOC because retaliatory acts did not take the form of an "ultimate employment decision."
Mattern v. Eastman Kodak
No. 95-40836 (5th Cir. 1995) 15 pps. **$25.00**

AB (Bruner for EEOC) In Support of Plaintiff- Appellant on Appeal from the D.C., M.D. Fla.
The district court erred in holding that there can be no retaliation without an adverse employment action and that none had occurred in this case, despite evidence that a supervisor engaged in extremely abusive, hostile and humiliating behavior when he learned that a female employee had complained internally and to the EEOC about him. The Commission's constructive discharge claim was dismissed even though the summary judgement record contained evidence of acts of sexual harassment and retaliation sufficient to lead a reasonable person to resign.
EEOC v. Mayflower Retirement Center, Inc.
No 96-3194 (11th Cir. 1996) 52 pps. **$65.00**

AB (Ramshaw for EEOC) Brief *amicus curiae* in Support of Petition for Rehearing and Suggestion for Rehearing *En Banc* on Appeal from D.C., E.D. Va.
The panel's holding that Title VII permits employer retaliation unless it meets the panel's definition of an adverse employment action has no basis in the language of § 704(a), undermines enforcement of Title VII, and conflicts with case law in this and other circuits.
Munday v. Waste Management of North America, Inc.
Nos. 94-2192 & 94-2193 (4th Cir. 1997) 18 pps. **$25.00**

AB (Goldstein for EEOC) Brief *amicus curiae* on Appeal from D.C., M.D. Fla.
Retaliation against an individual for filing a discrimination charge is prohibited under Title VII regardless of whether the charge is objectively reasonable. Title VII's anti-retaliation provision broadly prohibits retaliation regardless of whether the retaliation takes the form of an "ultimate employment decision."
Wideman v. Wal-Mart Stores
No. 97-2897 (11th Cir. 1997) 28 pps. **$35.00**

AB (Bernstein for EEOC) Brief in Support of Plaintiff-Appellant on Appeal from D.C., W.D. Ill.
The district court erred in judicially estopping Plaintiff's Title VII claim of retaliatory discharge because her receipt of disability benefits was not a judgment, or assertion on her part, that she was unable to return to work. The district court further erred in not applying the continuing violation exception to Title VII's 300 day limitations period, and thus only considering one harassing incident, despite that the Plaintiff complains of hostile environment harassment.
Wilson v . Chrysler Motors Corp.
No. 98-1833 (7th Cir. 1998) 25 pps. **$35.00**

AB (Gregory for EEOC) Brief in Support of Plaintiff-Appellant on Appeal from D.C., W.D. Wash.
Retaliation does not have to materially and adversely affect the terms and conditions of employment or be an ultimate employment decision in order to be actionable. Instead, it is actionable if it may have a deleterious effect on the excercise of protected rights. A decision otherwise would allow the employer to retaliate with manifest impunity and subvert the purpose of the anti-retaliation provisions.
Passantino v. Johnson & Johnson Consumer Products, Inc.
Nos. 97-36191 & 98-35036 (9th Cir. 1998) 25 pps. **$35.00**

AB (Marcosson for EEOC) Appeal from D.C., N.D. Cal.
Plaintiff's Title VII charges sufficed to permit her to (a) maintain a civil action against the defendants despite her failure to name them as respondents in the charges and (b) challenge employment decisions that were made after the filing of her charges. The court erred in dismissing the retaliation claim alleging that defendants refused to write letters of recommendation, and in dismissing ADEA claim as untimely.
Miller v. Maxwell's International, et al.
No. 90-16282 (9th Cir. 1990) 42 pps. **$55.00**

PB (Hornberger) Opposition to Summary Judgment
Defendant discriminated against plaintiff because of her gender and retaliated against her for filing a charge in violation of the 14th Amendment, Title VII, and 42 U.S.C. 1983. Summary judgment should not be granted for the defendant.
Penick v. City of Covington
No. 1-87-126 (D.C., E.D. Ky. 1990) 50 pps. **$55.00**

PB (Brusoski for EEOC) Appeal from D.C., C.D. Cal.
The court correctly determined on a motion for summary judgment that Hacienda's overt practice of terminating pregnant maids, rather than allowing them to take leaves of absences, violated Title VII. The court did not clearly err in finding

that Hacienda failed to reasonably accommodate plaintiff's religious practices, that it terminated them for refusing to work on their Sabbath, and that it retaliated against them for protesting religious discrimination.
EEOC v. Hacienda Hotel
No. 88-5563 (9th Cir. 1988) 61 pps. **$75.00**

DB (White for EEOC) Appeal from D.C., E.D. La.
The district court correctly found that plaintiff, an EEOC employee, was not passed over for promotion in retaliation for previously filing discrimination charges against the EEOC. The record supports the finding that the selecting official for the EEOC chose the candidate whom he believed was most qualified, and the official whom plaintiff contends was biased took no part in the decision. It is the employer's belief, rather than the correctness of the employment decision, which is relevant in determining the employer's motive.
Dugas v. Thomas, et al.
No. 88-3100 (5th Cir. 1988) 17 pps. **$25.00**

AB (Flynn for EEOC) Appeal from D.C., N.D. Ala.
The court erred by holding that the anti-retaliation provision of Title VII does not protect former employees, and that employers are free to retaliate against former employees who have filed discrimination charges by giving adverse references to their prospective employers.
Bailey v. USX Corp.
No. 87-7356 (11th Cir. 1987) 20 pps. **$25.00**

AB (Bogas for NELA) Appeal from D.C., S.D. N.Y.
The district court erred by finding that Sears had established a "same decision" defense without first requiring Sears to show that plaintiff's performance would have been unacceptable even had she been given the opportunity to improve as required by the Sears personnel manual. The district court also erred in holding that Sears had established a "same decision" defense, where it found that Sears would have discharged plaintiff for legitimate reasons, but accelerated that discharge when it learned that plaintiff had filed a charge with the EEOC.
Cosgrove v. Sears, Roebuck and Co.
No. 92-7197 (2nd Cir. 1992) 22 pps. **$35.00**

PB (Ramshaw for EEOC) Appeal from D.C., E.D. Va.
Under Title VII, an employee is protected from retaliatory discharge for complaining about perceived discrimination even if the employee's perception is mistaken, so long as the employee's perception is reasonable.
EEOC v. Hampton Memorial Gardens
No. 93-1930 (4th Cir. 1993) 23 pps. **$35.00**

AB (Ramshaw for EEOC) Appeal from D.C., D.Colo.
Section 704 of Title VII prohibits an employer from causing criminal charges to be brought against a former employee because he filed a charge of employment discrimination.
Berry v. Stevinson Chevrolet
No. 93-1031, -1031, -1055, -1072, 1127, -1354 (10th Cir. 1993) 40 pps. **$45.00**

AB (Marcosson for EEOC) In Support for Petition for Rehearing With Suggestion of Rehearing *En Banc* from D.C., N.D. Cal.
Title VII and the ADEA permits suing agents of an employer in their individual capacity when the agents discriminate on the basis of race and age in retaliation of complaints of discrimination. There is no question that agents-employees are encompassed in both Title VII's and the ADEA's definitions of "employer".

Miller v. Maxwell's International, et al.
No. 90-16286 (9th Cir. 1993) 22 pps. **$35.00**

AB (Gregory for EEOC) Reply Brief on Appeal from D.C., N.D. Ohio
The EEOC urges this court to reject defendant's argument that this court lacks authority to apply Section 704(a) to third-party retaliations even if "the statute may easily be evaded" under a more restrictive interpretation.
EEOC v. Ohio Edison Company
No. 923173 (6th Cir. 1992) 24 pps. **$45.00**
Also available: Brief on Appeal from D.C., N.D. Ohio, making similar arguments. 54 pps. **$65.00**

AB (Suhre for EEOC) In Support of Plaintiff-Appellant
Defendant's threats to interfere with plaintiff's efforts to obtain employment as an attorney because she filed a discrimination charge violated Title VII regardless of whether he acted on his threats. Defendant's statement that he had discretion to select whomever he wished as bartender did not satisfy defendant's burden of articulating a legitimate nondiscriminatory reason for replacing plaintiff.
Gnadt v. Castro
No. 95-1369 (4th Cir. 1995) 25 pps. **$35.00**

AB (Clark for EEOC) In Support of Plaintiff-Appellant
The district court erred as a matter of law in holding that plaintiff can not state a Title VII claim of retaliation merely because defendant took the adverse actions after his termination. The district court erred as a matter of law in holding that plaintiff can not state a Title VII claim of retaliation even though defendant's post-termination retaliatory actions were employment related.
VePrinsky v. Fluor Daniel, Inc.
No. 95-2197 (7th Cir. 1995) 26 pps. **$35.00**

AB (Marcosson for EEOC) In Support of Petitioner
Title VII prohibits an employer from retaliating against a former employee who has filed a charge of employment discrimination.
Robinson v. Shell Oil Co.
No. 95-1376 (U.S. Supreme Ct. 1995) 32 pps. **$45.00**

AB (Hedin for NELA) In Support of Petitioner
Title VII prohibits an employer from retaliating against a former employee who has filed a charge of employment discrimination when their claim of reprisal involves a denial of a "privilege of employment" that the employer confers on employees even though not contractually bound to do so. A benefit an employer confers on employees that becomes due only after the employment relationship ends is a "privilege of employment" protected by Title VII as is an accurate employment reference.
Robinson v. Shell Oil Co.
No. 95-1376 (U.S. Supreme Ct. 1995) 20 pps. **$25.00**

AB (Suhre for EEOC) In Support of Plaintiff-Appellant on Appeal from D.C., D. Md.
Section 704 of Title VII prohibits an employer from retaliating against a former employee because he filed a charge of employment discrimination.
Robinson v. Shell Oil Co.
No. 93-1562 (4th Cir. 1994) 37 pps. **$45.00**

AB (Bruner for EEOC) In Support of Plaintiff-Appellant
A picture of gorillas with plaintiff's name written on it when he was the only black employee in the office was sufficient evidence of racial harassment to overcome summary judgment, particularly when plaintiff complained about it to his supervisor, his supervisor laughed at him and refused to take it down for a week after the complaint. This evidence was also sufficient to overcome summary judgment on claims of discriminatory discharge and retaliation when plaintiff was fired four days after his complaint.
Oates v. Discovery Zone
No. 96-1205 (7th Cir. 1996) 36 pps. **$45.00**

AB (Suhre for EEOC) In Support of Plaintiff-Appellant
Title VII prohibits sex discrimination including protecting employees from sexual harassment by supervisors and co-workers of the same sex. Plaintiff's claim that he was fired because he complained to management about his supervisor's harassment states a claim under Title VII for retaliation, even if same-sex harassment is held not to violate Title VII because plaintiff could have a reasonable belief that such activity was an unlawful employment practice.
Mayo v. Kiwest Corp.
No. 95-2638 (4th Cir. 1995) 22 pps. **$35.00**

AB (Goldstein for EEOC) In Support of Plaintiff-Appellant
The district court improperly granted defendant's summary judgment after finding that plaintiff can not state a Title VII claim of retaliation because they could not have reasonably believed in the validity of their original claim. White male plaintiffs have standing to challenge injuries allegedly received by racial & sexual harassment of black & female coworkers and the retaliation for filing charges of such conduct under Title VII.
Childress v. The City of Richmond
No. 96-1585 (4th Cir. 1996) 34 pps. **$45.00**

TITLE VII - RACIAL DISCRIMINATION - DISPARATE TREATMENT

AB (Carter for EEOC) Appeal From the United States District Court for the Eastern District of Pennsylvania
There is no qualifications prerequisite in a Title VII case and thus no basis for dismissing a Title VII claim where the evidence is sufficient to sustain a finding that race played a role in an adverse employment action. Plaintiff can prevail under a direct evidence theory even where the plaintiff is unable to satisfy the qualifications element of the *McDonnell Douglas* prima facie case. The critical question is whether the evidence supports a finding that the protected trait was a determinative factor in the employer's decision. Plaintiff can withstand summary judgment regardless of the legal theory (direct, mixed-motives, or pretext) under which he proceeds. Hankins v. City of Philadelphia
No. 98-1327 (3rd Cir. 1999) 30 pps. **$35.00**

DB (Owsley for EEOC) Brief Of The Equal Employment Opportunity Commission As *Amicus Curiae* In Support Of Defendant's Motion To Dismiss
Testers, who were denied a job offer as a result of their race have standing to bring a racial discrimination claim under Title VII. Furthermore, participation in a legitimate employment discrimination testing program does not constitute fraud and supporting a discrimination lawsuit arising from a testing program does not constitute maintenance. The reason for this is because testers were not committing fraudulent acts, but striving to achieve the important policy objective of preventing and eliminating employment discrimination. The plaintiff's lawsuit asserting common law claims of fraud is preempted by Title VII. In *Hines v. Davidowitz,* the Supreme Court held that "state law is preempted because the state law stand as an obstacle to the accomplishment and execution of the full purposes of Congress." The Court should dismiss plaintiff's lawsuit against the testing program because it constitutes retaliation against it for engaging in protected activity. Furthermore, the court should dismiss the plaintiff's claims under the unclean hands doctrine.
K & J Management, Inc. v. Kyles, Pierce, and Legal Assistance Found. of Chicago

No. 98 L 12726 (Cir. Ct. of Cook County, Ill. 1999) 29pps. **$35.00** Appendix 114pps. **$105.00**
Also Available under: Kyles and Pierce v. J.K. Guardian Security Services, Inc. Brief of the EEOC as Amicus Curiae On Appeal from D.C., N.D. Ill., making similar arguments. 22pps. **$35.00** *Addendum 7pps.* **$15.00**

AB (Johnson for NELA) Writ of Certiorari to 8th Circuit
The *McDonnell Douglas* and *Burdine* tests are proper means for courts to resolve factual determinations in employment discrimination cases. Employer's general negative descriptions of employees can mask discriminatory intent. Black men continue to be victims of employment discrimination.
St. Mary's Honor Center v. Hicks
No. 92-602 (U.S. Supreme Ct. 1993) 15 pps. **$25.00**

AB (Keller for EEOC) Appeal from D.C., E.D. Mo.
Proof of *prima facie* case of race discrimination and pretext is sufficient to prove a violation of Title VII. The court erred in placing an additional burden on plaintiff, after pretext was established, to prove that race was the determining factor in the defendant's decision.
Hicks v. St. Mary's Honor Center
No. 91-15771 (8th Cir. 1991) 25 pps. **$35.00**

AB (Marcosson for EEOC) In Support for Petition for Rehearing With Suggestion of Rehearing *En Banc* from D.C., N.D. Cal.
Title VII and the ADEA permits suits against agents of an employer in their individual capacity when the agents discriminate on the basis of race and age in retaliation of complaints of discrimination. There is no question that agents-employees are encompassed in both Title VII's and the ADEA's definitions of "employer." Any other conclusion will prevent some plaintiffs from obtaining the full measure of relief which Congress has provided for employment discrimination victims.
Miller v. Maxwell's International, et al.
No. 90-16286 (9th Cir. 1993) 22 pps. **$35.00**

PB (Hornberger) Motion to Review
Plaintiff, a handicapped black janitor alleged that Post Office discriminated against him on the basis of race (Title VII) and disability (Section 501) by constructively discharging him, by not following EEO procedures, by violating its own return to work and seniority rules, and by revising job description him.
Haithcock v. Frank
No. C-3-89-291 (D.C., S.D. Ohio 1991) 72 pps. **$85.00**
Also available: Plaintiff's Post Trial Brief, making similar arguments. 78 pps. **$85.00**

PB (Keller for EEOC) Appeal from D.C., E.D. Va.
The district court's conclusion that appellant was not fired because of his race is clearly erroneous because it is based on the patently false finding that a similarly situated white employee was also fired.
EEOC and Downing v. Gilbert/Robinson, Inc.
No. 90-3196 (4th Cir. 1991) 25 pps. **$35.00**

PB (Wheeler for EEOC) Reply Brief on Appeal from D.C., N.D. Fla.
Whatever formulation of the *prima facie* case in a disparate treatment case is applied, summary judgment was improperly granted because the EEOC introduced evidence of the pretextual nature of the employer's explanation (by demonstrating the disparate application of discipline policy). District court did not abuse its discretion by denying employer's request

for attorney's fees.
EEOC v. Albertson's
Nos. 90-3573 & 3610 (11th Cir. 1990) 19 pps. **$25.00**

PB (Starr for EEOC) Appeal from D.C., N.D. Ill.
Defendant janitorial services engaged in a pattern or practice of intentional discrimination against non-Koreans when it recruited people into its overwhelmingly Korean work force by heavily relying on word-of-mouth recruiting in a closed Korean informational network. The district court erred in finding no pattern and practice of disparate treatment where substantial statistical disparities were not rebutted with legally sufficient evidence and in failing to find discriminatory intent in the recruitment practice used.
EEOC v. Consolidated Services Systems
No. 91-3530 (7th Cir. 1992) 58 pps. **$65.00**

PB (Starr for EEOC) Reply Brief on Appeal from D.C., N.D. Ill.
Defendant's argument, that the census data upon which EEOC's statistics are based are inherently invalid because the jobs that defendant offer are uniquely unattractive, can not be sustained because it fundamentally misapprehends the purpose and significance of labor market comparisons with an employer's applicant pool or work force.
EEOC v. Consolidated Services Systems
No. 91-3530 (7th Cir. 1992) 24 pps. **$25.00**

AB (Bogas for EEOC) Opposition to Summary Judgment by D.C., W.D. Ok.
The fact that plaintiff obtained reinstatement under the collective bargaining agreement (CBA) for discriminatory discharge and violation of his due process rights, does not bar recovery under Title VII and 42 U.S.C. sections 1981 and 1983. The arbitral proceeding did not address the issues of racial harassment, denial of promotions, and harsh disciplining. No provision in the CBA makes available an award of punitive or compensatory damages for pain and suffering which plaintiff could seek under federal civil rights law.
Ryan v. City of Shawnee
No. 92-6414 (10th Cir. 1993) 25 pps. **$25.00**

PB (Wheeler for EEOC) Appeal from D.C., W.D. Pa.
In issuing a directed verdict, the district court improperly applied the *McDonnell Douglas* standards in evaluating the *prima facie* case when it refused to allow a plaintiff's witness to rebut the company's testimony and it ignored evidence of racially discriminatory hiring practice.
EEOC v. Metal Service Company
No. 89-3322 (3rd Cir. 1989) 46 pps. **$55.00**
Also available: Reply Brief on Appeal from D.C., W.D. Pa., making similar argument. 11 pps. **$25.00**

PB (White for EEOC) Appeal from D.C., W.D. N.C.
The district court erroneously found that presumptive victims of racial discrimination were not entitled to relief for failure to meet their burden of proof. The court failed to allocate to defendant the burden of proving nondiscriminatory reasons for not to hiring claimants.
EEOC v. Anderson's Restaurant of Charlotte, Inc.
Nos. 87-3154 & 87-3161 (4th Cir. 1988) 25 pps. **$35.00**

PB Reply (White for EEOC) Appeal from D.C., W.D. N.C.
The court should not have denied claimant's relief where defendants were justified by hiring them. Where a defendant has shown a pattern of discrimination, the burden of persuasion shifts to the employer.

EEOC v. Anderson's Restaurant of Charlotte, Inc.
Nos. 87-3154 & 87-3161 (4th Cir. 1988) 34 pps. **$45.00**

AB (Marcosson for EEOC) In Support of Appellee's Petition for Rehearing with Suggestion of Rehearing *En Banc*
In a disparate treatment case involving race, the district court's supposed error in concluding that plaintiff had established a *prima facie* case should not have served as basis for reversal of the judgment in favor of plaintiff. The panel should have focused on whether the district court erred in finding that defendant's stated reason for firing the plaintiff was pretextual.
Hawkins v. The CECO Corp.
No. 88-7075 (11th Cir. 1989) 30 pps. **$35.00**

AB (Gregory for EEOC) Appeal from D.C., E.D. N.C.
In deciding against plaintiff, the district court erred by relying on evidence of employer's treatment of other black employees, plaintiff's assertions concerning the employer's treatment of other black employees, and plaintiff's failure to cite other discriminatory acts. In a mixed-motive decision, a court must determine whether the employer would have fired the employee on the sole basis of a permissible factor.
Armstrong v. Lance
No. 93-1298 (4th Cir. 1993) 41 pps. **$55.00**

PB (Coleman for EEOC) Appeal from D.C., N.D. Ill.
The district court's finding of a pattern or practice of discrimination was supported by a preponderance of the evidence of gross statistical disparity between black availability and by defendant's hiring record and anecdotal evidence. Under Title VII, a plaintiff who establishes discrimination is presumptively entitled to an award of back pay. The district court's publication of notice to potential claimants before determining the scope of relief was proper.
EEOC v. O & G Spring & Wire Forms Specialty Co.
No. 92-3436 (7th Cir. 1993) 60 pps. **$65.00**

AB (Moran for EEOC) In Support of Petition for Rehearing With Suggestion of Rehearing *En Banc*
Evidence that another black employee was promoted does not defeat plaintiff's *prima facie* case of discrimination. Plaintiff may establish pretext by alleging that defendant rejected plaintiff even before considering hiring another black employee, because the defendant's motives at the time of the employment decision to reject plaintiff are at issue.
Koyejo v. Cigna Corporation
No. 91-2023 (3rd Cir. 1992) 26 pps. **$35.00**

PB (Misicka for EEOC) Reply Brief on Appeal from D.C., M.D. Fla.
The *McDonnell Douglas* test is inapplicable where direct discrimination evidence of racial slurs is produced. Business records containing hearsay are inadmissible unless each of the foundational requirements set forth in Fed. R. Evid. 803 (6) are met. The district court abused its discretion by failing to issue an injunction against defendant for violating the Title VII recordkeeping provisions.
EEOC v. Alton Packaging Corp.
No. 89-3483 (11th Cir. 1989) 19 pps. **$25.00**

AB (Goldstein for EEOC) In Support of Plaintiff-Appellant
Plaintiff presented sufficient evidence of pretext by showing that the employer's explanation was implausible and by producing evidence that defendant's owners repeatedly made racial slurs. The district court erred in determining that plaintiff--who satisfied the requirements of the 4-prong test for a prima facie case--nonetheless failed to establish a prima facie case because he could not show the existence of similarly situated, yet better treated employees.

Talley v. Bravo Pitino Rest., Ltd.
No. 94-5708 (6th Cir. 1995) 24 pps. **$35.00**

AB (Bruner for EEOC) In Support of Plaintiff-Appellant
A picture of gorillas with plaintiff's name written on it when he was the only black employee in the office was sufficient evidence of racial harassment to overcome summary judgment, particularly when plaintiff complained about it to his supervisor, his supervisor laughed at him and refused to take it down for a week after the complaint. This evidence was also sufficient to overcome summary judgment on claims of discriminatory discharge and retaliation when plaintiff was fired four days after his complaint.
Oates v. Discovery Zone
No. 96-1205 (7th Cir. 1996) 36 pps. **$45.00**

AB (Moran for EEOC) In Support of Plaintiff-Appellee
The district court erred in holding that individual supervisors may not be held personally liable for race discrimination in violation of Title VII and in failing to give plaintiff the opportunity to amend her complaint to name the proper employer. The supervisors are agents of the defendant and are therefore "employers" who are liable.
Carter v. Lutheran Medical Center
No. 95-2262 (8th Cir. 1995) 24 pps. **$35.00**

TITLE VII - RACIAL DISCRIMINATION - DISPARATE IMPACT

AB (Silver for EEOC) Writ of Certiorari to 3rd Circuit
Under Article VIII of the Treaty of Friendship, Commerce, and Navigation with Korea, Title VII can proscribe intentional discrimination based on race by a Korean company, but can not proscribe the hiring due to citizenship. Article VIII overrides Title VII when Article VIII proscribes personnel decisions based on citizenship solely due to a disparate impact on a particular racial group/ national origin. Article VIII of the Treaty of Friendship Commerce and Margination permits a Korean company to discriminate on the basis of citizenship. However, when citizenship is not an issue, Article VIII does not shelter foreign companies in the U.S. from Title VII, the ADEA, or other laws impacting personnel decisions.

Korean Air Lines v. MacNamara
Nos. 88-1449 & 88-1551 (U.S. Supreme Ct. 1989) 26 pps. **$35.00**

PB (Marcosson for EEOC) Opposition to Appellees' Petition for Rehearing
The appellate panel correctly concluded that employer's "no-beard" policy for pizza deliverers caused a significantly disparate impact on black males, as proven by evidence that a particular skin condition which may prevent shaving excluded about 25% of the potential black workforce from employment while the white male workforce was not similarly excluded.
Bradley and EEOC v. Pizzaco of Nebraska, Inc.
Nos. 89-2271NE & 2272NE (8th Cir. 1991) 12 pps. **$25.00**
Also available: Plaintiff's Reply Brief on Appeal from D.C., D. Neb., making similar arguments. 21 pps. **$35.00**
Plaintiff's Brief on Appeal from D.C., D. Neb., making similar arguments. 60 pps. **$65.00**

PB (Marcosson for EEOC) Appeal from D.C., D. Neb.
The district court erred in finding that Domino's no-beard policy, which has a disparate impact on African-American men, is supported by a sufficient business justification. The court erred in applying the *Wards Cove* standard (making the employee prove the employer's lack of a valid business justification for its practice) rather than the Civil Rights Act of 1991 standard (which required that the employer prove the validity of the justification). Even if the *Wards Cove* standard was correctly applied, the court erred by not affording the EEOC an opportunity to show that the employer did not have

a valid business justification.
Bradley and EEOC v. Pizzaco of Nebraska, Inc.
No. 92-3781NEO (8th Cir. 1993) 35 pps. **$45.00**

AB (Marcosson for EEOC) Appeal from D.C., N.D. Miss.
The district court erred in its treatment of statistical evidence of racial discrimination by accepting the employer's break-down of job applicants into pools which disguised a pattern and practice of hiring discrimination.
Anderson v. Douglas & Lomason Co.
No. 92-7554 (5th Cir. 1992) 20 pps. **$25.00**

PB (Bogas for EEOC) Appeal from D.C., N.D. Ill.
The district court findings that employer's heavy reliance on word of mouth to fill entry-level factory positions discriminated against blacks is supported by the evidence. Discrimination was part of a continuing practice, and defendant's liability extended back beyond the charge-filing period. Award of backpay of the basis of a formula rather than individualized determinations as to which claimants would have been hired was proper.
EEOC v. Chicago Miniature Lamp Works
No. 90-2632 (7th Cir. 1990) 66 pps. **$75.00**

AB (Bogas for EEOC) Appeal from D.C., N.D. Ga.
The district court erroneously concluded that the fire fighters failed to raise an issue of material fact regarding the disparate impact of the city's no-beard policy.
Fitzpatrick, et al. v. City of Atlanta
No. 92-8306 (11th Cir. 1992) 34 pps. **$45.00**

PB (White for EEOC) Appeal from D.C., W.D. N.C.
The district court erroneously found that presumptive victims of racial discrimination were not entitled to relief because they failed to meet their burden of proof. The court did not require that defendant show nondiscriminatory reasons for not hiring claimants.
EEOC v. Anderson's Restaurant of Charlotte
Nos. 87-3154 & 87-3161 (4th Cir. 1988) 25 pps. **$35.00**

PB (White for EEOC) Reply Brief on Appeal from D.C., W.D. N.C.
The court should not have denied claimants' relief where defendants were justified in not hiring them. Where an employer has shown a pattern of discrimination, the burden of persuasion shifts to the employer.
EEOC v. Anderson's Restaurant of Charlotte
Nos. 87-3154 & 87-3161 (4th Cir. 1988) 34 pps. **$45.00**

PB (Bannon for EEOC) Appeal from D.C., E.D. Tenn.
The personnel test has a disparate impact on black clerical applicants. The employer failed to meet the requirements of *Albemarle Paper Co. v. Moody*, or the Uniform Guidelines on Employee Section Procedures, 29 C.F.R. Part 1607. Employer totally excluded Blacks from its clerical workforce, while hiring 50% of the white clerical applicants who did not pass the test.
EEOC v. Atlas Paper Box Co.
No. 87-5421 (6th Cir. 1987) 37 pps. **$45.00**
Also available: Reply Brief on Appeal from D.C., E.D. Tenn, making similar argument. 14 pps. **$25.00**

PB (Suhre for EEOC) Appeal from D.C., S.D. N.Y.

The defendant's policy requiring a high school diploma established a *prima facie* case of a Title VII violation because it has a disparate impact on blacks. The policy requiring employees who had no prior military service to be between the ages of 19-22 had disparate impact on women.
EEOC V. Joint Apprenticeship Commission
No. 89-6165 (2nd Cir. 1989) 47 pps. **$55.00**

AB (Wheeler for EEOC) Appeal from D.C., E.D. N.C.
Wards Cove does not diminish the validity of applicant flow data as the basis for proof of a disparity in the rate of hire between black applicants and white applicants. Although the Supreme Court noted that a comparison between the racial composition of the qualified persons in the labor market and the persons holding at-issue jobs generally form the proper basis for the initial inquiry in a disparate impact case, this does not undermine the view that the best measure of "qualified persons in the labor market" is the actual applicant flow.
Sledge and Amalgamated Clothing and Textile Workers' Union v. JP Stevens
No. 90-2634 (4th Cir. 1990) 33 pps. **$45.00**

PB (Marcosson for D.C. EEOC) Appeal of Dismissal and Attorney's Fee Award by D.C., S.D. Tex.
The district court's conclusion that defendant did not discriminate against blacks in hiring was clearly erroneous in light of statistical evidence, taken from both census data and defendant's applicant data, of racial disparity between defendant's workforce and the labor market, and in light of defendant vice-president's testimony that he wanted the work force to reflect the predominantly white racial makeup of the customers.
EEOC v. Olson's Dairy Queen
No. 91-6027 (5th Cir. 1992) 46 pps. **$55.00**
Also available: Reply Brief on Appeal of Dismissal and Attorney's Fee Award by D.C., S.D. Tex., making similar arguments.
19 pps. **$25.00**

PB (White, Ramshaw for EEOC) Brief of Plaintiff-Appellee/Cross Appellant
The district court's finding of disparate impact was compelled by undisputed evidence that the union followed a practice of nepotism in admitting members which had the effect of excluding minorities. The district court erred, however, in denying without explanation the backpay and affirmative action requested by the commission.
EEOC v. Bernard S. Costello, Inc. and Steamship Clerks Union Local 1066
Nos. 94-1621 & 94-1656 (1st Cir. 1994) 31 pps. **$45.00**

TITLE VII - RACIAL DISCRIMINATION - HARASSMENT

AB (Carter for EEOC) Brief Of The Equal Employment Opportunity Commission As *Amicus Curiae* For Plaintiff-Appellee/Cross-Appellant
The court should hold at minimum that punitive damages are available against an employer whenever a supervisor, while acting in the scope of employment, violates Title VII with malice or reckless indifference. A supervisor is always acting within the scope of employment if he engaged in discrimination that resulted in a tangible employment action, or otherwise discriminated while engaged in action taken for the employer's benefit.
Deffenbaugh-Williams v. Wal-Mart Stores, Inc.
No. 97-10685 (5th Cir. 1999) 35pps. **$45.00**

PB (Carter for EEOC) Brief Of The Equal Employment Opportunity Commission As Appellee
Plaintiffs were subjected objectively and subjectively to hostile working environments because of their sex. There existed evidence on which the jury could rationally conclude that the employer, Ameritech, negligently failed to prevent

and rectify continuous harassment by a co-worker. The jury's award for punitive damages should be affirmed because the evidence establishes that the defendant employer engaged in the discriminatory practice with malice or reckless indifference to the federally protected rights of the plaintiffs. The defendants, in the case at bar, acted with reckless indifference because it failed to act after acquiring knowledge of an employee's long history of sexual harassment of various women in the workplace. The district court did not abuse its discretion when it excluded the employer's arbitration evidence for purposes of liability and punitive damages. The district court correctly recognized that the employer's arbitration evidence was simply irrelevant to the employer's liability because of the employer's fears about what might happen if the harasser chose to file a grievance after being terminated, did not alter the basic duty of care an employer owed under Title VII to its female employees in this case.
EEOC v. Indiana Bell Tel. Co., Inc., d/b/a Ameritech Indiana, and Ameritech Corp.
No. 99-1155 (7th Cir. 1999) 60pps. **$65.00**

PB (Sloan for EEOC) Brief of Plaintiff-Appellant on Appeal from D.C., E.D. Mich.
The EEOC is not bound by the aggrieved individual's arbitration "agreement" with the defendant. The EEOC may bring its own action, independent of the aggrieved individual, in order to effectuate the purposes of Title VII. The district court improperly refused to consider a major portion of the Commission's evidence. The totality of evidence of racial harassment was sufficient to withstand summary judgment.
EEOC v. Northwest Airlines, Inc.
No. 98-1667 (6th Cir. 1998) 58 pps. **$65.00**

AB (Kitchens & Weber) On Appeal from D.C., M.D. Ga.
The district court held for the first time that non-statutory claims of discrimination lodged by federal employees are preempted by the Civil Service Reform Act (CSRA) of 1978. The Civil Service Reform Act (CSRA) of 1978 preempts the long recognized constitutional tort remedy for discrimination claims under *Davis v. Passman*, for excepted service federal employees expressly excluded from Title VII. Thus, the appellant/plaintiff, a United States Probation Officer, specifically excluded from Title VII converge, is entitled to judicial review of his claim of race discrimination concerning his demotion and subsequent termination from his position as a United State Probation Officer.
Lee v. Hughes and Lanford
No. 97-8423 (11th Cir. 1997) 12 pps. **$25.00**

PB (Rubin) On Writ of Certiorari to the United States Court of Appeals for the 3rd Circuit
The court of appeals construed Title VII to allow consideration of race only as a remedy for prior employment discrimination or imbalance, not for forward-looking non-remedial purposes or for non-employment related purposes, insisting that "there is no congressional recognition of diversity as a Title VII objective requiring accommodation."
Piscataway v. Taxman
No. 96-679 (3rd Cir. 1996) 41 pps. **$45.00**

AB (Gregory for EEOC) Appeal from D.C., E.D. Wis.
When evaluating a racial harassment claim, a court must consider the likely effect of defendant's conduct on a reasonable person's ability to perform work and well being, as well as the actual effect upon the plaintiff bringing the claim. Offensive racial comments combined with race-neutral harassment by plaintiff's supervisor are sufficient to sustain a finding of hostile working environment. Plaintiff is entitled to an award of back pay where he reasonably felt compelled to quit in part due to defendant's unlawful conduct.
Rodgers v. Western-Southern Life Insurance Co.
Nos. 93-1125 & 93-1266 (7th Cir. 1993) 25 pps. **$25.00**

DB (Zinobar) Brief for Appellee on Appeal from D.C., M.D. Fla.

Plaintiff's evidence of a denial of pay raise and denial of another position, a fellow worker's promotion, written warnings, racist and other pejorative comments by fellow employees and supervisors, delayed medical treatment for an allergic reaction, and a change in work schedule was insufficient to survive judgment as a matter of law on claims of racial harassment, constructive discharge, and retaliation.
Wideman v. Wal-Mart Stores, Inc.
No. 97-2897 (11th Cir. 1997) 80 pps. $**85.00**
Also available: *Brief amicus curiae of EEOC, making similar arguments. 28 pps.* **$35.00**

TITLE VII - SEX DISCRIMINATION - GENERAL

DB (McChesney for U-Haul) Appeal from D.C. Maine
Because defendant played no role in hiring or terminating plaintiff the court erred in submitting the single employer question to the jury even under an integrated enterprise theory. Under *Kolstad v. American Dental Ass'n*, 527 U.S. 526, the court should have applied a common law agency test. Even if the integrated enterprise test was applicable the court's jury instructions were incorrect as a matter of law because the court instructed the jury to consider wholly economic factors. The court should never have submitted the single employer question to the jury because plaintiff had failed to provide sufficient evidence under any theory. Nor should the court have submitted the punitive damages question to the jury. As established in *Kolstad*, punitive damages cannot be imputed solely on the basis of vicarious liability. Because there was insufficient evidence to show malice or reckless indifference, or a lack of good faith to comply with Title VII the court should have directed a verdict for defendant as soon as the jury returned a verdict for $0 in compensatory damages. Because actual damages are a predicate to any recovery for punitive damages under Title VII plaintiff was not entitled to an award of punitive damages.
Romano v. U-Haul International
No. 99-2328 (1st Cir. 2000) 53 pps. **$65.00** Addendum 8 pps. **$15.00**

PB (Gregory for EEOC) Appeal From D.C., E.D. North Carolina
The district court erred granting defendant's motion to dismiss and in ruling that the "ministerial" exception to Title VII applied to a choir director and part-time teaching positions occupied or sought by the charging party, where the positions were not essentially religious in nature. Since the "ministerial" exception does not apply, the Establishment Clause does not provide an independent basis for dismissing the EEOC's case.
EEOC v. Roman Catholic Diocese of Raleigh, North Carolina
No. 99-1860 (4th Cir. 1999) 34pps. **$45.00**

PB (Goldstein for EEOC) Appeal From D.C., E.D. Florida
Where there is considerable evidence that appellant's employment practices caused the absence of women it is appropriate to use labor market data to estimate the relevant labor market and it is appropriate to award "make whole" relief to qualified claimants who were discouraged from applying or rejected on the basis of their sex. A finding of discrimination based on disparate impact should be upheld where that finding encompasses both recruitment and interviewing practices. It is appropriate for the court to hold employer accountable for continuing to rely on word-of-mouth recruitment where that practice has led to a reputation for not hiring women. Even though it was a facially neutral practice it operated to perpetuate disparities. Where the court finds that applicant flow data does not represent an accurate picture of the relevant labor market it may rely on statistics based on labor force data. An employer's post-charge actions will not relieve it from pre-charge liability. Charges of discrimination not derived from subjective interviewing, but from recruitment practices, are timely if filed within 300 days from said recruitment action.
EEOC v. Joe's Stone Crab, Inc.
No. 98-5367 (11th Cir. 1999) 71pps. **$85.00**

PB (Newhouse) Proof Brief Of Appellant
The district court erred in granting summary judgment in respect to plaintiff's Equal Pay Act claims because she was paid less for doing substantially similar work as her male counterparts. It was error for the trial court to grant summary judgment
on plaintiff's sex discrimination claim when plaintiff clearly demonstrated that she was treated differently than male head coaches. The district court's dismissal of the plaintiff's case on Eleventh Amendment grounds was improper because plaintiff could have sued defendant, Ohio State University, under Titles VII and IX without the state's consent. The trial court erred as a matter of law by ruling that plaintiff lacked standing to raise a Title IX claim because she did not expressly invoke Title IX in voicing her complaints and therefore was not engaged in protected activity for the purpose of retaliation under Title IX.
Weaver v. Ohio State Univ., et al.
No. 98-4295 (6th Cir. 1999) 63pps. **$75.00**

PB (Gregory for EEOC) Reply Brief of EEOC as Appellant on Appeal from D.C., W.D. Pa.
The district court erred by suggesting that the Commission was required to produce specific evidence of sexual bias to state a viable claim of pretext-based discrimination, and in holding that the Commission could not state a claim of post-employment retaliation absent specific evidence that intervenor would have received the job with defendant if not for defendant's refusal to provide a reference.
EEOC v. L.B. Foster Company
No. 96-3469 (3rd Cir. 1996) 19 pps. $25.00

PB (Gregory for EEOC) Judicial Response of EEOC on Appeal from D.C., M.D. Fla.
Defendant has appealed from a nonfinal order which is not an "injunction" within the meaning of 28 U.S.C. § 1292 (a) (1). Nor does the collateral order doctrine provide the basis for jurisdiction and the defendant's premature appeal should be dismissed.
EEOC v. Public Super Markets, Inc.
No. 96-3713 (11th Cir. 1996) 11 pps. **$25.00**

PB (Mastroianni for EEOC) Reply Brief on Appeal from D.C., E.D. Mich.
The district court erred as a matter of law in holding that the EEOC could not use the disparate impact theory to prove that the "head of household" rule violates Title VII, since the alleged sexual discrimination created by the "head of household" rule goes to compensation. Further, the "head of household" rule is neither immunized as a "factor other than sex" nor justified as a business necessity.
EEOC v. J.C. Penney Co., Inc.
No. 86-1139 (6th Cir. 1986) 27 pps. **$35.00**

PB (Mastroianni for EEOC) Petition for Rehearing With Suggestion for Rehearing *En Banc* from D.C. E.D. Mich.
Defendant's rule, which permits only employees who contribute more than 50% of family earnings to obtain spousal health insurance coverage, is not an authorized "factor other than sex" under the Bennett Amendment to Title VII.
EEOC v. J.C. Penney Co., Inc.
No. 86-1139 (6th Cir. 1988) 15 pps. **$25.00**

AB (Wheeler for EEOC) Writ of Certiorari to 7th Circuit
The only available defense to a sex-based, facially discriminatory employment policy is the statutory bona fide occupational qualification defense. The case should be remanded for further consideration in light of a clarified standard for evaluating the defense of a sex based fetal protection policy.
International Union v. Johnson Controls

No. 89-1215 (U.S. Supreme Ct. 1989) 43 pps. **$55.00**

PB (Cornish) Motion for Order that Defendant Submit to Mental Examination Pursuant to F.R.Civ.P. 35
The defendant department chairperson should submit to a mental examination for good cause under the Federal Rules to show that plaintiff's gender motivated discriminatory actions.
Klein v. The Colorado College
No. 89-S-1286 (D.C., D.Colo. 1990) 6 pps. **$15.00**

PB (Moran for EEOC) Appeal from D.C., S.D. Tex.
The district court erred in finding no discrimination because the manager who recommended against hiring plaintiff clearly gave a pretextual reason for not hiring her, and defendant failed to meet its burden of proving that even if it had hired plaintiff it would have discharged her based on her former employment records.
EEOC v. Bailey Ford
No. 93-2436 (5th Cir. 1993) 39 pps. **$45.00**

PB (Moran for EEOC) Reply Brief on Appeal from D.C., S.D. Tex.
The district court erred in finding no discrimination because defendant's manager clearly gave a pretextual reason for not hiring her. Plaintiff may not be denied all Title VII relief based on false information on her job application. Since the Commission did not obtain a judgment, the district court properly denied defendant's request for attorney's fees and costs under Rule 68. Even if defendant would be entitled to recover under Rule 68, it would not be entitled to recover attorney's fees because pursuant to Title VII, a prevailing defendant may not recover attorney's fees unless plaintiff's lawsuit is frivolous.
EEOC v. Bailey Ford
No. 93-2436 (5th Cir. 1993) 21 pps. **$35.00**

AB (Coleman for EEOC) Appeal from D.C., M.D. Ga.
The district court erred in granting summary judgment to defendant because plaintiff set forth a *prima facie* case that she was discharged for discriminatory reasons not related to reduction in force. The evidence shows that defendant repeatedly told plaintiff that she did not fit in at the Bradley Center because she was a Jew; and as a woman, she might have to leave town if her husband relocated. This evidence, taken together with the fact that defendant did not follow its own reduction-in-force procedures, raises a genuine issue of a pretextual nature.
Sigman v. The Bradley Center, Inc.
No. 92-9184 (11th Cir. 1993) 32 pps. **$45.00**

AB (Clark for EEOC) Appeal from D.C., D. Kan.
The district court erred in granting summary judgment against plaintiff on her sex discrimination claim on the basis of findings in another action where the (1) plaintiff's interests were not represented; (3) her retaliation claim was barred because time elapsed between the filing of her complaint and the retaliatory acts; and (3) where she relied on the employer's failure to fire another employee who brought a Title VII action against it.
Meredith v. Beech Aircraft Corp.
No. 92-3288 (10th Cir. 1992) 18 pps. **$25.00**

PB (White for EEOC) Appeal from D.C., D.Md.
The district court erred in granting employer's motion for summary judgment because there was a genuine issue of fact regarding whether the reasons given for plaintiff's discharge were pretexts for sex discrimination. It is not necessary for plaintiff to produce direct evidence of discrimination; evidence indicating that the employer's proffered reason is not credible is sufficient to create a genuine issue of material fact.
EEOC v. Techalloy Maryland, Inc.

No. 91-1027 (4th Cir. 1991) 21 pps. **$35.00**
Also available: Reply Brief on Appeal from D.C., D. Md., making similar arguments. 8 pps. **$15.00**
AB (Marcosson for EEOC) Appeal from D.C., E.D. Mich.
Employer violated Title VII by deciding to seek outside applicants for a director's position to avoid hiring a female (plaintiff). Employer's later decision to hire a male for legitimate reasons (better qualifications) is a consequence of that decision which a court can remedy under Section 706(g) of Title VII.
Cesaro v. Lakeville Community School District
Nos. 90-2158 & 90-2223 (6th Cir. 1992) 15 pps. **$25.00**

PB (White for EEOC) Appeal from D.C., W.D. Mo.
Discriminatory evidence shows that plaintiff was constructively discharged when defendant, believing that only a man could handle the job, hired a man at a higher salary to replace her. The court properly found that defendant was liable for back pay. These claims were properly before the court since they were included in the reasonable cause determination issued to defendant, and defendant had the opportunity to conciliate.
EEOC v. Delight Wholesale Company
No. 91-3661/3786 (8th Cir. 1991) 48 pps. **$55.00**

PB (Sloan for EEOC) Appeal from D.C., E.D. Pa.
The district court erred in granting summary judgment to defendant because defendant did not articulate a legitimate non-discriminatory reason for denying plaintiff the opportunity to make up her absences and tardiness. The court incorrectly required the EEOC to prove pretext on a summary judgment motion. Further, the court erred in requiring that plaintiff prove pretext on a summary judgment motion and inappropriately resolved material issues of fact.
EEOC v. Brown Printing Co.
No. 89-1780 (3rd Cir. 1989) 39 pps. **$45.00**

PB (Suhre for EEOC) Appeal from D.C., S.D. N.Y.
Defendant's policy requiring employees who had no prior military service to be between the ages of 19-22 had disparate impact on women, and established a *prima facie* violation of Title VII.
EEOC v. Joint Apprenticeship Comm.
No. 89-6165 (2nd Cir. 1989) 47 pps. **$55.00**

AB (Posner for CELA) Appeal from California Court of Appeal, 2nd Appellate District
The court was correct in holding that in sex discrimination cases the plaintiff should be allowed to plea any applicable theory of recovery based on the facts arising out of the employment. Employment cases can not easily be classified; therefore a plaintiff should not have to choose between a statutory or a common law remedy. To do so may deprive a plaintiff of just recovery.
Rojo v. Kliger
No. B031801 (Cal. Supreme Ct. 1989) 17 pps. **$25.00**

PB (Hornberger) Opposition to Summary Judgment
Defendant discriminated against plaintiff because of her gender and retaliated when she filed charges for violations of the Fourteenth Amendment, Title VII, and 42 U.S.C. 1983.
Penick v. City of Covington
No. 1-87-126 (D.C., E.D. Ky. 1990) 50 pps. **$55.00**

AB (Starr for EEOC) Appeal from D.D.C.
Defendant failed to prove that it would have taken the same action with respect to plaintiff's candidacy for partner in the absence of discrimination. Defendant failed to show that the negative comments about plaintiff's personality were not

based on sexual stereotypes.
Hopkins v. Price Waterhouse
No. 90-7099 (D.C. Cir. 1990) 31 pps. **$45.00**

AB (Wheeler for EEOC) Writ of Certiorari to 7th Circuit
The only available defense to a sex-based, facially discriminatory employment policy is the statutory bona fide occupational qualification defense. The case should be remanded for further consideration in light of a clarified standard for evaluating the defense of a sex based fetal protection policy.
International Union v. Johnson Controls
No. 89-1215 (U.S. Supreme Ct. 1989) 43 pps. **$55.00**

AB (Larkin for NELA) Appeal from D.C., S.D. Ind.
Reversal of the district court's sex discrimination award was erroneous because it was based on non-dispositive burden of proof principles which did not prejudice defendant. The fact that the Magistrate's opinion inadvertently speaks of a "burden of proof" rather than a "burden of production" should not upset plaintiff's award based on pretext evidence.
Heerdink v. Amoco Oil Co.
No. 89-2596 (7th Cir. 1991) 8 pps. **$15.00**

PB (O'Leary) Appeal from D.C., S.D. Ind.
The district court was correct in finding that the plaintiff established a *prima facie* case by proving a pattern and practice of sex discrimination. Plaintiff is not required to show she was better qualified than male candidates.
Heerdink v. Amoco Oil Co.
No. 89-2596 (7th Cir. 1989) 31 pps. **$45.00**

PB (Yaskin) Trial Brief
Plaintiff alleges that she was denied a promotion, fraudulent concealment of promotional opportunities to induce transfer, and emotional distress because of her sex. Plaintiff seeks reinstatement, compensatory and punitive damages.
DiPaolo v. Cooper Hospital, et al.
No. 87-0835 (D.C., D. N.J. 1989) 19 pps. **$25.00**

AB (Bogas for NELA) Appeal from D.C., S.D. N.Y.
The district court erred by finding that Sears had established a "same decision" defense without first requiring Sears to show that plaintiff's performance would have been unacceptable even had she been given the opportunity to improve as required by the Sears personnel manual. The district court also erred in holding that Sears had established a "same decision" defense, where it found that Sears would have discharged plaintiff for legitimate reasons, but accelerated that discharge when it learned that plaintiff had filed a charge with the EEOC.
Cosgrove v. Sears, Roebuck and Co.
No. 92-7197 (2nd Cir. 1992) 22 pps. **$35.00**

PB (Goodman for EEOC) Appeal from D.C., N.D Iowa
Defendant paid plaintiff less than males for performing equal work and refused to promote her because of her sex. The district court's judgment in favor of plaintiffs on the EPA and on the Title VII wage discrimination and failure-to-promote claims should be affirmed. The Title VII judgments were entered in accordance with standards enunciated by the Supreme Court in *Hicks,* since defendant's discrimination was intentional and sex-based.
EEOC and Hambling v. Cherry-Burrell Corp.
Nos. 93-3475 & 93-3647 (8th Cir. 1994) 82 pps. **$85.00**

AB (Suhre for EEOC) In Support of Plaintiff-Appellant
Defendant's threats to interfere with plaintiff's efforts to obtain employment as an attorney because she filed a discrimination charge violated Title VII regardless of whether he acted on his threats. Defendant's statement that he had discretion to select whomever he wished as bartender did not satisfy defendant's burden of articulating a legitimate nondiscriminatory reason for replacing plaintiff.
Gnadt v. Castro
No. 95-1369 (4th Cir. 1995) 25 pps. **$35.00**

AB (Marcosson for EEOC) In Support of Plaintiff-Appellant
Summary judgment is inappropriate in an employment discrimination case where there is a genuine issue of material fact as to whether the employer's articulated reason for its decision is worthy of credence.
Smith v. Stratus Computer, Inc.
No. 94-1306 (1st Cir. 1994) 16 pps. **$25.00**

AB (Ballard, Burr for NELA) In Support of Plaintiff-Appellant
The adoption of a "pretext-plus" rule for proving employment discrimination is contrary to settled precedent and the district court erred in interfering with the jury's verdict and granting a new trial. The*prima facie* case retains its probative value even after the presumption of discrimination is rebutted. The rebuttal by plaintiff of defendant's proffered reason for the adverse employment action does not impermissibly shift the burden of proof. There is no basis in law to require a plaintiff to rebut an undisclosed reason for the adverse employment action.
Sheridan v. E.I. Pont De Nemours and Co.
No. 94-7509 (3d Cir. 1996) 36 pps. **$45.00**

PB (Coleman for EEOC) Brief as Appellant
The district court clearly erred by rejecting the Commission's statistical evidence of sex discrimination for reasons that were not supported by the record evidence. The record demonstrates that the defendant engaged in a pattern or practice of intentional discrimination against women.
EEOC v. The Turtle Creek Mansion
Nos. 95-10637 & 95-10696 (5th Cir. 1995) 27 pps. **$35.00**

PB (Coleman for EEOC) Reply Brief as Appellant and Responsive Brief as Appellee
The defendant mischaracterizes the record evidence and the Commission's sex discrimination claim and attempts to violate the court's order by raising only "theoretical challenges to the data or statistical approach taken." It is not true that the defendant made too few hiring decisions to support an inference of discrimination. The district court correctly denied the defendant's request for attorney's fees because the action was not frivolous.
EEOC v. Turtle Creek Mansion Corp.
Nos. 95-10637, 95-10696 (5th Cir. 1995) 22 pps. **$35.00**

TITLE VII - SEX DISCRIMINATION - MARITAL STATUS/DATING

AB (Kirn for NELA & Counsel for Women Employed) Appeal from the Fourth District Appellate Ct. S.Ct. Ill.
This brief urges for the appellate court to adopt a definition of marital status that includes discrimination based on the identity of the spouse and not merely discrimination based on whether the employee is single, married or divorced.
Boaden v. Human Rights Commission
No. 78343 (Ill. Supreme Ct. 1996) 15 pps. **$25.00**

AB (Silver) Appeal from D.C., W.D. Pa.

A supervisor's favoritism toward an employee based on a consensual romantic relationship does not constitute sex discrimination within the meaning of Title VII. A plaintiff who shows no more than sexual favoritism has not demonstrated that she would have been treated more favorably if she had been a man or, conversely, that she was treated less favorably because she was a woman. The district court was therefore correct in granting defendant's summary judgment motion.
Miller v. Aluminum Company of America
No. 88-3099 (3rd Cir. 1988) 25 pps. **$35.00**

AB (Marcosson for EEOC) In Support of Plaintiff-Appellee/ Cross-Appellant
The district court correctly applied the law in finding that defendant violated Title VII by denying plaintiff tenure because she is a married woman. The district court abused its discretion in awarding plaintiff less than full relief by failing to grant her unconditional tenure.
Fisher v. Vassar College
No. 94-7737 (2nd Cir. 1994) 32 pps. **$45.00**

AB (Marcosson for EEOC) Brief as *amicus curiae* on Rehearing *En Banc*
After finding defendant's reasons for denying plaintiff tenure pretextual, the court correctly considered all the evidence, including the finding of pretext and the supporting evidence, in finding plaintiff was discriminatorily denied tenure. The court also correctly considered the discrimination as discrimination not just because plaintiff is a woman, but because she is a married woman. Principles of academic freedom do not warrant any different Title VII analysis or evidentiary rules.
Fisher v. Vassar College
Nos. 94-7737 & 94-7785 (2nd Cir. 1996) 48 pps. **$55.00**

TITLE VII - SEXUAL DISCRIMINATION - HARASSMENT

AB (Danis for EEOC) In Support of Plaintiff-Appellee
Defendant was not entitled to judgment as a matter of law on liability because there was ample evidence that its policy against sexual harassment was not enforced and therefore failed to meet the *Faragher* standard. The evidence supports the jury's award of punitive damages under the *Kolstad* standard. The *Kolstad* standard has no applicability where liability for punitive damages is established directly by showing that the employer ratified its employee's conduct or negligently retained an employee with knowledge of his propensity to engage in sexual harassment. A new trial is not required here because *Kolstad* did not materially change existing Tenth Circuit law.
Cadena v. The Pacesetter Corp.
Nos. 99-3047 & 99-3166 (10th Cir. 1999) 38 pps. **$45.00** Addendum 48 pps. **$55.00**

AB (Carter for EEOC) On Appeal From the United States District Court for the Southern District of Georgia
The district court erred when it held that, although plaintiff complained to her supervisor that she was being harassed by her co-workers because of her sex and disability, defendant did not receive actual notice of the harassment. The district court erred in concluding that defendant did not receive constructive notice that plaintiff was being harassed by her co-workers because of her sex and disability.
Breda v. Wolf Camera, Inc.
No. 99-12410-G (11th Cir. 1999) 28 pps. **$35.00**

DB (Schere for Dade County School Board) On Appeal From an Order of Final Summary Judgment of the United States District Court For the Southern District of Florida

The trial court did not err in awarding summary judgment to defendant where the plaintiff failed to establish that he was subjected to a hostile work environment because of his gender, where the harassment directed at him by his female coworker stemmed from his termination of their consensual sexual relationship. The case at bar presents an issue of a "workplace romance that has gone awry." Plaintiff failed to offer any evidence that he was harassed based on his gender, and only offered evidence that his former lover sought retribution against him for "abandoning their relationship" and that she "reacted harshly to their failed relationship." "Personal animosity is not the equivalent of sex discrimination and is not proscribed by Title VII." Because plaintiff's offered evidence that his former lover treated everyone with equal animosity, male or female, he failed to show the requisite "impermissible animus" required by the Eleventh Circuit.

Succar v. Dade County School Board

No. 99-13681-E (11th Cir. 2000) 33 pps. **$45.00**

AB (Reesman) Brief *Amicus Curiae* Of The Equal Employment Advisory Council In Support Of Defendant-Appellant On Appeal From D.C., E.D. New York

Title VII's protection against "hostile environment" sexual harassment stops short of allowing a cause of action for harassment by hearsay. Victims of harassment must establish "severe or pervasive" conduct to support a hostile work environment claim. While evidence of harassment by other women may be relevant to an actual victim's harassment claim, it cannot alone support the claim of a non-victim. Plaintiff's connection to the alleged hostile environment was too tenuous to support a finding that she was subjected to discrimination. The district court's opinion shows indifference to the reasonable efforts of employers trying to prevent and remedy sexual harassment in the workplace. This court should reverse or vacate the opinion of the lower court.

Leibovitz v. New York City Transit Auth., et al.

No. 99-7757 (L), 99-7313 (CON) (2nd Cir. 1999) 30pps. **$35.00**

Also available: Brief for Defendant-Appellant On Appeal From D.C., E.D. New York. 70pps. **$75.00**

DB (Neale) Brief for Defendant-Appellant On Appeal From D.C., E.D. New York

The jury's finding that plaintiff was neither discriminated against nor retaliated against precludes, as a matter of law, any finding that she was a victim of a hostile work environment. The court erred in finding that plaintiff was an "aggrieved person" since the harm which the jury found was that inflicted on others and merely established through hearsay. Under *Burlington Industries v. Ellerth*, the employer could not be held liable when no tangible employment action was taken against plaintiff. The court's jury instructions and rulings based on "deliberate indifference to sexual harassment generally" is not the proper standard to establish employer liability in a hostile work environment claim. The defendant correctly showed, under the *Burlington* and *Faragher v. City of Boca Raton* standard, that it "exercised reasonable care to prevent and correct any sexually harassing behavior" and that the plaintiff "unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer."

Leibovitz v. New York City Transit Auth., et al.

No. 99-7313 (CON) (2nd Cir. 1999) 70pps. **$75.00**

Also available: Brief Amicus Curiae Of The Equal Employment Advisory Council In Support Of Defendant-Appellant. 30pps. **$35.00**

AB (Eisenberg) Brief *Amicus Curiae* Of The National Employment Lawyers Association In Support Of Plaintiff-Appellee

Applying *Trafficante v. Metropolitan Life Ins.*, an employee who is injured by a pervasive pattern of discriminatory harassment directed at fellow employees is an aggrieved person and has standing to recover under Title VII. Defendant provides no basis for departing from a uniform body of precedent authorizing injured non-targets to sue under Title VII. The jury instructions asking whether defendant violated plaintiff's rights "by its deliberate indifference to widespread discriminatory practices and sexual misconduct against others" pertained to the employer's liability once a substantive violation was established. The instructions, if erroneous, inured to defendant's benefit since they imposed a standard

higher than the minimum "negligence" standard for employer liability under Title VII.
Leibovitz v. New York City Transit Auth., et al.
No. 99-7757 (L), 99-7313 (CON) (2nd Cir. 1999) 36pps. **$45.00**

PB (Sloan for EEOC) Brief Of The Equal Employment Opportunity Commission As *Amicus Curiae* In Support Of Rehearing
The District Court Panel's refusal to apply a vicarious liability standard in a case alleging sexual harassment by a supervisor,
and holding that the standard only applies where the plaintiff fails to complain about the harassment is erroneous. The District Court Panel held that because the Plaintiff in this case, timely complained about the harassment, she must also show that the employer responded negligently to her complaint. This decision is contrary to the Supreme Court's rulings in *Faragher*, and *Ellerth*. In those cases, the Supreme Court rejected a negligence standard in favor of vicarious liability in all cases alleging harassment by a supervisor.
Indest v. Freeman Decorating, Inc., et al.
No. 96-30212 (5th Cir. 1999) 20pps**.** **$25.00**

PB (Schnapper) Petition For Writ Of Certiorari
Certiorari should be granted to describe what the roles of judges and juries should be in the determination of whether incidents of sexual harassment created a hostile work environment. It was error for the Court of Appeals to hold that sexual
harassment is not actionable unless it is both "severe and pervasive." The Supreme Court has consistently held that a plaintiff seeking to establish the existence of a hostile work environment may rely either on proof that the harassment was pervasive or severe. The Court of Appeals decision that sexual harassment is not actionable unless it "destroys a protected class-member's opportunity to succeed in the workplace" conflicts with the decision of the Supreme Court and numerous other courts of appeal.
Shepherd v. Comptroller Of Public Accounts Of The State Of Texas
No. 98-1989 (U.S. Supreme Ct. 1999) 15pps. **$25.00**

PB (Mausert) Opening Brief Of The Plaintiff-Appellee
The defendant, the State of Nevada, is procedurally barred from proceeding on this appeal because it did not preserve its right to appeal. The plaintiff presented substantial evidence of actionable sexual harassment, and retaliation by her supervisor. For this reason, there is sufficient evidence for this court to sustain the verdict.
State of Nevada v. Wilson
No. 98-17386 (9th Cir. 1999) 27pps. **$35.00**

PB (Brantner for NELA) Letter Brief to Fifth Circuit re: *Pfau v. Reed* 125 F.3d 927 (5th Cir. 1997)
The recent Supreme Court decisions of *Burlington Industries v. Ellerth* and *Faragher v. City of Boca Raton* have provided guidelines as to a clearer meaning of "supervisor" in hostile work environment cases. Now employer liability is no longer limited to supervisors who "have authority to hire or fire." Instead, "a supervisor with immediate (or successively higher) authority over the employee" can be held liable for creating a hostile environment." The Court squarely rejected the "quid-pro-quo" approach in hostile work environment cases when establishing employer liability. On behalf of Pfau, NELA requests that the Fifth Circuit remand the case for further review for clarification of this issue.
Pfau v. Reed
No. 97-1751 (U.S. Supreme Ct. 1998)(cert. granted, judgment vacated, case remanded) 3pps. **$15.00**

PB (Goldstein for EEOC) Brief for Plaintiff-Appellee on Appeal from D.C., M.D. Fla.
There is support for the district court's finding that Carrier subjected Papa to continual sexual harassment amounting

to a hostile work environment. There is also evidence to support the district court's finding that Carrier subjected Papa to quid pro quo harassment when she fired him for refusing to have a sexual relationship with her. And there is support for the district court's finding that Carrier retaliated against Papa by firing him after he refused her sexual advances and indicated he would report her sexual harassment to her superior. The district court's damage award is similarly supported by evidence in the record.
EEOC v. Domino's Pizza. Inc.
No. 95-3600 (11th Cir. 1996) 42 pps. **$55.00**

PB (Heitland) Plaintiff's Response to Motion for Summary Judgment
The issue to be determined on the hostile environment theory of sex discrimination is whether there existed at Guardian, because the plaintiff's gender, "conduct which had the purpose or effect of unreasonably interfering with Silva's work performance or creating an intimidating, hostile or offensive working environment." Determination of the issue rests upon inferences to be drawn from evidence and on assessment of credibility of witnesses. Such decisions cannot be made on a motion for summary judgment.
Silva v. Northern Arizona Health Care, Inc. and Flagstaff Medical Center, Inc.
No. CIV 96-369 PCT PGR (Ariz. District Ct. 1996) 16 pps. **$25.00**
Also available: Plaintiff's Response to Motion for Summary Judgment on Counts of Reprisal/Retaliation and Wrongful Discharge. 9pps. **$15.00**

AB (Sloan for EEOC) In Support of Plaintiff-Appellant on Appeal from D.C., W.D. Va.
An employer is liable under Title VII when a supervisor, in the course of carrying out his duties, sexually harasses a subordinate even if the employer did not know about the harassment until after the subordinate was discharged. The evidence in the record read a triable issue of fact on the question of whether the alleged harassment was severe or pervasive enough to create a hostile working environment.
Lissau v. Southern Food Service, Inc., et al.
No. 96-2672 (4th Cir. 1996) 45 pps. **$55.00**

PB (Coles) Plaintiff's Objections to the Magistrate's Recommended Decision of Defendants Motion for Summary Judgment
The Magistrate erred when he created a new rule, not recognized by any other court, regarding the scope of analysis of punitive damages in Title VII cases, namely that the trier of fact in a Title VII case is limited to only looking forward from the date the last victim complains of being sexually harassed for punitive damage analysis.
Martin v. Tennford Weaving Co., Inc.
No. 96-328-PC (D.C., D. Me. 1996) 27 pps. **$35.00**

AB (Zeigler for EEOC) Appeal from D.C., D. Minn.
The district court properly instructed the jury that Ortho Biotech could be held liable for sexual harassment by a high level manager where the manager was aided in accomplishing the harassment by his position with the company. In awarding plaintiff attorney fees, the district court properly refused Ortho's request to reduce the Lodestar by seventy-five percent for unsuccessful claims.
Todd v. Ortho Biotech
No. 97-6016 (8th Cir. 1997) 17 pps. **$25.00**

PB (Bruner for EEOC) Appeal from D.C., M.D. Fla.
Failure to report that one has been sexually harassed until after the employee quits does not undermine her claim that she was subjected to verbal and physical conduct. The time-barred incidents do rise to the level of sexual harassment and thus do warrant consideration in the evaluation of the alleged discrimination.
EEOC v. Mayflower Retirement

No. 96-3194 (11th Cir. 1996) 25 pps. **$35.00**

AB (Bernstein for EEOC) Appeal from D.C., D.S.C.
The district court erred in ruling that the plaintiff, who was fired less that two months after making an internal complaint of sexual harassment, could not demonstrate that requisite causal nexus between protected activity and adverse employment action necessary to establish unlawful retaliation under Title VII because she did not file an administrative share of discrimination until after her discharge.
Hindman v. Greenville Hospital
No. 9-2784 (4th Cir. 1996) 46 pps. **$45.00**

AB (Sloan for EEOC) Appeal from D.C., N.D. Miss.
An employer is liable under Title VII for the sexual harassment of an employee by her supervisor where he used or was aided by his delegated authority in harassing her. If an employee proves that her shift was changed and she was assigned different job duties because she objected to her supervisors sexual harassment, then the employer would be liable under Title VII because of the retaliatory acts.
Watts v. The Kroger Co., et al.
No. 96-60077 (5th Cir. 1996) 20 pps. **$25.00**

AB (Gregory for EEOC) In Support of the Plaintiff's Objection to the Magistrate's Report and Rec. for Motion to Dismiss
A valid claim of unlawful retaliation under Title VII by a plaintiff alleged that he employer orchestrated the filing of two lawsuits against the plaintiff in retaliation for her exercise of protected activity. The employer took steps to make it impossible for the plaintiff to collect on her judgement in a Title VII sexual harassment case in retaliation for her exercise of protected activity.
Llampallas v. Mini-Circuits Labs.
No. 96-2776 CIV-Atkins (D.C., S.D. Fla. 1996) 18 pps. **$25.00**

AB (Bruner for EEOC) In Support of Plaintiff-Appellant on Appeal from D.C., M.D. Fla.
The district court erred in concluding that the EEOC did not raise a genuine issue of material fact as to whether a female employee was a victim of sexual harassment for which Mayflower could be held liable where her manager's ongoing sexually demeaning behavior towards women offended her, her manager and immediate supervisor's public display of stained underwear caused her extreme humiliation, and their hostile and abusive behavior towards her escalated after the display incident. In addition, the district court erred in holding that there can be no retaliation without an adverse employment action and that none had occurred in this case, despite evidence that a supervisor engaged in extremely abusive, hostile and humiliating behavior when he learned that a female employee had complained internally and to the EEOC about him. In dismissing the Commission's constructive discharge claim even though the summary judgement record contained evidence of acts of sexual harassment and retaliation sufficient to lead a reasonable person to resign.
EEOC v. Mayflower Retirement Center, Inc.
No 96-3194 (11th Cir. 1996) 52 pps. **$65.00**

PB (Sloan for EEOC) Reply Brief of EEOC as Plaintiff-Appellant and as Cross -Appellee on Appeal from D.C., S.D. Fla.
Brief of the EEOC as cross-appellee argues that the district court properly denied cross-appellants motion for summary judgement as a matter of law with respect to liability because the evidence strongly supported the jury determination that sexual harassment was unwelcome. Reply brief of the EEOC argues that the district court should have granted the commission's motion for judgement as a matter of law regarding willfulness because no reasonable jury could have found the violation here was not willful.
EEOC v. Massey Yardley Chrysler-Plymouth, Inc.
No. 96-4129 (11th Cir. 1996) 37 pps. **$45.00**

AB (Waxman for the U.S. and the EEOC) Brief Supporting Respondent on Writ of Certiorari to the 7th Circuit
An employer is liable for discrimination under Title VII when a supervisor threatens an employee with adverse job consequences for failure to submit to his sexual demands. A supervisor's threat of adverse job consequences for failure to submit to his sexual demands alters a "term" of employment. An employer is vicariously liable when a supervisor threatens an employee with adverse job consequences for a failure to submit to his sexual demands. Respondent presented sufficient evidence to resist petitioner's motion for summary judgment.
Burlington Industries v. Ellerth
No. 97-569 (U.S. Supreme Ct. 1998) 34 pps. **$45.00**

PB (Waxman for EEOC) Brief for the EEOC in Opposition on Writ of Certiorari to the 11th Circuit
Plaintiff established a claim of quid pro quo sexual harassment when the rejection of a supervisor's advances resulted in a job detriment; there is no requirement that the supervisor threaten the employee with a job detriment beforehand. The district court's finding that the petitioner was liable for quid pro quo harassment is consistent with the uniform understanding for the scope of employer liability for such harassment. *Faragher* should not affect this basis for imposing liability on petitioner in this case, since in that case this Court granted certiorari to resolve a conflict in the circuits concerning the standard for determining when an employer is liable for a hostile working environment created by one of its supervisors. Therefore the petition in this case should be denied, without awaiting the decision in *Faragher*.
Domino's Pizza, Inc. v. EEOC and Papa
No. 97-552 (U.S. Supreme Ct. 1997) 18 pps. **$25.00**

AB (Sloan for EEOC) Brief *amicus curiae* on Appeal from D.C., D. Kan.
The district court erred in granting summary judgment on the basis of a determination that the only relevant evidence was that of incidents which were directed at plaintiff or incidents which would not have occurred "but-for" her sex. However, Title VII not only prohibits purposeful conduct which is directed at plaintiff, but also prohibits conduct which has the effect of creating a hostile working environment because of sex. When evidence of work-related sexually-oriented activities and harassment of other employees is factored into the analysis, a jury could find that plaintiff was subjected to a sexually hostile working environment. If plaintiff proves that defendant threatened to fire her if she continued to complain about the harassment, a jury could find retaliation actionable under Title VII as well.
Gillum v. Federal Home Loan Bank of Topeka, et al.
No. 97-3204 (10th Cir. 1997) 26 pps. **$35.00**

PB (Amlong for Plaintiff-Appellant) Appeal from D.C., S.D. Fla.
Evidence was presented to raise a triable issue of material fact that the employer knew or should have known about sexual harassment when the plaintiff reported the conduct to the person she was instructed to report to, and attempted to contact the company president, but was unable to reach him. Employee's not returning from vacation is irrelevant when the employer had the opportunity to respond to the harassment but failed to adequately do so.
Graff v. V & M Erectors, Inc.
No. 97-4541 (11th Cir. 1997) 23 pps. **$35.00**

PB (Rossiello) Brief for Respondent on Writ of Certiorari to 7th Circuit
Sexual harassment by a supervisor and unrealized threats of an abuse of official power both constitute action by the employer where the perpetrator uses or is aided by his supervisory powers. An abuse of official power constitutes employer action regardless of whether the threatened or realized harm is "tangible." The adoption of an anti-harassment policy is not a per se defense to a Title VII sexual harassment claim. This case presents genuine issues of material fact regarding whether a violation of Title VII occurred, therefore summary judgment was properly reversed.
Burlington Industries v. Ellerth

No. 97-569 (U.S. Supreme Ct. 1998) 60 pps. $**65.00**

DB (Casey) Reply Brief for Petitioner
Strict liability should not be applied under Title VII where the employee has suffered no tangible job detriment; this limit comports with standards applied to other forms of discrimination prohibited by federal law. Applying a negligence standard where no tangible job detriment has occurred is consistent with *Meritor.* Neither common law agency principles, nor agency principles applied to §1983 claims, nor the Restatement (Second) of Agency justify holding employers liable for all acts of supervisors or for quid pro quo type threats. Municipalities are not liable for their agents' conduct under §1983. Thus, the district court properly applied a negligence standard to this case.
Burlington Industries v. Ellerth
No. 97-569 (U.S. Supreme Ct. 1998) 17 pps. **$25.00**

AB (Oppenheimer for NELA) Brief *amicus curiae* in support of Respondent
Certiorari was improvidently granted. *Quid pro quo* sexual harassment includes threats by supervisors not carried out as well as threats fulfilled. Title VII liability for *quid pro quo* harassment is not limited to cases in which there are economic effects since the Civil Rights Act of 1991 provides a remedy even in the absence of economic damages, congressional intent and public policy support this position, and scientific evidence indicates that unfulfilled threats of retaliation for refusing sexual advances by supervisors cause serious harm. Under the EEOC's 1980 definition of *quid pro quo* sexual harassment and its 1990 guidance on sexual harassment, Ellerth has properly set forth the necessary factual allegations to defeat summary judgment.
Burlington Industries v. Ellerth
No. 97-569 (U.S. Supreme Ct. 1998) 37 pps. **$45.00**

AB (Reesman for Equal Employment Advisory Council) Brief *amicus curiae* in support of Petitioner
Workplace sexual conduct violates Title VII under the *quid pro quo* theory only if it constitutes discrimination in the fact of employment or in compensation, terms, conditions, or privileges. Environmental harassment is actionable only if it meets the established standards of severity or pervasiveness under *Meritor* and *Harris*. By definition, sexual harassment is *quid pro quo* only if a tangible job detriment is conditioned on sexual favors. A mere threat to condition a job benefit or detriment on the grant of sexual favors is not *quid pro quo* harassment if it is unsuccessful. An employer should be shielded from liability where the plaintiff fails to take advantage of a well communicated policy against sexual harassment or an adequate procedure for resolving claims, or where employer has taken prompt and appropriate action.
Burlington Industries v. Ellerth
No. 97-569 (U.S. Supreme Ct. 1998) 31 pps. **$45.00**

PB (Amlong) Petition for a Writ of Certiorari to the 11th Circuit
The 11th Circuit has entered a decision that is in conflict with the decision of at least two other U.S. courts of appeals on the issue of how the principles of agency should be applied in hostile-environment sexual harassment cases. The 11th Circuit has decided important issues of federal law concerning notice to employers of hostile-environment sexual harassment, ones which should be, but have not been, decided by this court, that is: (1) whether the same pervasiveness that makes sexual harassment actionable also serves to put an employer on constructive notice; (2) whether the failure to effectively disseminate a sexual harassment policy gives rise to constructive knowledge; and (3) whether the actual knowledge of an employer's "agent" who is not part of "higher management" constitutes notice to the employer.
Faragher v. City of Boca Raton
No. 97-282 (U.S. Supreme Ct. 1997) 37 pps. **$45.00**

PB (Amlong) Brief for Petitioner on Writ of Certiorari to the 11th Circuit
An employer is responsible for hostile work environment sexual harassment committed by supervisory employees who

use their supervisory status to effectuate the harassment. Notice may be inferred by the fact finder through actual notice to an immediate supervisor, or through constructive notice from either the pervasive nature of the harassment or from the absence of an effective policing mechanism.
Faragher v. City of Boca Raton
No. 97-282 (U.S. Supreme Ct. 1997) 42 pps. **$55.00**

DB (Buscemi) Brief for Respondent, The City of Boca Raton
The proper standard for liability in cases of hostile-environment sexual harassment is negligence, regardless of whether the harasser was a supervisor or co-worker of plaintiff. A test which automatically imposes liability when the harasser is a supervisor is inconsistent with *Meritor* and common-law agency principles. A *per se* rule which imposes liability when any employee in a supervisory role has actual notice of harassment assumes lines of reporting and responsibility that typically do not exist in the workplace, and would deter the effective communication necessary to deal with the problem of hostile-environment harassment. Petitioner's proposal that an employer's failure to disseminate a sexual harassment policy means that the employer will be deemed to have constructive knowledge of harassment is merely a device for arbitrarily expanding employer liability.
Faragher v. City of Boca Raton
No. 97-282 (U.S. Supreme Ct. 1997) 31 pps. **$45.00**

AB (Waxman for United States) Brief in Support of Petitioner on Writ of Certiorari to the 11th Circuit
The court of appeals applied the wrong legal standards in deciding that respondent was not liable for the hostile work environment created by its supervisors. An employer is liable for a supervisor's harassment of a subordinate when the supervisor is aided in the harassment by his agency relationship or when the employer knew or should have known about the harassment and failed to take corrective action. The court of appeals applied the wrong standards in finding that the harassment of petitioner was not aided by an agency relationship with respondent, and in determining when a supervisor's knowledge of harassment can be imputed to an employer. The court of appeals erred in failing to remand to the district court the question whether respondent's failure to disseminate its policy against harassment warranted a finding that respondent should have known about the harassment of petitioner.
Faragher v. City of Boca Raton
No. 97-282 (U.S. Supreme Ct. 1997) 37 pps. **$45.00**

AB (Harris for NELA) Brief *amicus curiae* on Writ of Certiorari to the 11th Circuit
Employers are vicariously responsible for sexual harassment by their supervisors who act within the scope of their employment. Employers may also be vicariously liable when the harassment is outside the scope of the harasser's employment when the harasser relied on his apparent authority from the employer to effectuate the harassment. Congressional intent and public policy support the application of vicarious liability to sexual harassment by supervisors. An employer is directly responsible when it fails to protect employees from sexual harassment of which it has actual or constructive knowledge.
Faragher v. City of Boca Raton
No. 97-282 (U.S. Supreme Ct. 1997) 26 pps. **$35.00**

AB (Williams for National Women's Law Center, et al.) *amicus curiae* Brief in Support of Petitioner
Agency principles support holding employers liable for the explicit or implicit use by supervisors of their authority to sexually harass employees. Persons subjected to hostile work environment harassment by supervisors deserve the same level of protection as persons subjected to other forms of unlawful discrimination under Title VII. Title VII mandates holding an employer liable for failure to provide a meaningful prevention program and redress procedure. The existence of a policy prohibiting, and procedures for reporting, sexual harassment alone should not immunize an employer where agency principles still mandate a finding of liability.

Faragher v. City of Boca Raton
No. 97-282 (U.S. Supreme Ct. 1997) 42 pps. **$55.00**

AB (Seymour for Lawyers' Committee for Civil Rights and ACLU) *amicus curiae* Brief in Support of Petitioner
The Court's reliance on agency principles should not be allowed to defeat the purposes of Title VII. The lower court misapplied agency law and ignored the purposes of Title VII in failing to impute Gordon's knowledge to the city. The lower court's requirement that employers use an unadvertised complaint procedure to provide notice to the city conflicts with Title VII. Section chief Terry's and Lieutenant or Captain Silverman's knowledge of their own conduct can be imputed to the city. The city is liable because Terry's and Silverman's actions were aided by the agency relationship. Constructive notice should not be defeated simply because a work site is "remote."
Faragher v. City of Boca Raton
No. 97-282 (U.S. Supreme Ct. 1997) 35 pps. **$45.00**

AB (Gold for AFL-CIO) *amicus curiae* Brief in Support of Petitioner
Meritor dictates that the question of employer liability for sexually discriminatory working conditions created by particular actions of a particular supervisory employee be dictated by the substantive law of Title VII rather than the common law of agency, which may, however, be informative. The issue is largely one of Congressional intent in crafting Title VII. While a generic employer liability rule for all supervisory employees is inappropriate, employers may, in many circumstances, be responsible for hostile environment sexual harassment perpetrated by supervisory employees without regard to the knowledge or approval of the harassment by any other employer representative. As noted by the *Meritor* concurring opinion, because employers act with regard to labor relations only through individual supervisors, as a general matter under Title VII, employers are held responsible for unlawful discrimination by supervisors whether or not the supervisor's act is consistent with the employer's official equal employment policies. This conclusion is consistent with the language, history and purposes of Title VII. Congress did not intend to distinguish for any purpose, including employer liability purposes, between discriminatory actions taken out of purely personal prejudices and predilections, on the one hand, and discriminatory actions taken because of a belief that the action will economically benefit the employer, on the other.
Faragher v. City of Boca Raton
No. 97-282 (U.S. Supreme Ct. 1997) 32 pps. **$45.00**

AB (Weitzman for the Society for Human Resource Management) *amicus curiae* Brief in Support of Respondent
Employer liability for a hostile work environment created by a supervisor is improper if the supervisor's conduct is expressly prohibited by a well-published anti-harassment policy and the employer had no notice of, or adequately responded to, the supervisor's conduct. Supervisors are not automatically agents of the employer for the purpose of receiving and responding to harassment complaints; complaints to low-level supervisors not designated as agents for this purpose in an anti-harassment policy are insufficient to charge the employer with actual knowledge of a hostile work environment. Employers should not be automatically charged with constructive knowledge of harassment deemed to be sufficiently pervasive to create an abusive work environment.
Faragher v. City of Boca Raton
No. 97-282 (U.S. Supreme Ct. 1997) 29 pps. **$35.00**

AB (Reesman for Equal Employment Advisory Council) *amicus curiae* Brief in Support of Respondent
An employer is not automatically liable for environmental sexual harassment. Sexual harassment is virtually always outside the scope of a supervisor's employment. Liability of an employer under an "apparent authority" theory is limited to situations where the victim reasonably believed that the supervisor had apparent authority and the supervisor actually used that authority. Absent that, an employer that is unaware of a supervisor's misconduct and therefore unable to halt the harassment of an employee should not be liable for environmental sexual harassment. A policy forbidding sexual harassment and an adequate complaint procedure preclude a finding of liability against an employer on either a

negligence theory or an apparent authority theory.
Faragher v. City of Boca Raton
No. 97-282 (U.S. Supreme Ct. 1997) 31 pps. **$45.00**

PB (Coleman for EEOC) Appeal from D.C., N.D. Ill.
Summary judgment for defendant employer was granted in error. Charging party alleged that her employer sexually harassed her; upon investigation, the Commission did not find reasonable cause to support her allegation. In the course of the investigation, the Commission found reasonable cause to believe that the employer had sexually harassed other women. The summary judgment award thwarts the Commission's effort to obtain injunctive relief against the employer and to prevent further harassment to other female employees.
EEOC v. Harvey L. Walner and Associates and Walner
No. 95-3524 (7th Cir. 1995) 29 pps. **$35.00**

AB (Harris for NELA) Writ of Certiorari to the 6th Circuit
This court should disavow *Rabidue v. Osceola Refining* and should not require that a victim of sexual harassment demonstrate "serious psychological injury." Acceptance of the status quo (the "take the workplace as you find it" position) as a defense to a hostile work environment claim frustrates the goals of Title VII.
Harris v. Forklift Systems
No. 92-1168 (U.S. Supreme Ct. 1992) 39 pps. **$45.00**

AB (Bigg for American Psychological Association) Writ of Certiorari to 6th Circuit
Including psychological injury as an element of a hostile work environment claim frustrates Title VII's purposes and does not effectively identify cases in which equal employment opportunities have been denied. Women and men perceive behavior that can be characterized as sexual harassment differently.
Harris v. Forklift Systems
No. 92-1168 (U.S. Supreme Ct. 1993) 16 pps. **$25.00**

AB (Bernstein for EEOC) Writ of Certiorari to 6th Circuit
In a hostile environment sexual harassment case, a plaintiff may obtain relief under Title VII without having to prove that the harassment caused adverse psychological effects. Plaintiff need only show that objectionable workplace conduct is sufficiently severe or pervasive to interfere with the job performance of a reasonable person who is subjected to the conduct.
Harris v. Forklift Systems
No. 92-1168 (U.S. Supreme Ct. 1992) 34 pps. **$45.00**

AB (Goldstein for EEOC) Appeal from D.C., S.D. Fla.
The district court correctly held that defendant was a joint employer and had control over the terms and conditions of plaintiff's employment. The court properly held defendant liable for sexual harassment. The district court correctly held that it had jurisdiction over defendants. Defendants employed the requisite number of individuals, and the charge of discrimination gave defendant notice, and placed it within the scope of the EEOC's investigation.
Virgo v. Sterling Group
No. 93-4032 (11th Cir. 1993) 32 pps. **$45.00**

AB (Tobias for NELA) Appeal from D.C., M.D. Fla.
A successful Title VII plaintiff who missed work to distance herself from the hostile environment should be awarded back pay. The trial court placed an overly onerous burden on plaintiff which frustrated national policy by requiring that plaintiff show that she was constructively discharged on each of the days, by requiring specificity, and by resolving any uncertainties in defendant's favor.

Robinson v. Jacksonville Shipyards
No. 91-3655 (11th Cir. 1992) 11 pps. **$25.00**

AB (Lenhoff for WLDF) Appeal of Judgment by D.C., M.D. Fla.
Liability under Title VII for sexual harassment should be based on workplace conduct, not on the extent of plaintiff's psychological injury, or the sex of plaintiff. The "reasonable woman" standard is inconsistent with Title VII and equal protection under the 14th Amendment. In evaluating whether workplace conduct is sufficiently severe to affect the conditions of employment, factors such as gender, race, religion, national origin, employment status, number of employees, history of violence, etc. should be considered.
Robinson v. Jacksonville Shipyards
No. 91-3655 (11th Cir. 1992) 35 pps. **$45.00**

AB (Gregory for EEOC) Appeal of Judgment by D.C., M.D. Fla.
Sexual harassment under Title VII includes conduct of a sexual nature which is not directed at a specific individual, but which has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment from the victim's perspective. Proscribing sexual harassment, that is not directed at a specific individual, does not violate the First Amendment.
Robinson v. Jacksonville Shipyards
No. 91-3655 (11th Cir. 1992) 35 pps. **$45.00**

PB (Fitzpatrick) Demand for Trial by Jury
Plaintiff who was required to wear skin-tight shorts at a "sports bar" alleges sexual harassment, discrimination, assault and battery, intentional infliction of emotional distress, and negligent hiring and retention.
Chandler v. Sadia Corp.
(D.C., E.D. Va. 1991) 17 pps. **$25.00**

PB (Brusoski for EEOC) Appeal from D.C., C.D. Cal.
The district court was correct in finding defendant liable for sexual harassment. Plaintiffs specifically testified to defendant's repeated vulgarities, sexual remarks, and requests for sexual favors.
EEOC v. Hacienda Hotel
No. 88-5563 (9th Cir. 1988) 61 pps. **$75.00**

AB (Helmer for PELA) In Support of Plaintiffs-Appellants' Memo in Support of Jurisdiction on Appeal from Ohio Court of Appeals, Hamilton County
The proper principle for finding an employer liable for the acts of its employees in sexual harassment cases are agency principles so that proof of pervasive sexual harassment puts the employer on notice that such a problem exists.
Kerans v. Porter Paint Co.
No. 90-1036 (Ohio Supreme Ct. 1990) 19 pps. **$25.00**

AB (Helmer for NELA) In Support of Plaintiffs-Appellants' Appeal of Summary Judgment on Appeal from Ohio Court of Appeals, Hamilton County
Summary judgment is improper where the court (1) did not apply common law tort standards of proof to the plaintiff's sexual harassment and related claims; (2) resolved issues of disputed facts and mixed issues of law and fact; (3) applied an overly-restrictive standard of proof; and (4) improperly decided contested issues of fact.
Kerans v. Porter Paint Co.
No. 90-1036 (Ohio Supreme Ct. 1990) 32 pps. **$45.00**

AB (Moran for EEOC) Appeal from D.C., E.D. Va.
The district court properly held that defendant was liable for plaintiff's sexual harassment, and that failure to stop the intolerable working conditions constituted constructive discharge. Defendant knew that one of its employees repeatedly attempted to kiss and touch plaintiff but failed to take appropriate measures to stop it.
Mowry v. Radisson Hotel Corporation and Ali Entezam
Nos. 92-2571, 92-2608 & 93-1006 (4th Cir. 1993) 32 pps. **$45.00**

PB (Sedey) Pre-Trial Brief
Defendant's deliberate indifference to plaintiff's complaints that a co-worker followed her around the facility, cornered her in her office, and plaintiff's later dismissal warrants recovery of compensatory and punitive damages under Title VII and 42 U.S.C. § 1983, and injunctive relief in the form of a sexual harassment training program.
Nicks v. State of Missouri
No. 90-1556-C-8 (D.C., E.D. Mo. 1992) 24 pps. **$35.00**

PB (Sedey) Post-Trial Brief
The record suggests that injunctive relief requiring that defendant adopt specific sexual harassment policies is necessary to prevent further sexual harassment of plaintiff and other employees.
Nicks v. State of Missouri
No. 90-1556-C-8 (D.C., E.D. Mo. 1992) 24 pps. **$35.00**
AB (Bogas for EEOC) Appeal from D.C., N.D. Ill.
In order to establish a quid pro quo sexual harassment case, an employee can show that after a consensual romantic relationship ended with her supervisor, the supervisors demoted her because of her refusal to submit to the supervisor's requests for sexual favors. Plaintiff raised a genuine issue of material fact as to whether her demotion was based on her refusal to submit to the sexual requests. Keppler v. Hinsdale Township High School
Nos. 89-2517 and 89-2626 (7th Cir. 1989) 25 pps. **$35.00**

AB (Suhre for EEOC) Appeal from D.C., E.D. N.Y.
The arbitration award ordering reinstatement of a male former employee who repeatedly sexually harassed female employees, and who had previously been suspended and warned that continuation of such conduct would cause his discharge, was correctly vacated on grounds that such order violated public policy against sexual harassment in the workplace under Title VII.
Newsday, Inc. v. Long Island Typographical Union
No. 90-7236 (2nd Cir. 1990) 28 pps. **$35.00**

AB (Mastroianni for EEOC) Appeal from D.C., W.D. La.
The district court erred in barring as untimely most of the harassment evidence. Since a "hostile environment" sexual harassment claim manifests itself over a period of time, it must be treated as a continuing violation. Plaintiff has shown that a hostile working environment existed, and that the company failed to take adequate remedial action. The court's judgment should therefore be reversed.
Waltman v. International Paper Co.
No. 88-4088 (5th Cir. 1988) 32 pps. **$45.00**

AB (Mastroianni for EEOC) In Support of Defendant’s Motion for Summary Judgment
Defendant's investigation of sexual harassment by plaintiff was required by Title VII and is a qualified privilege barring plaintiff's defamation charge.
Stockley v. AT&T Information Systems
No. 86 Civ. 1643 (RJD) (D.C., E.D. N.Y. 1987) 24 pps. **$35.00**

AB (Suhre for EEOC) Appeal from D.C., N.D. Ill.
The district court correctly held that defendants were liable under Title VII based on their inadequate response to plaintiff's complaints of sexual harassment. An employer has an affirmative duty to investigate complaints of sexual harassment. Plaintiff proved constructive discharge by showing that a reasonable person in her situation would have quit her job. She need not show specific intent on the part of the employer.
Brooms v. Regal Tube Co.
Nos. 87-2362, 87-2522, 87-2558 & 87-2559 (7th Cir. 1988) 22 pps. **$35.00**

AB (Moran for D.C. EEOC) Appeal of Summary Judgment by D.C., S.D. N.Y.
Plaintiff is not required to show actual economic loss in order to proceed on a quid pro quo theory of sexual harassment. Plaintiff need not prove that defendant knew or should have known of its supervisor's sexual harassment and failed to take remedial action, in order to sustain a Title VII claim under a quid pro quo or hostile work environment theory.
Karibian v. Columbia University
No. 93-7188 (2nd Cir. 1993) 19 pps. **$25.00**

PB (Leech) Appeal from D.C., N.D. Ill.
Plaintiff is entitled to a judgment on a quid pro quo sexual harassment claim where the trial court found that sex was a motivating factor and that defendant did not satisfy its burden of persuasion under Price Waterhouse.
Bristow v. Drake Street, Inc.
Nos. 92-1381, 92-1409 & 92-1497 (7th Cir. 1992) 54 pps. **$65.00**

PB (Arnold, Frank) In Opposition to Motion for Summary Judgment
Defendants have waived arbitration under state and federal law. Plaintiff has stated a valid claim for retaliation and sexual harassment. The defendants were joint employers under the "integrated enterprise" theory.
Busse v. Geri-Tech, Inc.
No. 3:92CV7678 (D.C., N.D. O.H. 1993) 68 pps. **$75.00**

AB (Coleman for EEOC) In Support of Plaintiff-Appellant
When an alleged sexual harasser begins his offensive conduct prior to Title VII's limitations period but continues it into the limitations period, the entire course of conduct is legally cognizable as a continuing violation.
Galloway v. G.M. Service Parts Operations
No. 94-3993 (7th Cir. 1995) 30 pps. **$35.00**

AB (Moran for EEOC) In Support of Plaintiff-Appellant
The district court erred in concluding that defendant-employer could not be held liable for defendant-employee's harassment of plaintiff unless it had notice of the harassment and failed to act. The district court erred in holding that defendant employee could not be sued for monetary damages under Title VII.
Gary v. Long
No. 94-7012 (D.C. Cir. 1995) 31 pps. **$45.00**

AB (Goldstein for EEOC) In Support of Plaintiff-Appellee
Frequent and severe sexual comments and jokes alone can constitute a hostile work environment even without evidence of "physical intrusion" or threats. Punitive damages were proper upon finding that the employer did nothing to address the harassment.
Black v. Zaring Homes, Inc.
No. 96-3118 (6th Cir. 1996) 33 pps. **$45.00**

AB (Clark for EEOC) In Support of Plaintiff-Appellant

The district court should have reached plaintiff's quid pro quo sexual harassment claim even if plaintiff did not specifically identify it as such in her complaint. The district court erred in finding that an employer is not liable for hostile work environment harassment when a supervisor uses his authority to harass a subordinate simply because the employer has a policy forbidding sexual harassment.
Ellerth v. Burlington Industries, Inc.
No. 96-1361 (7th Cir. 1996) 24 pps. **$35.00**

PB (Suhre for EEOC) Brief as Appellee
The district court was correct in ordering defendant to comply with EEOC's subpoenas because the information requested was manifestly relevant to valid charges of sexual harassment of claimants. In deciding whether to enforce an EEOC subpoena, the court should only consider whether the information sought in the subpoena is relevant to a valid charge of discrimination. *Huttig* does not apply because the claimants have not already filed a private Title VII action which would bar the EEOC from their enforcement action. The EEOC should also have power to enforce violations of Title VII beyond the specific charges made by particular claimants.
EEOC v. Hearst Corp.
No. 96-20042 (5th Cir. 1996) 46 pps. **$55.00**

AB (Sloan for EEOC) In Support of Plaintiff-Appellant
An employer is directly liable for sexual harassment under Title VII when a supervisor uses or is aided by his authority in harassing a subordinate. Even if a supervisor did not use his delegated authority to harass a subordinate, his employer may still be liable for his conduct if it knew that he had previously harassed another employee and had failed to prevent a recurrence.
Indest v. Freeman Decorating
No. 96-30212 (5th Cir. 1996) 24 pps. **$35.00**

PB (Fischer) Opposition to Summary Judgment
Summary judgment should not be entered because defendant knew or should have known of the harassment due to the constant stream of sexual harassment and the knowledge of other management level employees. There was also inadequate remedial action taken by management and there was possible quid pro quo liability as the harasser used actual or apparent authority to further the harassment. There was also continued sexual harassment by other employees upon the main harasser's termination, and plaintiff was effectively discharged by the harassment. Finally, there was enough evidence to get an intentional infliction of emotional distress issue to trial.
Sheffield v. Autozone, Inc.
No. 9:95-CV-65 (D.C., E.D. Tex. 1996) 20 pps. **$25.00**

AB (Gregory for EEOC) In Support of Plaintiff-Appellant
The fact that the employer decided to replace plaintiff with his "paramour" can be enough to establish a claim of quid pro quo discrimination and should at least not have been dismissed at the initial stage. Plaintiff stated a valid claim of quid pro quo discrimination that is supported by the Commission's sexual harassment guidelines and important policies underlying Title VII.
White v. Fowler
No. 95-4476 (11th Cir. 1995) 26 pps. **$35.00**

AB (Moran for EEOC) In Support of Plaintiff-Appellant
Title VII prohibits a labor organization from subjecting its female employees to a sexually hostile work environment. The prohibition is not limited to discrimination in membership and referrals.
Yerdon v. Teamsters Local 1149, et al.

No. 95-7604 (2nd Cir. 1995) 19 pps. **$25.00**

AB (Coleman for EEOC) In Support of Plaintiff-Appellant
The district court did not apply the correct standard when plaintiff's supervisor sexually harassed her and plaintiff sought to hold her employer liable. The employer is liable for quid pro quo harassment whenever a supervisor threatens adverse employment action for failure to comply with sexual demands, regardless of whether the threat is carried out. Agency principles also render an employer liable whenever a supervisor uses his delegated authority to facilitate the creation of a hostile work environment.
Jansen v. Packaging Corp. of America
No. 95-3128 (7th Cir. 1995) 24 pps. **$35.00**

AB (Suhre for EEOC) In Support of Plaintiff-Appellant
Title VII prohibits sex discrimination including protecting employees from sexual harassment by supervisors and co-workers of the same sex. Plaintiff's claim that he was fired because he complained to management about his supervisor's harassment states a claim under Title VII for retaliation, even if same-sex harassment is held not to violate Title VII because plaintiff could have a reasonable belief that such activity was an unlawful employment practice.
Mayo v. Kiwest Corp.
No. 95-2638 (4th Cir. 1995) 22 pps. **$35.00**

AB (Gregory for EEOC) In Support of Plaintiff-Appellant
The evidence supports a finding that plaintiff was subjected to sex-based discrimination and the claim is not defeated by the fact that the perpetrators of the harassment were of the same sex as the plaintiff.
Quick v. Donaldson Co., Inc.
No. 95-3387 (8th Cir. 1995) 25 pps. **$35.00**

AB (Wheeler for EEOC) In Support of Plaintiffs-Appellants/Cross-Appellees
In hostile environment sexual harassment cases, direct liability of the employer is a result of its own misconduct. Indirect liability is the result of the employers agents' harassment of its employees regardless of its knowledge.
Faragher v. City of Boca Raton, et al.
No. 94-04878 (11th Cir. 1996) 30 pps. **$35.00**

TITLE VII - SEX DISCRIMINATION - SAME SEX HARASSMENT

AB (Owsley for EEOC) In Support Of Appeal From Order Granting Defendant's Motion To Dismiss From D.C., N.D., Indiana
It is possible for both males and females to be sexually harassed by an "equal opportunity harasser." As a matter of law both a man and a woman may be sexually harassed by the same individual as long as each can still prove harassment on the basis of sex. The claims of individuals of the opposite sex are not mutually exclusive. It is possible that both were harassed or that only one was harassed and the other retaliated against. At a minimum, because they are allowed to make inconsistent statements in their complaint, they should be afforded the opportunity to discover evidence to support one or both of their claims.
Holman and Holman v. State of Indiana and Indiana Dept. of Transp.
No. 99-1355 (7th Cir. 1999) 24pps. **$35.00** Addendum 6pps. **$15.00**

AB (Clark for EEOC) In Support of Plaintiff-Appellant
Title VII's prohibition of sex discrimination protects employees from sexual harassment by supervisors and co-workers of the same gender. The alleged bisexuality of the harasser in this case does not necessarily preclude an employee's Title

VII claim of sexual harassment.
Hopkins v. Baltimore Gas & Electric Co.
No. 95-1209 (4th Cir. 1995) 25 pps. **$35.00**

AB (Bruner for EEOC) In Support of Plaintiff-Appellant on Appeal from the D.C., N.D. Ill.
The district court improperly dismissed Plaintiff's same-gender sexual harassment claim because Title VII's prohibition of sex discrimination protects a male employee from sexual harassment by a supervisor of the same gender. The district court improperly dismissed Plaintiff's same-sex harassment claim under Federal Rule 12 (B)(6) because, if proven, the facts he allege would establish a Title VII violation.
Schoiber v. Emro Marketing Co.
No. 96-3696 (7th Cir. 1996) 18 pps. **$25.00**

AB (Bogas for EEOC) Writ of Certiorari to the Fifth Circuit, U.S Court of Appeals
The court of appeals erred in holding that Title VII "bars all same-sex sexual harassment claims". Title VII protects all employees from sex discrimination, without regard to the gender of the harasser or the victim.
Oncale v. Sundowner Offshore Services Incorporated, et al.
No. 96-568 (U.S. Supreme Ct. 1996) 31 pps. **$45.00**

AB (Harris for NELA) Writ of Certiorari to the Fifth Circuit, U.S Court of Appeals
The Court of Appeals erred in granting summary judgment on the issue of material fact of whether Joseph Oncale's harassers were motivated by his sex or gender, as opposed to a gender-neutral reason. The issue should have been submitted to a fact finder for resolution rather than decided by the district judge on a motion for summary judgment. This decision erroneously carved out an exception to Title VII and failed to acknowledge well-established principles of law, namely that individuals in majority groups can be victimized by discrimination and that members of one group can discriminate against others in the same groups. In addition, proof of same-sex sexual harassment can be made in three ways: sexual attraction, disparate treatment, and the sexual nature of the harassment.
Oncale v. Sundowner Offshore Services Incorporated, et al.
No. 96-568 (U.S. Supreme Ct. 1996) 30 pps. **$35.00**

AB (Bogas for EEOC) In Support of Petitioner on Writ of Certiorari to the U.S. Court of Appeals
Title VII's prohibition against sexual harassment that constitutes sex discrimination in the workplace protects all employees, regardless of the sex of the harasser or employee.
Oncale v. Sundowner Offshore Services
No. 96-568 (U.S. Supreme Ct. 1996) 12 pps. **$25.00**

AB (Clark for EEOC) In Support of Suggestion for Rehearing *En Banc*
Rehearing should be granted because Title VII's prohibition of sex discrimination protects employees from sexual harassment by supervisors and co-workers of the same sex.
Oncale v. Sundowner Offshore Service, Inc.
No. 95-30510 (5th Cir. 1996) 26 pps. **$35.00**

AB (Clark for EEOC) In Support of Plaintiff-Appellant
Title VII's prohibition of sex discrimination protects employees from sexual harassment by supervisors and co-workers of the same sex. This court should not and need not follow its earlier decisions in *Giddens* and *Garcia* that same gender sexual harassment is not actionable under Title VII because such decisions are dicta. Also, other circuits and districts have held such harassment actionable. The Commission's position is also that such harassment is actionable.
Oncale v. Sundowner Offshore Service, Inc.
No. 95-30510 (5th Cir. 1995) 25 pps. **$35.00**

AB (Auvil for WVELA) Brief in Support of Plaintiff
The West Virginia Human Rights Act recognizes a claim of same gender sexual harassment namely because there is no principled Supreme Court.
Willis, et al. v. Wal-Mart Stores, Inc.,
No. 24152 (W. Va. Supreme Ct. of Appeals) 9 pps. **$15.00**

AB (Zeigler for EEOC) In Support of the Plaintiff-Appellant
The district court erred in holding that same-sex hostile environment claims are not cognizable when the victim and the alleged harassers are heterosexual. Discrimination on the basis of sex includes discrimination on the basis of gender stereotypes.
Ward, III, v. Ridley School District
No. 96-2011 (3rd Cir. 1996) 20 pps. **$25.00**

AB (Coleman for EEOC) Appeal from D.C., M.D. Fl.
The district court deemed that plaintiff was alleging discrimination based upon sexual orientation, which is unactionable claim under Title VII; rather than his sex. Plaintiff contends the court must resolve whether Title VII protects male employees from gender-based harassment by male supervisors. Plaintiff cites that Title VII is gender neutral and that there is no evidence that the supervisor propositioned female employees and where he propositioned male employees regardless of their sexual orientation. Had plaintiff been of the opposite gender, plaintiff would have prevailed.
Fredette v. BVP Management Associates
No. 95-3242 (11th Cir. 1995) 38 pps. **$45.00**

AB (Gregory for EEOC) In Support of Plaintiff-Appellant
The fact that the employer decided to replace plaintiff with his "paramour" can be enough to establish a claim of quid pro quo discrimination and should at least not have been dismissed at the initial stage. Plaintiff stated a valid claim of quid pro quo discrimination that is supported by the Commission's sexual harassment guidelines and important policies underlying Title VII.
White v. Fowler
No. 95-4476 (11th Cir. 1995) 26 pps. **$35.00**

AB (Sacher for D.C. EEOC) In Opposition to Memo and Recommendations of Magistrate
Both men and women can be victims of sexual harassment. An individual may state a claim under Title VII by alleging that he was sexually harassed by his fellow maintenance crew members, all of whom were men.
Polly v. Houston Lighting & Power Co.
No. H-91-574 & H-91-739 (D.C., S.D. Tex. 1993) 11 pps. **$15.00**

AB (Coleman for EEOC) In Opposition to Defendants' Motion for Summary Judgment
Title VII protects male employees from gender-based harassment by male supervisors.
Waag v. Thomas Pontiac, Buick, GMC, Inc.
No. 3-95-538 (D.C., D. Minn. 1996) 12 pps. **$25.00**

TITLE VII - SEXUAL DISCRIMINATION - PREGNANCY

PB (Gregory for EEOC) Reply Brief On Appeal From D. C. New Mexico
The Commission met its prima facie burden of showing that the charging parties were qualified for modified duty and were capable of performing that work. The fact that employer made pregnant employees ineligible for modified duty does not prevent them from making out a prima facie case of discrimination under Title VII.

EEOC v. Horizon/CMS Healthcare Corp.
No. 98-2328 (10th Cir. 1999) 34pps. **$45.00**

PB (Gregory for EEOC) Brief Of The Equal Employment Opportunity Commission As Plaintiff-Appellant
The district court erred in finding that the EEOC did not make out a prima facie case when the evidence shows that the employertook pregnancy into account in denying modified-duty work to each of the claimants. The Commission showed that the claimants, who were pregnant, were denied modified-duty work made available to any group of non-pregnant employees. This evidence is enough to raise an inference of discrimination, thus requiring the employer to provide a legitimate explanation for its actions.
EEOC v. Horizon/CMS Healthcare Corp.
No. 98-2328 (10th Cir. 1999) 53pps. **$65.00**

PB (Goldstein for EEOC) Reply Brief on Appeal from D.C., E.D. Mich.
Defendant's explanation for placing pregnant employees on leave was pretextual, given the inconsistent treatment of non-pregnant employees. The EEOC presented evidence that the actions of an agent of the employer were motivated by her antipathy towards pregnancy related complaints.
EEOC v. Detroit-Macomb Hospital
Nos. 91-1088 & 91-1278 (6th Cir. 1991) 14 pps. **$25.00**

AB (Coleman for EEOC) In Support of Plaintiff's Motion for Reconsideration of Award of Partial Summary Judgment
Defendants asserting counterclaims in response to plaintiff's Title VII claim constitute impermissible retaliation under Section 704(a) of Title VII.
Gisch v. Extendacare Health Systems
No. 92-5861 (D.C., Dallas County, Tex., 192nd Judicial District 1994) 8 pps. **$10.00**

PB (Starr for EEOC) Appeal from D.C., N.D. Ill.
The district court erred as a matter of law in holding that the denial of certain leave options to pregnant teachers does not violate Title VII. The leave provisions violate Title VII because the teachers requesting leave for childbirth did not have the option of selecting sick leave and general leave of absence. The CBA is discriminatory on its face by providing that specific leave benefits be used exclusively by pregnant teachers.
EEOC v. Elgin Teachers Association
No. 93-3390 (7th Cir. 1993) 60 pps. **$65.00**
Also available: Plaintiff's Reply Brief on Appeal from D.C., N.D. Ill. 27 pps. **$35.00**

PB (Goldstein for EEOC) Appeal from D.C., E.D. Mich.
District court erred in (1) granting summary judgment for defendant when there was factual issue as to whether defendant violated Title VII by treating employees with medical restrictions related to pregnancy worse than employees with other medical restrictions and (2) awarding defendant attorney's fees when EEOC actions in pursuing case were not unreasonable or without foundation.
EEOC v. Detroit Macomb Hospital
Nos. 91-1088 & 91-1278 (7th Cir. 1991) 22 pps. **$35.00**

AB (Wheeler for EEOC) Writ of Certiorari to 7th Circuit
The only available defense to a sex-based, facially discriminatory employment policy is the statutory bona fide occupational qualification defense. The case should be remanded for further consideration in light of a clarified standard for evaluating the defense of a sex based fetal protection policy.
International Union v. Johnson Controls

No. 89-1215 (U.S. Supreme Ct. 1989) 43 pps. **$55.00**

AB (Collazo for EEOC) Appeal from D.C., E.D. Va.
The district court properly allocated the burden of proof and correctly concluded that plaintiff was discharged and was not rehired in violation of the Pregnancy Discrimination Act. Defendant's arguments regarding latches and failure to conciliate are frivolous. The district court abused its discretion in computing plaintiff's back pay award by basing it on erroneous views of plaintiff's past earnings.
EEOC v. Old Dominion Security Corp.
Nos. 86-2121 & 86-2156 (4th Cir. 1986) 61 pps. **$75.00**

PB (Hornberger) Trial Brief
Plaintiff was discharged while on pregnancy leave. Defendant failed to articulate any non-discriminatory reason for the discharge. Wagner v. Commonwealth of Kentucky
No. 89-100 (D.C., E.D.Ky. 1990) 9 pps. **$15.00**

PB (Hornberger) Post-Trial Brief
Plaintiff was fired while on pregnancy related leave, and all evidence indicates discriminatory animus. Employer gave inconsistent reasons for discharging plaintiff, failing to rebut evidence of discriminatory animus. The defendants, a supervisor employed by the Commonwealth of Kentucky and its Revenue Cabinet, the Commonwealth and the Revenue Cabinet are jointly and severally liable for the Title VII violation.
Wagner v. Commonwealth of Kentucky
No. 89-100 (D.C., E.D. Ky. 1991) 53 pps. **$75.00**

PB (Hornberger) Proposed Findings of Fact and Conclusions of Law, and Supplemental Response to Defendant's Motion for Summary Judgment
Plaintiff alleges a violation of 42 U.S.C. 1983, the Fourteenth Amendment to the U.S. Constitution, Title VII, 42 U.S.C. 2000e, tort of outrage, and intentional infliction of emotional distress. An employer that does not rehire an employee after returning from pregnancy leave must establish a legitimate business reason for the discharge.
Wagner v. Kentucky
No. 89-100 (D.C., E.D. Ky. 1990) 24 pps. **$35.00**

PB (Starr for EEOC) Appeal from D.C., W.D. Ok.
Employer violated Title VII and the Pregnancy Discrimination Act by treating pregnant women differently. Employer's policy of liberally granting schedule adjustments was discriminatorily applied when plaintiff was terminated for requesting a pregnancy-related schedule adjustment.
EEOC v. Ackerman, Hood & McQueen
No. 91-6116 (10th Cir. 1991) 40 pps. **$45.00**

PB (Brusoski for EEOC) Appeal from D.C., C.D. Cal.
The district court correctly entered summary judgment against defendant on the issue of liability for firing pregnant maids. The court correctly determined that defendant's practice of terminating pregnant maids, rather than allowing them to take leaves of absence, violated Title VII, as amended in 1978 by the Pregnancy Discrimination Act.
EEOC v. Hacienda Hotel
No. 88-5563 (9th Cir. 1988) 61 pps. **$75.00**

PB (Sloan for EEOC) Brief of Plaintiff-Appellee
The district court properly concluded that it could base a finding of discrimination on the *prima facie* case and proof

that the proffered reasons were unworthy of belief.
EEOC v. Yenkin-Majestic Paint Corp.
No. 94-4087 (6th Cir. 1995) 79 pps. **$80.00**

AB (Moran for EEOC) In Support of Plaintiff-Appellee
Title VII prohibits an employer from discriminating against a woman because she is contemplating having an abortion. The trial court correctly awarded compensatory and punitive damages.
Turic v. Holland Hospitality, Inc.
Nos. 94-1424 & 94-1467 (6th Cir. 1994) 26 pps. **$35.00**

TITLE VII - RELIGIOUS DISCRIMINATION

AB (Bernstein for EEOC) Appeal from D.C., C.D. Cal.
The Railway Labor Act, in providing for compulsory exclusive arbitration of "minor disputes" arising under a collective-bargaining agreement, do not deprive a railroad worker of his federal statutory right to seek judicial resolution of a claim of unlawful discrimination based on religious grounds under Title VII.
Felt v. Atchison, Topeka & Santa Fe Railway Co.
No. 93-56265 (9th Cir. 1993) 27 pps. **$35.00**

PB (Sloan for EEOC) Appeal of Summary Judgment by D.C., D. Ariz.
In granting summary judgment against an employee who refused to work on his Sabbath, the district court erroneously failed to (1) determine whether the employer offered the employee an accommodation, and (2) failed to find that there was no genuine dispute that the employer could not have accommodated the employee's religious beliefs without undue hardship.
EEOC v. Hanson-Loran Co.
No. 93-15058 (9th Cir. 1993) 45 pps. **$55.00**

PB (Sloan for EEOC) Reply Brief on Appeal of Summary Judgment by D.C., D. Ariz.
Defendant is not entitled to summary judgment where it refused to accommodate plaintiff's religious beliefs, but instead demanded that plaintiff attend a cleaning demonstration on plaintiff's sabbath. The EEOC presented evidence raising a factual dispute as to whether defendant would have suffered undue hardship in accommodating plaintiff's beliefs.
EEOC v. Hanson-Loran Co.
No. 93-15058 (9th Cir. 1993) 25 pps. **$35.00**

PB (Marcosson for EEOC) Appeal from D.C., N.D. Miss.
Employer failed to accommodate plaintiff's religious beliefs (inability to work on Sundays) because the proposed change (offering plaintiff work on an "on-call" basis did not preserve plaintiff's full-time employment status. Plaintiff was constructively discharged because the on-call work status presented an intolerable condition for a full-time employee. The district court erred in concluding that constructive discharge required a deliberate act making the working conditions intolerable.
EEOC v. J.C. Penney Co., Inc.
No. 90-1399 (5th Cir. 1990) 31 pps. **$45.00**

PB (Marcosson for EEOC) On Writ of Certiorari to 9th Circuit
Petitioner's policy of hiring only Protestant teachers completely barred respondent from competing for a vacant position as a substitute teacher. The appeals court reaffirmed the *Townley* approach to determine whether defendant's purpose and character are primarily religious. The court was correct in concluding that petitioner is a secular institution, not entitled to engage in religious discrimination as a "religious" institution under Section 702(a).

Kamehameha Schools/Bishop Estate v. EEOC
No. 93-171 (U.S. Supreme Ct. 1993) 18 pps. **$25.00**
Also available: Plaintiff's Brief on Appeal from D.C., N.D. Cal., making similar arguments. 40 pps. **$45.00**

AB (Coleman for EEOC) Appeal from D.C., M.D. Ga.
The district court erred in granting summary judgment to defendant because plaintiff set forth a prima facie case that she was discharged for discriminatory reasons not related to reduction in force. The evidence shows that defendant repeatedly told plaintiff that she did not fit in at the Bradley Center because she was a Jew; and as a woman, she might have to leave town if her husband relocated. This evidence, taken together with the fact that defendant did not follow its own reduction-in-force procedures, raises a genuine issue of pretextual nature.
Sigman v. The Bradley Center, Inc.
No. 92-9184 (11th Cir. 1993) 32 pps. **$45.00**

PB (Brusoski for EEOC) Appeal from D.C., C.D. Cal.
The court did not err in finding that defendant failed to reasonably accommodate plaintiff's religious practices, and that she was terminated for refusing to work on her Sabbath.
EEOC v. Hacienda Hotel
No. 88-5563 (9th Cir. 1988) 61 pps. **$75.00**

PB (Marcosson for EEOC) Appeal from D.C., E.D. Mich.
The union and the university did not offer an adequate accommodation under Title VII, if plaintiff's religious beliefs forbid association with the union.
EEOC v. University of Detroit
No. 89-1226 (6th Cir. 1989) 23 pps. **$35.00**

PB (Brusoski for EEOC) Appeal from D.C., S.D. Miss.
Summary judgment was inappropriate. Plaintiff's proposal was not a reasonable accommodation of religious beliefs, and there are disputed issues of fact as to whether the company could have accommodated plaintiff's religious needs without undue hardship.
EEOC v. Universal Manufacturing Corp.
No. 89-7097 (5th Cir. 1989) 29 pps. **$35.00**

AB (Butler for EEOC) Writ of Certiorari to 2nd Circuit
An employer reasonably accommodates religious beliefs within the meaning of Title VII by offering the employee a combination of paid and unpaid leave for mandatory religious observance, unless the employer's paid leave policy discriminates against religious activities.
Board of Education, et al. v. Philbrook, et al.
No. 85-495 (U.S. Supreme Ct. 1985) 36 pps. **$45.00**

PB (Adams for EEOC) Appeal from D.C., N.D. Ohio
Plaintiff fired for a "Sabbath problem" six days after submitting conciliatory request for religious accommodation, establishes *prima facie* case of religious discrimination.
EEOC v. Sterling Merchandise Co.
No. 87-3491 (6th Cir. 1987) 40 pps. **$45.00**

PB (Duplinsky for EEOC) Appeal from D.C., W.D. N.C.
Plaintiff does not need to compromise his own religious beliefs in order to have the employer accommodate them.
EEOC v. Ithaca Industries Inc.

No. 87-2526 (4th Cir. 1987) 16 pps. **$25.00**

PB (Duplinsky for EEOC) Reply Brief on Appeal from D.C., W.D. N.C.
An employer's duty to reasonably accommodate an employee's religious belief does not violate the First Amendment. Section 701(j) passes U.S. Supreme Court's three prong test of secular purpose, secular effect, and no excessive government entanglement.
EEOC v. Ithaca Industries Inc.
No. 87-2526 (4th Cir. 1987) 31 pps. **$45.00**

DB (Fried for Dept. of Justice) Writ of Certiorari to 4th Circuit
The court of appeals correctly concluded that petitioner failed to meet its obligation to reasonably accommodate employee's religious prohibition against Sunday work. The court found that petitioner did demonstrate an effort to accommodate all employees by accepting volunteers when Sunday work was assigned, but those accommodations were neither made for religious reasons nor were specifically aimed at addressing the employee's beliefs. The petition for writ of certiorari should be denied.
Ithaca Industries, Inc. v. EEOC
No. 88-197 (U.S. Supreme Ct. 1988) 15 pps. **$25.00**

AB (Sloan for EEOC) In Support of Plaintiff-Appellant
The trial court applied improper legal standards in finding that the defendant reasonably accommodated plaintiff's religious beliefs and in finding that any true accommodation would result in greater than *de minimis* cost to the city.
Beadle v. Tampa
No. 93-3271 (11th Cir. 1994) 42 pps. **$55.00**

PB (Coleman for EEOC) Appellant's Brief
The district court improperly assessed credibility and weighed evidence in finding that defendant offered plaintiff a reasonable accommodation of his religious conflict with the defendant's no beard rule. The court's finding that defendant reasonably accommodates non-management employees impermissibly tainted its erroneous finding that defendant accommodated the plaintiff. In light of uncontroverted evidence that defendant would not reasonably accommodate a person who wears a beard for religious reasons and who seeks a management job, the court erred in requiring plaintiff to produce a victim to establish a prima facie case of discrimination against people seeking management jobs.
EEOC v. United Parcel Service
No. 96-1258 (7th Cir. 1996) 24 pps. **$35.00**

PB (Coleman for EEOC) Reply Brief of Plaintiff-Appellant
Defendant misstated the summary judgment standard to apply in this case and the court erroneously weighed the evidence. The EEOC has not waived its right to challenge the court's reliance on an unsworn statement of defendant's attorney. The EEOC preserved its right on the record. Defendant offers no valid reason to prevent the EEOC from pursuing a claim regarding facially neutral grooming standards as possible religious discrimination.
EEOC v. United Parcel Service
No. 96-1258 (7th Cir. 1996) 10 pps. **$15.00**

PB (Bernstein for EEOC) Brief as Cross-Appellee and Reply Brief as Appellant
The *McDonnell Douglas* framework is not appropriate here because the trial court credited direct evidence of discriminatory intent after a full trial on the merits. Title VII's prohibition against religious discrimination protects plaintiff from hiring decisions based on her religious beliefs. The finding that plaintiff was qualified to be hired is amply supported by substantial evidence. There was no clear err in allowing another employee's testimony that she did not hire plaintiff

due to certain religious factors and this is direct evidence of unlawful religious discrimination. Because the district court based its denial of relief based solely on precedent that is now overruled, a remand is required.
EEOC v. Wiltel, Inc.
Nos. 94-5131, 94-5132, & 95-5065 (10th Cir. 1995) 46 pps. **$55.00**

PB (Bruner for EEOC) Brief of Plaintiff-Appellee
The district court properly found that the defendant failed to reasonably accommodate employees when a religious holiday was requested. Accommodating other employees has no bearing on whether its failure to accommodate the employees at issue was discriminatory.
EEOC v. Ilona of Hungary, Inc.
No. 95-2935 (7th Cir. 1995) 61 pps. **$75.00**

TITLE VII - NATIONAL ORIGIN DISCRIMINATION

AB (Stewart for EEOC) Amicus Brief in Support of Respondent
An employer's preference for members of a particular Tribe constitutes a form of discrimination on the basis of "national origin" within the meaning of Title VII of the Civil Rights Act of 1964. Such a preference is not justified by the Indian preference exemption to Title VII.
Salt River Project Agricultural Improvement and Power Dist. v. Dawavendewa
No. 98-1628 (U.S. Supreme Court. 2000) 19 pps. **$25.00**

AB (Gregory for EEOC) Brief *amicus curiae* on Appeal from D.C., D. Ariz.
The Navajo preference policy maintained by SRP discriminates on the basis of national origin. The Indian preference provision does not apply to preferences based on tribal affiliation. The Commission's 1988 policy statement continues to be a valid articulation of the meaning of Title VII's Indian preference provision.
Dawavendewa v. Salt River Project Agricultural Improvement and Power District
No. 97-15803 (9th Cir. 1997) 30 pps. **$35.00**

AB (Gregory for EEOC) In Support of Plaintiff-Appellant on Appeal from D.C., E.D. Pa.
The district court erred as a matter of law in its assessment of plaintiff's evidence of bias.
Gomez v. Medical College of Pennsylvania
No. 94-1899 (3d Cir. 1995) 31 pps. **$45.00**

AB (Gregory for EEOC) In Support of Appellant's Petition for Rehearing and Suggestion for Rehearing *En Banc*
District court committed legal error in its assessment of plaintiff's evidence of discriminatory bias when it determined that defendant's statement lacked probative value because reference was not made to the specific country of plaintiff's origin. Plaintiff contends that defendant's statement that plaintiff "... is a foreigner and both speaks it and looks it ...," demonstrates that defendant harbored bias against defendant. The court's holding could undermine the effective enforcement of Title VII.
Gomez v. Allegheny Health Services, Inc., et al.
No. 95-1899 (3rd Cir. 1995) 21 pps. **$35.00**

PB (Suhre for EEOC) Appeal from D.C., W.D. Ok.
The district court erred in concluding that the employer did not discriminate where the employer offered no credible nondiscriminatory explanation for firing a Hispanic for misconduct, while only temporarily demoting non-Hispanics. The court also erred in failing to recognize that the difference in severity of discipline raised an inference of discrimination, which was not rebutted by employer's proffered reasons. Because the court erred in applying the proper legal standards

to the facts, the appellate court must conduct a de novo review.
EEOC v. Flasher Co
No. 911-6279 (10th Cir. 1991) 71 pps. **$85.00**
Also available: Reply Brief on Appeal from D.C., W.D. Ok., making similar arguments. 21 pps. **$35.00**

AB (Goldstein for EEOC) Brief in Support of Judgment for Plaintiff by D.C., N.D. Cal.
Defendant's "English-only" policy has an adverse impact on its Hispanic employees because it prohibits them from speaking in their primary language.
Garcia v. Spun Steak Company
No. 91-16733 (9th Cir. 1992) 36 pps. **$45.00**
Also available: Petition for Rehearing with Suggestion for Rehearing En Banc, making similar arguments. 20 pps. **$25.00**
Amicus Brief In Support of Petitioner, making similar arguments. 20 pps. **$25.00**

PB (Bruner for EEOC) Appeal from D.C., E.D. Tenn.
The district court abused its discretion by awarding attorney's fees to defendant. The EEOC claim was neither groundless nor unreasonable. Plaintiff was a member of a protected class, met his employer's employment expectations, but was discharged for not completing the I-9 form, while others in the same race and national origin were not terminated. The order for attorney's fees should be reversed.
EEOC v. Shoney's, Inc.
No. 93-5583 (6th Cir. 1993) 46 pps. **$55.00**

AB (Mastroianni for EEOC) Appeal from D.C., D. Haw.
Public hostility or bias against individuals of foreign national origin is not a legitimate reason under Title VII for rejecting an otherwise qualified applicant. The district court did not recognize that bias to foreign accent during the hiring process must be closely scrutinized under Title VII. Although it acknowledged that cultural bias can result in a breakdown of communication, it failed to make any finding as to whether or not the alleged communication problems resulted from the bias of plaintiff's non-Filipino interviewers.
Fragante v. City and County of Honolulu
No. 87-2921 (9th Cir. 1988) 19 pps. **$25.00**

PB (Rees for EEOC) Appeal from D.C., S.D. N.Y.
The EEOC has the subpoena power to require an employer, charged with race and national origin discrimination, to produce copies of unsuccessful employment applications. The EEOC did not violate Title VII's non-disclosure provisions when it used the employer's name in the questionnaire to the employer's unsuccessful applicants.
EEOC v. Macy's Kings Plaza
No. 87-6136 (2nd Cir. 1987) 34 pps. **$45.00**
Also available: Plaintiff's Reply Brief (Reams for EEOC), making similar arguments. 10 pps. **$15.00**

PB (Smith) Appeal from D.C., S.D. N.Y.
The U.S. Supreme Court's *Sure-Tan* decision mandates reversal of decision against undocumented workers' backpay claims, which were denied purely on their immigration status.
Rios et al. and EEOC v. Enterprise Association Steamfitters' Local Union 638 of U.A. et al.
Nos. 87-6043 & 6045 (2nd Cir. 1987) 33 pps. **$45.00**

AB (Silver for EEOC) Writ of Certiorari to 3rd Circuit
Under Article VIII of the Treaty of Friendship, Commerce, and Navigation with Korea, Title VII can proscribe intentional

discrimination based on race by a Korean company, but can not proscribe citizenship discrimination. Article VIII overrides Title VII when Article VIII proscribes personnel decisions based on citizenship solely due to a disparate impact on a particular racial group. Article VIII of the Treaty of Friendship Commerce and Navigation permits a Korean company to discriminate on the basis of citizenship. However, when citizenship is not an issue, Article VIII does not shelter foreign companies in the U.S. from Title VII, the ADEA, or other laws impacting personnel decisions.
Korean Air Lines v. MacNamara
Nos. 88-1449 & 88-1551 (U.S. Supreme Ct. 1989) 25 pps. **$35.00**

AB (Marcosson for D.C. EEOC) Appeal from D.C., N.D. Cal.
The 1991 U.S. - Philippines Air Transport Agreement does not permit defendant to violate Title VII and other fair employment practice laws by discriminating against non-Filipinos in its U.S. operations.
Lemnitzer v. Philippine Airlines
No. 92-17073 (9th Cir. 1993) 17 pps. **$25.00**

PB (Ramshaw for EEOC) Brief as Appellant
The defendant's English-only rule has a disparate impact on defendant's Hispanic employees based on their national origin. The district court abused its discretion in awarding attorney's fees to the defendant because its conclusion that the claim was frivolous can not withstand scrutiny.
EEOC v. Wynell, Inc.
Nos. 95-20419 & 95-20523 (5th Cir. 1995) 36 pps. **$45.00**

PB (Ramshaw for EEOC) Reply Brief of Plaintiff-Appellant
The Commission's claims are not frivolous. The defendant's English-only rule has a disparate impact on defendant's Hispanic employees based on their national origin.
EEOC v. Wynell, Inc.
Nos. 95-20419 & 95-20523 (5th Cir. 1995) 18 pps. **$25.00**

TITLE VII - EMPLOYER DEFENSES

AB (Carter for EEOC) In Support of Plaintiff-Appellee
An employer may not establish the "good faith" defense to punitive damages solely by arguing that it had an anti-discrimination policy in effect at the time of the discrimination. Employers seeking to rely on the good faith defense to punitive damages must demonstrate not only that they adopted anti-discrimination policies, but also that they made a good faith effort to educate themselves and their personnel on the requirements of the law, and to detect and deter discrimination in the workplace. Therefore, the jury reasonably concluded that United discriminated against Plaintiff with the state of mind required for punitive damages.
Gile v. United Airlines, Inc.
No. 99-2509 (7th Cir. 1999) 21 pps. **$35.00**

AB (Danis for EEOC) In Support of Plaintiff-Appellee
Defendant was not entitled to judgment as a matter of law on liability because there was ample evidence that its policy against sexual harassment was not enforced and therefore failed to meet the *Faragher* standard. The evidence supports the jury's award of punitive damages under the *Kolstad* standard. The *Kolstad* standard has no applicability where liability for punitive damages is established directly by showing that the employer ratified its employee's conduct or negligently retained an employee with knowledge of his propensity to engage in sexual harassment. A new trial is not required here because *Kolstad* did not materially change existing Tenth Circuit law.
Cadena v. The Pacesetter Corp.
Nos. 99-3047 & 99-3166 (10th Cir. 1999) 38 pps. **$45.00** Addendum 48 pps. **$55.00**

AB (Carter for EEOC) On Appeal From the United States District Court for the Southern District of Georgia
The district court erred when it held that, although plaintiff complained to her supervisor that she was being harassed by her co-workers because of her sex and disability, defendant did not receive actual notice of the harassment. The district court erred in concluding that defendant did not receive constructive notice that plaintiff was being harassed by her co-workers because of her sex and disability.
Breda v. Wolf Camera, Inc.
No. 99-12410-G (11th Cir. 1999) 28 pps. **$35.00**

AB (Goldstein for EEOC) Brief *amicus curiae* on Appeal from D.C., E.D. Penn.
An individual who executes a waiver of federal statutory claims need not tender back consideration received in order to bring suit and challenge the waiver's validity. Under Supreme Court and Third Circuit precedent, the ratification doctrine should not be applied to ratify an arguably invalid waiver. The doctrine is inconsistent with Title VII; the statute does not permit a prospective waiver of rights.
Jordan v. Smithkline Beecham, Inc.
No. 97-1273 (3rd Cir. 1997) 22 pps. **$35.00**

AB (Bogas for NELA) Appeal from D.C., S.D. N.Y.
The district court erred by finding that Sears had established a "same decision" defense without first requiring Sears to show that plaintiff's performance would have been unacceptable even had she been given the opportunity to improve as required by the Sears personnel manual. The district court also erred in holding that Sears had established a "same decision" defense, where it found that Sears would have discharged plaintiff for legitimate reasons, but accelerated that discharge when it learned that plaintiff had filed a charge with the EEOC.
Cosgrove v. Sears, Roebuck & Co.
No. 92-7197 (2nd Cir. 1992) 22 pps. **$35.00**

PB (Sloan for EEOC) Appeal from D.C., E.D. Pa.
The district court erred in granting summary judgment to defendant. Defendant did not articulate a legitimate non-discriminatory reason for treating female and male employees differently. The court incorrectly required the EEOC to prove pretext on a summary judgment motion, erred in requiring plaintiff to prove pretext on a summary judgment motion, and inappropriately resolved material issues of fact.
EEOC v. Brown Printing Co.
No. 89-1780 (3rd Cir. 1989) 38 pps. **$45.00**

AB (Wheeler for EEOC) Writ of Certiorari to 7th Circuit
The only available defense to a sex-based, facially discriminatory employment policy is the statutory bona fide occupational qualification defense. The case should be remanded for further consideration in light of a clarified standard for evaluating the defense of a sex based fetal protection policy.
International Union v. Johnson Controls
No. 89-1215 (U.S. Supreme Ct. 1989) 43 pps. **$55.00**

AB (Franklin for EEOC) Appeal of Dismissal by D.C., S.D. Ohio
A collective bargaining agreement which allows employers to request certain union members by name, irrespective of seniority, is not a bona fide seniority system exempt from Title VII coverage. A conciliation agreement entered into by the EEOC and an association of employers, which required 20 percent of union members employers requested by name to be minorities, did not require the use of name requests and does not insulate the union from Title VII liability.

Rosser v. Pipefitters, Local 392
No. 92-3016 (6th Cir. 1992) 24 pps. **$35.00**

PB (Mastroianni for EEOC) Reply Brief on Appeal from D.C., E.D. Mich.
The district court erred as a matter of law in holding that the EEOC could not use the disparate impact theory to prove that the "head of household" rule violates Title VII. Since the alleged discrimination created by the "head of household" rule goes to compensation. Further, the "head of household" rule is neither immunized as a "factor other than sex" nor justified as a business necessity.
EEOC v. J.C. Penney Co., Inc.
No. 86-1139 (6th Cir. 1986) 27 pps. **$35.00**

PB (Mastroianni for EEOC) Petition for Rehearing with Suggestion for Rehearing En Banc on Appeal from D.C., E.D. Mich.
Defendants' rule which permits only those employees who contribute more than 50% of family earnings to obtain spousal health insurance coverage, is not an authorized "factor other than sex" under the Bennett Amendment to Title VII.
EEOC v. J.C. Penney Co., Inc.
No. 86-1139 (6th Cir. 1988) 15 pps. **$25.00**

AB (Gregory for EEOC) In Support of Plaintiff-Appellant
The personal staff exemption of Title VII was intended to be applied narrowly and not to cover the vast majority of state and local government employees.
Cromer v. Brown
No. 94-1403 (4th Cir. 1994) 25 pps. **$35.00**

PB (Starr for EEOC) Plaintiff-Appellee's Brief
A nonprofit, noncommercial entity which regularly transacts business with other entities is an "industry affecting commerce" and therefore must abide by Title VII's provisions. Application of Title VII and its regulatory requirements to defendant does not impinge on the legitimate associational or privacy rights of its members.
EEOC v. Association of Community Organizations for Reform Now
No. 95-30347 (5th Cir. 1995) 46 pps. **$55.00**

AB (Fletcher for Amalgamated Transit Union, Local 587) In Support of Motion for Reconsideration
The trial court improperly equates BFOQ with the business necessity defense.
Kastanis v. Educational Employees Credit Union
No. 59443-1 (Wash. Supreme Ct. 1993) 7 pps. **$15.00**

AB (Moran for EEOC) In Support of Plaintiff-Appellant
An employer is liable under Title VII when a supervisor uses his authority to take a racially discriminatory employment action regardless of whether the employer condoned or even knew of the action.
Nelson v. Watergate at Landmark
No. 95-2818 (4th Cir. 1996) 22 pps. **$35.00**

AB (Clark for EEOC) In Support of Plaintiff-Appellant
The district court should have reached plaintiff's quid pro quo sexual harassment claim even if plaintiff did not specifically identify it as such in her complaint. The district court erred in finding that an employer is not liable for hostile work environment harassment when a supervisor uses his authority to harass a subordinate simply because the employer has a policy forbidding sexual harassment.

Ellerth v. Burlington Industries, Inc.
No. 96-1361 (7th Cir. 1996) 24 pps. **$35.00**

PB (Fischer) Opposition to Summary Judgment
Summary judgment should not be entered because defendant knew or should have known of the harassment due to the constant stream of sexual harassment and the knowledge of other management level employees. There was also inadequate remedial action taken by management and there was possible quid pro quo liability as the harasser used actual or apparent authority to further the harassment. There was also continued sexual harassment by other employees upon the main harasser's termination, and plaintiff was effectively discharged by the harassment. Finally, there was enough evidence to get an intentional infliction of emotional distress issue to trial.
Sheffield v. Autozone, Inc.
No. 9:95-CV-65 (D.C., E.D. Tex. 1996) 20 pps. **$25.00**

AB (Penner for EEOC) In Support of Plaintiff-Appellant
The district court erred in granting summary judgment for defendants when it found that the material facts regarding plaintiff's status as an employee were undisputed. Such a decision may allow employers to avoid their Title VII responsibilities by mislabeling employees as contractors when in fact there is a material factual dispute about their status.
Cilecek v. Inova Health System Services
No. 96-1317 (4th Cir. 1996) 27 pps. **$35.00**

AB (Sloan for EEOC) In Support of Plaintiff-Appellant
An employer is directly liable for sexual harassment under Title VII when a supervisor uses or is aided by his authority in harassing a subordinate. Even if a supervisor did not use his delegated authority to harass a subordinate, his employer may still be liable for his conduct if it knew that he had previously harassed another employee and had failed to prevent a recurrence.
Indest v. Freeman Decorating
No. 96-30212 (5th Cir. 1996) 24 pps. **$35.00**

PB (Bruner for EEOC) Brief as Appellant
The district court properly placed the burden of proof on defendant to prove it is exempt from Title VII coverage, but erred in concluding it is a private membership club. The defendant did not meet its burden of proving that it has meaningfully selective membership practices or standards.
EEOC v. The Chicago Club
No. 95-2323 (7th Cir. 1995) 94 pps. **$105.00**

PB (Bruner for EEOC) Reply Brief as Appellant
The defendant bears the burden of proof to prove it is exempt from Title VII coverage. The associational interests of a club are significant to the determination of whether it is private and genuinely selective. Substantial evidence shows the club is not private. The defendant also does not have meaningfully selective membership.
EEOC v. The Chicago Club
No. 95-2323 (7th Cir. 1995) 27 pps. **$35.00**

AB (Coleman for EEOC) In Support of Plaintiff-Appellant
The district court did not apply the correct standard when plaintiff's supervisor sexually harassed her and plaintiff sought to hold her employer liable. The employer is liable for quid pro quo harassment whenever a supervisor threatens adverse employment action for failure to comply with sexual demands, regardless of whether the threat is carried out. Agency principles also render an employer liable whenever a supervisor uses his delegated authority to

facilitate the creation of a hostile work environment.
Jansen v. Packaging Corp. of America
No. 95-3128 (7th Cir. 1995) 24 pps. **$35.00**

PB (Schnapper) Petition for a Writ of Certiorari to the 6th Circuit
It is important for the Court to decide whether a "strong inference" of non-discrimination in employment necessarily arises as a matter of law whenever a defendant employer establishes that the official alleged to have discriminated against the plaintiff was the same official who originally hired the plaintiff. Petitioner claims that such a strong presumption conflicts with other circuits and decisions of this court and is an important issue of substantial importance to the enforceability of federal anti-discrimination laws.
Buhrmaster v. Overnite Transportation Co.
No. 95- (U.S. Supreme Ct. 1995) 31 pps. **$45.00**

TITLE VII - REMEDIES

AB (Jones for NELA) In Support Of Plaintiff-Appellee-Cross-Appellant
Two U.S. Supreme Court cases, *Burlington Industries, Inc. v. Ellerth*, 118 S.Ct. 2257 (1998) and *Faragher v. City of Boca Raton*, 524 U.S. 775, 118 S.Ct. 2275 (1998), also apply to non-harassment cases. Employers are vicariously liable for punitive damages for tangible employment decisions undertaken by supervisors with the requisite intent. The common law of agency supports application of the *Faragher-Ellerth* standard to punitive damages. The imposition of vicarious liability is necessary to further the deterrent effect of the Civil Rights Act of 1991. The imposition of punitive damages under section 1981a is not limited to only "the most reprehensible and egregious conduct."
Deffenbaugh-Williams v. Wal-Mart Stores, Inc.
No. 97-10685 (5th Cir. 1999) 26pps. **$35.00**

DB (Franklin) Appellant's Opening Brief
A retaliation plaintiff must show an adverse employment decision occurred. To satisfy this element, a retaliation plaintiff must show a significant or tangible detriment of some kind. When the verdict is so great as to require a finding of passion or prejudice, *remittitur* is not sufficient, and a new trial is required because the prejudice might have affected the verdict as to liability as well. To be entitled to punitive damages, a plaintiff must show an evil motive on the part of defendant, and a deliberate disregard for plaintiff's federally-protected right against discrimination. The district court erred as a matter of law in awarding attorney's fees and expenses for distinct claims on which the plaintiff did not prevail. Washington law apportions attorney's fees between successful and unsuccessful employment claims. Here, plaintiff only prevailed on one of six of her claims. Her fees should be adjusted accordingly.
Passantino v. Johnson & Johnson Consumer Prod., Inc.
Nos. 97-36191, 98-35036 (9th Cir., 1998) 89pps. **$90.00**
Also available: Brief Of Amicus Curiae, Chamber Of Commerce Of The United States, In Support Of Appellant, making similar arguments on Damages. 84pps. **$90.00**
Also available: Brief Amicus Curiae Of The Equal Employment Advisory Council In Support Of Defendant-Appellant, making similar arguments on Requirement Of Retaliation For a Claim Of Retaliation Under Title VII.. 27pps. **$35.00**

AB (Bien for U.S. Chamber of Commerce) Brief Of *Amicus Curiae*, Chamber Of Commerce Of The United States, In Support Of Appellant
In response to many concerns about damage remedies authorized by civil rights awards, Congress and the Washington State Legislature intended damage awards to be small and closely monitored by the courts to that end. The EEOC followed Congress's lead by adopting strict requirements of proof of actual injury. The district court abused its discretion when it adopted an "excessive" lax review of the evidence. It was further error for the district court to allocate every compensatory award to plaintiff's retaliation claim and leave nothing to be capped under the federal law but the punitive damages award. This is error because if federal caps could be evaded by simple expedient of allocating

compensatory awards to state law claims, the federal caps would effectively disappear as meaningful limits on monetary relief under Title VII.

Passantino, et al. v. Johnson & Johnson Consumer Products, Inc.

Nos. 97-36191, 98-35036 (9th Cir. 1998) 75pps. **$85.00**

Also available: Brief Amicus Curiae Of The Equal Employment Advisory Council In Support Of Defendant-Appellant ,making similar arguments on Requirement Of Retaliation For a Claim Of Retaliation Under Title VII. 27pps. **$35.00**

Also available: Appellant's Opening Brief, making similar arguments. 89pps. **$90.00**

AB (Friedman for EEOC) Appeal From D. C. For The District Of Columbia

The district court correctly determined that the EEOC's issuance of a right to sue notice prior to the expiration of the statutory 180-day period did not deprive the court of subject matter jurisdiction. Nothing in the plain meaning of 42 U.S.C. § 2000e-5(f)(1) prevents the issuance of a right to sue notice prior to the expiration of 180 days. The 1991 amendments to Title VII define the term "compensatory damages" to exclude any type of relief previously authorized under Title VII. Prior to the amendments, Title VII authorized equitable relief that the court deemed appropriate. The district court erred in applying the statutory damages cap to the award of front pay. The majority of the circuits deem front pay an equitable remedy to be awarded in place of reinstatement where reinstatement would be inappropriate, as is the case here. Thus front pay is excluded from operation of the damages cap.

Martini v. Federal Nat'l Mortgage Ass'n

No. 98-7068 & 98-7081 (District of Columbia, 1998) 31pps. **$45.00**

AB (Gregory) In Support Of Plaintiff's Suggestion For Rehearing *En Banc*

Rehearing should be granted first because the panel's decision conflicts with over two decades of this Court's class action case law. The application of Rule 23(b)(2) to Title VII actions has been recognized by this Court in numerous cases. Cases where the Title VII class seeks monetary damages, compensatory and punitive damages. Secondly, the panel's decision eliminates Title VII class actions in cases of intentional discrimination. The panel's decision conflicts with the intent of Congress in the Civil Rights Act of 1991. It should be vacated and a rehearing should be granted.

Allison v. Citgo Petroleum Corp.

No. 96-30489 (5th Cir. 1998) 20pps. **$25.00**

PB (Carter for EEOC) On Appeal From D.C., S. D. Indiana

This Court should affirm the district court's decision to enter judgment in favor of the EEOC pursuant to the jury's award of compensatory and punitive damages to the two plaintiffs. The record is replete with evidence that supports each of the jury's awards. Defendant's claim that punitive awards were excessive should be rejected as pursuant to the structure and legislative history of 42 U.S.C. § 1981a, as plaintiffs do not need to demonstrate that their case is "egregious" in order to receive an award at the statutory cap for compensatory and punitive damages. This Court should reverse the district court's decision not to enter judgment on the jury's award in punitive damages to one of the plaintiffs because the jury did not also award her compensatory damages. This Court has already held that an award of punitive damages is not predicated on an accompanying award of compensatory damages.

EEOC v. Indiana Bell Tel. Co., Inc., et al.

No. 98-2182 & 98-2183 (7th Cir. 1998) 63pps. **$75.00**

AB (Gregory for EEOC) Appeal From The Circuit Court Of Milwaukee County

The trial court properly set aside the award of punitive damages against defendant Best. Employees should not be chilled from exercising their protected right to complain of discriminatory treatment. Complaints of discriminatory treatment are subject to well-recognized privileges that limit the ability of a plaintiff to recover on state law of tortious misconduct. Public policy militates against the award of punitive damages and the trial court's decision to set aside these damages should be affirmed.

Mackenzie v. Miller Brewing Co., Robert Smith & Patricia Best

No. 97-3542 (Dist. 1 Wis. 1998) 25pps. **$35.00**

PB (Waxman for EEOC) In Support Of Petitioner On Writ Of Certiorari From 7th Circuit
The EEOC has the authority to provide all "appropriate remedies" such as compensatory damages, to federal employees claiming employment discrimination in violation of Title VII. This is supported by the text of statutory provisions, the legislative history and congressional intent. The EEOC has itself recognized since 1992 that compensatory damages are available in the administrative process. Otherwise a federal employee would have to go to court to obtain compensatory damages even if he fully prevailed in the administrative process. Such a finding imposes burdens on federal employees, federal agencies, and the federal courts that Congress could not have intended. The court of appeal's reasons for concluding that the EEOC has no authority to award compensatory damages in administrative proceedings are unpersuasive and should be reversed.
Togo D. West, Jr., Secretary, Dept of Veterans Affairs v. Gibson
No. 98-238 (U.S. Supreme Ct. 1998) 42pps. **$55.00**

AB (Passman for NELA) Brief *Amicus Curiae* In Support Of Petitioner On Writ Of Certiorari From 7th Circuit
This Court should reject the Seventh Circuit Court of Appeals permitting compensatory damages only after a jury trial because that would prohibit the EEOC from continuing to award such damages and it would not be in accord with the remedial purpose Congress intended. The Seventh Circuit's decision is also contrary to Congress' broad delegation of authority to the EEOC to administer the statute and to award "appropriate remedies" to federal employees complaining of discrimination. However, the Court of Appeals was correct in finding that there is no need to exhaust administrative remedies conceding relief requested in order to receive compensatory damages in court.
Togo D. West, Jr., Secretary, Dept. of Veterans Affairs v. Gibson
No. 98-238 (U.S. Supreme Ct. 1998) 24pps. **$35.00**

PB (Gregory for EEOC) Proof Brief As Plaintiff-Appellee On Appeal From D.C., N.D. Ohio
When the EEOC moved to certify a class of contractors, the court denied the motion but ruled that the contractors could be joined as parties-defendants pursuant to FRCP 19(a) and 21. This brief maintains that there are no due process concerns raised by the joinder of third party defendants where they were joined to ensure that complete relief in a Title VII case could be awarded to plaintiffs on a prospective basis. The district court did not abuse its discretion in holding that joinder was proper under FRCP 19(a) and that contractors employing members of Local 120 would be subject to the same referral and reporting rules as Local 120. "Innocent" third parties can be required to share the burden of remedying the effects of illegal discrimination.
EEOC v. United Assoc. of Journeymen and Apprentices of the Plumbing and Pipefitters Industry, Local 120
Nos. 98-3987, 98-3988 (6th Cir. 1999) 2pps. **$35.00**

AB (Bruner for EEOC) Brief in Support of Plaintiff-Appellant on Appeal from the D.C., W.D. La.
A plaintiff who has met the statutory standard for the award of punitive damages under Title VII by showing that the defendant acted with reckless disregard for her rights under Title VII is entitled to punitive damages even if she has not been awarded compensatory damages.
Reed v. Lifecare Hospitals Inc.
No 98-30012 (5th Cir. 1998) 22 pps. **$35.00**

PB (Renner & Hamilton) Brief of Appellee on Appeal from the D.C., N.D. Ind.
It is feasible and appropriate for a jury in a Title VII case to award damages for lost earning capacity while, at the same time, the court exercises its powers of equity to grant short term future and specific relief in the form of front pay.
Williams v. Pharmacia, Inc., et al.
No. 96-4221 (7th Cir. 1996) 52 pps. **$65.00**

AB (Goldstein for EEOC) Appeal from D.C., D.S.C.
Evidence that an employer's explanation of discrimination is false, combined with evidence of a *prima facie* case, is sufficient to place the ultimate question of discrimination before a fact finder.
Moore v. J.P. Stevens & Co., Inc.
No. 97-1278 (4th Cir. 1997) 20 pps. **$25.00**

PB (Bruner for EEOC) Brief in Support of Petition for Rehearing on Appeal from the D.C., N.D. Ill.
Review of a district court's factual determination that a victim of discrimination mitigated her damages for back pay purposes if for clear error and there can never be clear error where there are two plausible views of the evidence and the district court has chosen one of them. The panel majority's reversal of back pay award should be set aside because the panel majority improperly weighted the evidence and inappropriately substituted its judgment for that of the district court when it decided that the defendant was not entitled to back pay because she quit before her employment was terminated
EEOC v. Ilona of Hungary, Inc.
No. 95-2935 (7th Cir. 1995) 81 pps. **$90.00**

AB (Gregory for EEOC) In Opposition to Plaintiff's Motion for Preliminary Injunction
This case raises important issues concerning the mandatory arbitration of Title VII claims. The ultimate issue is whether the arbitration agreements at issue are enforceable under federal law. This brief advances that the agreements are 1) unenforceable because they are excluded from the terms of the FAA, 2) the agreements are unenforceable because there are strong indications that Phillips did not knowingly enter into the agreements and 3) the agreements achieve an impermissible prospective waiver of the remedial protections of Title VII.
Hooters v. Phillips
No. 4:96-3360-22 (D.C., D.S.C.) 34 pps. **$45.00**

PB (Rubin) On Writ of Certiorari to the United States Court of Appeals for the 3rd Circuit
Taxman had no more that a fifty percent chance of keeping her job so she is entitled to no more than that percentage of her lost wages, since a full back pay award would bestow an undeserved windfall.
Piscataway v. Taxman
No. 96-679 (3rd Cir. 1996) 41 pps. **$45.00**

PB (Owsley for EEOC) Reply Brief of EEOC as Cross-Appellant on Appeal from D.C., D.N.M.
Punitive damages may be warranted by reckless or callous disregard for plaintiff's rights as well as intentional violations of federal law. Defendant's failure to take effective remedial action in response to sexual harassment was sufficiently reckless and indifferent. Defendant's argument, that punitive damages are unwarranted as a matter of law, fails because it misstates the standard as malicious, willful and in gross disregard of plaintiff's rights. Defendant's argument that its managers did not set corporate policy also misses the point that the company's failure to act was reckless or indifferent.
EEOC v. Wal-Mart Stores, Inc.
No. 97-2229 & 97-2252 (10th Cir. 1998) 45 pps. **$55.00**

PB (Gregory for EEOC) Brief for EEOC as Plaintiff-Appellant on Appeal from D.C., D. Ariz.
The district court erred in refusing to submit the issue of punitive damages to the jury. The Commission was not required to meet some higher standard of proof to have its claim for punitive damages submitted to the jury. The Commission presented sufficient evidence to have the issue of punitive damages submitted to the jury. The Commission is entitled to a new trial on the issue of punitive damages.
EEOC v. Wal-Mart Stores, Inc.
Nos. 97-16108 & 97-16602 (9th Cir. 1998) 36 pps. **$45.00**

PB (Suhre for EEOC) Brief for Appellant on Appeal from D.C., S.D. N.Y.
Because the Commission proved that JAC's requirement that applicants to its apprenticeship program have a high school diploma or GED violated Title VII, the Commission was entitled to an injunction prohibiting JAC from using that requirement. The district court erred by denying back pay to claimants who incurred economic injury as a result of JAC's practice of requiring applicants to its apprenticeship programs to be less than 22 years of age.
EEOC v. Joint Apprenticeship Committee of the Joint Industry Board of the Electrical Industry
Nos. 97-6193(L) & 97-6203(XAP) (2nd Cir. 1997) 42 pps. **$55.00**

AB (Finberg for NELA) Brief *amicus curiae* in support of Appellants on Appeal from D.C., W.D. La.
The panel improperly affirmed denial of certification under Federal Rule of Civil Procedure 23(b)(2). The Supreme Court, in *Amchem*, and Fifth Circuit precedent allow certification of discrimination cases which involve damages as well as injunctive relief under Title VII and § 1981. The purpose of the Civil Rights Act of 1991 was to enhance remedies for victims of discrimination, not to restrict procedural rights. The panel failed to consider whether class members area able to prosecute cases on an individual basis and overturned years of well-established case law permitting bifurcation of employment discrimination class actions. The panel's holding that resolution of disparate impact claims requires jury findings is without precedent and contrary to existing law.
Allison, et al. v. Citgo Petroleum Corp.
No. 96-30489 (5th Cir. 1998) 22 pps. **$35.00**

PB (Kamp for EEOC) Appeal from D.C., N.D. Ill.
The trial court's award of post-judgment interest on back pay award was mandated by 28 U.S.C. §1961 because back pay awards are money judgments.
EEOC v. Gurnee Inn Corp.
No. 91-1377 (7th Cir. 1991) 25 pps. **$35.00**

PB (Goodman for D.C. EEOC) Appeal from D.C., E.D. N.C.
The district court properly excluded evidence of the employee's prior convictions for writing bad checks where the employer failed to preserve the issue for appeal, and where the exclusion was harmless error. The district court properly awarded relief for the entire back pay period of almost three years from suspension to trial where the employer did not object to the award, where it offered no evidence to satisfy its burden of proving the employee's failure to mitigate, and where the evidence adduced supported a determination that the employee made diligent efforts to find work.
EEOC v. Pizza Hut of Roanoke Rapids, Inc.
No. 92-2083 (4th Cir. 1992) 35 pps. **$45.00**

AB (Fitzpatrick for NELA) Writ of Certiorari to 6th Circuit
Awards and settlements received in statutory employment discrimination cases should be excluded from gross income as damages received on account of personal injuries.
U.S. v. Burke
No. 91-42 (U.S. Supreme Ct. 1991) 40 pps. **$45.00**

AB (Zaleznick for AARP) Writ of Certiorari to 6th Circuit
Title VII damages should be excluded from gross income under I.R.S. regulations as damages received for personal injuries.
U.S. v. Burke
No. 91-42 (U.S. Supreme Ct. 1991) 19 pps. **$25.00**

AB (Posner for CELA) Appeal from California Court of Appeal, 2nd Appellate District

The court was correct in holding that in sex discrimination cases the plaintiff should be allowed to plea any applicable theory of recovery based on the facts arising out of the employment. Employment cases can not easily be classified; therefore a plaintiff should not have to choose between a statutory or a common law remedy. To do so may deprive a plaintiff of just recovery.
Rojo v. Kliger
No. B031801 (Cal. Supreme Ct. 1989) 17 pps. **$25.00**

AB (Collazo for EEOC) Appeal from D.C., E.D. Va.
District court properly allocated burden of proof and correctly concluded that employer discharged and refused to rehire plaintiff in violation of the Pregnancy Discrimination Act. The employer's arguments regarding latches and failure to conciliate are not properly before the court and are frivolous, and the district court abused its discretion in computing plaintiff's back pay award by basing it on erroneous view of plaintiff's past earnings.
EEOC v. Old Dominion Security Corp.
Nos. 86-2121 86-2156 (4th Cir. 1986) 62 pps. **$75.00**

AB (Bogas for EEOC) Appeal from D.C., E.D. Ky.
Because plaintiff had proven consistent past discriminatory conduct and because the conduct had not ceased, injunctive relief is mandatory and the district court's denial of such relief was an abuse of discretion. The district court's denial of injunctive relief was based on its legally erroneous assumptions that remedial measures taken after a charge is filed provide adequate assurance that discrimination will not recur, and that racial harassment is not intentional discrimination.

Prentice v. American Standard, Inc.
No. 91-6126/27 (6th Cir. 1991) 28 pps. **$35.00**

PB (Brusoski for EEOC) Appeal from D.C., C.D. Cal.
The district court correctly ruled that, undocumented workers who suffered sexual, pregnancy, and religious discrimination prohibited by Title VII, may recover back pay. The district court did not err in finding that plaintiffs properly mitigated their damages by looking for work upon their discharge.
EEOC v. Hacienda Hotel
No. 88-5563 (9th Cir. 1988) 61 pps. **$75.00**

PB (White for EEOC) Reply Brief on Appeal from D.C., W.D. Mo.
The district court erred in tolling plaintiff's back pay because the tolling of back pay is only proper when an individual unjustifiably quits a subsequent job, and plaintiff quit her subsequent job to care for her young daughter.
EEOC v. Delight Wholesale Company
No. 91-3661/3786 (8th Cir. 1991) 9 pps. **$15.00**

PB (Mulligan for EEOC) Appeal from D.C., N.D. Ill.
Back pay and interest awarded to victims of sexual harassment were proper when the court found the harassment resulted in constructive discharge of the women employees. Mitigation of damages was properly refused because defendant failed to enter any evidence that the plaintiffs could have found alternative employment sooner.
Gurnee Inn Corp. d/b/a Holiday Inn of Gurnee v. EEOC
No. 89-1524 (7th Cir. 1989) 33 pps. **$45.00**

PB (Coleman for EEOC) Appeal of Judgment by D.C., N.D. Ill.
The district court's finding of a pattern or practice of discrimination was supported by a preponderance of the evidence of gross statistical disparity between black availability and defendant's hiring record and anecdotal evidence. Under Title VII, a plaintiff who establishes discrimination is presumptively entitled to an award of back pay. The district court's

publication of notice to potential claimants before determining the scope of relief was proper.
EEOC v. O & G Spring & Wire Forms Specialty Co.
No. 92-3436 (7th Cir. 1993) 60 pps. **$65.00**

AB (Bogas for EEOC) Opposition to Summary Judgment by D.C., W.D. Ok.
The fact that plaintiff obtained reinstatement under the collective bargaining agreement (CBA) for discriminatory discharge and violation of his due process rights, does not bar recovery under Title VII and 42 U.S.C. sections 1981 and 1983. The arbitral proceeding did not address the issues of racial harassment, denial of promotions, and harsh disciplining. No provision in the CBA makes available an award of punitive or compensatory damages for pain and suffering which plaintiff could seek under federal civil rights law.
Ryan v. City of Shawnee
No. 92-6414 (10th Cir. 1993) 25 pps. **$25.00**

PB (Starr for EEOC) Appeal from D.C., M.D. Tenn.
The EEOC may obtain relief for victims of discrimination who did not file a charge where such victims are discovered during the reasonable investigation of a timely filed charge. A plaintiff who prevails on a Title VII claim is entitled to reimbursement for medical expenses incurred after dismissal as part of a back pay award where the plaintiff provides evidence of the expenses and coverage under employer's medical plan and defendant fails to rebut such evidence. Plaintiff is entitled to prejudgment interest as part of a back pay award. An injunction that prohibits behavior which does not, in isolation, violate Title VII is not overbroad where it is tailored to prevent defendant's past illegal conduct.
EEOC v. Wilson Metal Casket Co.
No 92-6643 (6th Cir. 1993) 44 pps. **$55.00**

PB (Leech) Appeal from D.C., N.D. Ill.
The 1991 Civil Rights Act, Section 102, providing compensatory and punitive damages in an intentional discrimination Title VII claim, and Section 107, providing for declaratory relief, are to be applied to cases pending at the time of enactment. Retroactive application of Section 102 is not manifestly unjust because it is purely remedial.
Bristow v. Drake Street, Inc.
Nos. 92-1381, 92-1409 & 92-1497 (7th Cir. 1992) 54 pps. **$65.00**

AB (Bryson for DOJ) Writs of Certiorari to the 5th and 6th Circuits
Sections 101 and 102 of the 1991 Civil Rights Act apply to cases pending on the date of enactment and cases filed after the date of enactment challenging pre-enactment conduct, since it is not manifestly unjust to allow victims of discrimination to benefit from newly enacted remedies.
Landgraf v. USI Film Products
Nos. 92-757 & 92-938 (U.S. Supreme Ct. 1992) 36 pps. **$45.00**

PB (Hornberger) Plaintiff's Motion that Unemployment Compensation Benefits Not Be Deducted from Plaintiff's Prospective Title VII Relief
Unemployment compensation benefits should not be deducted from plaintiff's prospective Title VII relief.
Necessary v. R. E. Kramig & Co.
No. C-1-89-001 (D.C., S.D. Ohio 1991) 5 pps. **$15.00**

PB (Bogas for EEOC) Appeal from D.C., N.D. Ill.
The district court findings that heavy reliance on word of mouth to fill entry-level factory positions discriminated against blacks is supported by the evidence. Discrimination was part of a continuing practice, and defendant's liability extended back beyond the charge-filing period. Award of backpay of the basis of a formula rather than individualized determinations as to which claimants would have been hired was proper.

EEOC v. Chicago Miniature Lamp Works
No. 90-2632 (7th Cir. 1990) 66 pps. **$75.00**
PB (Kamp for EEOC) Appeal from D.C., N.D. Ill.
The trial court's award of post-judgment interest on a back pay award was mandated by 28 U.S.C. §1961 because back pay awards are money judgments.
EEOC v. Gurnee Inn Corp.
No. 91-1377 (7th Cir. 1991) 25 pps. **$35.00**

PB (Collazo for EEOC) Appeal from D.C., E.D. Va.
The district court properly allocated the burden of proof and correctly concluded that plaintiff was discharged and was not rehired in violation of the Pregnancy Discrimination Act. Defendant's arguments regarding latches and failure to conciliate are frivolous. The district court abused its discretion in computing plaintiff's back pay award by basing it on erroneous views of plaintiff's past earnings.
EEOC v. Old Dominion Security Corp.
Nos. 86-2121 & 86-2156 (4th Cir. 1986) 61 pps. **$75.00**

PB (Coleman for EEOC) Appeal of Judgment by D.C., N.D. Ill.
The district court's finding of a pattern or practice of discrimination was supported by a preponderance of the evidence of gross statistical disparity between black availability and by defendant's hiring record and anecdotal evidence. Under Title VII, a plaintiff who establishes discrimination is presumptively entitled to an award of back pay. The district court's publication of notice to potential claimants before determining the scope of relief was proper.
EEOC v. O & G Spring & Wire Forms Specialty Co.
No. 92-3436 (7th Cir. 1993) 60 pps. **$65.00**

PB (Kores for EEOC) Appeal from D.C., W.D. Tenn.
A black female who was denied promotion from sales representative to domestic travel counselor, was properly awarded back pay based on the difference between the amount she could have earned in the higher position and what she actually earned in the sales representative position.
EEOC v. Mid-South Automobile Club
No. 87-5806 (6th Cir. 1987) 21 pps. **$35.00**

PB (White for EEOC) Brief of Plaintiff-Appellee
The district court's findings that Local 100 violated Title VII by failing to file required reports and destroying records were not clearly erroneous. The district court did not abuse its discretion in ordering Local 100 to provide the EEOC with a breakout of its membership and to retain referral records of the type which the union unlawfully destroyed in the past.
EEOC v. Laborer's International Union of North America
No. 94-3296 (7th Cir. 1994) 21 pps. **$35.00**

PB (Moran for EEOC) Appellee's Brief
The district court's finding that the union is in contempt is supported by overwhelming evidence of the union's persistent non-compliance with the court's prior orders. The remedies the district court imposed on the union were reasonably calculated to redress its past violations and to coerce future compliance with the court's orders. The court's order imposing a hiring hall and a work share program does not impose an impermissible burden on the contractors. The contractor's associations lack standing to challenge the work share program on the ground that it infringes the equal protection rights of white union members. The district court afforded the contractor's associations all the process they were due by allowing them to present argument and evidence and by considering their objections before entering its order.
EEOC v. Local 638, et al.

Nos. 95-6047 95-6049 (2nd Cir. 1995) 56 pps. **$65.00**

PB (Moran for EEOC) Supplemental Brief of Appellee
The field monitor appointment order is a valid and reasonable exercise of the administrator's powers as a special master to assist the district court in achieving compliance with its remedial orders to desegregate the defendant-union's membership. The administrator clearly has the authority to require defendants to take certain action, or refrain for taking certain action, if necessary to implement the district court's orders.
EEOC v. Local 638, et al.
Nos. 95-6047(L), 95-6049, & 95-6135 (CON) (2nd Cir. 1995) 24 pps. **$35.00**

AB (Goldstein for EEOC) In Support of Plaintiff-Appellee
Frequent and severe sexual comments and jokes alone can constitute a hostile work environment even without evidence of "physical intrusion" or threats. Punitive damages were proper upon finding the employer did nothing to address the harassment.
Black v. Zaring Homes, Inc.
No. 96-3118 (6th Cir. 1996) 33 pps. **$45.00**

PB (Ramshaw, Coleman for EEOC) Brief of Plaintiff-Appellee
The district court properly entered an injunction after holding that promises defendant obtained from former employees to not file charges or assist those who had filed charges with the EEOC are void as against public policy. Injunctive relief was warranted to avoid irreparable harm to the plaintiff's enforcement of Title VII.
EEOC v. Astra USA, Inc.
No. 96-1751 (1st Cir. 1996) 55 pps. **$65.00**

PB (Sloan for EEOC) Brief for the Plaintiff-Appellant on Appeal from the D.C., E.D. Mich.
In bringing a suit on behalf of an individual alleging discrimination under Title VII, where the individual is not a party to the suit, the EEOC was not bound by the mandatory arbitration provisions in the aggrieved individual's application for employment, and therefore should not have been prevented from bringing suit to challenge alleged discrimination and to obtain an award of substantive relief. The EEOC is not a proxy for aggrieved individuals in such cases, instead, it has independent power to bring suit and obtain a full range of relief in the public interest.
EEOC v. Frank's Nursery & Crafts, Inc.
No. 97-1698 (6th Cir. 1998) 30 pps. **$35.00**

TITLE VII - MANDATORY ARBITRATION OF EMPLOYMENT CLAIMS

PB (Waxman for EEOC) Reply Brief for the Petitioner on Petition for Writ of Certiorari
Certiorari is warranted because there is a split among the courts of appeals that have decided the effect of a charging party's binding agreement to arbitrate employment-related disputes on the EEOC's ability to seek "make-whole" relief in a judicial forum on behalf of the charging party. The issue presented is an important one, and is not likely to be resolved without review by the Supreme Court which may wish to refrain from deciding the petition until a decision is reached in *Circuit City Stores, Inc. v. Adams*.
EEOC v. Waffle House, Inc.
No. 99-1823 (U.S. Supreme Court 2000) 6 pps. **$15.00**

PB (Posner) Plaintiff's Petition for Review From Decision of The Court of Appeal, Second Appellate District
The courts should not enforce a release where the company secured signing of the release by bait and switch tactics, in essence tricking the employee into signing the release. The presence of independent evidence showing that the company lied to the ex-employee on a related matter at the time she signed indicates that the company is lying about how

the release came to be signed. Since Defendants secured Plaintiff's signature to the so-called release agreement by fraud, deceit and trickery, the entire agreement, including the arbitration provision is void. The bank's preparation of a false document with the obvious intent to use it in a judicial proceeding is an insult to the judicial system and must not be countenanced.
Geringer v. Bank Plus Corp. et al.
No. B137890 (Cal. Sup. Crt. 2000) 32 pps. **$45.00**

AB (Sloan for EEOC) In Support of Plaintiff-Appellee And In Favor of Affirmance
The district court correctly held that plaintiff did not enter into a binding agreement to arbitrate employment discrimination claims merely by continuing to come to work after defendant announced its new arbitration policy. The Federal Arbitration Act requires that "agreements" to arbitrate, to be enforceable, must be in writing.
Phillips v. Cigna Investments, Inc. and Cigna Corp.
No. 98-9657 (2nd Cir. 1999) 30pps. **$35.00**

AB (Gregory for EEOC) Appeal From D.C. Georgia.
The arbitration agreement signed by plaintiff is unenforceable because its terms place an impermissible financial burden on the plaintiff which interferes with the exercise of her Title VII rights and prejudices her claim of pay discrimination and retaliation. Even assuming plaintiff's claim is subject to arbitration, she is not deprived of the ability to act as class representative in pursuing her class claim of pay discrimination. A court may certify a Title VII class under Fed. R. Civ. P. 23(B)(2) even though the proposed class is seeking compensatory and punitive damages.
Bostick v. SMH (US), Inc.
No. 99-8220 (11th Cir. 1999) 44pps. **$55.00**

TITLE VII - ATTORNEY'S FEES & COSTS

PB (Rubenstein for NELA) Brief Of *Amicus Curiae* National Employment Lawyers Association In Support Of Appellant
The district court erred in drastically reducing appellant's attorney's fees. There was no evidence in this case to suggest to the court that plaintiff's counsel in this case devoted an excessive number of hours in litigation of marginal claims or in delaying tactics or the like. On the contrary, plaintiff, through her counsel, successfully opposed four summary judgment motions. The trial court denied fees to plaintiff's attorney on the ground that the requested fee was not reasonable in comparison plaintiff's ultimate recovery. The court did not look at the time spent and chose not to apply the time-honored, judicially sanctioned and straightforward cornerstone of fee requests, the lodestar/multiplier method of computation. The district court's action was inconsistent with the principles underlying civil rights fee shifting statutes, which is to address the practical problem which unemployed individuals or those with limited resources may face in their attempts to retain competent counsel who may be willing and able to take on cases that are difficult to prove even under the best of circumstances.
Keslar v. Bartu and State of Nebraska
No. 99-2242 (8th Cir. 1999) 23pps. **$35.00**

DB (Banks) EEOC As Appellee On Appeal From D.C., M.D. Florida
The district court correctly concluded that attorney's fees under 42 U.S.C. § 12205 should not be awarded to defendant because the EEOC's case was not frivolous, unreasonable, or groundless under the standards set forth by the Supreme Court in *Christiansburg Garment Co. v. EEOC* and *Sullivan v. School Bd. Of Pinellas Co.* The district court also did not abuse its discretion in refusing to award costs to defendant. Under Fed. R. Civ. P. 54(d), a prevailing party is required to submit a form bill of cost or otherwise itemize its expenses in such a way that the court may engage in a meaningful and comprehensive review. Defendants did not do so, and thus the district court was correct in not awarding costs.
Health Quest Management Corp., et al. v. EEOC

No. 98-2564 (11th Cir. 1998) 40pps. **$45.00**

Letter Brief (Posner for CELA) Request For De-publication
Stafford's conclusion that an award that exceeds the amount an attorney would be due under a contingency arrangement is unreasonable as a matter of law and should not remain in a published decision. The opinion is so broad that in may be mis-applied to other fee-shifting statutes in civil rights cases.
Stafford v. Sipper
65 Cal. App. 4th District 748 (July 21, 1998) Court of Appeal # B102770 8pps. **$15.00**

AB (Danis for EEOC) Brief *amicus curiae* on Rehearing *En Banc* on Appeal from D.C., S.D. N.Y.
Because the Supreme Court has rejected a rule requiring proportionality between a fee award and the amount of damages recovered in a civil rights action, this court must reject the district court's "billing judgment" rule. This court should not adopt an approach that links an award of attorney's fees to the amount of damages awarded because it would frustrate the policies behind the fee-shifting statutes applicable to civil rights statutes and would undermine enforcement of Title VII. This court should reaffirm its existing precedent which provides clear and consistent guidance to district courts calculating fee awards.
Quaratino v. Tiffany & Co.
No. 97-7096 (2nd Cir. 1998) 39 pps. **$45.00**

PB (Gregory for EEOC) Brief for the EEOC in Opposition
The court of appeals correctly reversed the district court's award of attorney's fees under Title VII, applying the standard announced by the Supreme Court in *Christianburg Garment Co. v. EEOC*. The court of appeals correctly determined that the Commission presented evidence which, if credited, would support a verdict in its favor; therefore a fee award was inappropriate under *Christianburg*. District courts do not have unbridled discretion to determine whether an action is frivolous, meritless or without foundation.
L.B. Foster v. EEOC
No. 97-870 (U.S. Supreme Ct. 1998) 14 pps. **$25.00**

AB (Gregory for EEOC) Brief of EEOC as Appellant on Appeal from the D.C., W.D. Pa.
The district court erred in awarding attorney's fees to defendant under the fee-shifting standard adopted in *Christiansburg Garment Co. v. EEOC*, which permits an award of fees to a prevailing Title VII defendant only which the plaintiff's action is "frivolous, unreasonable or, without foundation." Fees are to be awarded under the *Christiansburg* standard only in rare cases where the plaintiff's suit is manifestly lacking merit.
EEOC v. L.B. Foster Co.,
No. 96-3469 (3rd Cir. 1996) 34 pps. **$35.00**

PB (Bernstein for EEOC) On Appeal from the D.C., E.D. La.
Pat O'Brien's Bar failed to file a timely motion requesting fees or sanctions in the district court and thereby waived any claim for costs or attorneys' fees under Title VII or Rule 11. The EEOC's investigation and suit caused Pat O'Brien's Bar to correct its discriminatory waiter hiring practices. The bar was not a "prevailing party" within the meaning of Title VII's fee provision.
EEOC v. Pat O'Brien's Bar
No. 96-30786 (5th Cir. 1996) 40 pps. **$55.00**

AB (Zeigler for EEOC) Appeal from the D.C., D. Minn.
The district court properly instructed the jury that Ortho Biotech could be held liable for sexual harassment by a high level manager where the manager was aided in accomplishing the harassment by his position with the company. In

awarding plaintiff attorney fees, the district court properly refused Ortho's request to reduce the Lodestar by seventy-five percent for unsuccessful claims.
Todd v. Ortho Biotech
No. 97-6016 (8th Cir. 1997) 17 pps. **$25.00**
PB (Starr for EEOC) Brief of Appellant on Appeal from D.C., E.D. Va.
There was ample evidence from which a jury could find that the positions plaintiff sought were employment positions, not independent contractor positions. This included uncontested evidence that defendant controlled the means and manner by which the jobs were performed and evidence that other candidates selected in the same interview process obtained jobs as employees with defendant. The district court abused its discretion when it awarded attorney's fees to defendant since its decision cannot be reconciled with the standard announced in *Christianburg*.
EEOC v. MCI Telecommunications, Inc.
No. 98-1195 (4th Cir. 1998) 28 pps. $**35.00**

PB (Starr for EEOC) Brief for the Plaintiff-Appellant on Appeal from the D.C., E.D. Va.
The job that the Plaintiff was considered for was an employment position, not an independent contractor position because the employer "controlled virtually every aspect of the employment sought". Therefore, the Defendant's motion for summary judgment should not have been granted and the Plaintiff should not have been denied Title VII protections. The award of attorney's fees to the Defendant cannot be reconciled with the strict fee-shifting standards of Title VII.
EEOC v. MCI Telecommunications, Inc.
No. 98-1195 (4th Cir. 1998) 27 pps. **$35.00**

AB (Marcosson for EEOC) Appeal from D.C., E.D. N.Y.
Although plaintiffs ultimately did not prevail on their Title VII claim, the district court erred in awarding attorney's fees to defendants. Plaintiffs presented probative, credible, statistical evidence of significant and long standing disparities between wages paid by defendants to male-dominated and female-dominated jobs. The impact of this case could deter future plaintiffs from filing claims with substantial merit for fear of paying attorney's fees if they lose their case.
American Federation of State County and Municipal Employees (AFSCME), AFL-CIO v. County of Nassau, et al.
No. 95-9022 (2nd Cir. 1995) 35 pps. **$45.00**

PB (Clark for the EEOC) Plaintiff-Appellant's Brief
The district court erred in awarding attorney's fees against the Commission because the defendant is not a prevailing defendant and, even if it is a prevailing defendant for the purposes of a fee award, the Commission did not prosecute this action in bad faith and therefore is not liable for fees.
EEOC v. Hendrix College
No. 94-2870 (8th Cir. 1994) 33 pps. **$45.00**

DB (Sloan for EEOC) Brief on Behalf of EEOC, Janet Reno and Donna Shalala as Appellees on Appeal from D.C., M.D. Tenn.
The district court properly dismissed as moot plaintiff's motion for leave to file a reply to defendant's motion to dismiss or for summary judgment, given the case was already on appeal. The district court properly denied plaintiff's motion for sanctions since the plaintiff did not prevail on any issue and there was no finding that the defendant's conduct was improper. The district court did not abuse its discretion in ordering the plaintiff to pay defendant's attorney's fees and costs reasonably incurred as a sanction for plaintiff's pursuing a frivolous and vexatious lawsuit.
Wrenn v. Vanderbilt University Hospital, et al.
Nos. 94-5453 & 94-5593 (6th Cir. 1994) 58 pps. **$65.00**

PB (Starr for EEOC) In Support of Plaintiff-Appellee
The district court properly refused to award attorney fees to the defendant because the Equal Access to Justice Act does

not apply to this case since Title VII contains its own, pro-enforcement, fee-shifting provision. Alternatively, defendant is not entitled to fees because the Commission's position was substantially justified.
EEOC v. Consolidated Service Systems
No. 94-1135 (7th Cir. 1994) 34 pps. **$45.00**

PB (Goldstein for EEOC) In Opposition to Defendant's Amended Application for Award of Fees
Defendant's request for fees under Title VII is untimely given this court's requirement that fees be requested within 60 days after the entry of a final judgment. In addition, fees are not justified in this case.
EEOC v. Northwest Structural Components, Inc.
No. 6:91CV00052 (D.C., M.D. N.C. 1994) 13 pps. **$25.00**

DB (Moran for EEOC) Reply Brief As Appellant and Brief as Cross-Appellee on Appeal from D.C., S.D. Tex.
Since the EEOC did not obtain a judgment, the district court properly denied defendant's request for attorney's fees and costs under Rule 68. Even if defendant would be entitled to recover under Rule 68, it would not be entitled to recover attorney's fees because pursuant to Title VII, a prevailing defendant may not recover attorney's fees unless plaintiff's lawsuit is frivolous.
EEOC v. Bailey Ford
No. 93-2436 (5th Cir. 1993) 21 pps. **$35.00**

DB (Starr for EEOC) Appeal from D.C., N.D. Ill.
Defendant's request for attorney's fees for this appeal should be denied because attorney's fees under section 706(k), 42 U.S.C. § 2000e-5(k), are not available to a Title VII defendant unless Plaintiff's case is frivolous, unreasonable, or without foundation.
EEOC v. Elgin Teachers Association
No. 93-3390 (7th Cir. 1993) 27 pps. **$35.00**

PB (Wheeler for EEOC) Reply Brief of Appeal from D.C., N.D. Fla.
Whatever formulation of the prima facie case in a disparate treatment case is applied, summary judgment was improperly granted because the EEOC introduced evidence of the pretextual nature of the employer's explanation (by demonstrating the disparate application of discipline policy). It was not an abuse of discretion to deny employer's request for attorneys fees.
EEOC v. Albertson's
Nos. 90-3573 & 3610 (11th Cir. 1990) 19 pps. **$25.00**

PB (Bruner for D.C. EEOC) Appeal from D.C., E.D. Tenn.
It was an abuse of discretion to award attorney's fees to defendant. The EEOC claim was neither groundless nor unreasonable. Plaintiff was a member of a protected class, met his employer's employment expectations, but was discharged for not completing the I-9 form, while others in the same race and national origin were not terminated. The order for attorney fees should be reversed. EEOC v. Shoney's, Inc.
No. 93-5583 (6th Cir. 1993) 46 pps. **$55.00**

PB (Bogas for D.C. EEOC) Petition for Rehearing with Suggestion of Rehearing *En Banc*
The appellate court's decision that the district court acted within its discretion in awarding fees against EEOC is contrary to the "exceptional cases" standard for granting fees against losing Title VII plaintiffs where witnesses provided credible, probative testimony of pregnancy discrimination. Because the defendant did not file a pretrial motion to dismiss or for summary judgment, the fee award is inconsistent with prior decisions and an abuse of discretion.
EEOC v. Bruno's Restaurant

No. 91-55323 (9th Cir. 1993) 39 pps. **$45.00**

PB (Stevens) Declaration in Support of Plaintiff's Counsel's Application for Attorney's Fees
Declarations in support of plaintiffs' counsel for application of attorneys fees explains that plaintiff's employment discrimination and civil rights practice entail a great financial risk (compared to the risks entailed in a defense or general practice), many lawyers are reluctant to take such cases, and support the use of a multiplier.
Gomez et al. v. City of Watsonville
No. C-85-20319 WAI (D.C., N.D. Cal. 1989) 9 pps. **$15.00**

PB (Traynham) Plaintiff's Supplemental Submission in Light of Supreme Court's Decision in Pennsylvania v. Delaware Valley
The Supreme Court now requires that compensation for contingency must be based on the difference in market treatment of contingent fee cases as a class, rather than on an assessment of the "riskiness" of any particular case. In this matter, contingency enhancements in the range of 2.0 to 3.0 are required in order to attract competent counsel to represent plaintiffs in employment discrimination cases on a contingent fee basis.
Norton, et al. v. Tallahassee Memorial Hospital
Nos. TCA 76-163-MMP, 76-172-MMP 78-938-MMP (D.C., N.D. Fla. 1987) 39 pps. **$45.00**

PB (Marcosson for EEOC) Appeal from D.C., N.D. Ala.
It was not an abuse of discretion to reject defendant's request for attorneys' fees. Plaintiff's claims were not frivolous; they included claims that employer discriminatorily scheduled employees for polygraph tests, and two black employees were discharged for opposing the discriminatory scheduling of polygraph tests.
EEOC v. Discount Cleaners
No. 90-7872 (11th Cir. 1991) 37 pps. **$45.00**

AB (Moran for D.C. EEOC) Appeal from D.C., E.D. Va.
The court erred in awarding attorney fees in proportion to the damages for back pay award.
Mowry v. Radisson Hotel Corporation and Entezam
Nos. 92-2571, 92-2608, & 93-1006 (4th Cir.1993) 26 pps. **$35.00**

AB (Brunner for D.C. EEOC) Appeal from D.C., M.D. Ga.
It was an abuse of discretion to adjust the lodestar downward, refusing to use current market rates, and proportioning the attorney fees to the damages recovered by plaintiffs. This approach is contrary to controlling law on reasonable attorney's fees under fee-shifting statutes, such as Section 706 of Title VII, and the Congressional intent in passing the statutes.
Cullens v. Georgia Department of Transportation
No. 93-8570 (11th Cir. 1993) 34 pps. **$45.00**

PB (Chambers) Appeal of Dismissal by D.C., D. N.J.
Title VII complainants seeking only attorney fees may obtain relief in a district court. The language and broad purpose of Title VII, as well as the U.S. Supreme Court's holding in *Carey*, dictate that a properly exhausted claim for attorney fees may be brought before a district court.
Alexander v. Stone
No. 92-5302 (3rd Cir. 1992) 33 pps. **$45.00**

PB (Bruner for EEOC) Reply Brief on Appeal of Attorney Fee Award by D.C., E.D. Tenn.
The EEOC's allegations of discrimination and disparate treatment were neither groundless nor unreasonable at the time

suit was filed. Dismissal of the suit due to information gathered in discovery does not detract from prima facie evidence of a Title VII violation when suit was filed. District court abused its discretion by relying on facts not in the EEOC's possession at the time it brought suit.
EEOC v. Shoney's, Inc.
No. 93-5583 (6th Cir. 1993) 30 pps. **$35.00**

PB (Marcosson for EEOC) Appeal of Dismissal and Attorney Fee Award by D.C., S.D. Tex.
The district court's conclusion that defendant did not discriminate against blacks in hiring was clearly erroneous in light of statistical evidence taken from both census data and defendant's applicant data of racial disparity between defendant's workforce and the labor market, and in light of defendant's testimony that he wanted the work force to reflect the predominantly white racial makeup of the customers. The EEOC's suit was not frivolous and attorney fees should not be awarded to defendant.
EEOC v. Olson's Dairy Queen
No. 91-6027 (5th Cir. 1992) 46 pps. **$55.00**

PB (Marcosson for EEOC) Reply Brief on Appeal of Dismissal and Attorney Fee Award by D.C., S.D. Tex.
The district court's conclusion that defendant did not discriminate against blacks in hiring was clearly erroneous in light of statistical evidence, taken from both census data and defendant's applicant data of racial disparity between defendant's workforce and the labor market, and in light of defendant's testimony that he wanted the work force to reflect the predominantly white racial makeup of the customers. The EEOC's suit was not frivolous and attorney fees should not be awarded to defendant. The attorney for defendant lacks standing to personally appeal the amount of fees awarded under Title VII.
EEOC v. Olson's Dairy Queen
No. 91-6027 (5th Cir. 1992) 19 pps. **$25.00**

AB (Marcosson for EEOC) Appeal of Judgment by D.C, E.D. Cal.
The district court properly required defendant to come forward with evidence or affidavits to put the issue of the reasonable number of hours worked by plaintiff's attorneys into genuine dispute. Where defendant failed to produce such evidence, plaintiff is entitled to the attorney fees claimed. In light of plaintiff's monetary award under state law and grant of injunctive relief under Title VII, the court acted within its discretion in not reducing the attorney fee award.
Kyle v. Campbell Soup Co.
No. 92-16826 (9th Cir. 1993) 17 pps. **$25.00**

PB (Ramshaw for EEOC) Reply Brief on Appeal from D.C., N.D. Fla.
The EEOC's claim was not frivolous. Attorney fees should not be awarded to defendant. The EEOC could rely on evidence of time-barred events to establish a wage discrimination claim. A plaintiff claiming wage discrimination is required to show a difference in pay for employees with the same job, not for employees with the same qualifications. The EEOC may establish a prima facie case of retaliation through an inference of a causal connection from temporal proximity between an adverse action and a protected activity.
EEOC v. Reichhold Chemicals, Inc.
No. 91-4160 (11th Cir. 1992) 20 pps. **$25.00**

AB (Hornberger for NELA-Ohio) Appeal from D.C., S.D. Ohio
The district court's utilization of a 2.0 multiplier was appropriate and should be affirmed because the contingent risk undertaken by plaintiff's counsel in prosecuting this action justified an upward adjustment in the lodestar, and the market rate mandated a 2.0 lodestar.
Perotti v. Seiter
No. 90-3254 (6th Cir. 1990) 23 pps. **$35.00**

PB (Karl) Appeal from D.D.C.
In a Title VII sex discrimination case against the government the court of appeals has advisory mandamus jurisdiction to decide the question whether the district court has the authority to award interim attorney's fees. The Judgment Fund statute does not bar the awarding of attorney's fees in Title VII cases because the government waives sovereign immunity.
Trout v. Garrett, Secretary of the Navy
Nos. 88-5262 & 89-5137 (D.C. Cir. 1989) 61 pps. **$75.00**

PB (Hornberger) Plaintiff's Motion to Strike & Declare Null and Void Defendant's Purported Offers to Allow Judgment to Be Taken
Plaintiff, in a pregnancy discrimination action, moved to strike and declare null and void defendant's purported offers to allow a judgment against them that did not provide for attorney's fees accrued to the date of the offer.
Penick v. City of Covington
No. 87-126 (D.C., E.D. Ky. 1989) 8 pps. **$15.00**

AB (Gregory for EEOC) In Support of Plaintiff-Appellee/ Cross-Appellant
The district court abused its discretion in denying reinstatement and prejudgment interest and in substantially reducing the amount of attorney fees.
Hutchinson v. Amateur Electronic Supply, Inc.
Nos. 94-1733, 94-1778 (7th Cir. 1994) 26 pps. **$35.00**

AB (Moran for EEOC) In Support of Plaintiff-Appellee
Section 706(g)(2)(B) of Title VII allows a court to award attorney fees whenever a plaintiff proves a violation of Section 703(m), regardless of the amount or nature of plaintiff's recovery. The district court correctly held that attorney fees awarded under Section 706(g)(2)(B) are not part of costs for purposes of FRCP 68.
Sheppard v. Riverview Nursing Center, Inc.
No. 95-1091 (4th Cir. 1995) 25 pps. **$35.00**

AB (Moran for EEOC) In Support of the Suggestion for Rehearing *En Banc*
The panel's holding that a district court must engage in a proportionality analysis (of fees to damage award) before awarding attorneys fees under Section 706 (g)(2)(B) of Title VII is improper. The courts do not have very broad discretion to deny fees in mixed motive cases.
Sheppard v. Riverview Nursing Center, Inc.
No. 95-1091 (4th Cir. 1996) 18 pps. **$25.00**

PB (Ramshaw for EEOC) Brief as Appellant
The defendant's "English-only" rule has a disparate impact on defendant's Hispanic employees based on their national origin. The district court abused its discretion in awarding attorney's fees to the defendant because its conclusion that the claim was frivolous can not withstand scrutiny.
EEOC v. Wynell, Inc.
Nos. 95-20419 & 95-20523 (5th Cir. 1995) 36 pps. **$45.00**

PB (Coleman for EEOC) Reply Brief as Appellant and Responsive Brief as Appellee
The defendant mischaracterizes the record evidence and the Commission's sex discrimination claim and attempts to violate the court's order by raising only "theoretical challenges to the data or statistical approach taken." It is not true that the defendant made too few hiring decisions to support an inference of discrimination. The district court correctly denied the defendant's request for attorney's fees because the action was not frivolous.
EEOC v. Turtle Creek Mansion Corp.

Nos. 95-10637, 95-10696 (5th Cir. 1995) 22 pps. **$35.00**

TITLE VII - DEFINITION OF EMPLOYER

PB (Coleman for EEOC) In Support Of Plaintiff-Appellant For Rehearing And Suggestion For Rehearing *En Banc*
The panel erred by not adopting the "integrated enterprise" test, which is used almost everywhere else in the country to determine questions of coverage under Title VII. The panel's decision instructs employers on how to evade coverage under Title VII by fracturing itself into small pieces and following all legal formalities regarding separate incorporation.

EEOC v. Gjhsrt, Inc., et al.
No. 98-2185 (7th Cir. 1999) 16pps. **$25.00** Addendum Panel Decision 12pps. **$25.00**

PB (Coleman for EEOC) Plaintiff-Appellant Brief On Appeal from D.C., C.D. Ill.
Because the defendants were part of an integrated enterprise, they should have been evaluated for coverage as a single entity. The district court should have employed the 4-part test of *Rogers v. Sugar Tree Prods., Inc.*, 7 F.3d 577, 582 (7th Cir. 1993) instead of focusing on the relationship of the 3 named defendants.
EEOC v. GJHSRT, Inc., et al.
No. 98-2185 (7th Cir.) 18 pps. **$25.00**
Also available: Appendix including: Statement of Compliance, Final Judgment, District Court Opinion, Magistrate Judge's Report and Recommendation, and Opinion in Case No. 95-4110. 42 pps. **$55.00**
Reply Brief of Plaintiff-Appellant on Appeal from D.C., C.D. Ill. making similar arguments. 15 pps. **$25.00**

PB (Bernstein for EEOC) Plaintiff-Appellant's Brief
Recent congressional ratification of the EEOC's interpretation of the Title VII definition of employer is sufficient to overcome the *stare decisis* effect of *Zimmerman* and to sustain the view that Title VII subjects to statutory coverage any employer who has 15 or more employees on the payroll for each working day in each of 20 or more calendar weeks during a calendar year.
EEOC v. Metropolitan Educational Enterprises, Inc.
Nos. 94-3334, 94-3592 (7th Cir. 1994) 26 pps. **$35.00**
Also available: Appellant's Reply Brief making similar arguments. 22 pps. **$35.00**

AB (Goodman for EEOC) In Support of Plaintiffs-Appellants
Title VII plainly prohibits an employment agency of any size from discriminating against its employees.
Kellam v. Snelling Personnel Services
No. 94-7689 (3d Cir. 1995) 21 pps. **$35.00**

PB (Bernstein for EEOC) Petitioner's Brief
Title VII applies to employers with 15 or more employees for each working day in each of 20 or more calendar weeks in the current or past year. This is calculated by counting the number of employees on the payroll, regardless of the daily work schedules of the individual employees.
EEOC and Walters v. Metropolitan Educational Enterprises, Inc.
Nos. 95-779 & 95-259 (U.S. Supreme Ct. 1995) 49 pps. **$55.00**

PB (Stewart for EEOC) Reply Brief for Petitioner
It is an important issue for the Supreme Court to determine the proper test for the method of determining whether an employer "has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year" and is therefore subject to Title VII.

EEOC and Walters v. Metropolitan Educational Enterprises, Inc.
No. 95-779 (U.S. Supreme Ct. 1995) 3 pps. **$15.00**
Also available: Plaintiff's Petition for Writ of Certiorari, making similar arguments. 29 pps. **$35.00**

PB (Stewart for EEOC) Reply Brief for the EEOC
An employer is covered by Title VII as long as he has 15 or more employees on his payroll for each working day of 20 weeks in a year. The petitioners also misread the legislative history surrounding exactly how to calculate the number of employees in order to determine coverage under Title VII.
EEOC v. Metropolitan Educational Enterprises, Inc.
No. 95-779 & 95-259 (U.S. Supreme Ct. 1995) 15 pps. **$25.00**

AB (Moran for EEOC) In Support of Plaintiff-Appellee
The district court erred in holding that individual supervisors may not be held personally liable for race discrimination in violation of Title VII and in failing to give plaintiff the opportunity to amend her complaint to name the proper employer. The supervisors are agents of the defendant and are therefore "employers" who are liable.
Carter v. Lutheran Medical Center
No. 95-2262 (8th Cir. 1995) 24 pps. **$35.00**

TITLE VII - RES JUDICATA/COLLATERAL ESTOPPEL

PB (Suhre for EEOC) Appeal from D.C., S.D. Fla.
Res judicata precludes the appellate court from relitigating its prior finding of intentional discrimination. In this case, where the appellate court held the refusal to rehire plaintiff was discriminatory and remanded to trial court for purpose of determining damages, the trial court's finding that no job vacancy existed when plaintiff sought rehire can not undermine the appellate court's finding of discrimination. Because employer's appeal is frivolous, the court should award attorney's fees and other expenses to the EEOC.
EEOC v. Beverage Canners, Inc.
No. 91-5548 (11th Cir. 1991) 62 pps. **$75.00**

PB (Rivin) Memo of Points and Authorities in Opposition to Defendant's Motion for Summary Judgment
Collateral estoppel can not be applied to plaintiff's cause of action for discrimination/retaliation under the California Fair Employment and Housing Act (FEHA) or its federal counterpart, Title VII. The issues presented in plaintiff's workers' compensation trial and the FEHA case are not identical.
Broussard v. Hughes Aircraft Co.
No. SWC103 047 (Cal. Superior Ct., Los Angeles County 1991) 16 pps. **$25.00**

AB (Marcosson for D.C. EEOC) Appeal from Dismissal by D.C., W.D. N.Y.
This court should rule that judgments entered before the conclusion of the administrative process established by Title VII do not have claim preclusive effect in subsequent Title VII actions.
Woods v. Dunlop Tire Corporation
No. 92-7198 (2nd Cir. 1992) 23 pps. **$35.00**

PB (Gregory for EEOC) Appeal of Summary Judgment by D.C., N.D. Ill.
Res judicata does not bar the EEOC from bringing suit under the ADEA after the employee's private claim on the same facts was dismissed. The EEOC is not limited to intervention in a private Title VII action. The EEOC may bring its own Title VII suit regardless of the filing of a private action.
EEOC v. Harris Chernin, Inc.
No. 91-3136 (7th Cir. 1992) 91 pps. **$105.00**

PB (Gregory for EEOC) Reply Brief on Appeal of Summary Judgment by D.C., N.D. Ill.
Res judicata does not bar the EEOC from bringing suit under the ADEA after the employee's private claim on the same facts was dismissed.
EEOC v. Harris Chernin, Inc.
No. 91-3136 (7th Cir. 1992) 19 pps. **$25.00**

AB (Foreman for EEOC) Appeal from D.D.C.
Judicially unreviewed administrative decisions should not have a collateral estoppel effect in a subsequent Title VII action.
Barber v. American Security Bank
No. 87-7045 (D.C. Cir. 1987) 13 pps. **$25.00**

AB (Flynn for EEOC) Writ of Certiorari to 6th Circuit
A federal court adjudicating a Title VII action should not give res judicata effect to a judicially unreviewed decision of a state FEP administrative agency.
University of Tennessee v. Elliott
No. 89-588 (U.S. Supreme Ct. 1985) 38 pps. **$45.00**

AB (Starr for D.C. EEOC) Appeal of Dismissal by D.C., S.D. Ill.
Claim preclusion should not bar a Title VII action alleging discriminatory treatment in terms and conditions of employment and discriminatory dismissal due to race and gender, where the initial court action, under ERISA for the continuation of health insurance, contained operative facts unrelated to the core facts of the Title VII action.
Herrmann v. Cencom Cable Associates, Inc.
No. 92-4152 (7th Cir. 1993) 16 pps. **$25.00**

PB (White for D.C. EEOC) Appeal of Judgment by D.C., S.D. Tex.
Defendant failed to raise collateral estoppel to bind a district court in the court's determination of a Title VII claim and to follow the jury's verdict on plaintiff's state human rights act claim. The court should have granted plaintiff's motion for judgment notwithstanding the verdict on a state law discrimination claim where the jury determined by special verdict that plaintiff was fired, and plaintiff's evidence that pregnancy was the determining factor of termination went uncontradicted. Where defendant's offer to reemploy plaintiff did not specify the position and terms being offered, the offer was not unconditional under *Ford Motor Co. v. EEOC*, 458 U.S. 219 (1982), and back pay liability was not abated by the offer.
EEOC v. Clear Lake Dodge
No. 92-2679 (5th Cir. 1993) 36 pps. **$45.00**

TITLE VII - MODIFYING CONSENT DECREES

DB (Dellinger for EEOC) Brief for Respondent EEOC In opposition to Petition for Writ of Certiorari to the 2nd Circuit
Because the court of appeals affirmed the district court's judgment of contempt without placing any reliance on petitioner's failure to meet its membership goal, the question of whether the goal served as evidence of discrimination or as a quota is not presented. The district court did not abuse its discretion in ordering a change in petitioner's membership goal to take into account changes in the labor pool. Petitioner was correctly held partially responsible for the inequality in the number of hours worked by its nonwhite and white journey persons.
Sheet Metal Workers International Association Local Union No. 28 v. EEOC and City of New York
No. 96-54 (U.S. Supreme Ct. 1995) 12 pps. **$25.00**

PB (Suhre for EEOC) Reply Brief on Appeal from D.D.C.

The Commission is challenging the district court's order sealing the consent decree and other portions of the record in this action. The reasons given by the district court for sealing portions of the record were insufficient to overcome the presumption in favor of public access to judicial records. The court's restriction on the use of the depositions in this case unjustifiably prevents the Commission from using the information therein in subsequent administrative or judicial proceedings or to meet its obligation to share material with other governmental agencies.
EEOC v. National Children's Center. Inc.
No. 95-5408 (D.C. Cir. 1996) 17 pps. **$25.00**

AB (Sloan for D.C. EEOC) Appeal from D.C., N.D. Ohio
The district court properly exercised its discretion in extending the duration of a consent decree, which resolved litigation over discriminatory promotion practices, entered into by plaintiffs and defendant, where the objectives of the decree had not been accomplished before its termination. The express terms of the consent decree as well as the court's inherent authority allows it to modify the duration of the decree. Modification of the decree was proper without a showing of ongoing discrimination.
Vanguards of Cleveland v. City of Cleveland
No. 92-4315 (6th Cir. 1993) 37 pps. **$45.00**

PB (Goldstein for D.C. EEOC) Reply Brief on Appeal from D.C., S.D. N.Y.
The district court erred in vacating a consent decree in its entirety without requiring defendants to demonstrate that changed circumstances made continued enforcement of the decree fundamentally unfair.
Patterson v. Newspaper & Mail Deliverers' Union of New York
Nos. 92-7964 & 92-6242 (2nd Cir. 1993) 22 pps. **$35.00**

PB (Franklin for EEOC) Appeal from D.C., W.D. Wash.
The district court abused its discretion by ordering a consent decree sealed settling a class action for employment discrimination over the objection of the plaintiff. No valid reason was established for sealing the consent decree, and under established legal principles it should have been fully disclosed.
EEOC v. The Erection Co., Inc.
No. 89-35131 (9th Cir. 1989) 24 pps. **$35.00**

AB (Goldstein for EEOC) In Opposition to Petitioner
The question of whether the standards for modifying consent decrees set forth in *Bd. of Ed. of O.K. City Public Schools v. Dowell and Rufo v. Inmates of Suffolk County Jail* apply to cases involving non-governmental defendants and is not properly before this court.
Patterson v. Newspaper & Mail Deliverers Union
No. 93-1784 (U.S. Supreme Ct. 1993) 14 pps. **$25.00**

TITLE VII - CLASS CERTIFICATION

AB (Gregory for EEOC) In support of Plaintiff-Appellants on Appeal from D.C., W.D. La.
A putative class of Title VII claimants that otherwise meets the requirements of Fed.R.Civ.P. 23(a) should be denied certification because, by virtue of the enactment of the Civil Rights Act of 1991, individual claims for damages predominate over the class-based claim for injunctive relief.
Celestine, et al., v. Citgo Petroleum Corp.
No. 96-30489 (5th Cir. 1996) 20 pps. **$25.00**

TITLE VII - DAMAGES

AB (Ghio for NELA) Appeal from S.D. Iowa
Caps on compensatory and punitive damages established by Title VII are inconsistent with the Seventh Amendment of the Constitution. The damages caps infringe upon the office of the jury because the assessment of damages is a fundamental element of a jury trial in that the damage determination is a question of fact to be decided by the jury. Although Congress has the power to authorize or take away compensatory and punitive damages as a remedy for victims of employment discrimination, once Congress authorizes a jury to determine liability and assess damages, the Seventh Amendment prohibits any type of interference with that process.
IBP, Inc. v. United States
No. 99-2859 (Forgot to list court and number of pages)

AB (Carter for EEOC) In Support of Plaintiff-Appellee
An employer may not establish the "good faith" defense to punitive damages solely by arguing that it had an anti-discrimination policy in effect at the time of the discrimination. Employers seeking to rely on the good faith defense to punitive damages must demonstrate not only that they adopted anti-discrimination policies, but also that they made a good faith effort to educate themselves and their personnel on the requirements of the law, and to detect and deter discrimination in the workplace. Therefore, the jury reasonably concluded that United discriminated against Plaintiff with the state of mind required for punitive damages.
Gile v. United Airlines, Inc.
No. 99-2509 (7th Cir. 1999) 21 pps. **$35.00**

AB (White for ATLA) In support of Plaintiff-Appellee, Writ of Certiorari to the U.S. Supreme Court on appeal from the 8th Circuit
The court of appeals failed to exercise de novo review of the summary judgment, depriving petitioner of the right to trial by jury guaranteed by the Seventh Amendment, where the court did not seek to identify disputed issues of fact. Further, failure of the court to protect the jury's role as fact finder threatens erosion of the Seventh Amendment jury right.
Keyerleber v. Champion International Corporation
No. 99-267 (U.S. Supreme Court 1999) 17 pps. **$25.00**

AB (Danis for EEOC) In Support of Plaintiff-Appellee
Defendant was not entitled to judgment as a matter of law on liability because there was ample evidence that its policy against sexual harassment was not enforced and therefore failed to meet the *Faragher* standard. The evidence supports the jury's award of punitive damages under the *Kolstad* standard. The *Kolstad* standard has no applicability where liability for punitive damages is established directly by showing that the employer ratified its employee's conduct or negligently retained an employee with knowledge of his propensity to engage in sexual harassment. A new trial is not required here because *Kolstad* did not materially change existing Tenth Circuit law.
Cadena v. The Pacesetter Corp.
Nos. 99-3047 & 99-3166 (10th Cir. 1999) 38 pps. **$45.00**
Addendum 48 pps. **$55.00**

PB (Yablonski) Petition For Writ Of Certiorari
In 1991 Congress amended Title VII to authorize for the first time punitive damages awards for violations of that statute. Since 1991, a wide variety of inconsistent rules have been adopted by the various circuits regarding such awards. The decision below is in conflict with decisions of seven other circuits and with three decisions of this Court. A decision by the Court regarding the standard for punitive damages wards under Title VII will inform, if not control, the standard for such awards under section 1981 and under other federal civil rights statutes where the controversy is divided in the lower courts. A writ of certiorari should be issued to review the judgment and opinion of the court of appeals.
Kolstad v. American Dental Ass'n

No. 98-208 (U.S. Supreme Ct. 1998) 33pps. **$45.00**

PB (Goodman for NELA) Brief *Amicus Curiae* Of The National Employment Lawyers Association And Equal Rights Advocates, Inc. In Support Of Petitioner
The case deals with clarifying the proper standard for awarding of punitive damages under Title VII and the Americans With Disabilities Act. The Court should reject the District of Columbia Court of Appeals decision permitting punitive damages only upon a showing that the complained of conduct was "egregious" or "truly outrageous." Such a requirement is not in accord with either the plain language of the statute or the remedial purpose Congress intended when it amended the civil rights statutes to permit juries to award punitive damages. Amicus proposes that the Court adopt the standard enunciated by the First Circuit when it upheld the following district court jury charge: "Where a plaintiff in a racial discrimination case establishes the elements of malice, or callous indifference by a preponderance of evidence, then a jury is allowed in its discretion to assess punitive damages against the discriminatory defendant."
Kolstad v. American Dental Ass'n
No. 98-208 (U.S. Supreme Ct. 1998) 29pps. **$35.00**

PB Request For Hearing *En Banc*
Plaintiff respectfully suggests that the Panel decision misapprehended a crucial point of law, that being that the tip pool arrangements permitted by FLSA, 29 U.S.C. §203 (m) must be completely voluntary on the part of the employee. The statute requires retention of tips by employees, indicating voluntariness. The legislative history also suggests sharing and voluntariness. The implementing regulations of the Dept. of Labor go on to support the legislative history along with certain case law that also requires sharing and voluntariness. In light of the questions of exceptional importance presented herein, a rehearing *en banc* would be appropriate and, in the alternative, plaintiffs request that the judgment of the panel be reconsidered as to the issue of whether forced tip pools are permissible.
Kilgrove, et al v. Outback Steakhouse of Florida, Inc.
No. 97-5902 (6th Cir. 1998) 44pps. **$55.00**

AB (Carter for EEOC) In Support Of Plaintiff-Appellee/Cross-Appellant
An employer is liable for punitive damages when a supervisor discriminates against an employee with malice or reckless indifference under the Restatement (second) of Agency §217 C(c) and Title VII. Employers should also be liable for punitive damages when a supervisor, aided by his or her actual or apparent authority (and acting with the requisite mental state), discriminates in violation of Title VII.
Deffenbaugh-Williams v. Wal-Mart Stores, Inc.
No. 97-10685 (5th Cir. 1999) 35pps. **$45.00**

AB (Carter for EEOC) Letter Brief As *Amicus Curiae*
The Supreme Court's holding in *Kolstad v. American Dental Ass'n*, 119 S.Ct. 21118 (1999) that employers may present, as a defense to punitive damages, evidence of their good faith efforts to comply with the law, does not warrant a remand. Defendant had the opportunity to present such evidence at the original trial. Therefore, the jury's finding and the existing evidentiary recor preclude as a matter of law any additional arguments defendant might present.
Deffenbaugh-Williams v. Wal-Mart
Nos. 97-10685, 97-10706 (5th Cir. 1999) 13 pps. **$25.00**

AGE DISCRIMINATION IN EMPLOYMENT ACT

ADEA - GENERAL

PB (Collins) On Writ of Certiorari to the U.S. Ct. of Appeals 11th Circuit

The ADEA contains a clear statement of Congress' intent to subject states to suits by private parties in federal court. Application of the ADEA to the states is within Congress' power under section 5 of the 14th amendment and Congress has broad power to enact legislation enforcing the 14th amendment.
United States and Kimel, et al. v. Florida Bd. of Regents; United States and Dickson v. Florida Dept. of Corrections; MacPherson and Narz v. University of Montevallo
Nos. 98-791, 98-796 (U.S. Supreme Ct. 1999)

AB (Carter for EEOC) Appeal from N.D. Ga.
When a plaintiff successfully casts doubt on the employer's objective reasons for its actions, the plaintiff also casts doubt on the employer's subjective reasons. Based on the evidence that the employer's objective reasons may have been untruthful, a reasonable factfinder could determine that the employer's subjective reasons are not worthy of belief, entitling plaintiff to present his claims to a jury. A plaintiff may cast doubt on an employer's subjective explanation for its actions by presenting any evidence that would permit a jury to determine that the subjective explanation given by the employer is merely a pretext for discrimination. A plaintiff need not directly rebut the subjective reasons an employer provides, but need only present evidence that would allow the factfinder to question the truthfulness of the employer's subjective explanation.
Chapman v AI Transport
Nos. 97-8838, 97-9086 & 97-9269 (11th Cir. 2000) 28 pps. **$35.00**

AB (Gregory for EEOC) In Support of Appellants on Appeal from the U.S. D.C., W.D., Penn.
Defendant engaged in age discrimination as a matter of law when it made distinctions in employee benefits on the basis of a factor that is, at least in part, age-defined. The ADEA covers retirees who suffer discrimination in their employment-related health benefits and the court erred in holding that retirees where not covered. The text, context and purpose of the ADEA all should compel the court to find that retirees are covered against discrimination in employee benefits
Erie County Retirees Association v. The County of Erie Pennsylvania and Erie County Employees Retirement Board
No. 99-3877 (3rd Cir. 2000) 36 pps. **$45.00**

PB (Coleman) Suggestion For Rehearing *En Banc*
The panel's decision wrongly holds that an individual's agreement to submit his own employment discrimination claims to arbitration precludes the EEOC from exercising its statutory authority under the ADEA to obtain a full range of relief in a government enforcement action. The panel's decision rejects controlling statutory language in favor of flawed policy concerns and unduly restricts the EEOC's enforcement authority in a manner not required by this case. The EEOC urges this Court to grant a rehearing and its suggestion for rehearing *en banc*.
EEOC v. Kidder, Peabody & Co., Inc.
No. 97-6316 (2nd Cir. 1998) 15pps. **$25.00** Addendum 14pps. **$25.00**
PB (Gagliardo) Petition For Writ Of Certiorari From 4th Circuit
Congress intended the protection of the ADEA and Title VII to apply broadly. The First Amendment's Free Exercise Clause does not require that Congress' intent be diminished by depriving classroom elementary school teachers in religious schools of the protections of federal civil rights statutes. Similarly, the Free Exercise Clause does not require the abrogation of such teachers' contract with their religious employer. The court needs to resolve the conflict between the Fourth Circuit's analysis and that of at least three other circuits.
Clapper v. Chesapeake Conference of Seventh-Day Adventists
No. 98-1566 (U.S. Supreme Ct. 1999) 48pps. **$55.00**

AB (Ventrell-Monsees for AARP) Brief *Amici Curiae* In Support Of Plaintiff
The court should recognize non-statutory grounds for *vacatur* of arbitrator's awards. For example, more factors should be considered by the court when it reviews an arbitrator's award in a discrimination case than the four factors promulgated by

the Federal Arbitration Act. The court is called upon to consider whether public policy or expanded manifest disregard of
the law standard constitute additional grounds for *vacatur*. Furthermore, without a written record there could be no meaningful judicial review of an arbitrator's decision.
Williams v. Cigna Fin. Advisors Inc., Cigna Individual Fin. Services
No. 97-10985 (5th Cir. 1997) 28pps. **$35.00**

PB (Bruner for EEOC) Brief As Appellee
The district court's order requiring defendant to comply with the EEOC's subpoena and release of personnel files is proper.
The EEOC has broad investigatory authority under the ADEA and it may initiate an investigation without an underlying legal factual basis. The district court's order should thus be affirmed.
EEOC v. Dillard Dept. Stores Inc.
No 98-10158 (5th Cir. 1998) 36pps. **$45.00**

AB (Osborne for AARP) Appeal From D.C., S.D. Indiana In Support Of Appellants
The Court should reconsider its rejection of the disparate impact theory of liability under the ADEA in *EEOC v. Francis W. Parker School*, because its analysis, which restricts the ADEA to claims based on inaccurate and stigmatizing stereotypes, conflicts with the broad purposes of the Act. The statutory language of Title VII and the ADEA also supports the inclusion of disparate impact claims within the scope of the ADEA.
Adams, et al. v Indiana Bell Tel., Co., Inc., et al.
No. 98-1506, 98-2259, 98-2307 (7th Cir. 1999) 29pps. **$35.00**

AB (Goldstein for EEOC) Appeal From D.C., N.D. California
A disability plan which prescribes a lesser benefit for older workers than for similarly situated younger workers may be challenged as age-based disparate treatment. Defendants must show that the lower level of benefits provided to older workers is justified by age-related cost consideration. Absent this showing, defendant cannot invoke protection of the equal cost/equal benefit defense § 4 (f)(2)(B)(1) of the ADEA. The court should reverse the judgment and remand.
Arnell, et al. v. California Pub. Employees Retirement Systems, et al.
No. 98-15574 (9th Cir. 1998) 25pps. **$35.00**

PB (Gregory for EEOC) Appeal From D.C. New Mexico
Evidence shows that defendant's standard interview comment sheet contained a question in direct violation of the ADA. Defendant's decision makers acquired information regarding plaintiff's disability and as a result of this improper inquiry, plaintiff was denied employment and lied about what had occurred in the interview. This conduct by defendant's agents supports the district court's finding of liability and injunctive relief, as well as the jury's award for compensatory and punitive damages. Defendant's appeal is without merit and this court should affirm the judgment of the district court.
EEOC & Otero v. Wal-Mart Stores, Inc.
No. 98-2122 (10th Cir. 1998) 54pps. **$65.00**

AB (Gregory for EEOC) Opposition to Defendant's Motion for Reconsideration
The EEOC investigator issued a letter in this case that purported to represent the "EEOC's position" on this issue of statutory coverage under the ADEA, yet the position articulated in the letter is not, in fact, the Commission's position. The position is that the ADEA applies to a discriminatory change in post-employment benefits even when the change occurs after the individual has retired from employment.
McKeever v. Ironworker's District Council
No. CIV.A. 996-5858 (D.C., E.D. Pa.) 24 pps. **$35.00**

AB (Gregory for EEOC) Brief In Support of Plaintiff-Appellant on Appeal from D.C., W.D. Tex.
The district court erred in granting defendant's post-verdict motion for judgment as a matter of law by finding that the plaintiff was judicially estopped from prevailing on his ADA claim because of his statement on a social security disability benefit application that he was "totally disabled." The elements of judicial estoppel are not met in this case. Public policy considerations preclude application of judicial estoppel in cases of this nature. Includes 2 page addendum - June 2, 1993 Memorandum from Associate Commissioner of the Department of Health & Human Services re: ADEA.
Harris v. Marathon Oil Company
No. 96-50202 (5th Cir. 1996) 27 pps. **$35.00**

AB (Zaleznick, Osborne, Ventrell-Monsees for AARP, NELA) Writ of Certiorari to the 4th Circuit
Replacement by a member of the protected class is not an essential element of a *prima facie* case of age discrimination under the *McDonnell Douglas* proof paradigm. To require ADEA discharged plaintiffs to show a replacement outside the protected class is contrary to the statutory purpose of the ADEA. Because of its insistence on the mechanistic application of its version of the *McDonnell Douglas* model, the court below improperly rejected probative evidence sufficient to establish a prima facie case.
O'Connor v. Consolidated Coin Caterers Corporation
No. 95-354 (U.S. Supreme Ct. 1995) 19 pps. **$25.00**

AB (Gregory for EEOC) Brief in Support of Plaintiff-Appellant on Appeal from the D.C., M.D. Fla.
The district court erred in dismissing plaintiff's termination claim under the ADEA because the employer, in removing the plaintiff from her job, offered her alternative employment at a lower ranking position. An employee who is removed from her current position is not required to go into another line of work, accept a demotion, or take a demeaning position. An employer cannot set up a defense to one unlawful adverse action by offering as employee a second job which she does not want and which differed in material aspects.
Thomas v. Dillard Department Stores, Inc.
No. 96-2966 (11th Cir. 1996) 15 pps. **$25.00**

DB (Ramshaw for EEOC) In Support of Federal Respondent in Opposition on Petition of Writ of Certiorari to 2nd Circuit
By retaliating against respondent for participating in an investigation by the Equal Employment Opportunity Commission (EEOC), the court of appeals correctly concluded that sufficient evidence supported the jury's finding that petitioner violated the ADEA, 29 U.S.C. 621. Because petitioner testified at trial that he was "aware that it's a violation of law to take action against an employee who engages in activity protected by law" and that he knew "giving a statement to the EEOC is a protected activity," the petitioners violation of the ADEA was willful.
Metro-North v. Padilla
No. 96-1463 (2nd Cir. 1996) 15 pps. **$25.00**

DB (Sloan for EEOC) Brief in support of Defendant-Appellee on Petition for Writ of Certiorari
Directors of a corporation who continue to perform their duties as employees of the corporation are employees withing the meaning of the ADEA. In addition a retirement policy that requires certain employees to retire at a specified age can be defended under Section 4(f)(1) of the ADEA, 29 U.S.C. 623 (f)(1), as a policy "based on reasonable factors other that age."
Johnson & Higgins, Inc. v. EEOC
No. 96-1743 (U.S. Supreme Ct. 1996) 11 pps. **$25.00**

PB (Flynn for EEOC) Reply Brief on Appeal from D.C., C.D. Cal.

Defendant's argument that, notwithstanding Congress's rejection of the *McMann* decision they have satisfied the "not a subterfuge" requirement because their plan predates the Age Act's 1974 extension to state and local governments can not withstand the slightest scrutiny. A pre-Act benefit plan can be a "subterfuge to evade the purposes of" the ADEA within the meaning of §(4)(f)(2) of the Act.
EEOC v. County of Orange
No. 87-5564 (9th Cir. 1987) 26 pps. **$35.00**

AB (Suhre for EEOC) D.C., W.D. Mo.
Plaintiff established a *prima facie* case of age discrimination by showing that he was within the protected age group, was qualified for the job, was fired and replaced by an individual with similar qualifications, regardless of the fact that the replacement was over 40 years old.
Rihehart v. City of Independence, Missouri
No. 93-3560 (8th Cir. 1994) 28 pps. **$35.00**

AB (Posner for CELA) Appeal from Cal. Ct. of Appeal, 4th Appellate District
The California legislature has declared unequivocally that age discrimination violates public policy. Therefore any employer who discriminates because of age is liable for wrongful termination in violation of public policy.
Jennings v. Marralle
No. S034510 (Cal. Supreme Ct. 1993) 27 pps. **$35.00**

AB (Marcosson for EEOC) Appeal from D.C., D. Mass.
Summary judgment is inappropriate in an employment discrimination case in which the plaintiff demonstrates a genuine issue of material fact on the question of whether the employer's articulated reason for its decision is worthy of credence.
Woods v. Friction Materials
No. 93-2296 (1st Cir. 1994) 14 pps. **$25.00**

AB (Ventrell-Monsees for AARP) In Support of Plaintiff's Opposition to Defendant's Motion for Summary Judgment
Plaintiff's ADEA claims are actionable under both disparate treatment and disparate impact theories because older workers were denied the opportunity to receive enhanced severance benefits by signing a release legally equivalent to that signed by younger workers. The "equal benefit or equal cost" rule should not apply to this case because this rule was never intended to apply to cash-based benefit programs.
Dibiase v. Smithkline Beecham Corporation
No. 93-CV-3171 (D.C., E.D. Penn. 1994) 11 pps. **$25.00**

AB (Gorlick for AARP) In Support of Plaintiff's Opposition to Defendant's Motion for Summary Judgment
Granting the defendants' motion for summary judgement would threaten the retirement security of millions of older workers entitled to a retirement benefit. If pension plan fiduciaries are able to purchase annuities from a company which can not meet its commitments to pay benefits without participants being able to police such a decision, then older persons can not be secure during their retirement.
Calobrace, v. American National Can Co.
No. 93-C 0999 (D.C., N.D. Ill.) 3 pps. **$15.00**

AB (Bernstein for EEOC) Appeal from D.C., N.D. Ill.
Chicago's mandatory retirement of firefighters holding exempt rank positions is not permissible under ADEA § 623(j) because the law in effect in March 1983 expressly subjected only firefighters in the career service to mandatory retirement at age 63. Additionally, the definitional exemption of policy making political appointees from ADEA protection applies only to government employees appointed by an elected official.
Roche v. City of Chicago

No. 93-2737 (7th Cir. 1993) 26 pps. **$35.00**

PB (Coleman for EEOC) Appeal from D. C., N.D. Ill.
The district court erred in dismissing the Commission's ADEA action as "duplicative" of the private claimant's action in this consolidated case. Congress granted the Commission unequivocal authority to file its own ADEA enforcement actions, regardless of the existence of a private claimant's pending lawsuit.
EEOC v. G-K-G Inc.
No. 93-2275 (7th Cir. 1993) 67 pps. **$75.00**

PB (Seeley for EEOC) Plaintiff's Motion for Partial Summary Judgment
Plaintiff's motion for partial summary judgment should be granted. Defendant has not proven "good faith" within the meaning of the 7th Circuit's holding in Rose. The EEOC alleges that defendant violated Section 4(d) of the ADEA by discriminating against employees who have filed or caused to file a charge, complaint, or lawsuit under the ADEA. Defendant and the union adopted a CBA article allowing defendant to terminate grievance proceedings if an employee filed an ADEA charge with the Illinois Fair Employment Practices Commission, effectively depriving employees of in-house grievance/arbitration procedures.
EEOC v. Board of Governors of State Colleges and Universities, et al.
No. 86 C 0295 (D.C., N.D, Ill. 1990) 71 pps. **$85.00**

PB (Collingsworth for EEOC) Appeal from D.C., D. N.J.
To the extent that Westinghouse's layoff income and benefits plan denies transfer and recall rights to older workers, and caused involuntary retirement after the effective date of the 1978 amendments to the ADEA, it falls outside the protection of Section 4(f)(2) as interpreted in *Betts*.
EEOC v. Westinghouse Electric Corporation
No. 87-5174 (3rd Cir. 1989) 15 pps. **$25.00**

PB (Bruner for D.C. EEOC) Appeal from D.C., C.D. Cal.
The district court (1) abused its discretion when it excluded evidence regarding Delta's refusal to allow pilots to downbid two steps to a flight engineer position to avoid forced retirement under FAA rule; and (2) erroneously concluded that Delta was not Western's successor in liability and thus the injunction against Western to allow two-step downbidding was in effect.
Baker and EEOC v. Delta Air Lines
Nos. 92-55044, 92-55048, 92-55049 & 92-55050 (9th Cir. 1992) 56 pps. **$65.00**

PB (Bruner for EEOC) Reply Brief on Appeal from D.C., C.D. Cal.
Plaintiff argued that through stare decisis the previous decision allowing Western's pilots (the previous employer) to bid for flight engineer positions, and thereby avoid mandatory retirement at age 60, restricts defendant (the current employer). The district court failed to correctly apply successorship law to find defendant bound by the previous employer's obligations. The district court improperly excluded evidence of age-based discrimination and admitted only marginally relevant evidence. The district court improperly denied EEOC's motion for judgment notwithstanding the verdict on a claim that defendant willfully violated the ADEA. Sufficient evidence supports the jury's finding that defendant did not act reasonably and in good faith with regard to the age 60 limitation, and defendant knew or showed reckless disregard for whether such conduct was prohibited by the ADEA.
Baker v. Delta Air Lines
Nos. 92-55044, 92-55048, 92-55049 & 92-55050 (9th Cir. 1993) 37 pps. **$45.00**

AB (AARP) Writ of Certiorari to 2nd Circuit

The ADEA, particularly Sections 14(a) and (b), mandates that the courts, not administrative agencies, ultimately determine the federal rights guaranteed to older workers.
Astoria Federal Savings and Loan Ass'n. v. Solimino
No. 89-1895 (U.S. Supreme Ct. 1991) 26 pps. **$35.00**

PB (Gregory for EEOC) Reply Brief on Appeal from D.C., D. Minn.
Indian tribes' sovereignty is not impermissibly offended by the application of the ADEA.
EEOC v. Fond Du Lac Heavy Equipment and Construction Co., Inc.
No. 91-3561 (8th Cir. 1992) 28 pps. **$35.00**

AB (Ramshaw for EEOC) Appeal from D.C., D. Kan.
When Congress amended the ADEA to cover discrimination by states' employees, it expressed in unequivocal statutory language its intent to exercise its constitutional power to abrogate the Eleventh Amendment immunity from private suits in federal courts.
Hurd v. Pittsburgh State University
No. 93-3082 (10th Cir. 1993) 23 pps. **$35.00**

AB (Wheeler for EEOC) Appeal from D.C., S.D. W. Va.
In an ADEA case, the doctrine of legislative immunity should not be invoked to shield statutes from review for conflict with the U.S. Constitution or federal statutes under the supremacy clause, especially in the case of disparate impact of a state statute.
Nuchims v. West Virginia
No. 89-2487 (4th Cir. 1989) 29 pps. **$35.00**

AB (Miller for AARP) Appeal from D.C., E.D. Mo.
Plaintiff, one of 600 "partners" in an accounting firm was involuntarily terminated at age 60, pursuant to defendant's mandatory retirement policy, contrary to ADEA.
Maher v. Price Waterhouse
No. 85-1571 EM (8th Cir. 1985) 16 pps. **$25.00**

DB (Starr for EEOC) Opposition to Petition for Writ of Certiorari to 7th Circuit
A collective bargaining agreement, which relieves the employer of its obligation under the agreement to process an employee's grievance if the employee files an age discrimination charge under the same facts with the EEOC, violates the ADEA. Eliminating the grievance procedure for employees who file ADEA complaints discriminates on the basis of age.
Board of Governors of State Colleges and Universities v. EEOC
No. 91-1895 (U.S. Supreme Ct. 1992) 16 pps. **$25.00**

PB (Bogas for EEOC) Appeal of Summary Judgment by D.C., C.D. Ill.
Defendant's policy of forcing special police agents to retire at the age of 60 violates the ADEA. The policy is not exempt under ADEA Section 4 (I) because defendant's policy was not in effect under Illinois law, and not applied to special agents on March 3, 1983, as required by Section 4 (I).
EEOC v. State of Illinois
No. 92-2108 (7th Cir. 1992) 60 pps. **$65.00**
Also available: Reply Brief on Appeal of Summary Judgment by D.C., C.D. Ill., making similar argument. 31 pps. **$45.00**

AB (Posner for CELA) In Support of Plaintiff-Petitioner

The California legislature has declared that age discrimination violates public policy, thus, any employer who discriminates in this way is liable for termination in violation of public policy. Age is immutable and affects everyone, thus, age discrimination is an affront to a large growing segment of the U.S. population. Unless we dispel the myths surrounding older workers with effective enforcement of public policy, age discrimination is likely to increase.
Stevenson v. Superior Court of Los Angeles County
No. S052588 (Cal. Supreme Ct. 1996) 27 pps. **$35.00**

AB (McCann for AARP) In Support of Plaintiff-Petitioner
A finding that age discrimination in employment violates a fundamental public policy of the state of California is wholly consistent with this court's standards and prior decisions. Age discrimination can not and should not be distinguished from other forms of discrimination.
Stevenson v. Superior Court of Los Angeles County
No. S052588 (Cal. Supreme Ct. 1996) 29 pps. **$35.00**

AB (Suhre for EEOC) In Support of Plaintiff-Appellant
The plaintiff established a *prima facie* case of age discrimination by showing that he was in the protected age group, was qualified for the job, was fired and replaced by someone with similar qualifications, regardless of the fact that the replacement was over 40 years old.
Rinehart v. City of Independence, Missouri
No. 93-3560 (8th Cir. 1994) 19 pps. **$25.00**

AB (Osborne for AARP) In Support of Plaintiff -Appellant
The "same actor" theory should be rejected because it conflicts with this court's *en banc* decision in *Brown v. Stites Concrete, Inc.* The district court also misconstrued *Hazen Paper Co. v. Biggins* to totally preclude liability under the ADEA where the employer's decision is based on a "proxy" for age. Finally, the trial court improperly rejected the value of the decisionmaker's ageist comments.
Kelleher v. Aerospace Community Credit Union
No. 96-3130 (8th Cir. 1996) 17 pps. **$25.00**

ADEA - ELEVENTH AMENDMENT

AB (Carney for Amici States) In support of Respondent's Writ of Certiorari to the U.S. Court of Appeals for the 11th Circuit
In extending the coverage of the ADEA to cover States as employers, Congress neither expressed the intent nor has the power to abrogate the State's Eleventh Amendment immunity. The ADEA is not appropriate remedial legislation under Section 5 of the Fourteenth Amendment. Congress found no evidence of unconstitutional age discrimination by the States when it extended the ADEA to cover State employment in 1974. Further, ADEA's restrictions are far out of proportion to constitutional guarantees against irrational age discrimination.
Kimel v. State of Florida Board of Regents and United States v. Florida Board of Regents
No. 98-791 (11th Cir. 1999) and No. 98-796 (11th Cir. 1999) 22 pps. **$35.00**
Also available: *Respondent's brief making similar and additional arguments.* 88 pps. **$90.00**

DB (Sutton for States) Respondent's Writ of Certiorari to the U.S. Court of Appeals for the 11th Circuit
Congress cannot permissibly abrogate the States' immunity from individual money-damages actions where the ADEA does not explicitly abrogate the States' Eleventh Amendment immunity. ADEA is not appropriate enforcement legislation under Section 5 of the Fourteenth Amendment where its power is remedial and must be exercised in a way that is congruent with, and proportional to, constitutional wrongs. Further, the ADEA cannot be sustained as traditional enforcement legislation that merely prohibits constitutional violations as a rational basis standard is applied to alleged

discrimination against the elderly and judicial review under ADEA is far more rigorous than under the Equal Protection clause. Moreover, the ADEA is not "proper prophylactic" legislation as its extra-constitutional requirements cannot be justified by a power that Congress never invoked, it does not respond to a "predicate" pattern, or even a single threat of unconstitutional State action, and independently fails the proportionality requirements of Section 5. Finally, the conclusion that the ADEA exceeds congressional power fits well within the Court's Section 5 holdings and preserves vital principles of federalism.

Kimel v. State of Florida Board of Regents and United States v. Florida Board of Regents
No. 98-791 (11th Cir. 1999) and No. 98-796 (11th Cir. 1999) 88 pps. **$90.00**
Also available: *Brief amici curiae in support of respondent making similar arguments.* 22 pps. **$35.00**

PB (Waxman for DOJ) Brief For The United States
Congress clearly expressed in the text of the Age Discrimination in Employment Act (ADEA) its intent to abrogate the State's Eleventh Amendment immunity to private suits. By defining the terms "employer" and "employee" to include the States, Congress manifested its intent to impose the ADEA's substantive obligations to the States. The ADEA as applied to the states is a valid exercise of Congress's enforcement authority under Section 5 of the Fourteenth Amendment.

United States v. Florida Bd. of Regents, et. al., and Kimel, et al. v. Florida Bd. of Regents, et al.
Nos. 98-796 & 98-791 (U.S. Supreme Ct. 1999) 67pps. **$75.00**
Also available: *Petition For A Writ Of Certiorari To The Eleventh Circuit, making similar arguments. 18pps.* **$25.00**
Appendices. 107pps. **$105.00**
Also available: Brief of the AARP, The American Association of University Professors, et al., as Amicus Curiae in Support of Petitioners, making similar arguments. 39pps. **$45.00**

PB (Collins) Petition For A Writ Of Certiorari To The Eleventh Circuit
The court's findings in *Seminole Tribe of Florida v. Florida* has resolved important 11th Amendment questions and in doing so has precipitated a set of additional questions as to Congress' authority to provide for a private party federal cause's of action as a means of enforcing the federal statutory obligations on the states. Questions raised by the instant case and others that have followed *Seminole* have engendered much litigation and have created a sharper split in the lower court authority. Because there is a conflict among the circuits as to the right of private plaintiffs in enforcing the ADEA against state defendants in federal court Certiorari should be granted to resolve this conflict and to restore uniformity.

Kimel, et al. v. State of Florida Bd. of Regents, et al.
No. 98-791 (U.S. Supreme Ct. 1999) 18pps. **$25.00** Appendices 107pps. **$105.00**
Also available: Brief For The United States, making similar arguments. 67pps. **$75.00**
Also available: Brief of the AARP, The American Association of University Professors, et al., as Amicus Curiae in Support of Petitioners, making similar arguments. 39pps. **$45.00**

AB (McCann for AARP, *et al*.) Brief of the AARP, The American Association of University Professors, *et al*. In Support of Petitioners
Congress unequivocally expressed its intent to abrogate the States' Eleventh Amendment immunity by amending the text of the ADEA on four separate occasions. The ADEA is an appropriate and proportional exercise of Congress's Section Five enforcement power of the Fourteenth Amendment under the two-prong criteria of *City of Boerne v. Flores* in that it was Congress' response to pervasive and arbitrary age discrimination and in that it is narrowly tailored and provides a congruence and proportionality between the injury and the means adopted to prevent and remedy it. Moreover, the Equal Protection Clause protects against intentional and arbitrary discrimination by the States and the objectives of the ADEA are the essence of equal protection.

United States and Kimel, et al. v. Florida Bd. of Regents; United States and Dickson v. Florida Dept. of Corrections; MacPherson and Narz v. University of Montevallo
Nos. 98-791 (U.S. Supreme Ct. 1999) 39pps. **$45.00**
Also available: Brief For The United States, making similar arguments. 67pps. **$75.00**
Also available: Petition For A Writ Of Certiorari To The Eleventh Circuit, making similar arguments. 18pps. **$25.00**
Appendices 107pps. **$105.00**

AB (Carney) Brief of *Amicus Curiae* For The State Of Ohio, Tennessee And 21 Other States In Support Of Respondents. The ADEA does not contain an unmistakably clear, textual expression of an intent to abrogate the States' Eleventh Amendment immunity as does the FLSA. In the ADEA, Congress failed to address, even indirectly, the subject of the States' sovereign immunity. The ADEA is not appropriate legislation and fails the two-prong criteria set forth in *City of Boerne v. Flores* because Congress found no factual evidence of a pattern of unconstitutional age discrimination by the states when it extended the ADEA to cover state employment in 1974. The ADEA's restrictions are far out of proportion to the constitutional guarantees against age discrimination, among these restrictions are the application of the heightened strict scrutiny standard required in age employment decisions.
United States and Kimel, et al. v. Florida Bd. of Regents
Nos. 98-791 (U.S. Supreme Ct. 1999) 22pps. **$35.00**
Also available: Brief of Respondents, making similar arguments. 84pps. **$95.00**

DB (Sutton) Brief of Respondents
The ADEA did not expressly and explicitly abrogate the states' Eleventh Amendment immunity. The ADEA is not appropriate enforcement legislation under Section Five of the Fourteenth Amendment because, under *City of Boerne v. Flores,* that section's remedial powers must be exercised in a way that is congruent with and proportional to a constitutional wrong. The ADEA cannot be sustained, as traditional enforcement legislation that merely prohibits constitutional violations, because it required a far more rigorous judicial review than the "rational basis" review required by the Equal Protection Clause, as evidenced under the *Murgia* trilogy. Nowhere does the ADEA make mention of the Fourteenth Amendment, and its statement of purpose reveals a paradigmatic excercise of Congress' authority under the Interstate Commerce Clause. Moreover, the 1974 amendments were enacted pursuant to the FLSA, which is grounded in the Commerce Clause. All 50 states have enacted their own age discrimination laws and there is no legislative purpose or factual predicate pattern of unconstitutional state action to which the ADEA responds. Under the *City of Boerne* analysis, the ADEA independently fails the proportionality requirements of Section Five.
United States and Kimel, et al. v. Florida Bd. of Regents
Nos. 98-791 (U.S. Supreme Ct. 1999) 84pps. **$95.00**
Also available: Brief of Amicus Curiae For The State Of Ohio, Tennessee And 21 Other States In Support Of Respondents, making similar arguments. 22pps. **$35.00**

AB (Ventrell-Monsees for AARP) Brief *amicus curiae* of American Association of Retired Persons in Support of Plaintiffs-Appellees on Appeal from D.C., N.D. N.Y.
Congress unequivocally expressed its intent to abrogate states' 11th amendment immunity by amending the ADEA definition of "employer" to include states. This extension of the ADEA to include states was a valid exercise of Congress' powers under section five of the 14th amendment.
Cooper v. New York State Office of Mental Health et al.
Mete et al. v. New York State Office of Mental Retardation and Developmental Disabilities
New York State Dept. Of Civil Service, Davis et al. v. Board of Trustees of the University of Conn.
Nos. 97-9433L, 97-9543 & 97-9367 (2nd Cir. 1998) 23 pps. **$35.00**

AB (Osborne for AARP) Brief in Support of Appellee on Appeal from D.C., M.D. Pa.

The 11th Amendment does not give States immunity from private ADEA suits because Congress clearly expressed its intent to abrogate the States' sovereign immunity in the language of the ADEA and because the extension of the ADEA to the States was a valid exercise of congressional power under the equal protection clause of the 14th amendment.
Young v. Pennsylvania House of Representatives, Republican Caucus
No. 98-7130 (3rd Cir. 1996) 29 pps. **$35.00**

AB (Ventrell-Monsees for AARP) Appeal from D.C., W.D. Tenn.
In this case, the court mistakenly rejected the view of the vast majority of courts that have addressed the issue that the ADEA abrogates the States' Eleventh Amendment immunity and concluded incorrectly that the ADEA failed to satisfy both *Seminole Tribe* requirements. The court erred first by focusing solely on "Congress' expansion of the [ADEA] definitions of 'employer' and 'employee': to include States, and "alone" found it insufficient evidence of intent to abrogate. Thus the proper application of the *Seminole* test compels the conclusion that in enacting and amending the ADEA Congress abrogated the States' Eleventh Amendment immunity.
Coger v. Board of Regents, et al.
No. 97-5134 (6th Cir. 1997) 26 pps. **$35.00**

AB (Ventrell-Monsees and McCann for the AARP) Appeal from D.C., N.D. Ill.
The district court's holding that the plaintiff's claims are not barred by the Eleventh Amendment should be affirmed. The Eleventh Amendment is not bar to the ADEA claims against the States.
Gostasby v. Board of Trustees of the University of Illinois
No. 97-2297 (7th Cir. 1997) 19 pps. **$25.00**

AB (Hedin for NELA) In Support of Appellee on Appeal from D.C., N.D. Miss.
The ADEA could have been enacted pursuant to §5 of the Fourteenth Amendment, thereby abrogating the Eleventh Amendment immunity of the State of Mississippi.
University of Mississippi v. Linda Anne Scott
No. 96-60385 (5th Cir. 1996) 10 pps. **$15.00**
Also available: Brief of Appellee on Appeal from the D.C., N.D., Mississippi. 38 pps. **$45.00**
Reply Brief of Plaintiff -Cross Appellant on Appeal from the D.C., N.D., Miss. 24 pps. **$35.00**
Brief of Cross-Appellee/Reply Brief of Appellant on Appeal from the D.C., N.D., Miss. 39 pps. **$45.00**

AB (Hedin for NELA) Brief In Support of Plaintiff-Appellant on Appeal from D.C., N.D. Ala.
The district court's order dismissing appellant's complaint on 11th Amendment grounds should be reversed. Congress may abrogate the States' 11th Amendment immunity when it clearly indicates its intent to do so. The ADEA was enacted pursuant to Section 5 of the 14th Amendment. The 1996 Amendments to the ADEA, enacted 6 months after *Seminole Tribe of Florida v. Florida*. are further support that the ADEA was enacted pursuant to the 14th Amendment. The ADEA satisfies the "clear statement" rule. The ADEA, as federal legislation, carries a presumption of constitutionality.
MacPherson and Narz v. University of Montevallo
No. 96-6947 (11th Cir. 1996) 15 pps. **$25.00**

AB (Hedin for NELA) In Support of Appellant on Appeal from the D.C., D. Minn.
The ADEA could have been enacted pursuant to §5 of the Fourteenth Amendment, thereby abrogating the Eleventh Amendment immunity of the State of Minnesota. Congress' intent to abrogate is obvious because the ADEA's definition of "employer" includes the "states."
Humenansky v. Board of Regents of the University of Minnesota
No. 97-22302 (8th Cir. 1997) 12 pps. **$15.00**

AB (Hedin for NELA) In Support of Appellants on Appeal from the D.C., W.D. Tenn.

The ADEA could have been enacted pursuant to §5 of the Fourteenth Amendment, thereby abrogating the Eleventh Amendment immunity of the State of Tennessee. Congress' intent to abrogate is obvious because the ADEA's definition of "employer" includes the "states."
Coger v. Board of Regents of the University of Memphis
No. 97-2302 (8th Cir. 1997) 12 pps. **$15.00**

AB (Osborne) In Opposition to Defendant's Motion to Dismiss
The 1974 extension of the ADEA to the states and states agencies satisfies the *Seminole* test because: (1) Congress made its intent to abrogate the immunity unequivocally clear, and (2) Congress enacted the amendments pursuant to a valid exercise of § 5 Fourteenth Amendment powers. Accordingly, the Eleventh Amendment cannot shield the Commonwealth of Virginia (or its agencies) or any state from the ADEA's reach.
Haddad v. Virginia Polytechnic Institute and State University
No. 97-388-A (D.C., E.D. Va. 1997) 17 pps. **$25.00**

AB (McCann for AARP) Brief In Support of Plaintiffs-Appellants on Appeal from D.C., N.D. Ala.
The district court's decision should be reversed as the 11th Amendment is no bar to ADEA claims against the States. The 1974 amendments to the ADEA were passed pursuant to Congress' powers under Section 5 of the 14th Amendment. The purpose of the ADEA as applied to the States is clearly tied to the guarantees of the Equal Protection Clause. The ADEA and Title VII, which indisputably was passed pursuant to Section 5 of the 14th Amendment, share identical goals.
MacPherson v. University of Montevallo
No. 96-6947 (11th Cir. 1996) 35 pps. **$45.00**

AB (Hedin for NELA) Brief In Support of Plaintiff
Congress may abrogate the States' 11th Amendment immunity when it clearly indicates its intent to do so. The ADEA satisfies the "clear statement" rule. The ADEA was enacted pursuant to § 5 of the 14th Amendment. The 1996 Amendments to the ADEA, enacted 6 months after Seminole Tribe of Florida v. Florida, are further support that the ADEA was enacted pursuant to the 14th Amendment. The ADEA, as federal legislation, carries a presumption of constitutionality.
Jenkins v. Eastern State Hospital. et al.
No. 4:95CV174 (D.C., E.D. Va. 1996) 10 pps. **$15.00**
Also available: Motion of NELA to file amicus curiae Brief In Support of Plaintiff. 3 pps. **$15.00**

ADEA - PROCEDURES

AB (Gregory for EEOC) Brief in Support of Plaintiff-Appellee on Appeal from D.C., D. Mass.
The Older Workers Benefits Protection Act ("OWBPA") precludes enforcement of any pre-dispute agreement to arbitrate plaintiff's ADEA claim. The Supreme Court has not ruled on the effect of the OWBPA on the enforceability of such agreements. The OWBPA evinces an intent to preclude the waiver of procedural rights under the ADEA, when the waiver occurs in a pre-dispute agreement. The Civil Rights Act of 1991 evinces an intent to preclude the mandatory arbitration of plaintiff's Title VII claims. Other grounds exist for affirming the district court's decision.
Plaintiff v. Merrill, Lynch and Wyllys
No. 98-1246 (1st Cir. 1998) 42 pps. $**55.00**

PB (Roseman) Plaintiff-Appellant's Opening Brief on Appeal from D.C., D. Colo.
The district court erred in applying a deferential standard of review in connection with United's employment decisions. There exist genuine issues of material fact on plaintiff's claims of sex and age discrimination, and retaliation, precluding the grant of summary judgment. United's representation's concerning promotional opportunities for its current employees supported a claim for a breach of unilateral contract or promissory estoppel.

The district court erred in dismissing plaintiff's claims of sex and age discrimination for defendant's 1993 hiring decision.
Bullington v. United Airlines, Inc.
No. 98-1125 (10th Cir. 1998) 97 pps. **$105.00**

AB (Kearney for NELA) Appeal from a Final Judgment Issued by D.C., D. Colo.
The unequal use of objective criteria, coupled with the use of subjective criteria disadvantaging plaintiff as a member of a protected group, warrants the use of an inference of discriminatory intent of which plaintiff was deprived at the summary judgment stage. The court's order applied an erroneous summary judgment standard for discrimination cases by making credibility determinations and disregarding inconsistent objective criteria.
Bullington v. United Airlines, Inc.
No. 98-1125 (10th Cir. 1998) 30 pps. **$35.00**

AB (Parker for Equal Rights Advocates) Brief *amicus curiae* in Support of Plaintiff on Appeal from D.C., D. Colo.
The district court erred in giving defendant deference in its hiring decisions. The district court improperly weighed the evidence and determined the truth of the matter. Plaintiff's disparate treatment claim should survive summary judgment because plaintiff established a prima facie case and showed pretext. The district court erroneously weighed the ultimate issues that are for a trier of fact. The district court improperly granted summary judgment on plaintiff's disparate impact claim because plaintiff met her prima facie case, established with statistical evidence and defendant failed to present any evidence that its subjective interviewing criteria was job-related and justified by business necessity.
Bullington v. United Airlines, Inc.
No. 98-1125 (10th Cir. 1998) 28 pps. **$35.00**

AB (Gregory for EEOC) Brief *amicus curiae* on Appeal from D.C., S.D. N.Y.
This court should adopt the reasoning of the D.C. Circuit in *Cole v. Burns Int'l Security Servs.* and hold that a court, in the context of the ADEA, must apply a standard of review that is sufficiently rigorous to ensure that the arbitration panel correctly applied the statutory standards in resolving the claim. Under that standard, the arbitration award in this case must be vacated because, in the absence of a written opinion with a supporting rationale, the court has no meaningful way to determine that the arbitration panel acted in accordance with applicable statutory standards.
Chisolm v. Kidder, Peabody Asset Management, Inc.
No. 97-7828 (2nd Cir. 1997) 30 pps. **$35.00**

AB (Gregory for EEOC) Brief *amicus curiae* on Appeal from D.C., S.D. N.Y.
This court should adopt the reasoning of the D.C. Circuit in *Cole v. Burns Int'l Security Servs.* and hold that a court, in the context of the ADEA, must apply a standard of review that is sufficiently rigorous to ensure that the arbitration panel correctly applied the statutory standards in resolving the claim. Under that standard, the arbitration award in this case must be vacated because, in the absence of a written opinion with a supporting rationale, the court has no meaningful way to determine that the arbitration panel acted in accordance with applicable statutory standards.
Halligan v. Piper Jaffray Inc. and Geisness
Nos. 97-7801 97-7839 (2nd Cir. 1997) 30 pps. **$35.00**

PB (Duplinsky for EEOC) Appeal from D.C., W.D. NC.
The EEOC's ADEA and race discrimination charges should not be stayed during the employer's bankruptcy proceedings.
EEOC V. McLean Trucking Co.

No. 87-3070 (4th Cir. 1987) 22 pps. **$35.00**

PB (Fay for Plaintiff, Ventrell-Monsees, Gorlick for AARP) Reply Brief of Moving Plaintiffs-Intervenors in Support of Motion to Intervene & Modify Consent Decree
Rule 23 principles concerning notice apply to age discrimination cases. The EEOC can not enter into a settlement agreement that adversely resolves the rights of individuals without providing notice to those individuals prior to settlement. The EEOC's own guidelines require that the EEOC regional attorney notify the affected class members before transmitting the Consent Decree to the General Counsel in Washington, D.C. for approval.
EEOC and Pace et al. v. City of St. Louis Employee Retirement System Board of Trustees, et al.
No. 91-2003-C-7 (D. E.D. MO. 1994) 15 pps. **$25.00**

PB (Vassallo) Motion for New Trial
The district court erred in excluding a jury member over objection that the exclusion was racially motivated since the juror and plaintiff's counsel are of Hispanic origin. The district court erred in failing to exclude jurors with business ties to the defendant. The court erred in failing to instruct the jury to consider the proper factors in determining whether plaintiff effectively waived an ADEA claim. Plaintiff made out a *prima facie* case of handicap discrimination under Florida law.
Woodard v. General Management Services
No. 91-8319-CIV-Gonzalez (D.C., S.D. Fla. 1992) 15 pps. **$25.00**

AB (AARP) Appeal from D.C., N.D. Ind.
The jury should not have been allowed to consider defendant's good faith affirmative defense to ADEA liability because the evidence proffered was legally inadequate to support it, i.e., the defendants' relied on an interpretation that was not in effect at the relevant time. Moreover, the admission of collateral source financial information was reversible error.
Bell v. Trustees of Purdue University
No. 91-3095 (7th Cir. 1991) 17 pps. **$25.00**

PB (Reams for EEOC) Appeal from D.C., D. Kan.
The district court committed reversible error by excluding from the jury, for all purposes, factual evidence relating to the charge which was obtained during the EEOC's investigation of the charge.
EEOC v. Gear Petroleum Company
No. 90-3024 (10th Cir. 1990) 53 pps. **$75.00**
Also available: Reply Brief on Appeal from D.C., D. Kan., making similar arguments. 19 pps. **$25.00**

AB (Brusoski for EEOC) Appeal from D.C., S.D. Ind.
The intake questionnaire completed by plaintiff at the EEOC office was sufficient to constitute a "charge". The questionnaire was completed within the 180 day limitation period. Plaintiff's demotion charge was timely filed.
Steffen v. Meridian Life Insurance Co.
No. 87-1059 (7th Cir. 1987) 27 pps. **$35.00**

AB (Brusoski for EEOC) Appeal from D.C., W.D. N.Y.
The ADEA does not require an individual to personally file a timely charge before he may bring suit where a charge has been filed by another which adequately notifies the defendant of the allegation of discrimination against a group of persons.
Tolliver v. Xerox Corp.
No. 90-7201 (1st Cir. 1990) 21 pps. **$35.00**

AB (Ventrell-Monsees for AARP) Appeal from D.C., D. N.J.

Congress' selective incorporation of specific FLSA provisions into the ADEA demonstrates that Section 256 of the FLSA, which provides that a "collective or class action" under the FLSA is not commenced for each claimant is named a party to the complaint or files his consent in court, is inapplicable to the ADEA.
Mershon v. Elastic Stop Nut
No. 90-5597 (3rd Cir. 1990) 21 pps. **$35.00**

PB (Collingsworth for EEOC) Appeal from D.C., D. N.J.
The EEOC is not procedurally barred from presenting arguments and evidence to meet the standard of law created by *Betts* -- that the EEOC must prove that defendant denied layoff payments to older workers in order to discriminate in a non-fringe benefit aspect of employment.
EEOC v. Westinghouse Electric Corp.
No. 86-1226 (3rd Cir. 1987) 57 pps. **$65.00**

PB (Johnston for EEOC) Appeal from D.C., W.D. Pa.
Defendant's refusal to change the pension plan, after being notified of ADEA violations was willful violation and thus subjected defendant to the 3 year statute of limitations. Also, defendant has duty to cost-justify its disability plan that reduced benefits solely on basis of age.
EEOC v. City of Mt. Lebanon, P.A.
No. 87-3189 (3rd Cir. 1987) 32 pps. **$45.00**

AB (Marcosson for EEOC) In Support of Plaintiff
An employer may not bring a preemptive suit in state court for declaratory judgment that forced retirement of employees. The ADEA gives no cause of action to employers and permitting such a suit would disrupt the administrative process crafted by Congress.
City of St. Louis et al. v. Milentz et al.
No. 924-00119 (Mo. Cir. Ct., 22nd Cir. 1993) 10 pps. **$15.00**

PB (Fay for AARP) Reply Brief of Moving Plaintiffs-Intervenors In Reply to Plaintiff's Response Brief
Courts impose a notice requirement in "hybrid" Rule 23 cases despite the fact that Rule 23(b)(2) itself does not require notice. Therefore the EEOC must notify plaintiffs of the settlement it entered into with defendant.
EEOC and Pace, et al., v. City of St. Louis Employee Retirement System Board of Trustees, et al.
No. 91-2003-C-7 (D.C., E.D. Mo. 1994) 5 pps. **$15.00**

AB (Ramshaw for EEOC) In Support of Plaintiff-Appellant
Plaintiff's ADEA challenge to defendant's policy of reducing the disability retirement benefits of persons who become disabled after they are 55 is ripe even though plaintiff's reduction has not yet taken effect.
Riva v. Massachusetts
No. 95-1066 (1st Cir. 1995) 23 pps. **$35.00**

PB (Coleman for EEOC) Reply Brief of Plaintiff-Appellant
Because the ADEA authorizes the EEOC to bring enforcement actions even when a private litigant has already filed a lawsuit raising identical claims and seeking identical relief, the district court had no authority to dismiss the commission's action as "duplicative."
EEOC v. G-K-G, Inc.
No. 93-2275 (7th Cir. 1994) 15 pps. **$25.00**

PB (Vassallo) Memo of Law In Support of Motion for New Trial and to Alter Judgment

Plaintiff is entitled to a new trial because some jurors were improperly excluded, other jurors were improperly included, and the trial court erred in holding that plaintiff did not state a prima facie case of discrimination.
Woodard v. General Management Services, Inc., et al.
No. 91-8319-CIV-GONZALEZ (D.C., S.D., Fla. 1992) 15 pps. **$25.00**

PB (Suhre for EEOC) Brief of Plaintiff-Appellee
Defendant was not entitled to an adjudication of its claim that it is not covered by the ADEA before complying with the EEOC's subpoena.
EEOC v. The Michigan Catholic
No. 94-1878 (6th Cir. 1994) 19 pps. **$25.00**

PB (Cotiguala) Response to Defendant's Motion to Bifurcate the Liability and Damages Phases of the Trial
Defendant does not satisfy any factor for bifurcation. Bifurcation does not further convenience, avoid prejudice, and is not conducive to expedition or economy. Bifurcation is so prejudicial to plaintiff that it violates the right to trial by jury.
Wagner v. Kestler Solder Co.
No. 94-C-6039 (D.C., N.D. Ill. 1995) 26 pps. **$35.00**

ADEA - FILING CHARGE/STATUTE OF LIMITATIONS

AB (Brusoski for EEOC) Appeal from D.C., S.D. Ind.
The intake questionnaire completed by plaintiff at the EEOC office was sufficient to constitute a "charge". The questionnaire was completed within the 180 day limitation period. Plaintiff's demotion charge was timely filed.
Steffen v. Meridian Life Insurance Co., et al.
No. 87-1059 (7th Cir. 1987) 37 pps. **$45.00**

AB (Fink for EEOC) Appeal from D.C., N.D. Ill.
Although §7(d) of the ADEA clearly requires that one charge be filed as precondition to a private action, it does not require every participating plaintiff to have filed a charge. Title VII decisions are persuasive precedent in ADEA cases.
Anderson v. Montgomery Ward & Co.
No. 87-1297 (7th Cir. 1987) 30 pps. **$35.00**

AB (Miller for AARP) Appeal from D.C., S.D. N.Y.
Section 15 of the ADEA does not specify any limitation period for federal employees. The court mistakenly relied on limitations periods contained in the Civil Service Reform Act and Title VII, which mandate that a civil action is to be filed within 30 days of receipt of notice of the agency's final decision.
Bornholdt v. Baker, et al.
No. 88-6057 (2nd Cir. 1988) 26 pps. **$35.00**

AB (Wheeler for EEOC) Appeal from D.C., W.D. Pa.
The district court ignored the controlling legal principle that an ADEA charge timely filed with the EEOC is presumed to have been filed with the state agency in a deferral state.
Jones v. Baskin, Flaherty, Elliott and Mannino, P.C.
Nos. 89-3345 & 89-3439 (3rd Cir. 1990) 24 pps. **$35.00**

AB (Franklin for EEOC) Appeal from D.C., S.D. Iowa

A letter from the EEOC, informing a charging party that the EEOC will take no action regarding her charge of age discrimination until the conclusion of the state agency's proceedings, does not constitute a note of "disposition" of the charge by the EEOC for the purposes of §3(2)(b) of the Age Discrimination Claims Assistance Act (ADCAA). Therefore extended statute of limitations under ADCAA must apply to render plaintiff's ADEA claim timely.
Schleiniger v. Des Moines Water Works, Inc.
No. 90-2010SI (8th Cir. 1990) 25 pps. **$35.00**

AB (Gregory for EEOC) Appeal from D.C., W.D. Pa.
The district court erred in finding that a negative employment evaluation, which preceded the discharge, triggered the running of the charge-filing period for a discriminatory discharge claim under the ADEA.
Colgan v. Fisher Scientific Co.
No. 90-3659 (3rd Cir. 1990) 23 pps. **$35.00**

AB (Zaleznick, Ventrell-Monsees for AARP) Appeal from D.C., W.D. Ky.
An ADEA charge is timely filed under 29 U.S.C. §626(d) when there is evidence of a continuing violation (a systemic policy of age discrimination regarding promotions and advancement) that was in effect during the 300-day filing period. The district court erred in finding the claim untimely because plaintiff had not specifically been denied a promotion during the limitations period.
Parrish v. Ford Motor Co.
No. 91-5300 (6th Cir. 1991) 17 pps. **$25.00**

AB (Gregory for EEOC) Appeal from D.C., E.D. Pa.
The continuing violation theory applies here because each paycheck issued reflecting lower salary adjustments than similarly
situated employees because of his age constituted a new violation of the ADEA.
Sendal v. Bowing Helicopters
No. 93-1814 (3rd Cir. 1993) 27 pps. **$35.00**

AB (Gregory for EEOC) Appeal from D.C., N.D. Ohio
Plaintiffs are entitled to equitable tolling of the statute of limitations in their ADEA claim where they claim that defendant reduced its force and relocated its operations out of state facilities in order to replace plaintiffs with younger employees. Plaintiffs did not learn of defendant's hiring of younger employees for the new facility until after 300 days from the reduction in force at the old facility. Equitable tolling entitles plaintiffs to an extension of the full 300 day filing period, measured from the date plaintiffs became aware of the facts that supported their claim.
Allen v. Diebold, Inc.
No. 93-3012 (6th Cir. 1993) 29 pps. **$35.00**

AB (Goldstein for EEOC) Appeal from D.C., D. N.C.
Plaintiff's charge that defendant failed to consider him for available positions because of his age was timely challenged. This court has consistently recognized that where a plaintiff alleges that his employer engaged in a series of related discriminatory acts, at least one of which falls within the limitations period, a challenge to those acts is timely under the continuing violation theory.
Michael C. Lee v. Air Products and Chemicals, Inc.
No. 94-1119 (4th Cir. 1994) 20 pps. **$25.00**

PB (Sloan for EEOC) Appeal from D.C., D. N.J.

The district court erred in concluding that this action was barred by the two year statute of limitations for non-willful violations of the ADEA and in granting summary judgment because the EEOC's evidence raised a factual issue as to whether the violation was willful.
EEOC v. Britrail Travel International Corp.
No. 90-5435 (3rd Cir. 1990) 66 pps. **$75.00**

AB (Bogas for EEOC) Appeal from D.C., N.D. Ill.
The two year statute of limitations had expired as of the date of the enactment of the Age Discrimination Claims Assistance Act of 1988 (ADCAA), and therefore plaintiff can take advantage of the filing window provided by the ADCAA with respect to the nonwillful component of his complaint.
Brom v. Bozell, Jacobs, Kenyon & Eckhardt, Inc.
No. 90-1513 (7th Cir. 1990) 14 pps. **$25.00**

PB (Johnston for EEOC) Appeal from D.C., W.D. Pa.
Defendant's refusal to change the pension plan, after being notified of ADEA violation was a willful violation and thus subject to the 3 year statute of limitations. Defendant has duty to cost-justify its disability plan that reduced benefits solely on basis of age.
EEOC v. City of Mt. Lebanon, P.A.
No. 87-3189 (3rd Cir. 1987) 32 pps. **$45.00**

PB (Black for EEOC) Appeal from D.C., D. N.J.
District court erred by dismissing this action alleging denial of Layoff Income and Benefits (LIB), to laid off employees aged 55 or older, as time barred. The statute of limitations starts to run on the date of plant closing, not on notice of closing. Prior finding of willfulness should have been dispositive of timeliness issue.
EEOC v. Westinghouse Electric Co.
No. 87-5174 (3rd Cir. 1987) 46 pps. **$55.00**

AB (Zaleznick of AARP) Appeal from D.C., W.D. N.Y.
A previously timely filed ADEA claim that provided notice to defendant of an allegation of class-wide discrimination allows plaintiffs to "piggyback" their claims regardless of whether all plaintiffs initiate suit individually or collectively. Plaintiffs attempting to piggyback their claims under Section 7 (d) need not demonstrate that they are “similarly situated,” within the meaning of Section 7 (b), to those who filed charges. The statute of limitations should be tolled from the date of filing of a class-wide suit until the date of decertification for "opt-in" plaintiffs who later commenced a separate action.
Tolliver v. Xerox & Braun v. Xerox
Nos. 90-7201 (L) & 90-7251 (2nd Cir. 1990) 20 pps. **$25.00**

AB (Mastroianni for EEOC) Appeal from D.C., M.D. Ga.
The intake questionnaire completed by plaintiff 152 days after his termination was sufficient to constitute a charge under the ADEA even though plaintiff did not file a charge with the EEOC until 202 days after termination. Thus plaintiff filed within the 180 day time limit. Assuming arguendo that the intake questionnaire does not constitute a charge, the charge filing period should be equitably tolled because plaintiff did all that could be reasonably expected to trigger the EEOC's administrative process.
Clark v. Coats & Clark, Inc.
No. 88-8339 (11th Cir. 1988) 46 pps. **$55.00**

AB (Moran for EEOC) In Support of Plaintiff-Appellant, Appeal from D.C., S.D. N.Y.

When an alleged violation of the ADEA occurs in a state with its own laws against discrimination, a complainant has 300 days to file a charge with the EEOC regardless of when state proceedings are initiated.
Brodsky v. The City University of New York
No. 94-7907 (2nd Cir. 1994) 17 pps. **$25.00**

PB (Starr for EEOC) Reply Brief of Plaintiff-Appellant
The state's adoption and maintenance of a facially discriminatory statute that compels municipal employers to discriminate in the provision of fringe benefits on the basis of age makes the state a proper defendant in this ADEA action.
EEOC v. State of Illinois
No. 94-2700 (7th Cir. 1995) 24 pps. **$35.00**

PB (Clark for EEOC) Reply Brief of Plaintiff-Appellant
The district court abused its discretion in denying the EEOC's motions (1) to toll the statute of limitations, (2) to amend its complaint to name officers who were mandatorily retired and officers who did not learn of the suit until after the case was remanded; and (3) for prejudgment interest for the same period as the back pay award.
EEOC v. Kentucky State Police Department
Nos. 94-5850, 94-6049, 94-6050 & 94-6235 (6th Cir. 1995) 14 pps. **$25.00**

AB (Gregory for EEOC) In Support of Plaintiff-Appellant
The district court improperly ruled that the charge filing period was triggered prior to the date that plaintiff was notified of his discharge. Courts have overwhelmingly held that the charge filing period does not begin to run in a discrimination charge case until the employee is notified of his discharge.
Bouker v. Cigna Corp.
No. 94-2101 (3rd Cir. 1995) 30 pps. **$35.00**

PB (Sloan for EEOC) Brief as Applicant-Appellee
The district court's decision requiring defendant's compliance with the Commission's subpoena was correct because the Commission is empowered to conduct investigations under the ADEA irrespective of whether a charge is filed. The Commission may conduct such investigations on its own initiative.
EEOC v. Tire Kingdom, Inc.
No. 95-4227 (11th Cir. 1995) 34 pps. **$45.00**

ADEA - COVERAGE

AB (Coleman for EEOC) In Opposition to Defendants' Motion for Summary Judgment
The ADEA does not preempt state law awards of compensatory and punitive damages stemming from breach of a conciliation agreement. The ADEA protects against harassment whether or not a plaintiff suffers a change in job status or undergoes economic harm.
Eggleston v. South Bend Community School Corporations
No. S92-00672S (D. C., N.D. Ind. 1993) 13 pps. **$25.00**

AB (Clark for EEOC) On Appeal from D.C., E.D. Mich.
The district court properly dismissed Doe's complaint against the EEOC for lack of subject matter jurisdiction and failure to state a claim since review of the Commission's no cause determination is not available under 5 U.S.C. §§ 702 and 704 of the Administrative Procedures Act.
Doe v. Clarence Thomas, et al.
No. 93-2204 (6th Cir. 1994) 25 pps. **$25.00**

PB (Sloan for EEOC) Appeal from D.C., N.D. Ohio
The twenty employee minimum in §11(b) of the ADEA does not apply to government employers as a matter of law. The language of the statute excludes government employers from the minimum employee requirement. No valid reason to avoid a literal construction of the statute exists because it advances the Act's goal of eliminating age discrimination in employment.
EEOC v. Monclova Township
No. 89-4038 (6th Cir. 1990) 34 pps. **$45.00**
Also available: Reply Brief on Appeal from D.C., N.D. Ohio, making similar argument. 19 pps. **$25.00**

AB (Miller for AARP) Appeal from D.C., N.D. Ill.
Defendant, a government agency with less than twenty employees, is an employer under the ADEA.
Kelly v. Wauconda Park District
No. 85-2390 (7th Cir. 1985) 22 pps. **$35.00**

PB (Bogas D.C. EEOC) Appeal from D.C., E.D. Ill.
An appointed state associate judge is an employee of the state and is protected by the ADEA. Such a judge is not a policymaking official, an elected official, or an appointee working for an elected official, and therefore does not fall under the Section 11(f) exemption.
EEOC v. The State of Illinois
No. 89-3421 (7th Cir. 1989) 36 pps. **$45.00**
Also available: Reply Brief on Appeal from D.C., E.D. Ill., making similar arguments. 15 pps. **$25.00**

AB (AARP) Appeal from D.C., S.D. W.Va.
The doctrine of legislative immunity does not bar the challenge of a state statute setting the salaries of full time state faculty under the ADEA. The ADEA has been amended to apply to state and local governments as "employers" who therefore are subject to liability for discriminatory unemployment practices. To bar an ADEA suit against a state when intent is at issue would eviscerate the application of the ADEA to the states.
Nuchims v. State of West Virginia
No. 89-2487 (4th Cir. 1990) 18 pps. **$25.00**

AB (Marcosson for EEOC) Appeal from D.C., E.D. Mo.
Appointed state judges are employees within the meaning of the ADEA.
Gregory v. Ashcraft
No. 89-2360 (8th Cir. 1989) 41 pps. **$55.00**

AB (Zaleznick, Ventrell-Monsees for AARP) Writ of Certiorari to 8th Circuit
Missouri mandatory retirement provision for appointed state court judges violates Equal Protection Clause of Fourteenth Amendment. Appointed state court judges are not excluded from the coverage of the ADEA because they are not "appointees on the policymaking level" within the meaning of Section 630(f).
Gregory v. Ashcroft
No 90-50 (U.S. Supreme Ct. 1991) 30 pps. **$35.00**

AB (Marcosson for EEOC) Appeal from D.C., W.D. N.Y.
Section 11(f) of the ADEA exempts only certain officials appointed by elected officials, and thus the ADEA protects local government appointees chosen by an official who was not elected.
Tranello v. Frey

Nos. 91-7944 & 7946 (2nd Cir. 1991) 14 pps. **$25.00**

AB (Marcosson for EEOC) In Support for Petition for Rehearing *En Banc* from D.C., N.D. Cal.
Agents of an employer can be held individually liable for damages under Title VII and the ADEA. Title VII and the ADEA permits suits against agents of an employer in their individual capacity when the agents discriminate on the basis of race and age in retaliation of complaints of discrimination. There is no question that agents-employees are encompassed in both Title VII's and the ADEA's definitions of "employer". Any other conclusion will prevent some plaintiffs from obtaining the full measure of relief which Congress has provided for employment discrimination victims.
Miller v. Maxwell's International, et al.
No. 90-16286 (9th Cir. 1993) 22 pps. **$35.00**

PB (Bruner for EEOC) Appeal from D.C., S.D. Iowa
The ADEA's ambiguous language "employees for each working day" should include all persons on the payroll and regularly employed, and not merely persons at work on any given day. The payroll method of counting employees is consistent with Congressional intent and the history and purposes of ADEA, and the EEOC's adoption of the payroll test should be given deference. EEOC v. Garden and Associates
No. 91-2336 (8th Cir. 1991) 47 pps. **$55.00**

PB (Bruner for EEOC) Reply Brief on Appeal from D.C., S.D. Iowa
A person who pays salaries or wages to 20 or more individuals for 20 weeks in a calendar year is an employer within the meaning of the ADEA so long as he maintains an employment relationship with at least 20 employees each day of those 20 weeks. The employees may work all or part of the day or may be on paid or unpaid leave to be counted for the jurisdictional purpose.
EEOC v. Garden & Associates
No. 91-2336 (8th Cir. 1991) 29 pps. **$35.00**

AB (Marcosson for EEOC) Appeal from D.C., E.D. N.Y.
The district court erred in finding that application of the ADEA to teachers in parochial schools raised First Amendment issues since the ADEA is a secular law neither advancing nor inhibiting religion and not leading to entanglement of government in religious affairs.
DeMarco v. Holy Cross High School
No. 92-7914 (2nd Cir. 1992) 33 pps. **$45.00**

PB (Valdez for EEOC) Appeal from D.C., D. Mass.
Appointed state judges are employees under the ADEA protected from the state's mandatory retirement provision. They do not fall under any of the exceptions to the term "employee" in the ADEA. They are not "elected public officials", they do not engage in "policymaking", nor do they serve as "immediate advisors" to the Governor regarding the exercise of the constitutional and legal powers of that office. Congress intended elected but not appointed judges to be excepted from ADEA coverage.
EEOC v. Commonwealth of Massachusetts
No. 88-1419 (1st Cir. 1988) 62 pps. **$75.00**

PB (White for D.C. EEOC) Reply Brief on Appeal from D.C., D. Mass.
The ADEA preempts a state law requiring most state and local employees who are 70 or more years old to pass an annual medical exam, since most are not "constitutional officers" under *Gregory v. Ashcroft,* are clearly protected by the ADEA, and the state law is not based on reasonable factors other than age.
EEOC v. Commonwealth of Massachusetts

No. 92-1696 (1st Cir. 1992) 13 pps. **$25.00**

AB (Zaleznick for AARP) Appeal of Summary Judgment by D.C., E.D. Pa.
Religious institutions are employers covered by the ADEA. Under *Smith*, 494 U.S. 872 (1990), the First Amendment's free exercise clause does not apply to a neutral statute of general applicability such as the ADEA, that is not directed specifically at religious practices.
Geary v. Visitation of the Blessed Virgin Mary Parish School
No. 93-1062 (3rd Cir. 1993) 21 pps. **$35.00**

AB (Goldstein for EEOC) Appeal of Summary Judgment by D.C., E.D. Pa.
The ADEA protects non-clergy employees of parochial schools.
Geary v. Visitation of the Blessed Virgin Mary Parish School
No. 93-1062 (3rd Cir. 1993) 34 pps. **$45.00**

PB (Starr for EEOC) Plaintiff-Appellant's Brief
The district court erroneously concluded that a state is insulated from liability under the ADEA when it enacts and enforces a statute requiring some employers in the state to impermissibly discriminate against their employees on the basis of age simply because the statute does not apply to state employees.
EEOC v. State of Illinois
No. 94-2700 (7th Cir. 1994) 45 pps. **$55.00**

PB (Bogas for EEOC) Petition for Rehearing or Rehearing *En Banc*
ADEA protects police special agents, since mandatory retirement at 60 was not exempted by the ADEA grandfathering provision where special agents were not subject to mandatory retirement in 1983, though were later reclassified.
EEOC v. State of Illinois
No. 92-2108 (7th Cir. 1993) 49 pps. **$55.00**

PB (Gregory for EEOC) Petition for Rehearing with Suggestion of Rehearing *En Banc*
An Indian tribe employer is covered by the ADEA in its refusal to hire a tribe member as a truck driver for a tribal company due to his age. The ADEA does not exclude Indian tribes from coverage (unlike Title VII) and the tribe's commercial enterprises are not "purely intramural matters."
EEOC v. Fond du Lac Heavy Equipment and Construction Co.
No 91-3561 (8th Cir. 1993) 28 pps. **$35.00**

AB (Shure for EEOC) Appeal from D.C., E.D. Mo.
Applying the ADEA to employees of a religious institution who are not members of the clergy does not raise serious First Amendment concerns.
Weissman v. Congregation Shaare Emeth, et al.
No. 94-1464 (8th Cir. 1994) 26 pps. **$35.00**

AB (Coleman for EEOC) In Support of Plaintiff-Appellant
Defendant violated the ADEA by offsetting plaintiff's disability benefits with pension benefits that he could only receive by retiring.
Kalvinskas v. California Institute of Technology
No. 94-55958 (9th Cir. 1994) 32 pps. **$45.00**

AB (Hedin for NELA) In Support of Plaintiffs

Federal civil rights laws in this case override the state's 11th Amendment immunity when Congress clearly indicates its intent to create state liability.
McPherson v. University of Montevallo
No. 94-AR-2962-S (D.C., N.D. Ala. 1996) 15 pps. **$25.00**

PB (Marcosson for EEOC) Brief of Plaintiff-Appellee
The district court correctly concluded that the practice of prohibiting public employees over the age of 65 from becoming members of their employer's retirement plan violates §4(a) of the ADEA.
EEOC v. Commonwealth of Massachusetts
No. 95-2092 (1st Cir. 1995) 23 pps. **$35.00**

PB (Moran for EEOC) Brief of Plaintiff-Appellee
The district court properly granted summary judgment after determination that defendant's mandatory retirement policy should not escape scrutiny of being in violation of the ADEA merely because it applies only to directors.
EEOC v. Johnson & Higgins, Inc.
No. 95-6216 (2nd Cir. 1995) 47 pps. **$55.00**

AB (Gregory for EEOC) In Support of Plaintiff-Appellant
Plaintiff's employer was a foreign person, but appellant himself worked inside the United States. Thus, plaintiff's promotion claims are covered under the ADEA.
Denty v. Smithkline Beecham Corp.
No. 96-1554 (3d Cir. 1996) 24 pps. **$35.00**

ADEA - DISPARATE IMPACT

PB (Sloan for EEOC) Brief Of The Equal Employment Opportunity Commission As Appellant
The commission alleged that the defendant's practice of basing RIF decisions on factors such as retirement eligibility and merit raises had a significant disparate impact on employees 55 and older because of their age. It was erroneous for the district court to dismiss the commission's claim of disparate impact solely on the ground that a claim, to be viable, must allege an impact against the entire protected class and not just a subgroup of a protected class. The district court also erred in rejecting as irrelevant the substantial evidence that defendant selected 440 non-union employees 55 and older for layoff because they were eligible to retire. Under the company's pension plan, only employees 55 and older, with ten years of service, were eligible to retire.
EEOC v. McDonnell Douglas Corp.
No. 98-3897 (8th Cir., 1999) 112pps. **$105.00**
Also available: Reply Brief Of The Equal Employment Opportunity Commission on Appeal, making similar arguments.
56pps. **$65.00**
Also available: AARP Brief Amicus Curiae In Support Of Plaintiff On Appeal, making similar arguments on evidence. 21pps. **$35.00**

PB (Sloan for EEOC) Reply Brief Of The Equal Employment Opportunity Commission As Appellant
There is no reasoned basis for the district court's legal determination that disparate impact theory should be restricted to claims alleging an impact against the entire protected class. The determination that employers may terminate or otherwise limit the employment opportunities of older workers based on their retirement eligibility, even where age has a determinative influence on eligibility, likewise lacks any reasoned basis. Viewing the totality of the EEOC's statistical, anecdotal, and contextual evidence in the light most favorable to the EEOC, rather than to the

defendant), a jury could find that the company engaged in a pattern and practice of terminating employees 55 and older because of age. Summary judgment was improper and should be reversed.
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AB (McCann for AARP Foundation Litigation) Brief *Amicus Curiae* In Support Of Plaintiff On Appeal
The ADEA prohibits employers from targeting individuals for a reduction in force based on their eligibility for retirement benefits. Following established case law, defendant's subjective motive for choosing retirement eligible employees for termination is irrelevant as to the violation of the ADEA. Liability under the ADEA does not depend on evidence of inaccurate and stigmatizing stereotypes concerning older workers.
EEOC v. McDonnell Douglas Corp.
No. 98-3897 (8th Cir. 1998) 21pps. **$35.00**
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56pps. **$65.00**

ADEA - EVIDENCE

PB (Waide) Writ of Certiorari to U.S. Court of Appeals for the 5th Circuit
Evidence that plaintiff was displaced by a younger employee for pretextual reasons and other circumstantial evidence adequately support a jury finding of age discrimination. In addition, the court of appeals erred in examining all of the evidence to determine whether judgment as a matter of law should be granted. The court should have used the same standards used in considering a summary judgment motion. However, unlike review of a denial of a Rule 56 summary judgment motion, an appeals court should grant deferential review to a decision of a trial judge to deny a Rule 50 directed verdict motion.
Reeves v. Sanderson Plumbing Products, Inc.
No. 99-536 (U.S. Supreme Court 2000) 62 pps. **$75.00**

PB (Sloan for EEOC) Brief Of The Equal Employment Opportunity Commission As Appellant
The commission alleged that the defendant's practice of basing RIF decisions on factors such as retirement eligibility and merit raises had a significant disparate impact on employees 55 and older because of their age. It was erroneous for the district court to dismiss the commission's claim of disparate impact solely on the ground that a claim, to be viable, must allege an impact against the entire protected class and not just a subgroup of a protected class. The district court also erred in rejecting as irrelevant the substantial evidence that defendant selected 440 non-union employees 55 and older for layoff because they were eligible to retire. Under the company's pension plan, only employees 55 and older, with ten years of service, were eligible to retire.
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EEOC v. McDonnell Douglas Corp.
No. 98-3897 (8th Cir. 1998) 21pps. **$35.00**
Also available: Brief Of The Equal Employment Opportunity Commission As Appellant, making similar arguments on disparate impact. 112pps. **$105.00**
Also available: Reply Brief Of The Equal Employment Opportunity Commission on Appeal, making similar arguments.

56pps. **$65.00**

AB (Osborne for AARP and NELA) In Support Of Plaintiff-Appellant Recommending Reversal
The district court improperly found that because plaintiff's proffered ageist comment evidence failed to satisfy this court's definition of direct evidence it was not probative of defendant's discriminatory intent. Neither the direct nor the indirect method of proving discrimination requires "direct" evidence. Circumstantial evidence is sufficient under the indirect burden-shifting method of proof set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-04 (1973). Statements that reflect an age-biased corporate atmosphere are sufficient evidence of discrimination.
Lind v. UNC, Inc.
No. 99-10262 (5th Cir. 1999) 34pps. **$45.00**

PB (Gregory for EEOC) Reply Brief
The district court erred in granting summary judgment as the EEOC presented sufficient evidence to meet the direct and circumstantial evidence theories. Defendant's claim that they terminated plaintiff because the company needed to cut personal costs by the elimination of jobs was false. Defendant did not eliminate plaintiff's job, but rather replaced him with a younger manager. Defendant's agent, a decision maker, made statements that are directly probative of age bias

in informing plaintiff he had been replaced. Taken in the aggregate, the Commission's proof is sufficient to preclude summary judgment.
EEOC v. Complete Dewatering Inc, et. al.
No 97-5291 (11th Cir. 1998) 29pps. **$35.00**

AB (Dunaway for AARP) In Support Of Appellant
The court erred in granting summary judgment despite the fact the appellant presented numerous issues of material fact. The standard for defeating summary judgment is less than that required to prevail at trial. Appellant presented direct documentary evidence of a program designed to eliminate or otherwise bypass older employees. By ruling that the appellant failed to establish a continuing violation, the court erroneously decided a disputed issue of material fact.
Thiessen v. General Electric Capital Corp., et al.
No. 98-3208 (10th Cir. 1998) 24pps. **$35.00**

AB (Tipton for NELA) In Support Of Appellant
The district court misapplied the standard for "similarly situated," when it decertified the class of putative plaintiffs pursuant to the collective action procedures under the ADEA. While proper class certification is largely a matter of first impression, the 11th Circuit has held that the ADEA requirement of § 216(b) is more elastic and less stringent than that found in FRCP 20 (joinder) and FRCP 42 (severance). Potential class members do not have to demonstrate that they performed the same job in the same location, so long as there is a discriminatory policy common to all. The record shows that the putative plaintiffs had been placed on a "blocker" program by Human Resources, by which they were offered early retirement; thereafter, their positions were eliminated, and younger employees were moved around them. The term "blockers" had been used by the employer to mean well performing older employees who were blocking the advancement of younger, new recruits. Courts have held that a company-wide plan, or an employer's pattern or policy is sufficient to support a collective action. In *Vaszlavik v. Storage Technology Corp. (D.C. Colo., 1997)*, the court held that at the § 216(b) certification stage, disparities among the employment situations of the individual plaintiffs are irrelevant. Nor were the plaintiffs required to provide specific evidence that they were individually discriminated against. This court erred by requiring specific evidence of discrimination with respect to each putative plaintiff at the certification stage. In a pattern and practice case, such evidence would be presented at the second phase of the trial when plaintiffs must meet their burden of proving liability. Thiessen v. General Electric Capital Corp., et al.
No. 98-3208 (10th Cir. 1998) 23pps. **$35.00**

PB (Bogas for EEOC) Appeal from D.C., N.D. Tex.
The district court abused its discretion when it responded to delays in expert discovery by excluding the EEOC's expert evidence, rather than granting a continuance. The court erred in (1) dismissing claims of class members as a discovery sanction without issuing a discovery order; (2) compelling further response to interrogatories on the identities of class members; (3) excluding evidence of defendant's rejection of applicants over age 40, which can be used to prove pretext in an individual's intentional discrimination claim; (4) excluding evidence of young hirees. Evidence that an employee filed fifteen charges of discrimination against other employers should be excluded because the probative value is outweighed by the danger of unfair prejudice.
EEOC v. General Dynamics Corp.
Nos. 92-1156 & 1393 (5th Cir. 1992) 60 pps. **$65.00**

AB (Posner for NELA, Udziela for OTLA) Appeal from D.C., D. Ore.
Solid precedent requires the admission of statements from the tortfeasor's own mouth (that plaintiff would not be considered for the position because he was too old for the job, and the employer wanted somebody younger) to prove discriminatory intent.
Schnidrig v. Columbia Machine
No. 93-35770 (9th Cir. 1993) 29 pps. **$35.00**

AB (Gregory for EEOC) Appeal from D.C., D.Ore.
Evidence that plaintiff was told on several occasions that the company would not promote him because they were looking for a younger candidate is sufficient direct evidence of discrimination to bar summary judgement. Summary judgment can not be granted on the basis of plaintiff's alleged misconduct discovered after the lawsuit was filed.
Schnidrig v. Columbia Machine
No. 93-35770 (9th Cir. 1993) 34 pps. **$45.00**

PB (Bruner for EEOC) Appeal from D.C., C.D. Cal.
The district court (1) abused its discretion when it excluded evidence regarding Delta's refusal to allow pilots to downbid two steps to a flight engineer position to avoid forced retirement under FAA rule; and (2) erroneously concluded that Delta was not Western's successor in liability and thus the injunction against Western to allow two-step downbidding was in effect.
Baker and EEOC v. Delta Air Lines
Nos. 92-55044, 92-55048, 92-55049 & 92-55050 (9th Cir. 1992) 56 pps. **$65.00**

AB (Bogas for EEOC) Appeal from D.C., N.D. Tex.
Section 706 of Title VII, which bans the admission of conciliation material into evidence, is not applicable to the ADEA. Even if it did, the document at issue is not conciliation material because it contains no offer of settlement or concessions, and was not part of settlement negotiations. Moreover, employer waived any privilege by volunteering the letter in response to interrogatories.
Olitsky v. Spencer Gifts
No. 91-1010 (5th Cir. 1991) 27 pps. **$35.00**

AB (Gregory for EEOC) Appeal from D.C., E.D. Wis.
The district court erred in dismissing defendant's manager statements expressing preference for "young people." Courts have rejected the view that a discriminatory statement must be made in reference to the adverse employment decision at issue in order to support a finding of discrimination. Thus, the court improperly usurped the role of the jury in granting defendant's motion for JNOV.
Futrell v. J.I Case
No. 93-4049 (7th Cir. 1994) 26 pps. **$35.00**

AB (Marcosson for EEOC) In Support of Plaintiff-Appellant
A jury may find that an employer violated the ADEA based on evidence that the employer's stated reason for the challenged decision was not its true reason. The jury's finding that defendant discriminated against plaintiff by not considering him for vacant positions established a violation of the ADEA and shifted the burden to defendant to prove plaintiff would not have received a job in the absence of discrimination. There was sufficient evidence to support the jury's findings that defendant did not consider plaintiff for the vacant position because of his age, and that this discrimination deprived plaintiff of one or more positions he would otherwise have received.
Binder v. L.I. Lighting Co.
No. 94-7483 (2nd Cir. 1994) 31 pps. **$45.00**

AB (Bernstein for EEOC) In Support of Plaintiff-Appellant
Prima facie proof of discrimination and evidence that the employer's proffered explanation for its challenged employment action is unworthy of credence is sufficient to defeat a motion for summary judgment in an ADEA case.
Dailey v. Johnson & Johnson Consumer Products, Inc.
No. 94-10555 (5th Cir. 1994) 23 pps. **$35.00**

PB (Coleman for EEOC) In Opposition to Motion of Defendant-Appellant

The district court properly (1) excluded evidence about plaintiff's personal life because the evidence was irrelevant and prejudicial; (2) terminated defendant's redirect examination of Witness I because defendant's attorney improperly coached said witness; (3) admitted Witness II's out-of-court statement that defendant was fired because she was too old and too slow; (4) denied judgment as a matter of law because reasonable minds could find age discrimination from the evidence in this case; and (5) denied remittitur because defendant stipulated to the back pay calculations and did not prove that plaintiff had failed to mitigate her damages.
EEOC v. Allen Petroleum Co. of East Tennessee, Inc. d/b/a Okee Dokee No. 18
No. 94-5355 (6th Cir. 1994) 44 pps. **$55.00**

AB (Suhre for EEOC) In Support of Plaintiff-Appellant
Anecdotal and statistical evidence of an employer's treatment of other older employees can be highly relevant evidence of pretext in an individual disparate treatment action under the ADEA.
Harrington v. Sun Life Assurance Co. of Canada
No. 95-20007 (5th Cir. 1995) 17 pps. **$25.00**

AB (Posner for CELA) In Support of Plaintiff, Respondent and Cross-Appellant
The California legislature has declared unequivocally that discrimination because of age violates public policy. Thus, employers who discriminate based on age should be held liable for violation of public policy. Plaintiff presented substantial evidence of age discrimination upon which the jury based its findings. Thus, under the substantial evidence Rule, the court is bound to accept the jury's findings of discriminatory intent. Age is immutable and affects everyone, thus, age discrimination is an affront to a large growing segment of the U.S. population. Unless we dispel the myths surrounding older workers with effective enforcement of public policy, age discrimination is likely to increase.
Bonsangue v. Automatic Data Processing
No. G015787 (Cal. Ct. of Appeal, 4th District 1996) 41 pps. **$55.00**

AB (Ramshaw for EEOC) Appeal from D.C., W.D. Va.
The granting of summary judgment in an ADEA case is improper when plaintiff's evidence refuted all but one reason out of a list of asserted performance deficiencies and that reason alone would not have resulted in the same decision.
Burns v. AAF-McQuay, Inc.
No. 95-2831 (4th Cir. 1995) 26 pps. **$35.00**

AB (Zaleznick, Osborne, Ventrell-Monsees for AARP) In Support of Plaintiff-Appellant
The district court improperly disregarded plaintiff's direct evidence of discriminatory intent when it decided that plaintiff could not make a *prima facie* case since he was replaced by a member of the protected class.
O'Connor v. Consolidated Coin Caterers Corp.
No. 95-354 (U.S. Supreme Ct. 1995) 34 pps. **$45.00**

ADEA - METHODS AND BURDENS OF PROOF - GENERAL

AB (Carter for EEOC) Appeal from N.D. Ga.
When a plaintiff successfully casts doubt on the employer's objective reasons for its actions, the plaintiff also casts doubt on the employer's subjective reasons. Based on the evidence that the employer's objective reasons may have been untruthful, a reasonable factfinder could determine that the employer's subjective reasons are not worthy of belief, entitling plaintiff to present his claims to a jury. A plaintiff may cast doubt on an employer's subjective explanation for its actions by presenting any evidence that would permit a jury to determine that the subjective explanation given by the employer is merely a pretext for discrimination. A plaintiff need not directly rebut the subjective reasons an employer provides, but need only present evidence that would allow the factfinder to question the truthfulness of the employer's subjective explanation.

Chapman v AI Transport
Nos. 97-8838, 97-9086 & 97-9269 (11th Cir. 2000) 28 pps. **$35.00**

AB (Stewart for EEOC) Amicus Brief in Support of Petitioner
Prima facie proof of discrimination, together with evidence that the employer has not offered its true reason for an adverse employment action, is usually sufficient to support a jury finding of discrimination. Petitioner's prima facie case, coupled with his evidence that respondent did not offer the true reason for firing him, was sufficient to support the jury's verdict, despite the contrary evidence on which the court of appeals relied. Petitioner presented sufficient evidence that his age motivate respondent's employment decision. In this case, petitioner presented prima facie proof of age discrimination and evidence that respondent offered a pretextual reason for his discharge. There was no evidence that would have precluded a reasonable jury from inferring from petitioner's proof that respondent fired petitioner because of his age. The evidence was therefore sufficient to sustain the jury's verdict that respondent violated the ADEA. In setting aside the verdict, the court of appeals improperly usurped the jury's function of weighing the evidence, drawing reasonable inferences, and making the ultimate factual finding whether petitioner's discharge was unlawfully motivated by age.
Reeves v. Sanderson Plumbing Products, Inc.
No. 99-536 (U.S. Supreme Court 2000) 35 p.p.s.. **$45.00**

AB (McCann for AARP) In Support Of Appellant
The Older Workers Benefits Protection Act (OWBPA) requires employers to provide the information mandated by section 626(f)(1)(H) to each employee from whom a waiver of ADEA rights or claims is sought. Employer is required to distribute information to each individual. Providing one copy of information at a central location does not comply with requirement and defeats the statute's purpose.
Carpenter v. General Motors Corp.
No. 98-1763 (6th Cir. 1998) 22pps. **$35.00**

PB (Albrecht) Petition For Writ Of Certiorari To The United States Supreme Court
A district court has inherent power to deny a Fed. R. Civ. P. 50 motion for judgment as a matter of law due to the movant's
serious misconduct in impermissibly relying upon post-verdict communications with jurors regarding the credibility of its key witness, whose truthfulness the movant had argued to the jury was critical to the verdict. The Seventh Amendment to
the U.S. Constitution precludes a court of appeals from reversing an age discrimination jury verdict under Fed. R. Civ. P. 50
where credibility regarding the key defense witness was not addressed by the appellate court and this credibility evidence and additional circumstantial evidence permitted the jury to find age discrimination. The court of appeals decision conflicts with the proof methodology set forth in *St. Mary's Honor Center v. Hicks.*
Diettrich v. Northwest Airlines, Inc.
No. 98-1837 (U.S. Supreme Ct. 1999) 41pps. **$55.00**

AB (Gregory for EEOC) Brief In Support of Plaintiff-Appellant on Appeal from D.C., N.D. Ill.
The district court erred in ruling that plaintiff's evidence of age bias lacks probative value. A decision maker's age-biased statement need not be made in reference to the specific employment decision at issue to constitute probative evidence of discrimination. Defendant's retirement plan is facially discriminatory because it provides less favorable treatment to individuals who are eligible for early retirement and early retirement is, in part, explicitly defined by age.
Schoolman v. Uarco. Inc. and Trustees of the Uarco Retirement Plan
No. 96-2914 (7th Cir. 1996) 25 pps. **$35.00**

AB (Ventrell-Monsees for AARP) In Support of Appellee
After talking with the jury, the judge explained what the plaintiff must prove in order to establish a presumption that the defendant violated the ADEA. The judge erred in mentioning the *McDonnell Douglas/Burdine* presumption after the

defendant had produced evidence to rebut it, however the court held that the error was not prejudicial and the jury was properly advised of who had the burden of proof and what proof was needed to persuade. In addition, the district court properly admitted into evidence the chairman's initiative memo containing ageist comments of senior executive and managers because it was relevance and it reflected the corporate culture in which the decision to fire the Appellee was made.

Ryder v. Westinghouse Electric Corporation

No. 96-3414 (3rd Cir. 1996) 16 pps. **$25.00**

AB (Goldstein for EEOC) Appeal from D.C., N.D. Ohio

The district court's reliance on *Hazen Paper* was misplaced. Defendant's early retirement plan relies upon age itself, not upon some factor correlated to age as is true in age proxy cases like *Hazen Paper*. Plaintiffs established a *prima facie* case of disparate treatment because it provides fewer benefits to older workers because of their age.

Lyon v. Ohio Educational Association

No. 93-4072 (6th Cir. 1994) 43 pps. **$55.00**

PB (Bogas for EEOC) Appeal from D.C., N.D. Tex.

The district court committed reversible error by refusing to allow the jury to hear testimony regarding defendant's age related remarks, calling plaintiff an "old man", because such remarks by a supervisor, even if made outside the decisional process, have been held to be highly probative of discrimination. The court's jury instructions placed an improperly onerous burden on the plaintiffs when it directed the jury to find for defendants unless it concluded that the realignment of sales territories was discriminatory.

EEOC v. Manville Sales Corporation and Manville Corporation

No. 93-1069 (5th Cir. 1993) 53 pps. **$75.00**

AB (Moran for EEOC) Appeal from D.C., E.D. Mo.

Evidence that plaintiff was selected for layoff because of his age is sufficient evidence for the jury to find willfulness as required by the United States Supreme Court in *Hazen Paper v. Biggins.*

Glover v. McDonnell Douglas Corp.

No. 92-1059EM (8th Cir. 1994) 12 pps. **$15.00**

AB (Moran for EEOC) In Support of Appellee's Petition for Rehearing

This court should grant rehearing*en banc* and affirm the district court's award of liquidated damages because the panel misapplied the standard set by the United States Supreme Court in *Hazen Paper v. Biggins*. *Hazen Paper* held that in determining whether the employer's actions violated the ADEA "the focus should strictly be on whether the employer's actions were in willful violation of the ADEA as provided by the statute," and instructed lower courts not to be concerned with "ensuring a two-tiered liability scheme."

Glover v. McDonnell Douglas Corp.

No. 92-1059EM (8th Cir. 1994) 18 pps. **$25.00**

AB (Posner for CELA) In Support of Plaintiff

Plaintiffs suing on an age discrimination basis should be able to hold an entity liable, regardless of whether that entity is subject to the Fair Employment & Housing Act (FEHA), Government Code Section 12900.

Jennings v. Marralle, et al.

No. S034510 (Cal. Supreme Ct. 1993) 27 pps. **$35.00**

AB (Coleman for EEOC) In Support of Plaintiff's Motion for Reconsideration of the Award of Partial Summary Judgment on Retaliation Claim

Defendants asserting counterclaims in response to plaintiff's Title VII claim constitute impermissible retaliation under Section 704(a) of Title VII.

Gisch v. Extendacare Health Systems

No. 92-5861 (D.C., Dallas County, Texas, 192nd Judicial District, 1994) 8 pps. **$10.00**

AB (Bernstein for EEOC) Appeal from D.C., M.D. Tenn.
Summary judgment was improper where the record permitted the reasonable inference that the employer abused after-acquired evidence defense to terminate an employee's suit, and to avoid liability for discriminatory actions; and where the employer failed to meet its burden of proof.
McKennon v. The Nashville Banner Publishing Co.
No. 92-5917 (6th Cir. 1992) 18 pps. **$25.00**

PB (Teitelbaum) Appeal from the D.C., E.D. Mo.
The district court did not err in denying defendant's motion for JNOV in that substantial evidence supports the jury's finding that plaintiff would not have been terminated but for his age. Plaintiff was more qualified than younger employees retained during the reorganization.
Doyne v. Union Electric Company
Nos. 91-1543 EM & 91-2001 EM (8th Cir. 1991) 71 pps. **$85.00**

PB (Bogas for EEOC) Appeal from D.C., N.D. Tex.
Defendant engaged in unlawful disparate treatment by rejecting older workers as "overqualified" while hiring younger workers with similar qualifications. Defendant's policy of rejecting "overqualified" applicants, even if administered even-handedly, had a disparate impact on older workers. In an ADEA action brought by the EEOC, defendant can recover attorney fees only if the action was both "unfounded" and "maintained in bad faith".
EEOC v. General Dynamics Corp.
Nos. 92-1156 & 92-1393 (5th Cir. 1993) 20 pps. **$25.00**

PB (Bogas for EEOC) Reply Brief and Brief of Cross-Appellee from D.C., N.D. Tex.
In a complex case challenging the effect of General Dynamics' rejection of applicants over age 40 as "overqualified," the district court's exclusion of plaintiffs' timely designated, essential statistical expert as a sanction for its inadvertent delay was reversible error since it caused the EEOC to drop 90 of its 96 claims. Additionally, the district court erroneously refused to allow the EEOC to show that older applicants were judged more strictly than younger applicants, and admitted evidence of a plaintiff's prior charges of discrimination, making a fair trial impossible. Attorney's fees are only proper against a Title VII plaintiff when the case is frivolous; the district court's denial of attorney's fees in this case was proper.
EEOC v. General Dynamics Corp.
Nos. 92-1156 & 1393 (5th Cir. 1992) 34 pps. **$45.00**

AB (Moran for EEOC) In Support of Appellee's Petition for Rehearing
In overturning the jury's finding that the employer willfully violated the ADEA, the appellate court misapplied the *TWA v. Thurston* standard for determining willfulness. The appellate court's holding that the district court should have offset from the plaintiff's back pay award the pension payments he received after his unlawful discharge is contrary to precedent.
Glover v. McDonnell Douglas Corp.
No. 92-1059EM (8th Cir. 1993) 33 pps. **$45.00**

PB (Epstein) Petition for Writ of Certiorari to 3rd Circuit
The "specificity" mandate imposed by the circuit court in relevancy determinations violates the directives of the U.S. Supreme Court and prevents plaintiffs with ADEA claims from proving their case through the use of circumstantial evidence of unlawful motive and discriminatory intent. Application of the "harmless error" standard for criminal cases in civil matters is contrary to the directives of the Supreme Court.
Bhaya v. Westinghouse
(U.S. Supreme Ct. 1991) 75 pps. **$85.00**

PB (Tobias) Memo in Opposition to Defendant's Motion for Summary Judgment
Employer's motion for summary judgment should be denied because plaintiffs established a *prima facie* case of age discrimination and motive and intent are at issue in determining whether employer's reasons are pretext, and because of evidence that defendant violated plaintiffs' lifetime contract and implied contract to be discharged only for just cause.

Also, defendant placed a wiretap on telephone of its employee (plaintiff) in violation of federal law, 18 U.S.C. §2510-2520 and Ohio law.
Kutas v. The H. Zussman and Son Co.
No. A8701743 (Ohio Ct. of Common Pleas, Hamilton County 1988) 46 pps. **$55.00**

PB (Perry) Writ of Certiorari to 1st Circuit
To meet a summary judgment challenge in an ADEA case, plaintiff must make out a *prima facie* case and successfully rebut the employer's articulated reasons for the adverse action. Plaintiff need not directly prove age discrimination.
Connell v. Bank of Boston
No. 90-1646 (U.S. Supreme Ct. 1991) 54 pps. **$65.00**

PB (Gregory for EEOC) Appeal from D.C., W.D. N.C.
The district court erred in granting summary judgment against claimants for their inability during depositions to cite to specific statements or documents evidencing discrimination.
EEOC v. Clay Printing Co.
No. 91-2576 (4th Cir. 1992) 29 pps. **$35.00**

PB (Gregory for EEOC) Petition for Rehearing *En Banc*
Rehearing *en banc* should be granted where the appellate court erred in (1) holding that the EEOC was required to show replacement from outside the protected class in order to satisfy the replacement requirement of the *McDonnell Douglas* prima facie case, (2) reaching the issue of pretext where the employer had never articulated in the court below any explanation for the adverse employment decisions at issue.
EEOC v. Clay Printing Co.
No. 91-2576 (4th Cir. 1992) 17 pps. **$25.00**

PB (Goldstein for EEOC) Appeal from D.C., N.D. Ala.
Issues of fact exist as to whether defendant retaliated against employee for firing him a few weeks after receiving notice of this age discrimination charge, and where the absenteeism policy, on which employer says the termination was based, was enforced less strictly against employees who had not raised age discrimination claims.
EEOC v. Calhoun Community College
No. 91-7664 (11th Cir. 1991) 28 pps. **$35.00**
Also available: Reply Brief on Appeal from D.C., N.D. Ala., making similar arguments. 8 pps. **$15.00**

PB (Logan for NAACP) Writ of Certiorari to 3rd Circuit
Summary judgment is improper in ADEA case (1) where the employer adduced sworn statements by company executives and insisted that they acted with no unlawful motive in laying off respondent; and (2) where demeanor evidence is crucial to weighing the credibility of the statements. Summary judgment is not appropriate where motive intent or state of mind are at issue. Great caution should by used in granting summary judgment where effect is to deny jury trial.
Harbison-Walker Refractories v. Brieck
No. 87-271 (U.S. Supreme Ct. 1988) 106 pps. **$115.00**

AB (Tobias for PELA) Writ of Certiorari to 3rd Circuit
Summary judgment is improper where an inference of discrimination exists and the employer's explanation is subject to credibility determinations. If plaintiff states a prima facie case and the employer introduces evidence that the termination is not discriminatory, the presumption is rebutted, but an inference of discrimination remains as evidence to be considered by a jury. This is required by F.R.E. 301. If the employer's proffered defense is disbelieved, *prima facie* case evidence is sufficient to support plaintiff's jury verdict.
Harbison-Walker Refractories v. Brieck
No. 87-271 (U.S. Supreme Ct. 1988) 36 pps. **$45.00**

AB (Miller for AARP) Writ of Certiorari to 3rd Circuit

Plaintiff may establish that the employer's proffered explanation for an employment decision is merely a pretext for age discrimination. Plaintiff may present indirect evidence revealing inconsistencies and implausibilities in the employer's asserted reason.
Harbison-Walker Refractories v. Brieck
No. 87-271 (U.S. Supreme Ct. 1987) 24 pps. **$35.00**

AB (Bogas for EEOC) Appeal from D.C., D.P.R.
Summary judgment for the defendant was improper because the evidence established a prima facie case of discriminatory discharge in violation of the ADEA and showed that the defendant's nondiscriminatory explanation was most likely a sham. An inference of discrimination may be raised by showing that the defendant's proffered reasons were pretextual, even in the absence of evidence directly tying the decision to discrimination.
Olivera v. Nestle Puerto Rico, Inc.
No. 90-1363 (1st Cir. 1990) 23 pps. **$35.00**

AB (Wheeler for EEOC) Appeal from D.C., C.D. Ill.
The district court should rehear this case, *en banc* if necessary, for the following reasons: the panel departed from controlling standards for review of the trial court's discretionary decision to consolidate cases; the panel erred in reviewing the jury verdicts by substituting its own reading of the evidence for that of the jury; the panel erred in creating a novel proof requirement that ADEA plaintiffs seeking to demonstrate a pattern or practice of discrimination must produce some unspecified quantum of anecdotal incidents; the panel erred by remanding new trials to adjudicate the rights of persons not parties to the appeal.
King and Brickey v. General Electric Company
Nos. 90-2583 & 903038 (7th Cir. 1992) 18 pps. **$25.00**

AB (Coleman for EEOC) Appeal from D.C., N.D. Ill.
Based on its language and intent, the ADEA authorizes the use of disparate impact theory. Because the district court failed to analyze the Commission's disparate impact claim in light of disparate impact theory principles, awarding of summary judgement to defendant constitutes legal error. This court must reverse and remand for application of disparate impact theory to the EEOC's disparate impact claim.
EEOC v. Francis W. Parker School
No. 93-3395 (7th Cir. 1993) 65 pps. **$75.00**

PB (Sedey) Appeal from D.C., E.D. Mo.
The district court properly refused to grant JNOV and motion for a new trial because evidence supported the jury's finding of age discrimination. The jury was justified in believing that plaintiff was a well qualified mechanic, in considering the parties demeanor at trial, and the witness testimony of defendant's reference to plaintiff's "advancing age." These pieces of evidence proved that age was the primary factor in plaintiff's dismissal from the job.
Brown v. Stites Concrete, Inc.
Nos. 91-2581EM, 91-3057 & 91-3139 (8th Cir. 1991) 49 pps. **$55.00**

PB (Marcosson for EEOC) Appeal from D.C., E.D. Va.
Ample evidence supports the jury findings that defendant's created of a "new" position, which was no different that the one plaintiff filled for years, for the purpose of replacing him for a younger employee. Testimony of defendant's employees with respect to the hiring of a new manager was properly admitted under several provisions of the Rules of Evidence.
EEOC v. Watergate at Landmark Condominium
No. 93-1723 (4th Cir. 1993) 39 pps. **$45.00**

PB (Gregory for EEOC) Appeal from D.C., D. Ariz.

Summary judgment was not warranted because age discrimination and pretext can be inferred from defendant's unwillingness to interview or hire plaintiff, using deficiencies on job application as an excuse, and willingness to interview and hire younger applicants whom did not have the experienced required for the job.
EEOC v. Insurance Company of North America
No. 93-16384 (9th Cir. 1993) 37 pps. **$45.00**

PB (Gregory for EEOC) Reply Appeal from D.C., D. Ariz.
The EEOC has produced sufficient evidence to raise an inference of discrimination with respect to defendant's rejection of plaintiff. Evidence shows that defendant rejected plaintiff on grounds that could readily mask a preference for younger candidates as well as evidence that called into question the credence of defendant's "overqualified" explanation.
EEOC v. Insurance Company of North America
No. 93-16384 (9th Cir. 1993) 21 pps. **$35.00**

AB (Collingsworth for EEOC) Appeal from D.C., D. Md.
In an ADEA case, the district court misconstrued plaintiff's burden by requiring him to rebut defendant's articulated reason for termination as part of his prima facie case.
Kronick v. The Bankers Life
No. 89-2744 (4th Cir. 1989) 54 pps. **$65.00**

PB (Tobias) Appeal from D.C., S.D. of Ohio
Plaintiff produced sufficient evidence from which a reasonable jury could conclude that the company intentionally discriminated against him due to his age and that company's restructuring had a disparate impact on persons over 40.
McCabe v. Champion International Corp.
No. 89-4021 (6th Cir. 1990) 74 pps. **$85.00**

AB (Frank for PELA-Washington) In Support of Plaintiffs-Respondents
The trial court properly refused a proposed jury instruction in an age discrimination case because it assumed that a younger employee was better qualified than the plaintiff, and also misstated the law by requiring plaintiff to demonstrate he was better qualified in order to establish pretext and his *prima facie* case. The court was also correct in refusing to instruct the jury to decide whether "but for" the plaintiff's age, he would have received a promotion.
Selberg, et al. v. United Pacific Insurance Co.
No. 21521-3-I (Wash. Ct. of Appeals, 1988) 36 pps. **$45.00**

DB (Gompers) Writ of Certiorari to 3rd Circuit
The court should not review a single plaintiff ADEA jury verdict, which is amply supported by direct, circumstantial, statistical and anecdotal evidence, and which specifically links proof of employer's pretext to age motivated discrimination.
W.B. Saunders Co. v. Bruno
No. 89-857 (U.S. Supreme Ct. 1990) 35 pps. **$45.00**

PB (Goins) Petition for Writ of Certiorari to 5th Circuit
A supervisor's questions about an employee's intention to retire, and suggestions that the supervisor would retire if he were in the employee's situation, constitute sufficient evidence of an age-related motive for termination to withstand summary judgment. From these ambiguous statements, a trial court should draw adverse inferences of unlawful intent against the employer seeking summary judgment.
Moore v. Eli Lilly
No. 93-278 (U.S. Supreme Ct. 1993) 60 pps. **$65.00**

PB (White for EEOC) Appeal of Summary Judgment of D.C., D. Mass.
A Massachusetts law requiring state and local government employees 70 years of age and older to pass annual medical examinations as a condition of employment violates the ADEA.
EEOC v. Commonwealth of Massachusetts

No. 92-1696 (1st Cir. 1992) 39 pps. **$45.00**

PB (Egan) Brief of Respondents on Writ of Certiorari to 1st Circuit
An ADEA violation is "willful", and warrants liquidated damages, where the employer knowingly violates the ADEA or acts with reckless disregard. The standard of willfulness should be the same for individual discrimination and policies with disparate impact on older workers. Interference with pension vesting is permissible evidence of an ADEA violation. A concurrent violation of ERISA does not prevent recovery under the ADEA.
Hazen Paper Company v. Biggins
No. 91-1600 (U.S. Supreme Ct. 1992) 57 pps. **$65.00**

DB (Harrington) Reply Brief of Petitioners
In a case of individual discrimination, violation of the ADEA is "willful," hence leading to punitive damages, where the employer's conduct is outrageous or egregious. Interference with pension vesting does not violate the ADEA where the criteria for vesting under a pension plan is a short period of service, and the employee's age is not a factor. Requiring an older employee in a sensitive managerial position to sign a confidentiality agreement does not violate the ADEA.
Hazen Paper Company v. Biggins
No. 91-1600 (U.S. Supreme Ct. 1992) 14 pps. **$25.00**

AB (Marcosson, Goldstein, Starr for the United States and the EEOC) On Writ of Certiorari to 1st Circuit
In a case of individual discrimination, violation of the ADEA is "willful," hence leading to double damages, where the employer knowingly violates the ADEA or acts with reckless disregard for whether the conduct violates the ADEA. Interference with pension vesting is permissible evidence of an ADEA violation, but where the only criterion for vesting is a short period of service unrelated to age, it is weak evidence of age discrimination.
Hazen Paper Company v. Biggins
No. 91-1600 (U.S. Supreme Ct. 1992) 34 pps. **$45.00**

AB (Tobias for NELA) In Opposition to Petition of Writ of Certiorari to 1st Circuit
In a case of individual discrimination, violation of the ADEA is "willful," hence leading to double damages, where the employer knowingly violates the ADEA or acts with reckless disregard for whether the conduct violates the ADEA. Adding a new heightened "outrageous" or "egregious" standard would contravene Supreme Court precedent and legislative intent.
Hazen Paper Company v. Biggins
No. 91-1600 (U.S. Supreme Ct. 1992) 18 pps. **$25.00**
AB (Ventrell-Monsees for AARP) In Support of Respondent on Petition of Writ of Certiorari to 1st Circuit
In a case of individual discrimination, violation of the ADEA is "willful," hence leading to double damages, where the employer knowingly violates the ADEA or acts with reckless disregard for whether the conduct violates the ADEA. Creating different standards of willfulness is contrary to the language, structure, and purposes of the ADEA. An employer's interference with an employee's pension benefits may be evidence of age discrimination.
Hazen Paper Company v. Biggins
No. 91-1600 (U.S. Supreme Ct. 1992) 20 pps. **$25.00**

PB (Tobias) Plaintiff's Answer to Defendants' Motion for Summary Judgment
Plaintiff has shown a *prima facie* case of age discrimination. Plaintiff was a qualified employee age 46 terminated and replaced by an employee age 31. There is some evidence that "cost" related to age was a factor in plaintiff's layoff.
Harlan v. Intergy, Inc.
No C-86-4313 (D.C., N.D. of Ohio, 1988) 20 pps. **$25.00**

AB (Marcosson for EEOC) In Support of Plaintiff-Appellant
A jury may find that an employer violated the ADEA based on evidence that the employer's stated reason for the challenged decision was not its true reason. The jury's finding that defendant discriminated against plaintiff by not considering him for vacant positions established a violation of the ADEA and shifted the burden to defendant to prove plaintiff would not have received a job in the absence of discrimination. There was sufficient evidence to support the

jury's findings that defendant did not consider plaintiff for the vacant position because of his age, and that this discrimination deprived plaintiff of one or more positions he would otherwise have received.
Binder v. L.I. Lighting Co.
No. 94-7483 (2nd Cir. 1994) 31 pps. **$45.00**

AB (Bernstein for EEOC) In Support of Plaintiff-Appellant
Prima facie proof of discrimination and evidence that the employer's proffered explanation for its challenged employment action is unworthy of credence is sufficient to defeat a motion for summary judgment in an ADEA case.
Dailey v. Johnson & Johnson Consumer Products, Inc.
No. 94-10555 (5th Cir. 1994) 23 pps. **$35.00**

AB (Ramshaw for EEOC) In Support of Plaintiff-Appellants
The ADEA prohibits employers from using facially neutral employment criteria that have a disparate impact on the basis of age unless such use is justified as a business necessity.
Ellis v. United Air Lines, Inc.
No. 94-1351 (10th Cir. 1994) 23 pps. **$35.00**

PB (Bruner for EEOC) Plaintiff-Appellant's Brief
The district court improperly substituted its judgment for that of the jury when it set aside the verdict and entered judgment as a matter of law for the employer. The jury's disbelief of defendant's reasons for not promoting plaintiff is sufficient to sustain the jury's verdict.
EEOC v. Louisiana Office of Community Services
No. 93-3835 (5th Cir. 1994) 56 pps. **$45.00**
Also available: Reply Brief making similar arguments. 31 pps. **$45.00**

PB (Suhre for EEOC) Plaintiff-Appellant's Brief
Because a reasonable jury could infer from defendant's inconsistent explanation for discharging employee that the company was actually motivated by age, the district court erred in granting judgment as a matter of law for the company.
EEOC v. Ethan Allen, Inc.
No. 94-6063 (2nd Cir. 1994) 15 pps. **$25.00**

AB (Coleman for EEOC) In Support of Plaintiff On Appeal from D.C., N.D. Ill.
The Illinois statute prohibiting firefighters over the age of 35 from joining the firefighter's pension fund is facially invalid under the ADEA. The defendant can not rely on a facially invalid state statute to escape liability for violating the federal law against age discrimination. The state of Illinois is not a necessary party to this litigation because it has not claimed an interest in defending the validity of the challenged statute.
Quinones v. City of Evanston
No. 94-3060 (7th Cir. 1994) 23 pps. **$35.00**

AB (Sloan for EEOC) In Support of Plaintiff-Appellant On Appeal from D.C., D. N.J.
Defendants are not entitled to summary judgment because plaintiff's evidence, taken as a whole, raised a genuine issue of fact as to pretext and he was not required to present specific evidence of age discrimination.
Waldron v. SL Industries, Inc., et al.
No. 94-5282 (3d Cir. 1994) 74 pps. **$85.00**

AB (Marcosson for EEOC) In Opposition to Petition for a Writ of Certiorari
There is no requirement under the ADEA that a jury verdict be supported by direct evidence of the motive of the ultimate decision makers. Circumstantial evidence alone is enough to support a jury finding of intentional discrimination.
Watergate at Landmark Condominium v. EEOC
No. 94-15 (U.S. Supreme Ct. 1994) 15 pps. **$25.00**

PB (Rogers, Tress) Plaintiff-Appellee's Brief

Disparate impact applies to age discrimination and the district court properly applied the disparate treatment theory of liability. The district court properly applied state law standards to determine the attorney's fees.
Crommie v. State of California Public Utilities Commission, et al.
Nos. 94-15287 & 94-15696 (9th Cir. 1994) 58 pps. **$65.00**

AB (Gregory for EEOC) In Support of Plaintiff-Appellant
The district court's "sole cause" jury instruction improperly imposed upon plaintiff a higher burden of proof than that required by the Supreme Court and the other courts of this circuit.
Miller v. Cigna Corp.
No. 93-1773 (3d Cir. 1994) 21 pps. **$35.00**

AB (Zaleznick, Ventrell-Monsees, Osborne for AARP) In Support of Plaintiff-Appellant
The district court's "sole cause" jury instruction improperly imposed upon plaintiff a higher burden of proof than that required by the Supreme Court and the other courts of this circuit.
Miller v. Cigna Corp.
No. 93-1773 (3d Cir. 1994) 19 pps. **$25.00**

PB (Goldstein for EEOC) Brief of Plaintiff-Appellant-Cross-Appellee
The jury could reasonably have concluded that defendant willfully violated the ADEA based upon the evidence that defendant discharged its employee because of his age. The jury could reasonably have concluded that defendant failed to prove that suitable employment was available to said employee, and in so doing, found that defendant did not meet its burden of demonstrating the absence of mitigation. The district court abused its discretion when it disallowed deposition costs for defense witnesses not called at trial, and costs for depositions not used at trial.
EEOC v. Pape Lift, Inc., d/b/a Hyster Sales Co.
Nos. 94-35603 94-35654 (9th Cir. 1994) 40 pps. **$45.00**
Also available: Reply Brief of the EEOC making similar arguments (1995). 42 pps. **$55.00**

AB (Gregory for EEOC) In Support of Plaintiff-Appellant
The district court erred in determining, as a matter of law, that plaintiff could not make out a *prima facie* case of discrimination. Plaintiff's evidence was sufficient to support a finding of pretext under the correct legal standard. The district court improperly usurped the jury's role in granting the defendant's Rule 50 motion.
Isenbergh v. Knight-Ridder Newspaper Sales, Inc.
No. 94-4769 (11th Cir. 1994) 33 pps. **$45.00**

AB (Marcosson for EEOC) In Support of Plaintiff
The district court deprived the plaintiffs of a fair opportunity to prove that defendant engaged in a pattern of selecting older workers for layoff by refusing to allow the case to proceed as a representative action and by preventing plaintiffs from effectively presenting this claim in the individual trials. The district court erred in refusing to instruct the jury that if there was a pattern of discrimination in choosing older workers for discharge, ARAMCO would bear the burden of proving that each plaintiff was not a victim of that pattern.
Mooney v. Arabian American Oil Co.
No. 94-20040 (5th Cir. 1994) 30 pps. **$35.00**

AB (Goldstein for EEOC) In Support of Plaintiff-Appellee-Cross-Appellant
Liquidated damages and prejudgment interest are appropriate concurrent relief under the ADEA. The district court was entitled to reject defendant's mitigation defense where defendant admittedly did not produce evidence that comparable jobs were available to plaintiff. The district court was not required, as a matter of law, to apply judicial estoppel to preclude plaintiff from establishing that he was able to work following his unlawful termination.
Nelson v. J.C. Penney Co., Inc.
Nos. 95-1253 95-1305 (8th Cir. 1995) 22 pps. **$35.00**

AB (Sloan for EEOC) In Support of Plaintiff-Appellant
The district court erred in holding that plaintiff did not present sufficient probative evidence to survive summary judgment. An ADEA plaintiff can make out a prima facie case by showing he was replaced by someone younger, or younger co-workers were retained in the same or similar positions, whether or not those persons are under age 40.
O'Connor v. Consolidated Coin Caterers Corp.
No. 94-1214 (4th Cir. 1994) 49 pps. **$55.00**
Also available: Brief in Support of Plaintiff-Appellant's Suggestion for a Rehearing En Banc making similar arguments.
16 pps. **$25.00**

AB (Ventrell-Monsees for AARP & NELA) In Support of Petition for Rehearing With Suggestion of Consideration *En Banc*
The court should defer to the jury; it properly used the business judgment rule to discount the jury's determination that the employer's reasons were pretextual in an age discrimination case under the ADEA.
Doan v. Seagate Technology, Inc.
No. 95-6180 (10th Cir. 1996) 15 pps. **$25.00**

AB (Suhre for EEOC) In Support of Plaintiff-Appellant
Anecdotal and statistical evidence of an employer's treatment of other older employees can be highly relevant evidence of pretext in an individual disparate treatment action under the ADEA.
Harrington v. Sun Life Assurance Co. of Canada
No. 95-20007 (5th Cir. 1995) 17 pps. **$25.00**

AB (Ventrell-Monsees for AARP) In Support of Plaintiff-Appellant
The district court erred by placing the burden on plaintiff when the OWBPA dictates that defendant should carry the burden of proof to rebut charges of age discrimination in benefits. The denial of equal severance pay to older workers based on pension eligibility violated the ADEA & OWBPA.
Lautner v. AT&T
No. 95-3756 (6th Cir. 1995) 28 pps. **$35.00**

AB (Suhre for EEOC) In Support of Plaintiff-Appellant
The plaintiff established a *prima facie* case of age discrimination by showing he was in the protected age group, was qualified for the job, was fired and replaced by someone with similar qualifications, regardless of the fact that the replacement was over 40 years old.
Rinehart v. City of Independence, Missouri
No. 93-3560 (8th Cir. 1994) 19 pps. **$25.00**

ADEA - METHODS & BURDENS OF PROOF--EXHAUSTION

AB (Greenspan, Siegel for DOJ & EEOC) In Support of Defendant-Appellee on Appeal from D.C., N.D. Ill.
There is no exhaustion requirement under the ADEA. Section 1613.513 of the EEOC's regulations represents the commission's judgment that exhaustion is not required. To the extent that there is any exhaustion requirement under the ADEA, the government waives it.
Espinueva v. Garrett (Secretary of the Navy)
No. 93-1582 (2nd Cir. 1994) 23 pps. **$35.00**

ADEA - METHODS & BURDENS OF PROOF--DISPARATE IMPACT

AB (Goldstein for EEOC) Brief *amicus curiae* on Appeal from D.C., N.D. Fla.
Facially-neutral practices which have a disparate impact on older individuals may be challenged under the ADEA. Evidence the employer discovered years after it rejected the plaintiff for employment cannot be an absolute bar to his

discrimination action. In a disparate impact claim, after-acquired evidence that the plaintiff may not have qualified is germane to relief issues, but not to liability.
Sondel v. The Florida Board of Bar Examiners
No. 97-2512 (11th Cir. 1997) 33 pps. **$45.00**

PB (Coleman for EEOC) Reply Brief on Appeal from D.C., N.D. Ill.
Policy reasons support extending disparate impact protection to the ADEA.
EEOC v. Francis W. Parker School
No. 93-3395 (7th Cir. 1994) 30 pps. **$35.00**

AB (Coleman for EEOC) Petition for Rehearing and Suggestion for Rehearing *En Banc*
The disparate impact theory has always been available under the ADEA for both employees and applicants for employment, and the Supreme Court did not undermine its availability in *Hazen Paper*.
EEOC v. Francis W. Parker School
No. 93-3395 (7th Cir. 1994) 21 pps. **$35.00**
Also available: Petition for Writ of Certiorari making similar arguments. 67 pps.(Including 48 Appendices) **$75.00**

AB (Coleman for EEOC) Appeal from D.C., N.D. Ill.
Based on its language and intent, the ADEA authorizes the use of disparate impact theory. Because the district court failed to analyze the Commission's disparate impact claim in light of disparate impact theory principles, awarding of summary judgement to defendant constitutes legal error. This court must reverse and remand for application of disparate impact theory to the EEOC's disparate impact claim.
EEOC v. Francis W. Parker School
No. 93-3395 (7th Cir. 1993) 65 pps. **$75.00**

AB (Ramshaw for EEOC) In Support of Plaintiffs-Appellants
The ADEA prohibits employers from using facially neutral employment criteria which have a disparate impact on the basis of age unless such use is justified as a business necessity.
Hiatt v. Union Pacific Railroad Co.
Nos. 94-8088 & 94-8089 (10th Cir. 1994) 26 pps. **$35.00**

AB (Ventrell-Monsees for AARP) In Support of Plaintiff's Opposition to Defendant's Motion for Summary Judgment
Plaintiff's ADEA claims are actionable under both disparate treatment and disparate impact theories because older workers were denied the opportunity to receive enhanced severance benefits by signing a release legally equivalent to that signed by younger workers. The "equal benefit or equal cost" rule should not apply to this case because this rule was never intended to apply to cash-based benefit programs.
Dibiase v. Smithkline Beecham Corporation
No. 93-CV-3171 (D.C., E.D. Penn. 1994) 11 pps. **$25.00**

PB (Rogers, Tress) Plaintiff-Appellee's Brief
Disparate impact applies to age discrimination and the district court properly applied the disparate treatment theory of liability. The district court properly applied state law standards to determine the attorney's fees.
Crommie v. State of California Public Utilities Commission, et al.
Nos. 94-15287 94-15696 (9th Cir. 1994) 58 pps. **$65.00**

AB (Sloan for EEOC) In Support of Plaintiff-Appellant
The ADEA prohibits employment practices which are facially neutral but have a disparate impact based on age unless they are adequately justified by the employer showing they are based on a reasonable factor other than age. There is a triable issue of fact as to whether the defendant's cardiopulmonary fitness standards are reasonably necessary and thus, summary judgment was improper.
Smith v. City of Des Moines
No. 95-3802 (8th Cir. 1996) 25 pps. **$35.00**

AB (Dunaway for AARP) In Support of Plaintiff, Respondent and Cross-Appellant
Age discrimination disparate impact claims are cognizable under both California and federal laws prohibiting discrimination. Contrary to defendant's assertions, older workers are truly disadvantaged in today's economy and suffer from employment discrimination, (including as a result of restructuring and downsizing).
Bonsangue v. Automatic Data Processing
No. G015787 (Cal. Ct. of Appeal, 4th District 1996) 26 pps. **$35.00**

AB (Posner for CELA) In Support of Plaintiff, Respondent and Cross-Appellant
The California legislature has declared unequivocally that discrimination because of age violated public policy. Thus, employers who discriminate based on age should be held liable for violation of public policy. Plaintiff presented substantial evidence of age discrimination upon which the jury based its findings. Thus, under the substantial evidence Rule, the court is bound to accept the jury's findings of discriminatory intent. Age is immutable and affects everyone, thus, age discrimination is an affront to a large growing segment of the U.S. population. Unless we dispel the myths surrounding older workers with effective enforcement of public policy, age discrimination is likely to increase.
Bonsangue v. Automatic Data Processing
No. G015787 (Cal. Ct. of Appeal, 4th District 1996) 41 pps. **$55.00**

ADEA - METHODS & BURDENS OF PROOF - BFOQ

DB (Dellinger for EEOC) Brief for Respondent In opposition to Petition for Writ of Certiorari to the 6th Circuit
The court of appeals correctly concluded that defendants failed to show that mandatory retirement at age 55 for police officers was justified as a "bona fide occupational qualification" under § 4(f)(1)) of the ADEA. The court of appeals correctly refused to deduct the amount of unemployment compensation received by state police officers from their back pay awards under the ADEA.
Kentucky State Police Department. et al. v. EEOC
No. 96-160 (U.S. Supreme Ct. 1995) 10 pps. **$15.00**
Also available: Supplemental Brief for Respondent EEOC on Writ of Certiorari to the 6th Circuit detailing the 1996 ADEA Amendments. 7 pps. **$15.00**

AB (Ramshaw for EEOC) Appeal from D.C., D. Mass.
An earlier decision that a mandatory retirement age for police officers was allowed as a BFOQ does not foreclose this challenge to a new mandatory retirement age because circumstances have changed since the previous decision. An exception in the ADEA allowing states to maintain retirement ages for police officers can not be invoked to effectively lower the retirement age for police officers continuing in a reorganized department.
Gately v. Commonwealth of Massachusetts
No. 92-2485 (1st Cir. 1993) 29 pps. **$35.00**

RP (Coleman for EEOC) Appeal from D.C., N.D. Ill.
Defendant has not established that its practice of refusing to hire teachers with greater experience for positions having a maximum salary corresponding to lesser experience is justified by business necessity. This case does not involve a bona fide seniority system.
EEOC v. Francis W. Parker School
No. 93-3395 (7th Cir. 1994) 30 pps. **$35.00**

PB (Black for EEOC) Appeal from D.C., M.D. Tenn.
As a matter of law, defendant may not assert age 55 as a BFOQ for wildlife officers, because the state permitted 10 wildlife officers to continue working beyond age 55.
EEOC v. Tennessee Wildlife Resources Agency
No. 86-5539 (6th Cir. 1986) 53 pps. **$65.00**

PB (Mastroianni for EEOC) Appeal from D.C., S.D. Miss.

The court erred in holding that defendant's involuntary retirement of officers at age 50 is justified as a bona fide occupational qualification. Defendants failed to prove any specific fitness and health qualifications for the jobs which are reasonably necessary to the business. The wide latitude given to younger employees hired and retained, with respect to physical fitness, is inconsistent with the high standards which defendant sets for older officers.
EEOC v. Mississippi State Tax Commission
No. 87-4659 (5th Cir. 1987) 33 pps. **$45.00**
Also available: Reply Brief on Appeal from D.C., S.D. Miss., making similar arguments. 20 pps. **$25.00**

PB (Mastroianni for EEOC) Appeal from D.C., S.D. Miss.
Defendants failed to prove that mandatory retirement of officers at age 60 is a bona fide occupational qualification. The court's approval of a consultant's study of the job qualifications at issue in another case does not compel approval of that firm's similar study in this case.
EEOC v. State of Mississippi
No. 87-4214 (5th Cir. 1987) 67 pps. **$75.00**

PB (Lisser) Appeal from D.C., E.D. Ky.
Kentucky has not proved that mandatory age 55 retirement is bona fide occupational qualification for state police force members. ADEA amendment permitting police forces to have mandatory early retirement but for only a 7 year period should not apply to pre-existing cases.
EEOC v. Kentucky State Police
No. 87-5193 (6th Cir. 1987) 46 pps. **$55.00**

PB (Valdez for EEOC) Appeal from D.C., D. Mass.
The Commonwealth of Massachusetts violated the ADEA by restricting appointments to the position of Motor Vehicle Examiner to those 35 year old and younger. There was a genuine issue of material fact regarding whether motor vehicle examiners are law enforcement officials within the meaning of the ADEA's 1986 Amendments. Thus the district court erred by granting defendant's motion for summary judgment.
EEOC v. Commonwealth of Massachusetts
No. 88-1126 (1st Cir. 1988) 51 pps. **$65.00**

DB (Fried for EEOC) Writ of Certiorari to 9th Circuit
The court of appeals correctly concluded that genuine issues of triable fact were raised in the EEOC's charge that Boeing mandatory retirement at age 60 for pilots violated the ADEA. There was conflicting evidence on whether Boeing could test its pilots on an individual basis.
Boeing Co. v. EEOC
No. 88-53 (U.S. Supreme Ct. 1988) 8 pps. **$15.00**

PB (Bernstein for EEOC) Plaintiff-Appellant's Brief
Murnane does not preclude the commission from challenging defendant's age-based pilot hiring restrictions because defendant has since materially altered its pilot hiring practices, the intervening *Criswell* decision significantly clarified the proper scope and application of the bona fide occupational qualification defense, and equitable considerations render collateral estoppel inapplicable. The Commission's statistical proof of a gross disparity in defendant's rate of hiring pilot applicants age 40 and older established a *prima facie* case of a pattern or practice of unlawful age discrimination.
EEOC v. American Airlines, Inc.
No. 94-10033 (5th Cir. 1994) 58 pps. **$65.00**
Also available: Reply Brief making similar arguments. 30 pps. **$35.00**

ADEA - METHODS AND BURDENS OF PROOF - REDUCTIONS-IN-FORCE

AB (Osborne for AARP) Brief *amicus curiae* in Support of Appellant on Appeal from Cal. Ct. of Appeal
Plaintiff's burden at summary judgment is to produce evidence which raises a material issue of fact; summary judgment is not appropriate in this case. Appellant's evidence of pretext is sufficient to avoid summary judgment. Even at trial

appellant need not meet the standard advocated by respondent, that plaintiff must establish a causal connection between his protected status and the adverse employment decision to survive summary judgment.
Gun v. Bechtel National, Inc., et al.
No. S062201 (Cal. Supreme Ct. 1998) 25 pps. $**35.00**

AB (Gregory , Sloan for EEOC) Writ of Certiorari To 4th Circuit
The Fourth Circuit erred in concluding that to establish a prima facie case of age discrimination under *McDonnell Douglas*, petitioner was required to demonstrate that his replacement was not within the class of persons protected by the ADEA, and that the age of the replacement employee is not an element of the prima facie case under the *McDonnell Douglas* framework. Further, considerations that may be applicable to cases involving reductions-in-force do not apply to this case. Although respondent eliminated a few positions from its workforce, it did not cease to have a need for someone to perform the functions petitioner had been assigned; the jobs were consolidated and each employee worked harder to perform the same task.
EEOC v. Consolidated Coin Caterers Corp.
No. 95-354 (U.S. Supreme Ct. 1995) 26 pps. **$35.00**

AB (Sloan for D.C. EEOC) Appeal from D.C., W.D. N.C.
Summary judgment was improper where the employee produced sufficient evidence to create a genuine dispute as to whether the employer's reasons for his termination in a company reorganization and reduction in force were pretextual.
Stiles v. General Electric Co.
No. 92-1886 (4th Cir. 1992) 42 pps. **$55.00**

AB (Wheeler for D.C. EEOC) Appeal from D.C., C.D. Ill.
The EEOC urges the panel to rehear this case and to affirm the jury verdict. The trial court did not err in consolidating the plaintiffs' claims. All plaintiffs challenged demotion or termination ordered by the same managers pursuant to a reduction in force, but were forced to go because of their age.
King v. General Electric
Nos. 90-2583 90-3038 (7th Cir. 1992) 20 pps. **$25.00**

PB (Sedey) Appeal of Summary Judgment by D.C., E.D. Mo.
In a reduction in force case, defendant did not hire plaintiff because of his age and disability in violation of the ADEA and the Missouri Human Rights Act. Plaintiff was not hired though a consultant relations position remained open, and was offered to younger individuals. In a reduction in pay case plaintiff needs to establish that his job continued to exist in its various parts, not in its same title or description.
Weber v. American Express
No. 92-2014 (8th Cir. 1992) 41 pps. **$55.00**

AB (Zaleznick for AARP) Appeal from D.C., D. Kan.
In a reduction in force case the controlling inquiry is whether older workers were treated less favorably than younger workers. Plaintiff established a prima facie case with evidence that a younger employee was retained, and that younger workers were treated more favorably when they were recalled and newly hired before older workers.
Morgan v. ANR Freight Systems, Inc.
No. 89-3017 (10th Cir. 1989) 26 pps. **$35.00**

AB (Zaleznick for AARP) Appeal from D.C., D. N.J.
Defendant's voluntary reduction-in-force was followed by involuntary reduction-in-force contrary to ADEA.
Luscardi v. Xerox
Nos. 87-5901 & 5902 (3rd Cir. 1988) 32 pps. **$45.00**

AB (Zaleznick for AARP) Appeal of Summary Judgment by D.C., E.D. Pa.

The cost savings derived from eliminating high salaried workers is not a "legitimate non-discriminatory business reason" for firing older workers under the ADEA, unless implemented in an age-neutral manner.
Armbruster v. Unisys Corporation
No. 93-1333 (3rd Cir. 1993) 18 pps. **$25.00**

PB (Bogas for EEOC) Appeal from D.C., N.D. Tex.
In an RIF case, plaintiff may introduce a variety of different types of evidence to prove that defendant's reasons for firing plaintiff were pretextual. Plaintiff is not required to prove that plaintiff was clearly better qualified. The EEOC's letter of determination is per se admissible. The jury, not the judge, must determine whether plaintiff made reasonable efforts to mitigate damages.
EEOC v. Manville Sales Corp.
No. 93-1069 (5th Cir. 1993) 30 pps. **$35.00**

AB (Marcosson for EEOC) Opposition to Summary Judgment
In a RIF, where severance pay was offered to employees involuntarily terminated who signed a waiver of claims against the employer, such waivers do not bar ADEA claims where the employer did not comply with 29 U.S.C. 626 (f) (1) (H), requiring disclosure of age related information.
Burch v. Fluor Corporation
No. 4:93CV00831 (D.C., E.D. Mo. 1993) 10 pps. **$15.00**

AB (Marcosson for EEOC) Opposition to Summary Judgment
In a RIF (where severance pay was offered to employees involuntarily terminated who signed a waiver of claims against the employer) waivers do not bar ADEA claims where the employer did not comply with 29 U.S.C. 626 (f) (1) (H), requiring disclosure of age related information.
Tindall v. Doe Run Investment Holding Corp.
No.4:93-CV-00759 (D.C., E.D. Mo. 1993) 10 pps. **$15.00**

ADEA - METHODS AND BURDENS OF PROOF - BENEFITS

AB (McCann for AARP) In Support Of The Plaintiffs' Motion For Summary Judgment
Using a formula based explicitly on age to pay workers over 55 years old, less sick leave benefits, upon retirement violates the ADEA. Section 4(a) of the ADEA, 29 U.S.C. § 623(a) as amended in 1990 by the Older Workers Benefit Protection Act prohibits employers from discriminating in providing virtually all forms of employee benefits. Under § 4(f)(2)(B)(I) of the ADEA, an employer may reduce benefits based on age only if it can show that there is an increased cost in providing the particular benefit to older workers. Defendants cannot show costs incurred because Congress did not intend § 4(f)(2)(B)(I) to apply to uninsured paid sick leave.
O'Brien v. Deer Park Union Free School Dist., and EEOC v. Deer Park Union Free School Dist.
Nos. 94-4695, 95-0092 (D.C., E.D., N.Y. 1999) 23pps. **$35.00**

AB (Dunaway for AARP) In Support Of Plaintiffs-Appellants
The Older Workers Benefit Protection Act (OWBPA) states that severance benefits may not be denied or reduced based on pension eligibility or receipt of pension benefits. Severance pay and pension benefits are not fungible. Pension eligibility and early retirement eligibility continue to be proxies for age, and employment decisions based on such factors are unlawful under the ADEA. Defendant did not satisfy the requirements for the OWBPA's two exceptions permitting a reduction in severance benefits.
Hawes, et al. v. Johnson & Johnson, et al.
No. 98-6408 (3rd Cir. 1999) 29pps. **$35.00**

PB (Gregory for EEOC) In Support Of Plaintiff-Appellant

The plaintiff is entitled to summary judgment on the issue of ADEA liability based upon a disparate treatment theory because reliance upon an age-defined factor is *per se* discriminatory. Defendant violated the ADEA when it based eligibility for a post-termination employee benefit on a factor that is explicitly defined, in part, by age. The district court erred in granting summary judgment in the defendants' favor since discovery could uncover evidence that defendant acted on the assumption that the employees excluded from the benefit were "likely to be older."
EEOC v. American Tel. and Telegraph Co., et al.
No. 98-4348 (6th Cir. 1999) 57pps. **$65.00**

AB (Carter for EEOC) Brief in Support of Plaintiffs-Appellees on Appeal from D.C., N.D. Ind.
Making retirement benefit incentives unavailable to teachers over 62 years old violates the ADEA. The defendant's retirement benefits incentive plan does not qualify under the narrow exception of "bridge payments". Plaintiffs have article III standing because they have suffered an injury in fact by being denied full early retirement benefits because of their age.
Solon v. Gary Community School Corporation
Nos. 97-3954 97-4024 (7th Cir. 1998) 24 pps. **$35.00**

AB (Gregory for EEOC) Brief In Support of Plaintiff-Appellant on Appeal from D.C., N.D. Ill.
The district court erred in ruling that plaintiff's evidence of age bias lacks probative value. A decision maker's age-biased statement need not be made in reference to the specific employment decision at issue to constitute probative evidence of discrimination. Defendant's retirement plan is facially discriminatory because it provides less favorable treatment to individuals who are eligible for early retirement and early retirement is, in part, explicitly defined by age.
Schoolman v. Uarco. Inc. and Trustees of the Uarco Retirement Plan
No. 96-2914 (7th Cir. 1996) 25 pps. **$35.00**

PB (Ramshaw for EEOC) Appeal from D.C., N.D. Cal.
The district court correctly held that the fund violated the ADEA by granting the Plaintiff lower pension benefits because of his age. Moreover, the reduction in pension benefits was not compelled by the Internal Revenue Code. Section 4(I) of the ADEA applies to the actions of an entity which, like the fund, was created by employers and a labor union for the purpose of maintaining an employee pension benefit plan.
Lee v. California Butchers' Pension Trust Fund
Nos. 96-16408, 96-16562 & 97-15272 (9th Cir. 1996/97) 20 pps. **$35.00**

AB (Ventrell-Monsees for AARP) Brief in Support of Plaintiff-Appellants on Appeal from the D.C., N.D. Cal.
By limiting disability retirement benefits to the member's service retirement rate at age 55, the Defendant does not provide employees hired at age 40 or older the same level of disability benefits as they provide to other workers. The difference in benefits provided is based solely on age which constitutes *per se* disparate treatment in violation of the ADEA as amended by the OWBPA regardless of the Defendant's motivation.
Arnett, et al. v. California Public Employees' Retirement System, et al.
No. 98-15574 (9th Cir. 1998) 26 pps. **$35.00**

PB (Suhre for EEOC) Appeal from D.C., D. Nev.
District court erred in granting summary judgment to Local 350, because its referral policy, requiring retired persons to forego their pension benefits merely to seek a referral for employment while not requiring non-retired persons to forego any other source of income or to seek referral, violates the ADEA. The policy is not based upon "reasonable factors other than age."
EEOC v. Local 350, Plumbers and Pipefitters
No. 90-16810 (9th Cir. 1991) 31 pps. **$45.00**

PB (Suhre for EEOC) Opposition to Petition for Rehearing with Suggestion of Rehearing *En Banc*

The court was correct in finding a violation of the ADEA in defendant's policy that requires a retired person to relinquish his or her pension benefits as a condition of using the union's hiring hall while not requiring an unemployed individual who is not retired to give up any other source of income before using the hiring hall. The policy is not based on a reasonable factor other than age. Sanctions should be imposed for presenting material not in the record.
EEOC v. Local 350, Plumbers and Pipefitters
No. 90-16810 (9th Cir. 1993) 29 pps. **$35.00**

PB (Jay) Plaintiff's Motion for Summary Judgment and Memorandum of Points and Authorities in Support of Motion for Summary Judgment
Defendant's exclusion of teachers over the age of 60 from the $10,000 retirement incentive has no rational business justification, and constitute a "subterfuge" under §4(f)(2) of the ADEA. Defendant's are incapable of demonstrating a correlation between age and the cost of the challenged benefit necessary to "disprove subterfuge."
Cipriano and Miller v. Board of Education of the City School District, City of North Tonawanda, New York, et al.
No. 84-CV-80C (D.C., W.D. N.Y. 1988) 42 pps. **$55.00**

AB (Keller for EEOC) Appeal from D.D.C.
The ADEA's prohibition against retaliation is not limited to forms of retaliation that involve the employment relationship. A bona fide executive who receives more than $44,000 in annual pension benefits is not exempt from the ADEA's prohibition against mandatory retirement unless he is entitled to that amount of pension benefits under the terms of the applicable pension plan.
Passer v. American Chemical Society
No. 90-7166 (D.C. Cir. 1991) 31 pps. **$45.00**

PB (Wheeler for EEOC) Appeal from D.C., D. N.J.
An employee benefit plan that does not on its face discriminate in a nonfringe-benefit aspect of an employment relationship can nevertheless be a subterfuge to evade the purposes of the ADEA, and therefore be outside the protection of §4(f)(2) of the Act, if the plan is shown to have the intended effect of discriminating with respect to nonfringe-benefit employment rights.
EEOC v. Westinghouse Electric Corp.
Nos. 87-5174 & 86-1226 (3rd Cir. 1990) 34 pps. **$45.00**

AB (Zaleznick for AARP) Appeal from D.C., D. N.J.
Defendant's policy of denying severance benefits to employees eligible to receive or receiving earned retirement pension benefits, while offering them to younger employees is violative of ADEA. Plans do not qualify as "bona fide" exceptions under §4(f)(2), and amount to a "subterfuge".
EEOC v. Westinghouse Electric Corp.
No. 86-1226 (3rd Cir. 1986) 30 pps. **$35.00**

AB (Miller for AARP) Appeal from D.C., D. N.J.
Defendant's policy which refuses severance pay to workers who are eligible for a pension at the time of a layoff constitutes involuntary retirement. AARP urges Court of Appeals to affirm district court decision.
EEOC v. Westinghouse Electric Corp.
No. 86-1226 (3rd Cir. 1989) 28 pps. **$35.00**

PB (Collingsworth for EEOC) Appeal from D.C., D. N.J.
The EEOC is not procedurally barred from presenting arguments and supporting facts in order to meet the new standard created by *Betts*. Even after *Betts*, defendant's layoff plan was not shielded from §4(f)(z) liability under the ADEA because it intended to discriminate against older employees in a non-fringe benefit aspect of employment and therefore was a subterfuge. The plan created a condition of forced retirement.

EEOC v. Westinghouse Electric Corp.
No. 86-1226 (3rd Cir. 1989) 55 pps. **$65.00**

PB (Black for EEOC) Appeal from D.C., D. N.J.
District court erred by dismissing this action, alleging denial of Layoff Income and Benefits (LIB), to laid off employees aged 55 or older, as time barred. The statute of limitations starts to run on the date of plant closing, not on notice of closing. Prior finding of willfulness should have been dispositive of timeliness issue.
EEOC v. Westinghouse Electric Co.
No. 87-5174 (3rd Cir. 1987) 46 pps. **$55.00**
Also available: Reply Brief on Appeal from D.C., D. N.J., making similar arguments. 19 pps. **$25.00**

PB (Collingsworth for EEOC) Appeal from D.C., D. N.J.
Decisions on the merits in an ADEA/pension benefit litigation involving a New Jersey plant should be stayed pending the outcome of petition for certiorari to the U.S. Supreme Court in the litigation involving the Pennsylvania plan, or pending the outcome of legislation that would overturn *Betts*.
EEOC v. Westinghouse Electric Co.
No. 87-5174 (3rd Cir. 1989) 36 pps. **$45.00**

PB (Wheeler for EEOC) Appeal from D.C., E.D. Pa.
Summary judgment was inappropriate because the retirement plan is subterfuge under *Betts* and it permits involuntary retirement.
EEOC v. USX & United Steelworkers of America
No. 89-2026 (3rd Cir. 1990) 55 pps. **$65.00**
Also available: Reply Brief on Appeal from D.C., E.D. Pa., making similar argument. 24 pps. **$35.00**

AB (Mackronis for AARP) Writ of Certiorari to 6th Circuit
Section 4(f)(2) of the ADEA provides an exception to age discrimination by permitting employee benefit reductions justified by age-related cost. Appellant has not met its burden of proof since it did not provide any cost justification for excluding workers over 60 from its disability plan. Even though the provision predates the ADEA, §4(f)(2) still applies.
Public Employees Retirement System of Ohio v. Betts
No. 88-3898 (U.S. Supreme Ct. 1988) 28 pps. **$35.00**

AB (Miller for AARP) Appeal from D.C., D. Kan.
A benefit plan which predates the passage of ADEA may still be a violation of the ADEA's "no subterfuge" test of §4(f)(2).
EEOC v. Cargill, Inc.
No. 84-2692 (10th Cir. 1985) 14 pps. **$25.00**

AB (Miller for AARP) Appeal from D.C., N.D. Ill.
Defendant's program, designed to encourage voluntary retirement, drastically reduced benefits for all eligible employees 65 or older. It is not an exception as a bona fide employee benefit plan.
Karlen v. City Colleges of Chicago
No. 870151 (7th Cir. 1987) 23 pps. **$35.00**

PB (Fay for AARP) Memorandum in Support of Plaintiff's Cross-Motion for Partial Summary Judgment or Liability Concerning the Profit Sharing Plan and In Opposition to Motion for Summary Judgment Concerning the Profit Sharing Plan
The denial of profit sharing contributions and allocations of forfeitures to employees over age 65 constitutes a *per se* violation of the ADEA. Plaintiffs are entitled to liquidated damages because defendant's plan constituted willful discrimination.

AARP v. Farmers Group, Inc.
No. CV-86-6203-TJH (D.C., C.D. Cal. 1988) 40 pps. **$45.00**

PB (Fay for AARP) Memorandum in Support of Plaintiff's Cross-Motion for Partial Summary Judgment on Liability Concerning the Pension Plan and In Opposition to Motion for Summary Judgment Concerning the Pension Plan
Farmer's denial of continued service and salary credit after reaching age 65 is a per se violation of the ADEA. The provisions are maintained to force the involuntary retirement of older employees, and are not justified by age related cost considerations.
AARP v. Farmers Group, Inc.
No. CV-86-6203-TJH (D.C., C.D. Cal. 1988) 32 pps. **$45.00**

AB (Gregory for EEOC) In Support of Plaintiffs-Appellees on Appeal from D.C., C.D. Cal.
Employer can not rely on the bona fide employee benefit plan exception under the ADEA where it made an explicit decision in response to the 1978 amendments to the ADEA to retain the age-65 cut-off of its profit sharing contributions to discourage employees from working beyond the age of 65. Such decision constituted a willful violation of the ADEA because it was made without regard to legal advice solicited by the employer and with a specific intent to evade the purposes of the ADEA.
AARP v. Farmers Group, Inc.
No. 90-55872 (9th Cir. 1990) 25 pps. **$35.00**

PB (Duplinsky for EEOC) Appeal from D.C., W.D. Pa.
Defendant's refusal to change pension plan, after being notified of ADEA violation was willful violation and thus subject to 3 year statute of limitations. Also, defendant has duty to cost-justify its disability plan that reduced benefits solely on basis of age.
EEOC v. City of Mt. Lebanon, P.A.
No. 87-3189 (3rd Cir. 1987) 40 pps. **$45.00**

PB (Johnston for EEOC) Reply Appeal from D.C., W.D. Pa.
Summary judgment should be reversed and the case should be remanded on the issue of whether defendant has made out §4(f)(2) defense as to its disability plan. The court did not address this issue because it first decided defendant's use of the plan was not a willful violation of the ADEA, and claims concerning it were therefore barred by the two year statute of limitations. The issue of willfulness is only relevant once violation is established.
EEOC v. City of Mt. Lebanon, P.A.
No. 87-3189 (3rd Cir. 1987) 30 pps. **$35.00**

PB (Johnston for EEOC) Appeal from D.C., C.D. Cal.
Age-based exclusion of over 35 employees from a "Safety Member" retirement plan is discriminatory regardless of whether it predates the ADEA.
EEOC v. County of Orange, et al.
No. 87-5564 (9th Cir. 1987) 47 pps. **$55.00**

AB (Wheeler for EEOC) In Support of Plaintiff-Appellee on Appeal from D.C., S.D. Ohio
Rehearing of the panel's majority decision is improper because the decision does not nullify U.S. Supreme Court precedent. The U.S. Supreme Court did not reach the issue of involuntary retirement in *Betts*. A Public Employee Retirement System plan has never been found to be a subterfuge.
Betts v. Hamilton County Board of Mental Retardation and Developmental Disabilities
No. 86-3676/4034 (6th Cir. 1990) 40 pps. **$45.00**
Also available: Amicus Brief in Opposition to Petition for Rehearing and Suggestion of Rehearing En Banc, 12 pps. **$25.00**

PB (Laufman) Appeal from D.C., S.D. Ohio
Defendant's disability retirement plan discriminates on the basis of age. The defendant's plan denies the option of applying for disability to workers that have not attained age 60, forcing them into involuntary retirement. This plan is not exempted by §4(f)(2).
Betts v. Hamilton County Board of Mental Retardation and Developmental Disabilities
No. 86-3676 (6th Cir. 1986) 64 pps. **$75.00**

AB (Mackaronis for AARP) Appeal from D.C., D. R.I.
A challenged separation pay plan was a per se violation of §4 of the ADEA because denial of separation pay was age-biased. The plan did not qualify as a "bona fide" benefit plan which was not a "subterfuge" to invade the ADEA under §4(f)(2).
Abenante v. Fulflex, Inc.
No. 89-1179 & No. 89-1180 (1st Cir. 1989) 28 pps. **$35.00**

AB (Mackaronis for AARP) Appeal from D.C., D. Colo.
An employer violated the ADEA and ERISA when it increased its pension benefit threshold requirements for a lump sum payment without grandfathering employees who had already satisfied the plan's conditions. The employees were constructively terminated when they had to retire early in order to receive the lump sum payment they were already entitled to.
Mitchel v. Mobil Oil Corp.
No. 89-1019 (10th Cir. 1989) 25 pps. **$35.00**

AB (Zaleznick for AARP) In Support of Plaintiff on Appeal from D.C., W.D. N.Y.
A one-time lump sum employee benefit does not constitute an "employee benefit plan" under §4 (f) (2). To establish that a retirement incentive plan is not a "subterfuge" under §4 (f) (2), an employer must demonstrate that the plan provides equal benefits without regard to age, or the plan incurs equal benefit costs for all employees.
Cipriano and Miller v. Board of Education of the City School District of the City of North Tonawanda, et al.
No. 84-CV-80C (D.C., W.D. N.Y., 1987) 45 pps. **$55.00**

PB (Ramshaw for EEOC) Appeal from D.C., N.D. Ill.
Defendant's retirement plan is a facially discriminatory employment policy that can be challenged each time it is applied.
EEOC v. City Colleges of Chicago
No. 90-3162 (7th Cir. 1990) 74 pps. **$85.00**

AB (Signorille & Zaleznick for AARP) In Support of Plaintiff on Appeal
The district court properly found that defendant's promise that the health care benefits existing at the time of early retirement would continue for the life of the early retiree and surviving spouse constituted a binding bilateral contract.
Sprague v. General Motors Corp.
Nos. 94-1896, 94-1897, 94-1898 & 94-1937 (6th Cir. 1994) 19 pps. **$25.00**

ADEA - RETALIATION

PB (Goldstein for EEOC) Appeal from D.C., N.D. Ala.
Issues of fact exist as to whether defendant retaliated against employee by firing him a few weeks after receiving notice of this age discrimination charge, and where the absenteeism policy on which employer says the termination was based was enforced less strictly against employees who had not raised age discrimination claims.
EEOC v. Calhoun Community College
No. 91-7664 (11th Cir. 1991) 28 pps. **$35.00**
Also available: Reply Brief on Appeal from D.C., N.D. Ala., making similar arguments. 8 pps. **$15.00**

AB (Keller for EEOC) Appeal from D.D.C.
The ADEA's prohibition against retaliation is not limited to forms of retaliation that involve the employment relationship. A bona fide executive who receives more than $44,000 in annual pension benefits is not exempt from the ADEA's prohibition against mandatory retirement unless he is entitled to that amount of pension benefits under the terms of the applicable pension plan.
Passer v. American Chemical Society
No. 90-7166 (D.C. Cir. 1991) 31 pps. **$45.00**

PB (Goodman for EEOC) Brief of Plaintiff-Appellant
The requisite causal link of a*prima facie* case of retaliation exists when the evidence is sufficient to create an inference that the protected act was the likely reason for the adverse action.
EEOC v. Avery Dennison Corp.
Nos. 95-3060 & 94-4320 (6th Cir. 1995) 31 pps. **$45.00**

PB (Ramshaw for EEOC) Brief as Appellee
The evidence supports the jury finding that defendant willfully violated the ADEA by retaliating against plaintiff for participating in EEOC proceedings. The district court's award of front pay provides a reasonable make-whole remedy well within the court's discretion. The district court was proper in ruling that plaintiff should not be denied front pay because of an inaccurate statement since defendant could not show they would have demoted plaintiff for this reason.
Padilla & EEOC v. Metro-North Commuter Railroad
No. 95-6056 (2nd Cir. 1996) 49 pps. **$55.00**

ADEA - REMEDIES

DB (Dellinger for EEOC) Brief for Respondent EEOC In opposition to Petition for Writ of Certiorari to the 6th Circuit
The court of appeals correctly concluded that defendants failed to show that mandatory retirement at age 55 for police officers was justified as a "bona fide occupational qualification" under § 4(f)(1)) of the ADEA. The court of appeals correctly refused to deduct the amount of unemployment compensation received by state police officers from their back pay awards under the ADEA.
Kentucky State Police Department. et al. v. EEOC
No. 96-160 (U.S. Supreme Ct. 1995) 10 pps. **$15.00**
Also available: Supplemental Brief for Respondent EEOC on Writ of Certiorari to the 6th Circuit detailing the 1996 ADEA Amendments. 7 pps. **$15.00**

PB (Mackaronis for AARP) Brief on the Inapplicability of the Norris-LaGuardia Act to Injunctive Relief Requested
The Norris-LaGuardia Act, 29 U.S.C. § 101 (“the Act”) does not limit the Courts ability to grant the injunctive relief sought by 21 teachers and administrators who remained employed by Gary Schools at the time of trial and who, expressly and solely because of their age, were denied the opportunity to retire and receive the same benefits offered to younger workers. The Seventh Circuit Court of Appeals has explicitly held that the Act does no protect employers from injunctions. Additionally, case law indicates that policy consideration should exclude claims arising under the ADEA from the Act’s restrictions.
Solon v. Gary Community School Corporation
C.A. No. 2:95 CV-327 RL (D.C., N.D. Ind. 1995) 9 pps. **$15.00**

AB (Moran for EEOC) Petition for Rehearing In Support of Appellee's Petition for Rehearing, Appeal from D.C., E.D. Mo.
In overturning the jury's finding that the employer willfully violated the ADEA, the appellate court misapplied the *TWA v. Thurston* standard for determining willfulness. The appellate court's holding that the district court should have offset from the plaintiff's back pay award the pension payments he received after his unlawful discharge is contrary to precedent.

Glover v. McDonnell Douglas Corp.
No. 92-1059EM (8th Cir. 1993) 33 pps. **$45.00**
AB (Goldstein for EEOC) In Support of Plaintiff-Appellee-Cross-Appellant
Liquidated damages and prejudgment interest are appropriate concurrent relief under the ADEA. The district court was entitled to reject defendant's mitigation defense where defendant admittedly did not produce evidence that comparable jobs were available to plaintiff. The district court was not required, as a matter of law, to apply judicial estoppel to preclude plaintiff from establishing that he was able to work following his unlawful termination.
Nelson v. J.C. Penney Co., Inc.
No. 95-1253 & 95-1305 (8th Cir. 1995) 22 pps. **$35.00**

PB (Suhre for EEOC) Appeal from D.C., D. Nev.
Where a willful violation of the ADEA was proven, the district court abused its discretion in (1) refusing to allow the jury to consider evidence of plaintiff's future damages because back pay award encompassed over five years and in (2) refusing to amend the judgment to include an award of liquidated damages.
Brooks v. Hilton Casinos
Nos. 90-15424, 15460 15623 (9th Cir. 1990) 41 pps. **$55.00**

AB (Liebross for AARP) Appeal from D.C., D. Colo.
The district court abused its discretion in permitting pension and social security benefits earned from prior unrelated employment to be offset from any remedial award.
Faulkner v. Super Valu Stores, Inc.
No. 91-1273 (10th Cir. 1991) 12 pps. **$25.00**

PB (Sedey) Appeal from D.C., E.D. of Mo.
The district court did not err in instructing the jury as to mitigation of damages because the duty of mitigation does not require that plaintiff seek or accept other employment of a different of inferior kind.
Brown v. Stites Concrete, Inc.
Nos. 91-2581EM, 91-3057 & 91-3139 (8th Cir. 1991) 49 pps. **$55.00**

AB (Marcosson for EEOC) Appeal from D.C., E.D. Mo.
Pension benefits are a collateral source of income that should not be deducted from an award of back pay.
Doyne v. Union Electric Co.
Nos. 91-1543 2001 (8th Cir. 1991) 18 pps. **$25.00**

PB (Teitelbaum) Reply Brief of Appellee/Cross Appellant on Appeal from D.C., E.D. Mo.
The district court erred in deducting past and future pension benefits from plaintiff's backpay and frontpay awards in that pension benefits constitute a collateral source and to deduct them would provide a windfall to a defendant who has acted unlawfully. The district court erred in reducing the amount of front pay the jury awarded based upon its determination that plaintiff had not properly mitigated his front pay damages and/or that plaintiff would have retired at age 65 rather than, as the jury found, at age 70.
Doyne v. Union Electric Company
Nos. 91-1543 EM & 91-2001 EM (8th Cir. 1991) 19 pps. **$25.00**

PB (Teitelbaum) Appellee/Cross-Appellant's Brief on Appeal from the D.C., E.D. Mo.
The defendant waived its objections to punitive damages by not raising them before the submission of the case to the jury. The district court properly denied defendant's motion for JNOV with respect to the punitive damages award.
Doyne v. Union Electric Company
Nos. 91-1543 EM & 91-2001 EM (8th Cir. 1991) 71 pps. **$85.00**

PB (Marcosson for EEOC) Appeal from D.C., E.D. Mich.

An unchallenged jury verdict of willfulness under the Fair Labor Standards Act precludes a finding that the defendant acted in good faith and with a reasonable belief that its actions were lawful, thus mandating an award of liquidated damages. Even if the court is not bound by the jury's verdict, failure to award liquidated damages would have been an abuse of discretion.
EEOC v. City of Detroit Health Department
No. 89-2337 (6th Cir. 1990) 31 pps. **$45.00**

AB (Goodman for EEOC) Appeal from D.C., S.D. Ohio
The district court abused its discretion in denying plaintiff front pay. A front pay award should not be based on the duration of plaintiff's past employment with defendant, but on future loss of earnings attributable to defendant's discrimination.
Kadinger v. Wayne Chemical
Nos. 93-3282 & 93-3338 (6th Cir. 1993) 20 pps. **$25.00**

PB (Ramshaw for EEOC) Appeal from D.C., D. Minn.
An award of back pay under the ADEA should not be deducted by unemployment compensation benefits or by income plaintiff earned which could have been earned "moonlighting" if plaintiff remained employed by defendant. A back pay award should include amounts spent by plaintiff to replace insurance provided by defendant, and contributions defendant previously made to a savings plan for plaintiff.
Gaworski v. ITT Commercial Finance Corp.
Nos. 92-1753 & 92-1840 (8th Cir. 1992) 30 pps. **$35.00**

PB (Ramshaw for EEOC) Reply Brief on Appeal from D.C., D. Minn
An award of back pay under the ADEA should not be deducted by unemployment compensation benefits.
Gaworski v. ITT Commercial Finance Corp.
Nos. 92-1753 & 92-1840 (8th Cir. 1992) 7 pps. **$15.00**

AB (Gregory for EEOC) Appeal of Summary Judgment by D.C., D. Ariz.
Evidence providing a legal basis for discharging plaintiff acquired by defendant after its decision to discharge plaintiff can not bar plaintiff's age discrimination claim. Defendant may be able to limit the relief to a prevailing plaintiff if it can prove, on the basis of after-acquired evidence, that it would have taken adverse action against plaintiff. Plaintiff, however, is entitled to obtain monetary relief for discharge in violation of the ADEA for the period prior to defendant's later discovery of disqualifying information.
O'Day v. McDonnell Douglas Helicopter Company
No. 92-15625 (9th Cir. 1992) 37 pps. **$45.00**

PB (Jay for Plaintiffs; Mackeronis, Ventrell-Monsees for AARP) Plaintiff's Motion for Summary Judgment and Memorandum of Points and Authorities in Support of Motion for Summary Judgment
Plaintiffs are entitled to liquidated damages because defendants willfully violated the ADEA.
Cipriano and Miller v. Board of Education of the City School District, City of North Tonawanda, New York, et al.
No.84-CV-80C (D.C., W.D. N.Y. 1988) 42 pps. **$55.00**

AB (Johnson for NELA) Appeal from D.C., W.D. Tex.
Remedies standards to be applied in determining proper back pay and proper front pay standards in ADEA cases wherein the violation was found to be "willful" and, accordingly, liquidated damages are awarded by statute and, wherein defendant has asserted an "after acquired evidence" defense.
Shattuck v. Kinetic Concepts, Inc.
No. 93-8632 (5th Cir. 1994) 34 pps. **$45.00**

ADEA - ATTORNEY'S FEES & COSTS

PB (Bogas for EEOC) Appeal from D.C., N.D. Tex.
Defendant engaged in unlawful disparate treatment by rejecting older workers as "overqualified" while hiring younger workers with similar qualifications. Defendant's policy of rejecting "overqualified" applicants, even if administered even-handedly, had a disparate impact on older workers. In an ADEA action brought by the EEOC, defendant can recover attorney's fees only if the action was both "unfounded" and "maintained in bad faith".
EEOC v. General Dynamics Corp.
Nos. 92-1156 & 92-1393 (5th Cir. 1993) 20 pps. **$25.00**

PB (Bogas for EEOC) Supplemental Brief on Appeal from D.C., N.D. Tex.
In an ADEA action brought by the EEOC, defendant can recover attorney's fees only if the action was both "unfounded" and "maintained in bad faith." Defendant engaged in unlawful disparate treatment by rejecting older workers for being "overqualified" while hiring younger workers with similar qualifications. Defendant's policy of rejecting "overqualified" applicants, even if administered even-handedly, had a disparate impact on older workers in violation of the ADEA.
EEOC v. General Dynamics Corp.
Nos. 992-1156 & 92-1393 (5th Cir. 1993) 20 pps. **$25.00**

PB (Bogas for EEOC) Reply Brief and Brief as Cross-Appellee from D.C., N.D. Tex.
In a complex case challenging the effect of General Dynamics' rejection of applicants over age 40 as "overqualified," the district court's exclusion of plaintiffs' timely designated, essential statistical expert as a sanction for its inadvertent delay was reversible error since it caused the EEOC to drop 90 of its 96 claims. Additionally, the district court erroneously refused to allow the EEOC to show that older applicants were judged more strictly than younger applicants, and admitted evidence of a plaintiff's prior charges of discrimination, making a fair trial impossible. Attorney's fees are only proper against a Title VII plaintiff when the case is frivolous; the district court's denial of attorney's fees in this case was proper.
EEOC v. General Dynamics Corp.
Nos. 92-1156 & 1393 (5th Cir. 1992) 34 pps. **$45.00**

PB (Sedey) Appeal from the D.C., E.D. Mo.
The district court erred in denying plaintiff's request for enhanced attorney's fees. The 8th Circuit standard for enhancing attorney's fees is, in accordance with U.S. Supreme Court precedent, based upon a market analysis of attorney fees rather than analysis of risk involved in an individual case. The 8th Circuit has ruled that the St. Louis legal market enhances contingency arrangements by 100%.
Brown v. Stites Concrete, Inc.
Nos. 91-2581EM, 91-3057 & 91-3139 (8th Cir. 1991) 49 pps. **$55.00**

AB (Gregory for EEOC) Appeal from D.C., D. Ariz.
The district court erred in awarding attorney's fees to the employer under state law where fees could not be awarded under the federal ADEA (since the action was not brought in bad faith) and the pendent state claims where inseparable from the federal claim, thus subverting the federal policy of limiting fee awards to defendants. It also erred in awarding fees to the employer under state (AZ) law on non-frivolous state claims.
O'Day v. McDonnell Douglas Helicopter Co.
No. 92-16512 (9th Cir. 1992) 26 pps. **$35.00**

AB (Goldstein for EEOC) Appeal from D.C., D. Wyo.
Employee is a prevailing party entitled to an attorney's fee award where the jury found that the employer discriminated against him on the basis of age, and where it awarded the relief he sought under the ADEA (an amount equivalent to his lost wages) even though the jury allocated the relief specifically to plaintiff's breach of contract claim rather than his ADEA claim.
Hall v. Western Production Co.

No. 91-8059 (10th Cir. 1992) 17 pps. **$25.00**

AB (Bruner for EEOC) In Support for Attorney fee Award from D.C., N.D. Tex.
Abundant case law supports the district court's discretionary award of fees for time invested in the first trial, where plaintiff prevailed on all of his ADEA and ERISA claims. Past decisions also support the preposition that an ultimately-prevailing plaintiff's should receive attorney's fees for prosecution of an appeal, even if they were unsuccessful. Thus, lack of success in plaintiff's cross-appeal does not warrant a reduction in attorney's fees.
Olitsky v. Spencer Gifts, Inc.
No. 91-7221 (5th Cir. 1992) 17 pps. **$25.00**

PB (Gregory for EEOC) Opposition to Summary Judgment by D.C., W.D. N.C.
The ADEA does not contain a provision authorizing the award of fees to defendants. It was an abuse of discretion to award attorney fees to defendant under the "substantially justified " standard of the Equal Access to Justice Act where the EEOC maintained the action in good faith and fees could not be properly awarded under the fee-shifting standard of the ADEA.
EEOC v. Clay Printing Company
No. 93-1605 (4th Cir. 1993) 58 pps. **$65.00**

PB (Gregory for EEOC) Appeal of Fee and Cost Award by D.C., W.D. N.C.
In an ADEA suit, EEOC liability for fees should be determined under the "bad faith" standard of Title VII, not under the "substantially justified" standard of the Equal Access to Justice Act. The district court's opinion on the merits is not controlling on the issue of fees. The EEOC properly handled its investigation of constructive discharge claims, and proceeded with sufficient evidentiary support.
EEOC v. Clay Printing Company
No. 93-1605 (4th Cir. 1993) 31 pps. **$45.00**

PB (Coleman for D.C. EEOC) Appeal of Denial of Attorney's Fees and Costs by D.C., N.D. Ill.
The Equal Access to Justice Act's "substantial justification" standard does not apply to the award of attorney's fees to a defendant in an ADEA suit. The ADEA contains its own fee-shifting provision which awards fees to defendants only under federal common law. Even if the Equal Access to Justice Act were held applicable, the EEOC's age claim against defendant had a reasonable basis in law and fact at the time of trial, and hence was "substantially justified."
EEOC v. O & G Spring & Wire Forms Specialty Co.
No. 92-4118 (7th Cir. 1993) 42 pps. **$55.00**

PB (Clark for EEOC) Reply Brief of Plaintiff-Appellant on Appeal form D.C., E.D. Ark.
The district court's grant of summary judgment to defendant on the commission's plea for injunctive relief does not constitute a decision on the merits of the commission's claim that defendant violated the ADEA's recordkeeping requirements and therefore does not support defendant's status as a prevailing party for the purpose of an attorney's fee award.
EEOC v. Hendrix College
No. 94-2870 (8th Cir. 1994) 13 pps. **$25.00**

PB (Goldstein for EEOC) Brief of Plaintiff-Appellant-Cross-Appellee on Appeal from D.C., D. Ore.
The jury could reasonably have concluded that defendant willfully violated the ADEA based upon the evidence that defendant discharged its employee because of his age. The jury could reasonably have concluded that defendant failed to prove that suitable employment was available to said employee, and in so doing, found that defendant did not meet its burden of demonstrating the absence of mitigation. The district court abused its discretion when it disallowed deposition costs for defense witnesses not called at trial, and costs for depositions not used at trial.
EEOC v. Pape Lift, Inc., d/b/a Hyster Sales Co.
Nos. 94-35603 & 94-35654 (9th Cir. 1994) 40 pps. **$45.00**

Also available: Reply Brief making similar arguments (1995). 42 pps. **$55.00**

ADEA - COLLATERAL ESTOPPEL/RES JUDICATA

AB (Bernstein for EEOC) On Appeal form the D.C., N.D. Ill.
The doctrine of "virtual representation" does not establish the "privity" required under principles of res judicata or collateral estoppel to preclude an ADEA suit by an aggrieved individual who was not a party to a prior adverse judgement and has never had an opportunity to litigate his statutory claim.
Tice v. American Airlines, Inc.
Nos. 97-1888 & 97-2027 (7th Cir. 1997) 18 pps. **$25.00**

AB (Bogas for EEOC) Appeal from Cal. Superior Court, Los Angeles County
The EEOC's settlement with the employer of an ADEA suit in federal court was not res judicata barring the employee from pursuing her own previously filed state court action, since the EEOC represents the public interest in eliminating discrimination, not the interests of individual victims, and therefore a "commonality of interest" is lacking.
Victa v. Merle Norman Cosmetics, Inc.
No. B065856 (Cal. Ct. of Appeals, 2nd Dist. 1992) 19 pps. **$25.00**

PB (Fink for EEOC) Appeal from D.C., W.D. La.
The EEOC is not barred from bringing suit to enforce the ADEA by the prior filing of an individual private suit based on the same facts.
EEOC v. Wackenhut Corp.
No. 90-4260 (5th Cir. 1990) 31 pps. **$45.00**

AB (Brusoski for EEOC) Appeal from D.C., N.D. Ga.
The judicially unreviewed decisions of the Georgia Employment Security Agency are not entitled to collateral estoppel effect in ADEA actions.
Delgado v. Lockheed-Georgia Co.
No. 86-8261 (11th Cir. 1986) 22 pps. **$35.00**

PB (Franklin for EEOC) Appeal from D.C., W.D. Pa.
District court correctly concluded that unsuccessful ADEA actions by four individuals did not preclude their receipt of relief pursuant to an EEOC action, where the EEOC was not a party to the private actions, different issues were litigated in the private actions, and the individuals were in fact harmed by a policy found unlawful in the EEOC action.
EEOC v. United States Steel Corp.
No. 90-3041 (3rd Cir. 1990) 32 pps. **$45.00**

AB (White for EEOC) Appeal from D.C., E.D. N.Y.
A federal court can not give a judicially unreviewed decision of a state administrative agency preclusive effect when adjudicating an ADEA claim. To do so would frustrate Congressional intent in creating the ADEA enforcement scheme.
Solimino v. Astoria Federal Savings and Loan Association
No. 89-7639 (2nd Cir. 1989) 29 pps. **$35.00**

AB (Liebross for AARP) Appeal from D.C., E.D. N.Y.
Decisions of state administrative agencies do not preclude relief in federal court on an ADEA claim because to do so would be inconsistent with Congressional intent that state agencies are forums of first, not last resort. Such a preclusion would also violate ADEA §14(a) which provides that ADEA actions supersede state proceedings.
Solimino v. Astoria Federal Savings & Loan Association
No. 89-7639 (2nd Cir. 1989) 25 pps. **$35.00**

AB (Ventrell-Monsees for AARP) Appeal from D.C., S.D. N.Y.
A claim brought under the ADEA is guaranteed the right to judicial review, and therefore arbitration can not displace the right to a judicial forum and relief under the ADEA. Legislative history demonstrates that Congress intended courts to have final authority under the ADEA regardless of alternative forums.
Burte v. Shearson Lehman/American Express, Inc.
No. 89-7554 (2nd Cir. 1989) 26 pps. **$35.00**

PB (Schwartz) Memorandum of Law in Opposition to Defendant's Request for Issue Preclusion
The resolution of issues in workman's compensation for emotional injury plaintiff suffered during the course of her employment should not preclude plaintiff's court action for age discrimination, breach of employment contract, breach of implied covenant of good faith and fair dealing, loss of consortium and negligent infliction of emotional distress.
Latourelle and Latourelle v. Compugraphic Corp.
No. 85-9712 (Mass. Superior Ct. 1985) 8 pps. **$15.00**

AB (Bogas for EEOC) Appeal from D.C., N.D. Ill.
A predispute arbitration agreement can not preclude access to a judicial forum for the resolution of claims under the ADEA.
Pierce v. Shearson Lehman Hutton
No. 90-2079 (7th Cir. 1990) 25 pps. **$35.00**

AB (Dunaway for AARP) Appeal from D.C., N.D. Ill.
The terms and structure of ADEA evidence Congressional intent that arbitration can not displace the right to a judicial forum and judicially imposed relief under ADEA.
Pierce v. Shearson Lehman Hutton
No. 90-2079 (7th Cir. 1990) 23 pps. **$35.00**

AB (Zaleznick for AARP) Writ of Certiorari to 4th Circuit
The Federal Arbitration Act does not apply to employment contracts. Compulsory arbitration inherently conflicts with the purposes and structure of the ADEA.
Gilmer v. Interstate/Johnson Lane Corp.
No. 90-18 (U.S. Supreme Ct. 1990) 33 pps. **$45.00**

PB (Gregory for EEOC) Brief of Plaintiff-Appellee
Defendant misstates the factual record concerning the scope of the lawsuit and the claims resolved by the consent decree, and the claims asserted in the Minnesota action are not barred by res judicata. The EEOC is free to pursue claims arising after entry of the decree in a separate lawsuit.
EEOC v. Northwest Airlines, Inc.
Nos. 94-35689 & 94-35720 (9th Cir. 1994) 39 pps. **$45.00**

ADEA - WAIVER OF RIGHTS

PB (Pitt) Plaintiff-Appellant's Brief on Appeal from D.C., E.D. Mich.
The employer was not in compliance with the OWBPA when it merely informed the employee of the availability of statutorily required statistical data rather than providing the actual data contemporaneously with its proposed waiver of claims. Absolute technical compliance with the OWBPA is required.
Carpenter v. General Motors
No. 98-1763 (6th Cir. 1998) 28 pps. **$35.00**

AB (McCann for AARP) Brief *amicus curiae* of the American Association of Retired Persons in Support of Plaintiff-Appellee on Appeal from D.C., D. Minn.

An employer may not rescind a waiver agreement during the 21-day period that the Older Workers Benefits Protection Act grants to older employees to consider the agreement. Allowing such a rescission gives the employer license to manipulate the process and coerce older workers to sign a waiver before obtaining the advice and information they need to make a knowing and voluntary decision. The plain language and purposes of the act support this outcome.
Ellison v. Premier Salons International, Inc.
No. 98-1384 (8th Cir. 1998) 12 pps. **$25.00**

AB (Starr for EEOC) Brief in support of Plaintiff-Appellant on Appeal from the D.C., S.D. N.Y.
The district court erred in holding that a former employee who signed a one year employment contract containing a waiver of ADEA claims that does not comport with the specific requirements of the OWBPA must tender back the consideration received under the contract as a condition precedent to bringing an ADEA suit. In dismissing the plaintiff's ADEA claim as untimely where the plaintiff did not file within 90 days of withdrawal of his charge but the Commission did not notify him that it was terminating its proceedings, and his charge withdrawal was both prohibited by the terms of the OWBPA and undertaken in accordance with a void waiver.
Hodge v. New York College of Podiatric Medicine
No. 96-9349 (2nd Cir. 1996) 25 pps. **$35.00**

AB (Meites for NELA) In Support of Petitioner on Writ of Certiorari.
Plaintiff should not tender back consideration supposedly received for a putative release or waiver of claims under the federal anti-discrimination statutes before challenging its validity. Although this case arises under the particular terms of the ADEA and the OWBPA, the issue recurs under other federal employment laws such as Title VII and The ADA. This brief argues that equitable and public policy considerations weigh against application of tender back and ratification to releases of federal anti-discrimination claims of all stripes.
Oubre v. Entergy Operations, Inc.,
No. 96-1291 (U.S. Supreme Ct. 1996) 23 pps. **$35.00**

AB (Ventrell-Monsees for AARP) In Support of Petitioner on Writ of Certiorari
Congress affirmatively abrogated the common law principles of ratification and tender back when it enacted Title II of the Older Workers Benefits Protection Act (OWBPA). To address the problem of employers unfairly obtaining waivers from employees who are unaware of their rights under the ADEA, Congress created detailed statutory requirements that must be met for a waiver of ADEA rights and claims to be enforceable. Moreover, as a matter of public policy, waivers that violate a statute, such as the OWBPA, may not be enforced due to the disparity in the bargaining positions of employers and employees. Finally, ratification and tender back must not be judicially superimposed on the OWBPA because they harm the very group the OWBPA was designed to protect.
Oubre v. Entergy Operations, Inc.,
No. 96-1291 (U.S. Supreme Ct. 1996) 21 pps. **$35.00**

AB (Gregory for EEOC) Opposition to Defendant's Motion to Compel Arbitration
The Supreme Court's decision in *Gilmer* does not support the enforcement of arbitration agreements that are entered into as a condition of employment, particularly where the arbitration arrangement established under the agreement is an inadequate substitute for the judicial right of action established under Title VII and the ADEA and the agreement does not specifically refer to the arbitration of employment disputes.
Rosenberg v. Merrill Lynch, Pierce, Fenner & Smith, Inc.
No. 96-12267-NG (D.C., D. Mass. 1996) 30 pps. **$45.00**

AB (Bogas for EEOC) In Support of Petitioner on Writ of Certiorari
An employee does not waive a claim under the ADEA by execution of a release of claims and retention of severance payments made thereunder, if the release does not conform to the statutory prerequisites for a knowing and voluntary waiver of ADEA claims under the Older Workers Benefit Protection Act (OWBPA). The common law doctrine of contractual ratification cannot be applied to override the OWBPA's explicit restriction of the waivability of ADEA claims.

Severance payments received be an employee in conjunction with a purported ADEA waiver prior to pursuing an action under the ADEA need not be tendered back.
Oubre v. Entergy Operations, Inc.
No. 96-1291 (U.S. Supreme Ct. 1996) 29 pps. **$35.00**

AB (Starr for EEOC) In Support of Suggestion for Rehearing *En Banc*
The court concluded that, despite a federal statute banning the enforcement of agreements to waive individual ADEA rights signed under circumstances designed to exert pressure and duress, the district court will enforce such agreements if employees fail to tender back the benefits received thereunder. Such holding effectively guts the Congressional enactment, leaving older workers once again largely unprotected when asked to settle any potential ADEA claims.
Wamsley v. Champlin Refining & Chemicals, Inc.
No. 92-1743 (5th Cir. 1994) 22 pps. **$35.00**

AB (Starr for EEOC) In Support of Appellant on Appeal from D.C., N.D. Tex.
Summary judgment was improper where plaintiffs were told they had less than the statutory 45 days to consider whether to waive any ADEA claims against their employer and accept termination pay and benefits, and where the district court deemed that waivers did not meet statutory requirements.
Wamsley v. Champlin Refining & Chemicals, Inc.
No. 92-1743 (5th Cir. 1992) 19 pps. **$25.00**

AB (Bernstein for EEOC) Appeal from D.C., N.D. Ill.
The validity and enforcement of releases of rights under the ADEA is governed by the Older Workers Benefit Protection Act, which amended the ADEA, not state contract law. Under the OWBPA, a waiver of rights under the ADEA must be knowing and voluntary. Waiver by ratification under state contract law, where an employee retains benefits the employer intends to be consideration for release, is not a valid knowing and voluntary waiver under the OWBPA. The employee does not have to tender back such benefits in order to sue under the ADEA, however such benefits received may be deducted from the ADEA award. An employee may validly waive the right to recover in his or her own suit or a suit by the EEOC, but can not waive the right to file a charge or assist EEOC enforcement efforts.
Oberg v. Allied Van Lines, Inc.
Nos. 92-3472 & 92-3893 (7th Cir. 1993) 26 pps. **$35.00**

AB (Marcosson for D.C. EEOC) Opposition to Summary Judgment
In a RIF, where severance pay was offered to employees involuntarily terminated who signed a waiver of claims against the employer, such waivers do not bar ADEA claims where the employer did not comply with 29 U.S.C. 626 (f) (1) (H), requiring disclosure of age related information.
Burch, et al. v. Fluor Corporation
No. 4:93CV00831 (D.C., E.D. Mo. 1993) 10 pps. **$15.00**

AB (Marcosson for EEOC) Opposition to Summary Judgment
In a RIF (where severance pay was offered to employees involuntarily terminated who signed a waiver of claims against the employer) waivers do not bar ADEA claims where the employer did not comply with 29 U.S.C. 626 (f) (1) (H), requiring disclosure of age related information.
Tindall v. Doe Run Investment Holding Corp.
No. 4:93-CV-00759 (D.C., E.D. Mo. 1993) 10 pps. **$15.00**

PB (Marcosson for EEOC) Appeal from D.C., C.D. Ill.
Interlocutory appeal of district court ruling that private plaintiffs in an ADEA case are not required to make a tender of the consideration received in exchange for an allegedly invalid release in order to challenge the release in a subsequent suit should be denied.
Isaacs v. Caterpillar Inc.
No. 91-8057 (7th Cir. 1991) 11 pps. **$25.00**

AB (Miller for AARP) Appeal from D.C., D. Minn.
An unsupervised waiver of claims under ADEA violated the ADEA. Only waivers executed under EEOC's direct supervision are valid.
Lancaster v. Buerkle Buick Honda Co.
No. 86-5020MN (8th Cir. 1985) 20 pps. **$25.00**

AB (Ventrell-Monsees for AARP) Appeal from D.C., E.D. Pa.
An unsupervised ADEA release does not bar any subsequent claims.
Valenti v. International Mill Service Inc.
Nos. 86-1367, 86-1394, 86-1478, 86-1479, 86-1600 & 86-1601 (3rd Cir. 1988) 22 pps. **$35.00**

AB (Mackaronis for AARP) Appeal from D.C., E.D. Pa.
An unsupervised release can not bar a subsequent claim even if "knowing and voluntary".
Cirillo v. ARCO Chemical Co.
No. 88-1009 (3rd Cir. 1988) 29 pps. **$35.00**

AB (Black for EEOC) Appeal from D.C., S.D. N.Y.
An ADEA claim is entitled access to a judicial forum even after a predispute arbitration agreement has been reached. The court is intended to be the final forum for such a claim, and a binding arbitration would constitute an impermissible prospective waiver of ADEA rights.
Burte v. Shearson Lehman/American Express, Inc.
No. 89-7554 (2nd Cir. 1989) 33 pps. **$45.00**

PB (Ramshaw for EEOC) Appeal from D.C., N.D. Ill.
Collective bargaining agreement provision depriving employees who file charges of discrimination of their contractual right to a grievance proceeding violates §4(d) of the ADEA irrespective of the employer's motivation in adopting it.
EEOC v. Board of Governors
No. 90-2440 (7th Cir. 1991) 68 pps. **$75.00**

PB (Levy) Petition for Writ of Certiorari to 10th Circuit
An employee's settlement of an overtime compensation dispute under FLSA does not bar an ADEA claim, under the doctrine of res judicata. Waiver of rights under the ADEA must be voluntary and knowing.
Clark v. Haas Group
No. 91- (U.S. Supreme Ct. 1991) 41 pps. **$55.00**

AB (Marcosson for EEOC) In Support of Plaintiff's Motion for Partial Summary Judgment
The waivers used by defendant in connection with reducing its workforce were not made "knowingly and voluntarily" as per the ADEA. Plaintiff is not required to "tender back" the severance payment he received in return for executing the invalid waiver in order to maintain his suit.
Elliott v. United Technologies Corp.
No. 394-CV-01577 (D.C., D.Ct. 1994) 17 pps. **$25.00**

AB (Zaleznick, Ventrell-Monsees, Dunaway for AARP) In Support of Plaintiffs-Appellants
Congress enacted the Older Workers Benefit Protection Act to ensure that releases of ADEA rights were knowing and voluntary. The OWBPA requires employers to give employees who are asked to release their ADEA rights a minimum of 45 days to sign.
Griffin v. Kraft General Foods, Inc.
No. 94-8335 (11th Cir. 1994) 22 pps. **$35.00**

AB (Goldstein for EEOC) In Support of Plaintiff-Appellant

Permitting a waiver of ADEA rights by means of a waiver that does not satisfy the standards of OWBPA conflicts with the terms of OWBPA and the purposes of the ADEA.
Long v. Sears, Roebuck & Co.
No. 96-1264 (3d Cir. 1996) 33 pps. **$45.00**
AB (Ventrell-Monsees for AARP) In Support of Respondent
The Older Workers Benefit Protection Act does not sanction an employer's use of pension plan assets to purchase releases of potential claims from employees. Defendant also violated ERISA by using plan assets to buy releases of potential claims from employees. The Omnibus Budget Reconciliation Act of 1986's prohibition of age discrimination in pension plans requires older workers who retire after Jan. 1, 1988 to receive pension credit for all pre-act years of service.
Lockheed Corp. v. Spink
No. 94-809 (U.S. Supreme Ct. 1995) 39 pps. **$45.00**

AB (Ventrell-Monsees for AARP) Amended Brief in Support of Appellant
The Older Workers Benefit Protection Act supersedes the applicability of the common law doctrine of ratification to waivers of ADEA rights or claims. Such application of the ratification doctrine and a tender-back requirement undermine the purposes of the OWBPA. Waivers that would violate the OWBPA are unenforceable on grounds of public policy.
Long v. Sears, Roebuck & Co.
No. 96-1264 (3d Cir. 1996) 25 pps. **$35.00**

AB (Ventrell-Monsees for AARP) In Support of Plaintiff-Appellant on Appeal from D.C., S.D., Ohio
The Communication Workers of America asserted that AT&T violated the collective bargaining agreement when it laid off union employees and AT&T was directed to recall workers. Plaintiff alleged that AT&T treated younger workers more favorably than similarly situated older workers when it provided substantial severance benefits to younger employees who opted not to return to work and none to older employees who received pensions. The collective bargaining agreement should not be construed to excuse the denial of severance benefits to older workers under the OWBPA.
Lautner v. AT&T
No. 95-3756 (6th Cir. 1995) 29 pps. **$35.00**

ADEA - AFTER-ACQUIRED EVIDENCE

AB (Goldstein for EEOC) Appeal from D.C., W.D. Tex.
The view that failure to rehire can not be separately actionable is contrary to well-settled precedent. The court's invocation of the after-acquired evidence doctrine was improper in this case since employer had knowledge of plaintiff's misconduct long before it took discriminatory actions. This court should reject the doctrine because it seriously undermines enforcement of anti-discrimination statutes.
Redd v. Controls
No. 92-8702 (5th Cir. 1993) 38 pps. **$45.00**

AB (Goldstein for EEOC) Brief *amicus curiae* on Appeal from D.C., N.D. Fla.
Facially-neutral practices which have a disparate impact on older individuals may be challenged under the ADEA. Evidence the employer discovered years after it rejected the plaintiff for employment cannot be an absolute bar to his discrimination action. In a disparate impact claim, after-acquired evidence that the plaintiff may not have qualified is germane to relief issues, but not to liability.
Sondel v. The Florida Board of Bar Examiners
No. 97-2512 (11th Cir. 1997) 33 pps. **$45.00**

AB (Smith for NELA and White for ATLA) In Support of Petitioner
Established legal principles prohibit the application of the clean hands and *in pari delicto* defenses as they have been applied in this case under the guise of the so-called after-acquired evidence defense.

McKennon v. The Nashville Banner Publishing Co.
No. 93-1543 (U.S. Supreme Ct. 1994) 25 pps. **$35.00**

AB (Bernstein for EEOC and Dimsey, Gross for the DOJ) In Support of Petitioner
The after-acquired evidence defense does not insulate defendants from liability for discharges which are discriminatory under the ADEA.
McKennon v. Nashville Banner Publishing Co.
No. 93-1543 (U.S. Supreme Ct. 1994) 34 pps. **$45.00**

AB (Gregory for EEOC) In Support of Plaintiff-Appellant's Petition for Rehearing with Suggestion for Rehearing*En Banc*
In determining the standard of proof applicable at the relief stage of an ADEA discrimination suit in which the defendant seeks to limit the plaintiff's remedies based on after-acquired evidence, the panel deviated from its established law and the controlling precedence in the circuit by holding that the defendant could meet its burden of proof under a preponderance of the evidence standard. If this decision is allowed to stand, it will undermine anti-discrimination statutes.
O'Day v. McDonnell Douglas Helicopter Co.
Nos. 92-15625 96-16512 (9th Cir. 1996) 17 pps. **$25.00**

AB (Gregory for EEOC) Appeal of Summary Judgment by D.C., D. Ariz.
Evidence providing a legal basis for discharging plaintiff acquired by defendant after its decision to discharge plaintiff can not bar plaintiff's age discrimination claim. Defendant may be able to limit the relief to a prevailing plaintiff if it can prove, on the basis of after-acquired evidence, that it would have taken adverse action against plaintiff. Plaintiff, however, is entitled to obtain monetary relief for discharge in violation of the ADEA for the period prior to defendant's later discovery of disqualifying information.
O'Day v. McDonnell Douglas Helicopter Co.
No. 92-15625 (9th Cir. 1992) 37 pps. **$45.00**

PB (Ramshaw for EEOC) Brief of EEOC as Appellee
The evidence supports the jury finding that defendant willfully violated the ADEA by retaliating against plaintiff for participating in EEOC proceedings. The district court's award of front pay provides a reasonable make-whole remedy well within the court's discretion. The district court was proper in ruling that plaintiff should not be denied front pay because of an inaccurate statement since defendant could not show they would have demoted plaintiff for this reason.
Padilla & EEOC v. Metro-North Commuter Railroad
No. 95-6056 (2nd Cir. 1996) 49 pps. **$55.00**

SECTION 1981

SECTION 1981 - GENERAL

AB (Danis for EEOC) In Support Of Appeal From D.C. Maryland
An arbitration clause in an employment application form, which requires resolution of discrimination claims in an arbitral forum that truncates important substantive rights provided by federal law may not be enforced because enforcement of such an agreement would frustrate Congressional intent to provide particular substantive protections and rights for victims of employment discrimination. An arbitration clause in an employment application may not preclude plaintiff's claims under 42 U.S.C. § 1981 if it deprives plaintiff of substantive remedies that would be available in a judicial forum. Because the arbitration clause limited punitives and back pay and because it mandated that plaintiff pay for half of arbitration costs, the arbitral forum did not provide the same statutory rights and protections as a judicial forum.
Johnson v. Circuit City Stores, Inc.
No. 99-1449 (11th Cir. 1999) 36pps. **$45.00**

SECTION 1981 - PERSONS PROTECTED

AB (Bogas for EEOC) In Support of Defendant on Appeal from the D.C., S.D. Ind.
The district court correctly held that the mandatory arbitration provisions contained in the collective bargaining agreement (CBA) did not divest the court of subject matter jurisdiction over the plaintiff's employment discrimination action. In *Alexander v. Gardner - Denver* a unanimous Supreme Court held that while "a union may waive certain statutory rights related to collective activity, the rights conferred by Title VII can form no part of the collective bargaining agreement. Therefore the CBA in this case could not waive the defendant's statutorily created right to pursue his Title VII, § 1981, and ADA claims in court.
Pryner v. Tractor Supply Company, Inc.
No. 96-2437 (7th Cir. 1996) 20 pps. **$25.00**

AB (Moran for EEOC) Appeal from D.C., M.D. Fla.
As a matter of law, Filipinos are a racial minority within the meaning of §1981.
Donaire v. NME Hospitals
No. 92-2653 (11th Cir. 1992) 8 pps. **$15.00**

PB (Stanlon for NAACP) Memorandum in Opposition to Defendant's Motion to Dismiss
Plaintiff was fired for refusing to violate 42 U.S.C. §1981 and should have standing to sue under §1981. When company told plaintiff not to hire any more blacks, he complained about the illegal activity and was fired. Defendant had argued the complaint should be dismissed on theory that §1981 does not apply to plaintiff's conduct which occurred after formation of the contract with the plaintiff.
Fowler v. McCrory Corp.
No. 87-1610 (D.C., D.Md 1987) 21 pps. **$35.00**

PB (Stix) Memorandum in Opposition to Defendant's Motion to Dismiss and Memorandum in Support Thereof
Plaintiff, a naturalized American from India, has a cause of action under 42 USC §1981 for racial discrimination. The district court has pendent jurisdiction over plaintiff's state law wrongful discharge and tort claims where proof of employment discrimination and the state law claims will involve the employment practices of defendant.
Thakore v. Sargent and Lundy
No. 82-C-7166 (D.C., N.D. Ill.) 13 pps. **$25.00**

SECTION 1981 - PROHIBITED CONDUCT

PB (Potter) Appeal from D.C., N.D. Ill.
The court should affirm the jury verdict for plaintiff and remand to district court with instructions to award plaintiff prejudgment interest and pension credits. Defendant-union denied plaintiff job referrals because he was black (which interfered with plaintiff's right to contract, and constituted discrimination in enforcing terms of the collective bargaining agreement) and expelled plaintiff from the union because he filed charges, all in violation of §1981. Defendant's conduct is also in breach of duty of fair representation under §301. Evidentiary rulings of court and jury instructions were appropriate.
Daniels v. Pipefitters Local No. 597
Nos. 90-3124 & 90-3261 (7th Cir. 1991) 133 pps. **$145.00**

PB (Roseman) In Opposition to Defendant's Motion for Judgment on Pleadings of Relief Brought Under 42 USC Section 1981 - Failure To Promote and Discriminatory Termination
Plaintiff has stated claims for discharge and discriminatory denial of promotional opportunities under §1981. Further Patterson should not be applied retroactively in this case.
Gomez v. Martin Marietta Corp.
No. 88C-1430 (D.C., D. Colo. 1989) 33 pps. **$45.00**

SECTION 1981-DAMAGES

AB (Stewart for EEOC) On Writ Of Certiorari In Support Of Petitioner
The plain language of §1981a authorizes punitive damages when, in addition to engaging in intentional discrimination under Title VII or the ADA, the defendant did so "with malice or reckless indifference to the federally protected rights of an aggrieved individual." Nothing in the text of §1981a, requires that the plaintiff in addition show that the underlying discriminatory conduct was egregious. The court of appeals erred in making egregious conduct the sole path to a punitive damages award. Judgment should be vacated and the case remanded for reconsideration of punitive damages.
Kolstad v. American Dental Ass'n
No. 98-208 (U.S. Supreme Ct. 1998) 39pps. **$45.00**

PB (Yablonski) Petition For Writ Of Certiorari
In 1991 Congress amended Title VII to authorize for the first time punitive damages awards for violations of that statute. Since 1991, a wide variety of inconsistent rules have been adopted by the various circuits regarding such awards. The decision below is in conflict with decisions of seven other circuits and with three decisions of this Court. A decision by the Court regarding the standard for punitive damages wards under Title VII will inform, if not control, the standard for such awards under section 1981 and under other federal civil rights statutes where the controversy is divided in the lower courts. A writ of certiorari should be issued to review the judgment and opinion of the court of appeals.
Kolstad v. American Dental Ass'n
No. 98-208 (U.S. Supreme Ct. 1998) 33pps. **$45.00**

AB (Gregory for EEOC) In Support of Plaintiff-Appellee/Cross-Appellant
The district court erred in applying §1981's caps to damages that are properly attributable to recovery under §1981. Under §1981, a plaintiff is entitled to separate application of caps for each separate claim of discrimination on which she prevails.
Reynolds v. CSX Transportation, Inc.
No. 95-3364 (11th Cir. 1996) 28 pps. **$35.00**

AB (Gregory for EEOC) Appeal from the D.D.C.
In most cases involving a claim of intentional discrimination under Title VII, a finding of Title VII violation is sufficient by itself to sustain, yet not require, a jury's award of punitive damages under 42 U.S.C. §1981a.
Kolstad v. American Dental Association
Nos. 96-7030 & 96-7047 (D.C. Cir. 1996) 25 pps. **$35.00**

SECTION 1981 - REMEDIES

AB (Finberg for NELA) Brief *amicus curiae* in Support of Appellants on Appeal from D.C., W.D. La.
The panel improperly affirmed denial of certification under Federal Rule of Civil Procedure 23(b)(2). The Supreme Court, in *Amchem*, and 5th Cir. precedent allow certification of discrimination cases which involve damages as well as injunctive relief under Title VII and § 1981. The purpose of the Civil Rights Act of 1991 was to enhance remedies for victims of discrimination, not to restrict procedural rights. The panel failed to consider whether class members area able to prosecute cases on an individual basis and overturned years of well-established case law permitting bifurcation of employment discrimination class actions. The panel's holding that resolution of disparate impact claims requires jury findings is without precedent and contrary to existing law.
Allison, et al. v. Citgo Petroleum Corp.
No. 96-30489 (5th Cir. 1998) 22 pps. **$35.00**

PB (Vassallo) Memo of Law In Opposition to Defendant's Motion to File Amended Answer

Punitive damages are recoverable in a 42 USC §1981 claim. Federal law governs claims for punitive damages in federal civil rights actions. The 4th and 6th Amendments do not apply to civil cases under 42 USC §1981. The 14th Amendment is inapplicable to federal civil rights actions brought in federal court.
Robinson v. Caulkins Indiantown Citrus
No. 83-8655-CIV-Hoeveler (D.C., S.D. Fla. 1991) 9 pps. **$15.00**
Also available: Plaintiff's Supplemental Response making similar arguments. 6 pps. **$15.00**
Plaintiff's Reply Memo to Defendant's Memo In Support of Motion for Summary Judgment as to Plaintiff's Claims for Punitive Damages making similar arguments. 7 pps. **$15.00**

SECTION 1983

SECTION 1983 - GENERAL

DB (Goldstein for EEOC) Appeal from the D.C., E.D., Pa.
Plaintiff did not refer to 42 U.S.C. § 1983 or otherwise argue that the district court's dismissal of his claim under that section was in error, therefore he has abandoned any argument that he has a claim under § 1983.
Benjamin v. EEOC
No. 97-1020 (3rd Cir. 1997) 12 pps. **$25.00**

AB (Posner for CELA) Appeal from the Cal. Ct. of Appeal, 2nd District
The only exhaustion requirement that exists under the Fair Employment and Housing Act is the statutory requirement to exhaust remedies with the DFEH. Any court-imposed exhaustion of internal of employer-created remedies requirement before the filing of either a DFEH charge or a lawsuit would run directly counter to the statutory requirement that the administrative charge be filed within one year, and that a lawsuit be filed within one year of the right-to-sue letter. In addition, the U.S. Supreme Court has held that exhaustion of an employer's administrative remedies is not required to bring a suit under 42 U.S.C. § 1993.
Carrillo v. University of California at Los Angeles
No. SC 039495 (Cal. Supreme Ct. 1997) 13 pps. **$15.00**

AB (Cornish for NELA) Appeal from the D.C., N.D. Cal.
The constitutional framework for analyzing an informational privacy claim should be analyzed by reference to a Section 1983 claim. Genetic and biochemical testing of the body fluids of public employees by their employers is never constitutionally justified unless the employer demonstrates a strong need for the testing, or is the product of informed and voluntary consent. The Lawrence Berkeley Laboratory is not entitled to summary judgment on Plaintiff's constitutional privacy claims because it has failed to show that it met the constitutional predicates when Plaintiffs' blood and urine for sickle-cell trait, pregnancy and syphilis were independent of the invasions of privacy which occurred during a medical examination.
Norman-Bloodsaw v. Lawrence Berkeley Laboratory, et al.
No. 96-16526 (9th Cir. 1996) 34 pps. **$45.00**

PB (Vassallo) Memorandum
Municipalities are subject to suit in state court for civil rights violations brought under 42 USC §1983.
Doe v. Roe
(Fla. 1989) 10 pps. **$15.00**

PB (Stix) In Response to Defendant's Motion to Dismiss
Defendant's continuing violations of plaintiff's rights render his §1983 claims are timely. Defendants waived their right to move to dismiss plaintiff's state claim by not moving to dismiss them in defendants' first 12(b)(6) motion. Defendant's continuing tortious acts render plaintiff's state claims timely.
Mulligan v. City of Chicago

No. 93-C-2422 (D.C., N.D. Ill. 1994) 10 pps. **$15.00**

PB (Stix) Response to Defendant's Motion to Strike and Dismiss
Defendants are properly included in plaintiff's amended complaint. Defendants waived the arguments that the claims against them in their official capacity should be dismissed and that plaintiff's prayer for punitive damages should be stricken from his emotional distress claim.
Mulligan v. City of Chicago
No. 93-C-2422 (D.C., N.D. Ill. 1995) 10 pps. **$15.00**

SECTION 1983 - ELEMENTS OF CAUSE OF ACTION

PB (Newman) Plaintiff Compliance with Pre-Trial Order
Section 1983 action was brought when public official released letter to press containing allegations of dishonesty and lack of integrity against her own employee. Prior to publication of letter, employee was not given a hearing regarding allegations nor was a hearing provided after publication to answer allegations. At no time was employee informed of employer's dissatisfaction with her job performance.
Galvin v. Town of Hamden
No. N-87-290 (PJD) (D.C., D. Conn. 1988) 14 pps. **$25.00**

AB (Marcosson for EEOC) In Support of Plaintiff-Appellant
A plaintiff who brings suit under 42 U.S.C. §1983 alleging employment discrimination in violation of the Constitution need not comply with the procedural prerequisites to suit under Title VII.
Annis v. County of Westchester, N.Y.
No. 94-7085 (2nd Cir. 1994) 23 pps. **$35.00**

SECTION 1983 - DEPRIVATION OF FEDERAL RIGHTS

AB (Cornish for NELA, APHA, ACLU) Brief In Support of Plaintiffs-Appellants on Appeal from D.C., N.D. Cal.
The district court erred in failing to recognize that invasions of privacy inherent in lab testing of plaintiff's blood and urine for sickle-cell trait, pregnancy and syphilis were independent of invasions that occurred during the medical examination process. Such lab testing is a search under the 4th Amendment. The court must balance the employee's privacy interest against the employer's asserted need for testing. In addition, the plaintiff did not consent to either the testing or the medical exams.
Norman-Bloodsaw v. Lawrence Berkeley Laboratory. et al.
No. 96-1652 (9th Cir. 1996) 43 pps. **$55.00**

PB (Hornberger) Opposition to Summary Judgment
Defendant discriminated against plaintiff because of her gender and retaliated against her for filing a charge in violation of the 14th Amendment, Title VII, and 42 U.S.C. 1983. Summary judgment should not be granted for the defendant.
Penick v. City of Covington
No. 1-87-126 (D.C., E.D. Ky 1990) 50 pps. **$55.00**

EQUAL PAY ACT

PB (Newhouse) Proof Brief Of Appellant
The district court erred in granting summary judgment in respect to plaintiff's equal pay act claims because she was paid less for doing substantially similar work as her male counterparts. It was error for the trial court to grant summary judgment
on plaintiff's sex discrimination claim when plaintiff clearly demonstrated that she was treated differently than male head coaches. The district court's dismissal of the plaintiff's case on Eleventh Amendment grounds was improper because

plaintiff could have sued defendant, Ohio State University, under Titles VII and IX without the state's consent. The trial court erred as a matter of law by ruling that plaintiff lacked standing to raise a Title IX claim because she did not expressly invoke Title IX in voicing her complaints and therefore was not engaged in protected activity for the purpose of retaliation under Title IX.
Weaver v. Ohio State Univ., et al.
No. 98-4295 (6th Cir. 1999) 63pps. **$75.00**

AB (Eisenbery for NELA) In Support of Plaintiff-Appellee
A plaintiff who proves a continuing violation of the Equal Pay Act must be made whole through full recovery of wages withheld. The Equal Pay Act should be interpreted consistency with other civil rights statutes.
Pollis v. New School For Social Research
No. 96-9361 (2nd Cir. 1996) 13 pps. **$25.00**

PB (Galanter for DOJ) Brief for the United States as Intervenor on Appeal from D.C., W.D. Mich.
Provisions of the Equal Pay Act which allow individuals to sue states in federal court are a constitutional abrogation of states' 11th Amendment immunity. Congress clearly stated its intent to abrogate in the Equal Pay Act's definitional and enforcement provisions, which allow a state employer to be sued in federal court by a state employee. The Equal Pay Act, as applied to states, is an appropriate exercise of Congress' power under section five of the 14th Amendment.
Timmer v. State of Michigan, Dept. Of Commerce
No. 95-1706 (6th Cir. 1995) 22 pps. **$35.00**

AB (Sedey for NELA) Brief in Support of Plaintiff-Appellant on Appeal from the D.C., D.Minn.
The 1974 extension of the EPA to the States satisfies the *Seminole* test because: 1) Congress expressed its intent to abrogate the States' 11th amendment immunity in the plain language of the statute, and 2) Because the purpose of the EPA is to ensure equality in civil rights through equal pay for women, Congress enacted the EPA pursuant to a valid exercise of section 5 Fourteenth Amendment powers. *Seminole Tribe of Florida v. Florida*, __ U.S. __, 116 S.Ct. 1114 (1996). The district court's opinion should, therefore, be reversed as the 11th amendment is not a bar to EPA claims made against States.
O'Sullivan v. State of Minnesota, et al.
No. 98-2706 (8th Cir. 1998) 20 pps. **$25.00**

PB (Galanter for DOJ) Reply brief of United States as Intervenor on Appeal from the D.C., D.Minn
The EPA contains a clear statement of congress' intent to abrogate the State's 11th amendment immunity. The EPA is a valid exercise of Congress' power to enforce the Equal Protection Clause. Includes, as addendum, a 1998 Council of Economic Advisors' report on explanation of the wage gender gap.
O'Sullivan v. State of Minnesota, et al.
No. 98-2706 (8th Cir. 1998) 27 pps. **$35.00**

AB (Bernstein for EEOC) Brief in Support of Plaintiff-Appellant on Appeal from the D.C., C.D. Cal.
The issue of whether gender discrimination by the Defendant created the disparity in the level of spectator interest and revenue generated by the men and women's basketball teams, which the Defendant used to justify a disparity in the compensation paid to the male and female head basketball coaches, raises a triable issue of fact and therefore the district court erred in granting summary judgment to the Defendant.
Stanley v. University of Southern California and Garrett
No. 95-55466 (9th Cir. 1998) 28 pps. **$35.00**

PB (Hornberger) Pretrial Memorandum Brief
The pretrial brief asserts that defendants discriminated against plaintiff regarding pay, working conditions, and other terms and conditions of employment in violation of the Equal Pay Act and Kentucky civil rights statutes, and constructively discharged plaintiff.
Kraus v. Kentucky Bancorporation, Inc.

No. 88-195 (D.C., E.D. KY. 1991) 15 pps. **$25.00**

AB (Suhre for EEOC) Appeal from D.C., D. Ariz.
The district court erred in basing its EPA attorney's fees calculation on a percentage of the plaintiffs' underlying recovery rather than using a "lodestar", and in limiting the fees to an amount less than the monetary value of the plaintiffs' underlying award, thereby undermining the purpose of fee-shifting provisions of encouraging litigation by private counsel to enforce important civil rights.
Holland v. University of Tennessee and Hatton v. Hunt
Nos. 92-6117, 92-6118, 92-6119, 92-6120 & 92-6121 (6th Cir. 1992) 91 pps. **$105.00**

PB (Goldstein for EEOC) Appeal from D.C., D. Mich.
The district court erred in granting summary judgment to defendant since the EEOC did not allege that defendant retaliated for instituting proceedings under the Equal Pay Act, but rather defendant retaliated because of plaintiff's opposition to unlawful employment practices. The court's ruling that the EEOC failed to establish a prima facie violation of the Equal Pay Act because the employer corrected the pay disparity after plaintiff complained that her paycheck was more than one dollar an hour less than the pay to male employees is manifestly wrong.
EEOC v. Romeo Community Schools
No. 91-2181 (6th Cir. 1992) 24 pps. **$35.00**

PB (Suhre for EEOC) Appeal from D.C., D. Wyo.
Prevailing in an Equal Pay Act retaliation claim entitles plaintiff to additional backpay, reinstatement or front pay and injunctive relief. Reinstatement should not be denied in the absence of hostility between the parties, because plaintiffs found other employment. The request for injunctive relief was not insufficiently specific.
EEOC v. General Lines Inc.
No. 87-1253 (10th Cir. 1987) 48 pps. **$55.00**

AB (Bannon for EEOC) Appeal from D.C., W.D. La.
The panel committed reversible error in the Equal Pay Act case by applying the "but for" standard rather than the "factor other than sex" standard to plaintiff's claim, and by requiring intentional discrimination.
Peters v. City of Shreveport
86-4608 (5th Cir. 1987) 18 pps. **$25.00**

PB (Rees for EEOC) Appeal from D.C., N.D. Ohio
Sex-based wage discrimination claim was not untimely because male comparator's employment ceases at time outside Title VII and Equal Pay Act limitation period. Males and females paid unequally do not have to hold positions concurrently.
EEOC v. Penton Industrial Publishing Co.
No. 87-3142 (6th Cir. 1987) 26 pps. **$35.00**
Also available: Reply Brief on Appeal from D.C., N.D. Ohio, making similar arguments. 9 pps. **$15.00**

PB (Goodman for EEOC) Appeal from D.C., N.D. Iowa
Defendant paid plaintiff less than males for performing equal work and refused to promote her because of her sex. The district court erred as a matter of law in denying liquidated damages, which are mandatory under the EPA when, as in this case, the defendant fails to prove and the district court fails to find that defendant acted in a reasonable and good faith belief that its conduct was lawful under the EPA.
EEOC & Hambling v. Cherry-Burrell Corp.
Nos. 93-3475 & 93-3647 (8th Cir. 1994) 82 pps. **$85.00**

AB (Suhre for EEOC) In Support of Appellants Petition for Rehearing with Suggestion of Rehearing *En Banc*
A rehearing should be granted to correct the panel's ruling that plaintiff is barred by latches from pursuing timely claims of employment discrimination because she failed to timely challenge similar discriminatory acts in the past.

Ashley v. Boyle's Famous Corned Beef Co., Inc.
No. 94-2174 (8th Cir. 1995) 21 pps. **$35.00**

PB (Goodman for EEOC) Reply Brief of Plaintiff/ Cross-Appellant
An award of full liquidated damages is mandatory under the EPA where the defendant has not proved that he or she acted in good-faith with the reasonable belief that its conduct was lawful. A finding of nonwillfulness is not the same as a finding of good faith and reasonableness. Furthermore, defendant's conduct can not be considered non-willful.
EEOC v. Cherry-Burrell Corp.
No. 93-3475 & 93-3647 (8th Cir. 1994) 21 pps. **$35.00**

PB (Silver for EEOC) Brief as Intervenor
Congress has constitutionally abrogated the States' 11th Amendment immunity in the Equal Pay Act. The EPA's application to the States is a valid exercise of Congressional power.
Timmer v. State of Mich. Dept. of Commerce
No. 95-1706 (6th Cir. 1995) 27 pps. **$35.00**

AB (Goodman for NELA) On appeal from D.C., S.D. N.Y.
The 11th Amendment does not prohibit suits against states under the Equal Pay Act because (1) language in the Act evinces a clear intent to abrogate the states' sovereign immunity, as previously interpreted by the 2nd Circuit; and (2) in subjecting states to suit under the EPA, Congress acted pursuant to a valid exercise of power under section 5 of the 14th amendment since the act enforces equality of civil rights. Thus, the two-pronged test of *Seminole Tribe* is satisfied.
Anderson v. SUNY, et al.
No. 98-7025 (2nd Cir. 1998) 23 pps. **$35.00**

AMERICANS WITH DISABILITIES ACT

ADA - GENERAL

AB (Gregory for EEOC) In Support of Appellant's Petition for Rehearing *En Banc* from the U.S. D.C., W.D., Washington
The panel's decision conflicts with Supreme Court precedent established by *Robinson* and *Olmstead*. Furthermore there is no credible circuit court authority on which the court based its findings. The decision by the panel does not accord appropriate deference to the Commission's position as the agency entrusted to administer Title I of the ADA. Based on these reasons a rehearing should be granted by the court.
Weyer v. Twentieth Century Fox Film Corporation and UNUM Life Insurance Company of America
No. 98-35215 (9th Cir. 2000) 20 pps. **$25.00**

PB (Sloan for EEOC) Reply Brief on appeal from U.S. D.C., District of Columbia
Defendant's long-term disability benefits plan discriminates against mentally disabled persons because of their disability, and therefore violated Title I. Defendant's plan pays salary continuation benefits until the age of 65 to all employees who can no longer work because of a physical disability but limits benefits to two years for employees who can't work because of a mental disability. Unless Defendant can show that the 2-year limitation is based on actuarial principles, Title I should apply in order to be consistent with recent Supreme Court decisions and to best effectuate the broad remedial purposes of the ADA.
EEOC v. Aramark Corp., INC. and Fennell v. Aetna Life Insurance Co. and Aramark Corp., INC
No. 99-5125 & No. 99-7042 (Dist. of Columbia Cir. 1999) 36 pps. **$45.00**

DB (Heppen for WMATA) Appeal From The District Court For The District of Columbia
The court erred when it failed to grant WMATA's motion to dismiss as a matter of law because plaintiff had not established that he was disabled within the meaning of the ADA since he had failed to show that he was significantly impaired in the major life activity of working. Plaintiff did not even establish that he had a permanent disability.

Furthermore, plaintiff's action is not actionable under the ADA because he failed to establish that he was a qualified person within the definition of the ADA. Plaintiff did not ask for an accommodation and he was responsible for the breakdown in the interactive process. WMATA is entitled to a new trial because the court erroneously instructed the jury that it could award damages in the form of future pecuniary losses and because the court failed to give a limiting instruction of the use of defendant's alleged statement that plaintiff was "damaged goods." Plaintiff is not entitled to pre-judgment interest.

Duncan v. Washington Metropolitan Area Transit Authority

No. 99-7073 (D.C. Cir. 2000) 53 pps. **$65.00** Addendum 20 pps. **$25.00**

DB (Heppen for WMATA) Appeal From The District Court For The District of Columbia

Plaintiff failed to establish that he was substantially limited in the major life activity of working because he failed to present evidence regarding the numbers of jobs available to him. Because plaintiff was basically an unskilled laborer, with no particular employment preferences, the pool of positions available to him was wider than for an individual with finely honed skills and experience in a particular trade or field. Plaintiff's reliance on the EEOC's Guidelines to establish that "an individual who has a back condition that prevents the individual from performing any heavy labor job would be substantially limited in the major life activity of working" is unfounded because the Supreme Court has refused to recognize other provisions of the Guidelines. Plaintiff was not a qualified person with a disability under the ADA because he failed to inform WMATA that he had a disability. Furthermore, the instruction to the jury regarding future pecuniary damages as well as the judge's refusal to give a limiting instruction regarding the comment that plaintiff was "damaged goods" was erroneous.

Duncan v. Washington Metropolitan Area Transit Authority

No. 99-7073 (D.C. Cir. 2000) 22 pps. **$35.00** Addendum 12 pps. **$25.00**

PB (Bender for Plaintiff) Appeal From The District Court For The District of Columbia

Plaintiff presented sufficient evidence of his back impairment that a reasonable jury could find that he was disabled under the ADA because he was substantially limited in the major life activity of working. Plaintiff was precluded from performing a broad range of jobs because his impairment made it impossible for him to perform any heavy lifting jobs. Given his education, training and the fact that his work experience consisted solely of heavy lifting jobs a reasonable jury could have found he was substantially limited in the major life activity of working. Furthermore plaintiff was a "qualified individual" for the job in question because he could perform the essential functions of the job, mainly carrying parts weighing about twenty pounds. Plaintiff repeatedly asked to be transferred to "light duty" and thus asked for a reasonable accommodation. Any breakdown in the interactive process was not caused by the plaintiff. WMATA is not entitled to a new trial on the grounds that the judge instructed the jury it could award damages for "future pecuniary losses" when plaintiff had failed to provide any evidence of such damages. Nor is it entitled to a new trial on the grounds that the court failed to give a limiting instruction made by plaintiff's supervisor that the plaintiff was "damaged goods."

Duncan v. Washington Metropolitan Area Transit Authority

No. 99-7073 (D.C. Cir. 2000) 47 pps. **$55.00** Addendum 13 pps. **$25.00**

AB (Carter for EEOC) Appeal from N.D. Ind.

The liberal rules of notice pleading, as stated in Rule 8(a) of the Federal Rules of Civil Procedures continue to apply to ADA claims. The Supreme Court's decision in *Sutton v. United Airlines, Inc.*, 119 S. Ct. 2139 (1999) did not apply a heightened pleading standard, nor could it, given the Supreme Court's prior holding that the federal courts may not create heightened pleading standards. Plaintiff's assertion that he was a "qualified individual with a disability as defined under the ADA" was sufficient.

Mattice v. Memorial Hospital of South Bend, Inc.

No. 00-1364 (7th Cir. 2000) 22 pps. **$35.00**

AB (Carter for EEOC) On Appeal From the United States District Court for the Southern District of Georgia

The district court erred when it held that, although plaintiff complained to her supervisor that she was being harassed by her co-workers because of her sex and disability, defendant did not receive actual notice of the harassment. The district court erred in concluding that defendant did not receive constructive notice that plaintiff was being harassed by her co-workers because of her sex and disability.
Breda v. Wolf Camera, Inc.
No. 99-12410-G (11th Cir. 1999) 28 pps. **$35.00**

PB (Gregory for EEOC) Petition Of The EEOC For Rehearing And Suggestion For Rehearing En Banc
The Panel decision is inconsistent with Supreme Court precedent, with the controlling precedent of this court, and with the two circuit court decisions to have addressed the precise issue. A private arbitration agreement does not preclude the EEOC from suing in its own name to recover monetary damages under the ADA. The Commission did not sign an arbitration agreement. The Commission is entitled to bring its statutory claim in court and to seek the full panoply of statutory remedies. Thus, the Panel decision thwarts the objectives of both the ADA and the FAA. The Panel Decision improperly gives effect to the arbitration agreement between the charging party and the defendant. There was no enforceable arbitration agreement under these circumstances. Arbitration provisions contained in generic corporate wide employment applications do not follow the party to whichever corporate facility hires him or her. Furthermore, if the employer requires an employee to agree to mandatory arbitration as a condition to obtaining or continuing employment, the employer must bear the cost of the arbitrator's fees.
EEOC v. Waffle House, Inc.
No. 98-1502 (4th Cir. 2000) 20 pps. **$25.00**

PB (Gantz for EEOC) Appeal from D.D.C.
Defendants are subject to suit in federal court by virtue of Rule 17(b) of the Federal Rules of Civil Procedure, which permits suits to enforce federal claims against unincorporated associations. Defendants are a voluntary group of people, organized for a common purpose, without a charter. Thus, defendants fit the definition of an unincorporated association as construed by the courts. Although defendants are affiliated with the Archdiocese, defendants operate independently from the Archdiocese in employment and financial matters to such an extent that they cannot be said to be operating under the charter of the Archdiocese. Thus, the district court's conclusion that defendants are not amenable to suit under the ADA is erroneous.
EEOC v. St. Francis Xavier
No. 99-5428 (D.C. Cir. 2000) 30 pps. **$35.00**
Addendum 8 pps. **$15.00**

PB (Carter for EEOC) Reply Brief
Sears cannot maintain that plaintiff was not substantially limited in walking because she was able to clean her house, go shopping and play bingo. Sears cannot rely on the assumption that just because plaintiff was active, she could not have been substantially limited in walking. Sears was put on notice of plaintiff's disability because plaintiff informed Sears managers about her problems with walking, provided them with two doctors notes and repeatedly requested various forms of reasonable accommodation. Plaintiff proposed at least three accommodations that would have reduced the distance she had to walk, but Sears either rejected or failed to implement any of the proposed accommodations without suggesting any alternative. Sears does not challenge plaintiff's assertion that constructive discharge claims are cognizable under the ADA, but merely contends that plaintiff's conditions were not intolerable and were not sufficiently associated with her disability. However, the facts must be construed in the light most favorable to plaintiff and are such that a rational jury could find that plaintiff was constructively discharged.
EEOC v Sears, Roebuck & Co.
Nos. 99-3734 & 99-4037 (7th Cir. 2000) 28 pps. **$35.00**

AB (Gregory for EEOC) Amicus Brief Suggesting The Need For Rehearing En Banc
The Panel's decision that plaintiff was precluded from asserting a claim under the ADA because he simultaneously applied for social security disability benefits conflicts with the Supreme Court's decision in *Cleveland*. Under

Cleveland the differences in statutory standards will be sufficient, in most cases, to avoid any preclusion of an ADA claim, at least at the summary judgment stage. The Panel's heightened "additional rationale" standard is inconsistent with the *Cleveland* decision. Under the holding in *Cleveland* a person may be disabled enough to qualify for receipt of disability benefits, yet still be able to assert an ADA claim. The claimant need only provide an explanation for the apparent inconsistency. The difference in legal standards will be sufficient in most cases to explain away the apparent inconsistency in positions.
Motley v. New Jersey State Police & State Troopers Fraternal Assoc.
No. 97-5715 (3rd Cir. 2000) 19 pps. **$25.00**

AB (Center for Employment Law Center) Brief A*micus Curiae* In Support Of Petitioners On Writ Of Certiorari From 10th Circuit
The analysis employed by the court of appeals for the 10th circuit in *Sutton* and affirmed by the court in *Murphy*, is contrary to the purpose of the ADA. The definition of "disability" under the ADA is intentionally broad to protect not only those persons who have impairments that give rise to specific physical and mental limitations, but to also protect those who have experienced such limitations in the past or who are regarded as having a disability by others. Congress, as well as federal agencies charged with enforcement of the ADA, have stated that mitigating measures should not be considered in determining whether an individual is disabled. This is consistent with the intent of Congress to protect persons with treatable disabilities. Excluding individuals with such disabilities from the coverage of the ADA is contrary to its fundamental purposes. This Court should reverse and remand both *Sutton* and *Murphy* for an analysis of whether plaintiffs' impairments, and the absence of mitigating measures constitute protected disabilities.
Sutton and Hinton v. United Air Lines, Inc., and Murphy v. United Parcel Serv., Inc.
No. 97-1943 (U.S. Supreme Ct. 1998) 46pps. **$55.00**

PB (Hughes) Brief For Petitioners On Writ Of Certiorari From 10th Circuit
The Tenth Circuit's decision should be reversed because the plaintiffs are actually disabled within the meaning of the ADA and defendant regarded them as disabled. Whether an individual is disabled should be determined without regard to available corrective measures. This view is followed by the EEOC, which has so constructed the statute in its interpretive guidance. The legislative history of the ADA also supports the idea that corrective measures need not be considered. The rule of consideration of corrective measures squarely applies to the circumstances of severe correctable myopia, like that suffered by the plaintiffs. There is no principled or practical reason why the ADA should protect those who employ hearing aids, medication and the like, but subject persons with severe but correctable myopia to continued discrimination. Even if myopia is found not to be a disability, defendant regarded plaintiffs as disabled in rejecting them from employment based upon a false perception of their abilities.
Sutton and Hinton v. United Air Lines, Inc.
No. 97-1943 (U.S. Supreme Ct. 1998) 64pps. **$75.00**

AB (Waxman for EEOC) Brief *Amicus Curiae* In Support Of Petitioners On Writ Of Certiorari From 10th Circuit
Plaintiffs claimed that they were disabled within the meaning of the ADA as the myopia they suffer impairs and substantially limits a major life activity, seeing. Inquiry into whether this is a "disability" under the ADA must be undertaken on an individual basis. Plaintiffs' complaint was sufficient to allege that they were disabled. The court of appeals found them not to be disabled because they had stated that their poor vision could be fully correctable. The question of whether an individual has a disability under the ADA must be answered without regard to mitigating measures that the individual takes, such as was stated in *Murphy*. Petitioners also allege that they were "regarded as" being disabled when defendant would not consider them for any of its pilots positions because of their poor eyesight. The court improperly pretermitted the inquiry before petitioners were given the opportunity to support their claim and therefore the case should be reversed and remanded.
Sutton and Hinton v. United Air Lines, Inc.
No. 97-1943 (U.S. Supreme Ct. 1998) 25pps. **$35.00**

AB (Waxman for EEOC) Brief *Amicus Curiae* In Support Of Petitioners On Writ Of Certiorari From 10th Circuit
This Court should grant a writ of certiorari in *Murphy* with respect to the issue of whether mitigating measures should be taken into account in assessing a disability. This Court should resolve the conflict that currently exists conceding this issue. The petition for writ of certiorari in *Sutton* should be held pending this Court's decision in *Murphy* and then disposed of accordingly.
Sutton and Hinton v. United Air Lines, Inc. and Murphy v. United Parcel Serv., Inc.
No. 97-1943 & 97-1992 (U.S. Supreme Ct. 1998) 25pps. **$35.00**

AB (Gallagher for Air Transport Association of America, Inc) In Support Of Respondent On Writ Of Certiorari From 10th Circuit
Nearsightedness is not an impairment within the meaning of the ADA. Correctable visual acuity problems are not substantially limiting disabilities. Respondent did not regard petitioners as disabled simply because they did not meet high selection criteria. Safety is the essence of an airlines business and vision standards adopted by the FAA and ATA are an inseparable part of their respective safety programs. Judgment of the court of appeals should be affirmed.
Sutton and Hinton v. United Air Lines, Inc.
No 97-1943 (U.S. Supreme Ct. 1998) 39pps. **$45.00**

PB (Hughes) Reply Brief For Petitioners
Pilots are disabled in the major life activity of seeing. The court should not treat severe myopia differently than other correctable impairments. The court should analyze pilots impairment in the uncorrected state. The language of the ADA and the intention of Congress supports consideration of disabilities in the uncorrected state. Defendant regarded plaintiff as disabled in the major life activity of working Defendant falsely perceived plaintiff to be unfit. An employer can very easily point to handful of teaching or administrative or other tangentially positions that a rejected employee could fill. However, Congress could not have intended for the "regarded as" provision to be so easily circumvented.
Sutton and Hinton v. United Air Lines, Inc.
No. 97-1943 (U.S. Supreme Ct. 1998) 31pps. **$45.00**

PB (Waxman for DOJ) Motion For Leave To File Brief In Reply To Respondent's Post-Argument Brief, And Brief For The United States And The Equal Employment Opportunity Commission.
Under EEOC's regulations, an employer may make employment decisions based on physical characteristics without being found to "regard" the employee as having a substantially limiting impairment under the ADA. This occurs when an employer bases its decision on an actual or perceived physical characteristic that is not an impairment within the meaning of the ADA. It would also occur where an employer bases its decision on a characteristic that is an impairment, but does not substantially limit a major life activity.
Sutton and Hinton v. United Air Lines, Inc.
No 97-1943 (U.S. Supreme Ct. 1999) 7pps. **$15.00**

AB (Danis for EEOC) On Appeal From D.C., E. D. Virginia
Plaintiff's claim of discrimination in the provision of a post employment fringe benefit is covered under Title I of the ADA. This Court should affirm the district's court holding that the termination of LTD benefits solely because plaintiff had a mental, rather than physical, disability violated the ADA unless an actuarial justification for the coverage distinction brought the plan within the ADA's "safe harbor." This Court should further find that the defendant's LTD plan was not immunized by the ADA's safe harbor because the plan did not meet the requirement of a Virginia State law requiring justification for all disability-based distinctions in insurance coverage.
Lewis v. Kmart Corp.
No. 98-2179 (4th Cir. 1998) 46pps **$55.00** Addendum 16pps. **$25.00**

AB (Gregory for EEOC) In Support Of The Plaintiff-Appellant On Appeal From D.C., N.D. West Virginia

The district court erred in finding that federal unions are not covered under the ADA. The ADA prohibits discrimination by a "labor organization." The terms "labor organization" has the same meaning under the ADA as it does under Title VII. The district court ruled that federal unions fall outside the reach of Title VI. The text of Title VII is, at the very least ambiguous, and the broader indicia of congressional intent compel a finding that federal unions are encompassed within Title VII's prohibitions on the same terms as unions in general. The decision should be reversed and remanded.
Jones v. American Postal Workers Union Local 4755
No. 97-2581 (4th Cir. 1998) 27pps. **$35.00**

AB (Ramshaw for EEOC) In Support Of Denial Of Defendant's Motion To Dismiss
Submitting a charge of discrimination to the EEOC and requesting that it be filed with both the EEOC and the relevant state agency is sufficient to comply with section § 706(c) of Title VII even where the charge fails to expressly refer to state law. The failure to institute state proceedings in compliance with § 706(c) does not deprive the district court of subject matter jurisdiction over an ADA claim. If plaintiff's failure to comply with § 706(c) was caused by incorrect legal advice from the EEOC the district court should hold the case in abeyance and give plaintiff an opportunity to comply with the statute.
Flippo v. American Home Products Corp.
No. 3:98CV804 (D.C., E.D., Va. 1999) 12pps. **$25.00**

PB (Danis for EEOC) Reply Brief On Appeal From D.C., S.D. Texas
The commission presented sufficient evidence to raise a material fact dispute about whether Plaintiff was disabled within the meaning of the ADA. Defendant admits that the Commission has at least raised a material fact dispute about whether defendant regarded plaintiff as substantially limited in his ability to work. Also the Commission raised a material dispute about Plaintiff's record of disability. Because the parties are in apparent agreement that the evidence could have supported a jury finding that the primary decision maker, defendant, regarded plaintiff as substantially limited, this court should reverse summary judgment as well as reverse the award of attorney's fee which defendant has waived.
EEOC v. R.J. Gallagher
No. 98-20351 (5th Cir. 1998) 32pps. **$45.00**

PB (Danis for EEOC) Plaintiff-Appellant's Brief On Appeal From D.C., S.D. New York
The ADA reaches intragroup discrimination based on the particular disability of a group member. Because the language of
the ADA is modeled after earlier civil rights statutes such as Title VII and the ADEA, the Supreme Court has consistently
interpreted the ADA to protect individual members of a protected class. Moreover, the ADA's protection must be understood to extend to insurance fringe benefits, such as the long term disability benefit plan in the case at bar.
EEOC v. Chase Manhattan Savings Bank and Unum Life Ins. Co. of America
No. 99-6035 (2nd Cir. 1999) 87pps. **$90.00**

PB (Goodman for NELA) Brief *Amicus Curiae* Of The National Employment Lawyers Association And Equal Rights Advocates, Inc. In Support Of Petitioner
This case deals with clarifying the proper standard for awarding of punitive damages under Title VII and the Americans With Disabilities Act. The Court should reject the District of Columbia Court of Appeals decision permitting punitive damages only upon a showing that the complained of conduct was "egregious" or "truly outrageous." Such a requirement is not in accord with either the plain language of the statute or the remedial purpose Congress intended when it amended the civil rights statutes to permit juries to award punitive damages. Amicus propose that the Court adopt the standard enunciated by the First Circuit when it upheld the following district court jury charge: "Where a plaintiff in a racial discrimination case establishes the elements of malice, or callous indifference by a preponderance of evidence, then a jury is allowed in its discretion to assess punitive damages against the discriminatory defendant."

Kolstad v. American Dental Ass'n
No. 98-208 (U.S. Supreme Ct. 1998) 29pps. **$35.00**

PB (Danis for EEOC) Brief Of Appellant Equal Employment Opportunity Commission
The district court failed to recognize that the ADA's prohibition against disability-based discrimination reaches intragroup
discrimination in all aspects of the employment relationship, including disability-based discrimination in the context of
insurance fringe benefits. The defendant's long term disability plan furthermore would not be immunized under the ADA's safe harbor provision.
EEOC v. Staten Island Savings Bank, and Guardian Life Ins. Co.
No. 99-6011 (2nd Cir. 1999) 81pps. **$90.00**

PB (Lowry) Reply Brief For Petitioner On Writ Of Certiorari From 10th Circuit
Case law and the ADA's legislative history confirm that the ADA's "disability" determination should be made without consideration of mitigating measures. In this case, summary judgment on the "disability" question is not appropriate. There are genuine issues of material disputed fact as to whether plaintiff's severe hypertension substantially limits one or more of his major life activities and wether defendant "regarded" him as disabled. This Court should reverse and remand.
Murphy v. United Parcel Serv., Inc.
No. 97-1992 (U.S. Supreme Ct. 1998) 28pps. **$35.00**

PB (Friedman for EEOC) Appeal From D.C., W.D. North Carolina
Judicial estoppel should not bar the Commission from asserting a claim on behalf of a qualified individual with a disability due to a statement that she made in an application for Social Security disability benefits. Where a disabled individual informs SSA that her disability renders her unable to work, her ADA claim should not be barred if she also informs SSA that she could work with an accommodation. In determining a claimant's eligibility for benefits, the SSA inquires whether the claimant is able to work, but it does not consider whether the claimant could work given reasonable accommodation. Furthermore, where it is the Commission who is the plaintiff and not the individual, judicial estoppel should be invoked only when the Government conducts what appears to be a knowing assault upon the integrity of the judicial system.
EEOC v. Stowe-Pharr Mills Inc.
No. 99-1040 (4th Cir. 1999) 32pps. **$45.00**

AB (Goldstein for EEOC) In Support Of Appeal From D.C., S.D. Florida
Working overtime is not a job duty, and so cannot be an essential function of a job within the meaning of the ADA. Collective bargaining agreements are a factor in the reasonable accommodation analysis, but are not determinative on the issue. Therefore, plaintiff's proposed accommodation must be considered even though it implicates collectively-bargained seniority rights. Accommodations that implicate other workers' seniority rights are not per se unreasonable.
Davis v. Florida Power & Light Co.
No. 99-4076 & 99-10524 (11th Cir. 1999) 35pps. **$45.00**

PB (Sloan for EEOC) Appeal From D.C. District Of Columbia
Coverage under Title I of the ADA extends to former employees who are no longer able to work because of a disability, where the claim alleges disability-based discrimination in employer-provided post-employment fringe benefits. Intra disability discrimination is not exempt as a matter of law under the ADA's safe harbor provision. Remand and discovery are necessary
EEOC v. Aramark Corp.; Fennell v. Aetna Life Ins.
Nos. 99-5125, 99-7042 (D.C. Cir. 1999) 62pps. **$75.00** Addendum 26pps. **$35.00**

PB (Lonnquist) Plaintiff-Appellant's Opening Brief on Appeal from D.C., W.D. Wash.
Contrary to the policy reflected in the safe harbor provisions of the ADA, the ruling of the district court would deny all ADA- and by extension, Washington Law Against Discrimination (WLAD)- protections to rehabilitated drug users. The purchase of illegal drugs is conduct that is so inextricably intermingled with the nature of the disability, that the addict cannot lawfully be terminated for such activity. Defendant had no legitimate reason to terminate the plaintiff and as such violated the ADA, the WLAD and FMLA's right to return provision.
Doe v. King County
No. 97-35876 (9th Cir. 1998) 28 pps. **$35.00**
Also Available: Plaintiff-Appellant's Reply Brief on Appeal from D.C., W.D. Wash.,. making similar arguments. 13 pps. ***$25.00***

DB (Pailca) Appellee's Brief on Appeal from D.C., W.D. Wash..
Because the plaintiff was a current drug user under the ADA and by extension, the Washington Law Against Discrimination (WLAD) he was not afforded its protections. Plaintiff is not otherwise qualified under the ADA because he no longer had the trustworthiness required for the job. Plaintiff was terminated not because of his disability of addiction, but because of his illegal activities while employed as a bailiff. The timing of a termination after a FMLA leave does not automatically violate the "right to return" provisions of FMLA.
Doe v. King County
No. 97-35876 (9th Cir. 1998) 40 pps. **$45.00**

AB (Butler for NELA) Brief *amicus curiae* in Support of Appellee's Petition for Rehearing on Appeal from D.C., S.D. Tex.
An ADA case. Appellee's petition for rehearing should be granted because the court incorrectly applied the plain error doctrine. Here, defendant did not raise the issue of insufficiency of evidence at trial, thus the matter was deliberately waived and there was no error. Applying the plain error doctrine to reverse a case on appeal for insufficiency of evidence, in these circumstances, would encourage parties to bypass the district judge's scrutiny of the sufficiency of evidence.
Barber v. Nabors Drilling U.S.A., Inc. and Nabors Loffland Drilling Co.
No. 97-20102 (5th Cir. 1997) 11 pps. **$25.00**

PB (Moran for EEOC) Brief for Plaintiff-Appellant on Appeal from D.C., D. Mass.
An employer who terminates an individual for conduct related to the individual's disability has terminated the individual "because of her disability" within the meaning of the ADEA. The district court erred in granting summary judgment based on defendant's assertion that Guglielmi could not be trusted to administer medications since she was qualified to perform the essential functions of her job and defendant did not prove by undisputed evidence that she posed a direct threat to safety. There are material issues of fact as to whether defendant could have reasonably accommodated Guglielmi by reassigning her to a behavior therapist position.
EEOC v. Amego. Inc.
No. 96-1837 (1st Cir. 1996) 43 pps. **$55.00**
Also available: Memorandum and Order, EEOC v. Amego. Inc., granting defendant's motion for summary judgment. 18 pps. **$25.00**

AB (Ramshaw for EEOC) Supplemental Brief In Support of Plaintiff-Appellant on Appeal from D.D.C.
The court should not address defendant's arguments concerning the validity of plaintiffs right to sue notice and the scope of coverage under §102(d)(4)(A)) because defendant failed to cross appeal, and neither argument affects the district court's jurisdiction. The EEOC's regulation permitting issuance of notices of right to sue less than 180 days after a charge is filed is consistent with both the letter and spirit of Title VII and is therefore valid. Section l02(d)(4)(A)'s ban on disability-related inquiries protects all employees, not just those with disabilities.
Roe v. Cheyenne Mountain Conference Resort
No. 96-1086 (10th Cir. 1996) 23 pps. **$35.00**

AB (Goldstein for EEOC) In Support of Plaintiff-Appellants Appeal from the D.C., S.D. N.Y.
The ADA permits a challenge under Title I's comprehensive prohibition of discrimination in benefits to an alleged discriminatory denial of benefits by former police officers who retired with a disability and are no longer able to perform the duties of their former jobs. Congress intended that retired employees be able to challenge disability discrimination in the provision of fringe benefits under title I of the ADA.
Castellano, et al., v. The City of New York, et al.
No. 96-7920 (2nd Cir. 1996) 28 pps. **$35.00**

AB (Gregory for EEOC) In Support of Plaintiff-Appellant on Appeal from the D.C., N.C. Ohio.
The district court erred in ruling that the plaintiff's amended complaint did not relate back to the filing of his original complaint, under Fed.R.Civ.P. 15(c), where the amended complaint merely corrected a mistake in the naming of the parties, the party sought to be added in the amended complaint had been properly named and served with the plaintiff's EEOC charge. In addition, the district court erred in ruling that the plaintiff's claim against the other corporate defendant's named in the original and amended complaints were barred because these defendant, while sharing the same address, legal counsel, and similar name as the party named in the plaintiff's EEOC charge, were not themselves named in the charge.
Smith v. Sofco, Inc.,
No. 97-3121 (6th Cir. 1997) 20 pps. **$25.00**

AB (Goldstein for EEOC) Appeal from the D.C., E.D. Pa.
The district court erred in deciding that plaintiff, who experienced an epileptic seizure at work, was not substantially limited in major life activities. In addition, the district court erred in deciding that in order to make out a *prima facie* case of disability discrimination, plaintiff was required to identify a better-treated individual from outside the protected class and to refute allegations that his work performance was unsatisfactory.
Matczak v. Frankford Candy & Chocolate Co.
No. 97-1057 (3rd Cir. 1997) 24 pps. **$35.00**

AB (Gregory for EEOC) In Support of Appellant on Appeal from the D.C., D. N.J.
While the ADA may permit a covered entity to make treatment-based distinctions among categories of disabilities in determining the level of coverage under a health insurance policy, it does not permit a covered entity to select out certain disabilities or groups of disabilities for less favorable treatment merely because the employer decides that it wants to provide reduced benefits for those individuals with the disfavored disability or disabilities.
Ford v. Schering-Plough
No. 96-5674 (3rd Cir. 1996) 38 pps. **$45.00**

AB (Ramshaw for EEOC) On Appeal from the D.C., N.D. Ala.
The district court erred in holding that plaintiff had to submit his ADA claim to arbitration because unions are not permitted to waive individual employees' rights to a judicial forum for their statutory employment discrimination claims. The district court's decision was erroneous for the additional reason that the CBA grants the arbitrator authority only to interpret and apply the agreement's own provisions. There, the CBA does not require the arbitration of employees' individual statutory claims.
Brisentine v. Stone & Webster Engineering
No. 96-6866 (11th Cir. 1996) 25 pps. **$35.00**

AB (Goldstein for EEOC) In Support of Plaintiff-Appellant on Appeal from the D.C., D. Ore.
Applying for disability benefits does not preclude a plaintiff as a matter of law from establishing that she is a "qualified individual" under the ADEA. In addition, summary judgement should not have been granted to the bank because of evidence that plaintiff was qualified for one of her former positions.
Miller v. U.S. Bancorp
No. 96-35678 (9th Cir. 1996) 33 pps. **$45.00**

AB (Sloan for the EEOC) Appeal from the D.D.C.
The district court erred in holding that the defendants were not covered by the ADA because they did not have 25 or more employees during the relevant time frame surrounding their alleged refusal to consider a person for a teaching position. The integrated enterprise or single employer doctrine is designed to permit plaintiffs to aggregate employees of separate corporations For coverage purposes under federal anti-discrimination law, including the ADA is that employees should be counted if they are in an ongoing employment relationship with the defendant and are listed on the defendant's payroll for each working day in a particular work week.
EEOC v. St. Francis Xavier School and Church
No. 96-5239 (D.C. Cir. 1996) 41 pps. **$55.00**
Also available: Reply Brief on Appeal from the D.D.C. making similar arguments. 14 pps. ***$25.00***

AB (Moran for EEOC) Reply Brief in Support of Plaintiff-Appellant on Appeal from the D.C., D. Mass.
When defendant terminated an employee for suicide attempts caused by her depression and bulimia, it terminated her because of her disability, thus the district court erred in holding that an employee was not terminated because of her disabilities as a matter of law.
The ADA reaches termination decisions based not only on an individual's underlying disability, but also on the consequences of that disability. Material issues of fact preclude summary judgement on whether defendant could had reasonably accommodated employee by reassigning her to a behavior therapist position.
EEOC v. Amego, Inc.
No. 96-1837 (1st Cir. 1996) 23 pps. **$35.00**

PB (Ramshaw for EEOC) Appeal from the D.C., W.D. Mich.
Employee was removed from the produce department and put him on leave because of his HIV status, and later fired him because he refused to submit to a medical examination. The district court incorrectly ruled that the employee presented a direct threat to the health of his co-workers so as to justify his removal under the ADA. In addition, the defendant's demand that the employee submit to medical examination was not reasonably necessary and therefore, violated the ADA. The record contained ample evidence to support the jury's award of punitive damages.
EEOC v. Prevo's Market
No. 97-1001 (6th Cir. 1997) 40 pps. **$45.00**

AB (Phelan for NELA) Appeal from the D.C., S.D. Fla.
Title II of the ADA incorporated the anti-discrimination principles of Section 504 of the Federal Rehabilitation Act, 29 U.S.C. §704 and extended them to the state and local governments and an action for employment discrimination may be brought by a public employee with a disability under Title II of the ADA of 1990. A majority of courts have concluded that Title II of the ADA encompasses employment discrimination claims.
Bledsoe v. Palm Beach Soil and Water Conservation District, et al.
No. 96-5375 (11th Cir. 1996) 9 pps. **$15.00**

PB (Marshall) Memorandum of Plaintiff in Opposition to Defendant's Motion to Dismiss
The ADA and the Rehabilitation Act of 1973, as amended, target states and were enacted pursuant to Congress' plenary power to enforce the equal protection clause. In exercising its plenary power under § 5 of the Fourteenth Amendment, Congress may enact norms of equality different that those established by judicial precedent.
Nihiser v. State of Ohio
No. C2-94-1258 (S.D., E.D. Ohio 1996) 20 pps. **$25.00**

PB (Cater for EEOC) Brief of EEOC in Support of Petition for Rehearing, with Suggestion of Rehearing *En Banc* on Appeal from D.C., W.D. Mich.
By awarding summary judgment to defendant, the panel majority ratified employer decision making based on fear, ignorance and prejudice about disabilities. The panel concluded that defendant could require a medical examination to

determine whether plaintiff's HIV condition posed a "direct threat" to others in his work as produce clerk. The panel majority in this case improperly expanded the "business necessity" exception to the general prohibition on medical examinations on employees.
EEOC v. Prevo's Family Market, Inc.
No. 97-1001 (6th Cir. 1998) 37 pps. $**45.00**

AB (Gregory for EEOC) Brief in Support of Plaintiffs-Appellants on Appeal from D.C., D. WA.
Plaintiff's claim of disability-based discrimination in the provision of long-term disability benefits is covered by Title I of the ADA. The ADA does not unambiguously require that an individual be a qualified individual at the time of the alleged discrimination in LTD benefits. Title I of the ADA is properly read to cover the claim of a disabled individual who challenges disability discrimination in the provision of fringe benefits that are made available to the individual because of his or her prior status as an employee. The plan's distinction between physical and mental conditions constitutes disability-based discrimination. The ADA's safe harbor provision protects only those benefit plans in which the disability-based disparate treatment is justified by the risks or costs associated with the disability.
Weyer, et al. v. Twentieth Century Fox Film Corp. and Unum Life Insurance Co. of America
No. 98-35215 (9th Cir. 1998) 50 pps. $**55.00**

AB (Gregory for EEOC) Brief *amicus curiae* on Appeal from D.C., D. Minn.
Plaintiff's claims under the ADA are not barred by a prior favorable settlement of his grievance under a collective bargaining contract, under *Alexander v. Gardner-Denver*. The ADA does not preclude the assertion of claims for disability discrimination under section 1983 where those claims are based on independent constitutional grounds.
Wallin v. Minnesota Dept. Of Corrections, et al.
No. 97-3309 (8th Cir. 1997) 27 pps. **$35.00**

AB (Bruner for EEOC) Brief in Support of Plaintiff-Appellant on Appeal from D.C., N.D. OK.
The ADA's prohibition against disability-related inquiries protects all job applicants, not just those with disabilities, and therefore an applicant does not have to be an individual with a disability to challenge an employer's violation of that provision. The conclusion that the ADA protects all applicants from improper inquiries during the pre-offer stage is supported by the plain language of § 102(d)(2)(A), the structure of the ADA, legislative history and administrative guidance. The conclusion that this protection applies only to applicants with disabilities is inconsistent with the remedial objectives of the ADA.
Griffin v. Steeltek, Inc.
No. 97-5103 (10th Cir. 1997) 24 pps. **$35.00**

AB (Carter for EEOC) Brief in Support of Plaintiff-Appellant on Appeal from the D.C., E.D. Ok.
The district court erred in granting Defendant's motion for judgment as a matter of law. Sleeping and concentrating are major life activities under the ADA because major life activity includes any basic activity that the average person in the general population can perform with little or no difficulty and are significant in our lives and day-to-day existence. Moreover, it erred in holding that, even if sleeping and concentrating are major life activities, plaintiff did not present enough evidence for a reasonable jury to conclude that she was substantially limited.
Pack v. Kmart Corporation and Nichols
No. 97-7120 (10th Cir. 1998) 26 pps. **$35.00**

AB (Dunaway for AARP) In Support of Plaintiff-Appellant on Appeal from D.C., N.D. Ga.
If employers are granted broad discretion to impose disability-targeted limitations or even outright denials of insurance benefits, the ADA's benefits protections for disabled workers would be virtually eliminated. Access to health care treatment is critical for persons with disabilities. If the employee loses coverage in the workplace, it is virtually impossible to obtain coverage through any other source.
Gonzales v. Garner Fast Foods, Inc.
No. 95-8533 (11th Cir. 1995) 21 pps. **$35.00**

AB (Ramshaw for EEOC) In Support of Plaintiff-Appellant
The district court erred in holding that the statement by plaintiff's doctor that he could return to work "as tolerated" conclusively established that she was not able to do her job.
Derbis v. U.S. Shoe Corp.
No. 94-2312 (4th Cir. 1995) 28 pps. **$35.00**

PB (Coleman for EEOC) Brief of Plaintiff-Appellee
Admission of the videotaped deposition of co-plaintiff did not rise to the level of plain error when the videotape was demonstrative evidence of co-plaintiff's condition three months after his termination. The district court gave a legally correct jury instruction regarding defendant's "direct threat" defense. The president and sole shareholder of defendant was properly held liable in her individual capacity for the firing. The district court acted within its discretion in permitting the jury's award of compensatory damages to stand.
EEOC v. AIC Securities Investigations, Inc.
No. 93-3839 (7th Cir. 1994) 59 pps. **$65.00**

AB (Marcosson for EEOC) In Support of Petition for Rehearing with Suggestion for Rehearing *En Banc*
In light of *King*, the AAE defense can not insulate defendant from liability for discriminatory conduct--firing an employee who was about to undergo a surgical procedure which was covered by the employer's benefit plan.
Welch v. Liberty Machine Works, Inc.
No. 93-2670 (8th Cir. 1994) 21 pps. **$35.00**

AB (Clark for EEOC) In Support of Plaintiff-Appellant
The district court erred in granting summary judgment for defendant by holding that the allegation in plaintiff's complaint that carpal tunnel syndrome impairs his ability to type defeats his assertion that he can perform the essential functions of his position as medical director. The district court also erred in granting summary judgment by holding that plaintiff's statement that defendant made an accommodation defeats his claim that defendant failed to reasonably accommodate his disability.
Feliberty v. Kemper Corp.
No. 95-1724 (7th Cir. 1995) 34 pps. **$45.00**

AB (Ramshaw for EEOC) In Opposition to Defendant's Motion for Summary Judgment
The rule established by the EEOC whereby complaints filed with the Office of Federal Complaint Compliance are deemed to have been filed with the EEOC is valid and within the authority granted to the EEOC by the ADA.
Maldonado v. Pfizer Pharmaceuticals, Inc.
No. 94-1365 (D.C., D. P.R. 1994) 19 pps. **$25.00**

AB (Ramshaw for EEOC) In Support of Plaintiff-Appellant
The statements made to defendant by plaintiff's sister and social worker were sufficient to put defendant on notice of plaintiff's disability which required accommodation.
Miller v. National Casualty Co.
No. 95-1001 (8th Cir. 1995) 21 pps. **$35.00**

AB (Coleman for EEOC) In Support of Plaintiff-Appellant
Because plaintiff qualifies to receive long-term disability benefits, she is a "qualified individual with a disability" under Title I of the ADA for purposes of challenging those benefits. Defendant may be a "covered entity" under Title I of the ADA because it administers co-defendant's long-term disability benefits plan.
Parker v. Metropolitan Life Insurance. Co.
No. 95-5269 (D.C., W.D. Tenn. 1995) 22 pps. **$35.00**

AB (Coleman for EEOC) In Support of Plaintiff-Cross Appellant

The district court abused its discretion by arbitrarily reducing plaintiff's attorney's fees by 50%, after already having eliminated specific, "unnecessary" hours simply because of the EEOC's presence in this case.
Wessel v. AIC Security Investigations, Ltd.
Nos. 94-2895 & 94-3089 (7th Cir. 1994) 46 pps. **$55.00**

PB (Snyder, Glazer) In Opposition to Motion to Dismiss
Defendant's vision requirements for police officers unlawfully discriminate against plaintiff whose corrected vision is 20/20, in violation of the ADA.
O'Neil v. Board of Public Safety Standards & Training
No. 94-240-AS (D.C., D. Ore. 1994) 29 pps. **$35.00**

AB (Marcosson for EEOC) Appeal from D.C., D. N.H.
An entity which deprives an individual of employment benefits based on his disability can be liable under Title I of the ADA even if the affected individual is an employee of another company. The ADA's provisions permit suits against "employers" who discriminate with respect to the terms and conditions of employment to employees other than their own.
Carparts Distribution Center, Inc. v. Automotive Wholesaler's Association of New England Medical Plan
No. 93-1954 (1st Cir. 1993) 24 pps. **$35.00**

AB (Bernstein for EEOC) Opposition to Plaintiff's Motion for Summary Judgment
The ADA prohibits disability-based discrimination in the provision of benefits under an ERISA regulated self-insured employee benefit plan. An entity that provides benefits incident to the employment relationship is covered by the ADA. Exclusion from coverage of all AIDS related medical expenses violates the ADA.
Mason Tenders District Council Welfare Fund, et al. v. Donaghey et al. and EEOC
No. 93-1154 (D.C., S. D. N.Y. 1993) 21 pps. **$35.00**

AB (Clark for EEOC) Appeal of Judgment by D.C., D. R.I.
Whether obesity is a disability under the Rehabilitation Act or the ADA must be decided on a case by case basis. Morbid obesity is a "physical impairment" under Section 504 of the Rehabilitation Act. Whether this impairment "substantially limits one or more major life activities" under Section 504 depends on the extent and duration of the condition.
Cook v. State of Rhode Island
No. 93-1093 (1st Cir. 1993) 68 pps. **$75.00**

PB (Cornish) Plaintiff's Substitute Brief in Support of Her Motion For Summary Judgment
Plaintiff is entitled to summary judgment. Defendant's prescription drug use reporting requirement violates the ADA because it violates the confidentiality provisions and the restriction on disability-related inquiries. Defendant's policies (requiring disclosure of prescription drug use, prohibition of legal non-prescription drugs and random drug testing in non-sensitive jobs) also violates Colorado common law right of privacy and public policy. Finally, plaintiff should be entitled to injunctive relief.
Roe v. Cheyenne Mountain Conference Resort
No. 95-WY-2152 (D.C., D. Colo. 1995) 63 pps. **$75.00**

AB (Ramshaw for EEOC) In Support of Plaintiff-Appellant
District court abused its discretion in denying injunctive relief to plaintiff when the court found that the employer's prescription disclosure requirement violated the ADA and plaintiff submitted uncontradicted evidence that the defendant does not intend to delete the unlawful provision. The district court also abused its discretion in refusing to award attorneys fees to plaintiff who won her ADA claim and where there are no special circumstances that would make such an award unjust.
Roe v. Cheyenne Mountain Conference Resort

No. 96-1086 (10th Cir. 1996) 24 pps. **$35.00**

AB (Hedin for NELA) In Support of Plaintiff-Appellant/Petitioner
The district court erred in denying attorney's fees to appellant who won her ADA claim because the issues were novel, the appellee's negligence is not grounds for denying fees, the appellant acted efficiently by moving for summary judgment, and because a *de facto* injunction was entered.
Roe v. Cheyenne Mountain Conference Resort
No. 96-1086 (10th Cir. 1996) 11 pps. **$25.00**

AB (Coleman for EEOC) In Support of Plaintiff-Appellee/Cross-Appellant
District court erred in holding that plaintiff could not establish a *prima facie* case of intentional discrimination under the ADA without showing he had been replaced by a non-alcoholic. The central question is whether plaintiff was treated less favorably because of his disability.
Burch v. The Coca-Cola Co.
No. 95-10990 (5th Cir. 1996) 16 pps. **$25.00**

PB (Marcosson for EEOC) Reply Brief on Appeal from D.C., N.D. Ill.
The court erred in dismissing the complaint which sought a preliminary injunction barring defendants from terminating long term disability benefits of plaintiff pending the completion of the EEOC proceedings on her charge of disability discrimination. Plaintiff is still considered a qualified individual with a disability even though she receives long term disability benefits.
EEOC v. CNA Insurance Co., et al.
No. 96-1304 (7th Cir. 1996) 16 pps. **$25.00**

PB (Moran for EEOC) Brief as Appellant
An employer violates the ADA if it fires a qualified individual with a disability because of the specific attributes of his disability. Specifically, the court erred in granting summary judgment to defendant who fired plaintiff because of seizures due to his epilepsy. The court's attempt to separate a disability from its necessary and inevitable consequences is opposed to both the language and purpose of the ADA.
EEOC v. Kinney Shoe Corp.
Nos. 95-1555 & 95-1556 (4th Cir. 1996) 42 pps. **$55.00**

PB (Fischer) Opposition to Motion for Summary Judgment
The motion for summary judgment should be denied because plaintiffs were perceived as individuals with disabilities under the ADA entitled to reasonable accommodation due to their severe obesity and/or increased heart rate after exercise. They should not have been terminated due to one doctor's determination they were disqualified from being school bus drivers.
Henderson, et al v. Durham Transportation
No. 9:95CV168 (D.C., E.D. Tex. 1996) 30 pps. **$35.00**

PB (Marcosson for EEOC) Brief as Appellant
Under the ADA, a person who is qualified to receive benefits under a disability benefit plan, but who is not capable of performing the job held before becoming unable to work, is a "qualified individual with a disability" with respect to the disability benefit plan. It is irrelevant whether the employee is able to hold her previous position. She can still challenge discrimination in disability benefits.
EEOC v. CNA Insurance Co., et al.
No. 96-1304 (7th Cir. 1996) 63 pps. **$75.00**

AB (Marcosson for EEOC) In Support of Plaintiff-Appellant

The plaintiff's challenge to the impending termination of his benefits pursuant to defendant's long term disability plan is ripe for adjudication. A person who is qualified to receive long-term disability leave, but is not capable of performing the functions of the job held previously to becoming unable to work, is a "qualified individual with a disability" under the ADA.
Leonard F. v. Israel Discount Bank of New York
No. 95-6420 (2nd Cir. 1996) 28 pps. **$35.00**

AB (Peart for EEOC) Motion to Participate as *Amicus Curiae* & Brief in Opposition to Defendant's Motion to Dismiss the Complaint
The defendant's argument for dismissal is based on an erroneous interpretation of the ADA which would leave a large loophole in the ADA's protection against discrimination on the basis of disability. An individual challenging discrimination in a disability benefit program need only satisfy the non-discriminatory criteria for eligibility under the plan in order to be a "qualified individual" under the ADA.
Leonard F. v. Israel Discount Bank of New York
No. 95 CIV 6964 (CLB) (D.C., S.D. N.Y. 1995) 14 pps. **$25.00**

AB (Ventrell-Monsees, Dunaway for AARP) In Support of Plaintiff-Appellant
Placing a cap on health insurance benefits will have a negative effect on current & future employees.
Gonzales v. Garner Fast Foods, Inc.
No. 95-8533 (11th Cir. 1995) 20 pps. **$25.00**

AB (Ventrell-Monsees, Koslow for AARP) In Support of Plaintiff-Appellant
Because the ADA was enacted to require employers to judge people for employment solely on the basis of performance ability rather than their impairments, barring persons who qualify for total and permanent disability benefits from suing under the ADA would contravene Congress' fundamental purpose.
McNemar v. Disney Stores, Inc.
No. 95-1590 (3rd Cir. 1995) 17 pps. **$25.00**

AB (Gregory for EEOC) In Support of Plaintiff-Appellant
The district court erred in determining that plaintiff could not make out a *prima facie* case of unlawful discharge under the ADA. The fact that plaintiff certified, in a post-termination benefits application, that he was totally disabled has no bearing on the lawfulness of the defendant's motivation at the time of plaintiff's termination.
McNemar v. Disney Stores, Inc.
No. 95-1590 (3rd Cir. 1995) 33 pps. **$45.00**

AB (Gregory for EEOC) In Support of Appellant's Petition for Rehearing and Suggestion for Rehearing *En Banc*
The panel incorrectly relied on after-acquired evidence. Their interpretation goes against set precedent. The panel's interpretation will undermine the enforcement goals of the ADA and it also distorts the factual record.
McNemar v. The Disney Stores, Inc.
No. 95-1590 (3d Cir. 1996) 18 pps. **$25.00**

PB (Moran for EEOC) Reply Brief of EEOC as Appellant
The district court did not hold plaintiff was unqualified for his job as a matter of law and the court misread this court's decision in *Tyndall*. Material factual disputes exist over whether plaintiff was qualified for his job. The district court properly held that plaintiff did not pose a direct threat to the health or safety of others or to himself. There is no evidence that plaintiff made any affirmative representations to the Social Security Administration that he was totally disabled.
EEOC v. Kinney Shoe Corp.
Nos. 95-1555 & 95-1556 (4th Cir. 1996) 29 pps. **$35.00**

ADA - DEFINITION OF "DISABILITY"

PB (Carter for EEOC) Appeal from N.D. Ill.
The district court erred in granting summary judgment to Sears because a reasonable jury could have found that plaintiff was disabled under the ADA and that Sears had failed to reasonably accommodate her, resulting in her constructive discharge. A rational jury could have found that plaintiff was substantially limited in the major life activity of walking even though she used a cane because even with the assistance of this mitigating measure, plaintiff could not walk more than one city block without having her entire leg go numb. Furthermore, the testimony of defendant's employees that plaintiff's job performance was satisfactory established that plaintiff was a qualified individual. Plaintiff put Sears on notice of her disability and Sears repeatedly failed to accommodate her. This made the conditions of work so intolerable that a reasonable person would have been compelled to resign. Because the Seventh Circuit has previously noted that a constructive discharge claim "would seem to arise under the general prohibition against discrimination with respect to terms or conditions of employment," the court should reverse the district court's decision to award summary judgment to Sears.
EEOC v Sears, Roebuck & Co.
Nos. 99-3734 & 99-4037 (7th Cir. 2000) 38 pps. **$45.00**
Addendum 15 pps. **$25.00**

AB (Phelan for NELA) Brief *Amicus Curiae* In Support Of Petitioners On Writ Of Certiorari From 10th Circuit
The ADA is a remedial statute which must be construed to effectuate its purpose. Some courts have interpreted the term "disability" by ruling that an individual's use of mitigating measures should be taken into consideration when determining whether an individual is covered under the ADA. However, ten circuits have rejected that position. This Court should embrace the views of the overwhelming number of courts. The ADA's definition of "disability" was derived from the definition of "handicapped individual" under the Rehabilitation Act, which has routinely excluded consideration of mitigating measures. In addition, both the EEOC and the legislative history of the ADA, state that mitigating measures should not be considered when determining whether an individual is substantially limited in a major life activity and therefore covered under the ADA. Another interpretation would be inconsistent with the statute's broad remedial purpose.
Sutton and Hinton v. United Air Lines, Inc.
No. 97-1943 (U.S. Supreme Ct. 1998) 31pps. **$45.00**

AB (Waxman for EEOC) Brief *Amicus Curiae* In Support Of Petitioner On Writ Of Certiorari From 10th Circuit
There is no dispute that plaintiff has severe hypertension that if left unmedicated it substantially limits all or most of his major life activities. He has an actual disability. The fact that he takes medication to relieve his condition may be relevant for other reason, such as whether he is qualified to perform his job, but it has no relevance in the threshold inquiry as to whether he has a disability. Both Congress' intent and agencies entrusted with the enforcement of Title I indicate that mitigating measures should not be taken into account in assessing the existence of a disability. The court of appeals erred in holding that the plaintiff was not "regarded as" disabled under the 3rd prong of the ADA definition of "disability." Plaintiff was told he was fired because his blood pressure was too high to satisfy a federal requirement. If that were correct, that should establish that plaintiff, because of his hypertension, was substantially limited in the major life activity of working. Thus, defendant "regarded" plaintiff as substantially limited in working, satisfying the statutory definition of being "regarded as" disabled. The court of appeals holding should be reversed.
Murphy v. United Parcel Serv., Inc.
No. 97-1992 (U.S. Supreme Ct. 1998) 37pps. **$45.00**

AB (Phelan for NELA) Brief A*micus Curiae* In Support Of Petitioner On Writ Of Certiorari From 10th Circuit
Mitigating measures should not be considered when an individual has a disability under the first prong of the ADA's definition of "disability." Both the ADA's legislative history and the agencies charged with implementation demonstrate and guide that mitigating measures should not be considered when determining whether an individual has a disability

and whether an impairment substantially limits a major life activity. Excluding the consideration of mitigating measures is consistent with the statute's broad remedial purpose and therefore this Court should reverse and remand this case.
Murphy v. United Parcel Serv., Inc.
No. 97-1992 (U.S. Supreme Ct. 1998) 30pps. **$35.00**

PB (Lowry) On Writ Of Certiorari From 10th Circuit
Plaintiff's severe hypertension either substantially limited one or more of his life activities, or Defendant "regarded" him as disabled. The ADA's "disability" determination should be made without consideration of mitigating measures. The ADA's structure and legislative history confirm that the definition of "disability" is inclusive and should be made without mitigating measures. Also, agencies of Congress expressly charged with implementing Title I, such as the EEOC, require that the "substantially limits" assessment be made without consideration of mitigating measures. Defendant fired Plaintiff because they "regarded" him as disabled. Weather that view was based on misperceptions of the medical risk or on a legally justified belief that Plaintiff's blood pressure was too high to qualify him for a DOT health card, does not matter in making the threshold "disability" determination. This Court should reverse the judgment and remand the case.

Murphy v. United Parcel Serv., Inc.
No. 97-1992 (U.S. Supreme Court 1998) 48pps. **$55.00**

AB (Friedman for EEOC) Brief Of The Equal Employment Opportunity Commission As *Amicus Curiae* In Support Of Plaintiff-Appellant Seeking Reversal
The district court erred in finding that plaintiff, whose back injury limits his work, did not have a disability under the ADA.
The district court also erred in concluding that defendants did not regard plaintiff as having a disability.
Snyder v. Fry's Food Stores of Arizona,
No. 98-16752 (9th Cir. 1999) 37pps. **$45.00**

AB (Banks for EEOC) Appeal From D.C. Utah
The district court erred in finding that Title I of the ADA does not extend to claims for fringe benefits discrimination by disabled individuals who, while no longer able to work, qualify for benefits based on their former employment. The court also erred in ruling that the Plan's distinction between a physical disability and mental disability is not "disability" based discrimination.
Kimber v. Thiokol Corp. et al.
No. 98-4106 (10th Cir. 1998) 25pps. **$35.00**

AB (Sloan for EEOC) Appeal From D.C., N.D. California
Plaintiff is a "qualified individual with a disability" within the meaning of the ADA. Defendant violated the ADA by failing to reasonably accommodate her disability of repetitive stress injuries. The Court erred in granting summary judgment.
Martin v. Lachute Martin
No. 98-15809 (9th Cir. 1998) 46pps.**$55.00**

PB (Wall) Brief For Petitioner On Writ Of Certiorari From 5th Circuit
Application for, or receipt of, Social Security disability insurance benefits does not create a rebuttable presumption that the applicant is judicially estopped from asserting that she is "a qualified individual with a disability" under the ADA. The statements made on petitioner's disability application are not inconsistent with her position in her ADA claim, as they were made in a forum which does not consider the effect that reasonable workplace accommodation would have on the ability to work. The Fifth Circuit disregarded the fact that reasonable job accommodation is not an issue for the SSA and bears no relevance on their inquiry into petitioner's disabled status. The weight of the statements made in connection with an application for disability benefits should be no different than the weight given to any other evidence. The court should remand petitioner's case.
Cleveland v. Policy Management Systems Corp., et al.

No. 97-1008 (U.S. Supreme Ct. 1997) 54pps. **$65.00**
Also available: EEOC's AB in Support of Petitioner, making similar arguments. 38pps. **$45.00**
Also available: NELA's AB in Support of Petitioner, making similar arguments. 37pps. **$45.00**

AB (Epstein for NELA) Brief *Amicus Curiae* In Support Of Petitioner On Writ Of Certiorari From 5th Circuit
Application for and receipt of disability benefits should not create a rebuttable presumption that the employee is judicially estopped from asserting a claim under the ADA. The use of judicial estoppel against such plaintiffs is a pernicious doctrine that deprives persons with disabilities from the intended protection of the ADA and violates due process. There exists other alternative remedies that can be used to adequately protect courts and the system of justice from abuse. By using such alternatives the court need not deny a civil rights claimant the right to a full hearing based on a preclusory doctrine.
Cleveland v. Policy Management Systems Corp., et al.
No. 97-1008 (U.S. Supreme Ct. 1998) 37pps. **$45.00**
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Also available: Petitioner's Brief for Writ of Certiorari, making similar arguments. 54pps. **$65.00**

AB (Gregory for EEOC) Brief *Amicus Curiae* In Support Of Petitioner On Writ Of Certiorari From 5th Circuit
A claim for Social Security disability benefits is not inconsistent with a valid ADA claim. The court erred in adopting a rebuttable presumption that an applicant or recipient of Social Security disability benefits is judicially estopped from asserting she is a "qualified individual with a disability." The use of judicial estoppel to bar an action under the ADA is inconsistent with the statutory scheme and would frustrate the purpose of both the ADA and the Social Security Act.
Cleveland v. Policy Management Systems Corp., et al.
No. 97-1008 (U.S. Supreme Ct. 1998) 38pps. **$45.00**
Also available: Petitioner's Brief for Writ of Certiorari, making similar arguments. 54pps. **$65.00**
Also available: NELA's AB in Support of Petitioner, making similar arguments. 37pps. **$45.00**

PB (Gardenshire) Petition of Writ of Certiorari for the 10th Circuit
Certiorari should be granted to clarify whether a person with epilepsy, whose disability is in a state of mitigation because of medication, is considered handicapped under the Rehabilitation Act of 1973, and whether the federal agency has an affirmative duty to accomodate such a disabled applicant. The district court's refusal to address whether defendant met its duty under the Act is a violation of the Due Process Clause and calls for an exercise of the court's supervisory powers. Courts below have not squarely addressed the issue of whether persons who have mitigated the effects of their impairment are under the protection of the Act. The court should also resolve the conflict in the circuits and find that manifestations (such as poor performance or misconduct) of a disabling medical condition do not abrogate an employer's affirmative duty under the Act to reasonably accommodate a handicapped person seeking employment.
Gresham v. Henderson, Postmaster General, U.S. Postal Serv.
No. 98-1968 (U.S. Supreme Ct. 1998) 63pps. **$75.00**

AB (Waxman for United States) Brief for the United States and the EEOC As *Amicus Curiae* Supporting Respondent
The court of appeals correctly decided that petitioner was not entitled to summary judgment on the ground that respondent was not disabled. Monocular vision is a disability under the ADA because it substantially limits a major life activity, "seeing." Petitioner's argument that respondent was not "regarded as" disabled was not properly before the court, but
the court of appeals correctly held that petitioner's statement that respondent was, *inter alia*, "legally blind" was sufficient to create a material issue of fact concerning whether petitioner regarded respondent as disabled. Petitioner was also not entitled to summary judgment because there were significant issues of material fact concerning whether its binocular vision standard was justified.
Albertson's, Inc. v. Kirkingburg
No. 98-591 (U.S. Supreme Ct. 1999) 38pps. **$45.00**
Also available: Brief Of Justice For All, Et Al. As Amici Curiae In Support of Respondent, making similar arguments.

46pps. **$55.00**
Also available: Brief Amicus Curiae Of The National Employment Lawyers Association In Support of Respondent, making similar arguments. 36pps. **$45.00**

AB (Klein for Gay and Lesbian Advocates, et al.) Brief Of Justice For All, Et Al. As *Amici Curiae* By In Support Of Respondent
Congress defined disability in the ADA to ensure that individuals who are capable of working are not precluded from doing so because of discrimination against them based on a wide range of impairments. The text and purpose of the ADA demonstrate that certain impairments invariably meet the statutory definition of disability. An employer violates the ADA when it acts on inaccurate assumptions or beliefs that an individual's mental or physical characteristic make that individual unqualified or unsafe to retain. Plaintiff was fired because of his vision impairment and not on his skills and abilities to perform the job, indicating defendant regarded Plaintiff as disabled. The court of appeals opinion should be affirmed.
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AB (Phelan) Brief *Amicus Curiae* Of The National Employment Lawyers Association In Support of Respondent
Mitigating measures should not be considered when determining whether an individual has a disability under the first prong of the ADA's definition of disability. This view is supported by the Rehabilitation Act, ADA's legislative history, the EEOC's Interpretive Guidance, and is consistent with the Act's broad remedial purpose. Moreover, mitigating measures are relevant to the "accommodation" side of the mandate, not the "definition" side. Considering mitigating measures and devices in evaluating if an individual is disabled under the ADA will lead to the absurd result of eliminating the first prong of the definition. The ADA should not be interpreted in a manner that would discourage individuals from controlling their impairments. Moreover, in some cases, those who do not control their impairments, such as diabetes, would risk not being considered as "qualified" individuals with a disability under the ADA. Finally, nothing in the ADA's legislative history or EEO regulations provides that certain impairments, such as visual impairments, should not be covered by the first prong, because the measures for treating them are either easy to use or common. This approach confuses the impairment with its treatment.
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AB (Carter for EEOC) Appeal From D.C., N.D. Texas
The district court erred in holding that plaintiff's self accommodation was unreasonable because, in the court's view it conflicted with his medical condition. Plaintiff presented sufficient evidence to reach a jury on whether his proposed accommodation was reasonable, and therefore on whether he is a "qualified individual" with a disability.
Lopez v. Tyler Refrigeration
No. 99-10637 (5th Cir. 1999) 21pps. **$35.00**

AB (Owsley for EEOC) Brief in Support of Plaintiff-Appellant on Appeal from the D.C., D.Kan.
The district court erred by finding that the plaintiff did not submit enough evidence to show that she is limited in a major life activity because the plaintiff's learning and mental disability limits her major life activity of learning. Moreover, the

plaintiff should not have been required to make a showing regarding additional discretionary factors provided for in the regulations in order to get her claim to a jury.

Anderson v. General Motors Corp.

No. 97-3388 (10th Cir. 1998) 24 pps. **$35.00**

Also Available: Addendum Brief, Keck v. New York State Office of Alcoholism and Substance Abuse Services, _F.Supp._, No. 94-1428,1998 WL 379104 (N.D.N.Y. June 24, 1998). 7 pps. **$15.00**

AB (Hedin & Goldberg) Appeal from the D.C., S.D. Ga.

There are three types of perceived disabilities. In this case the lower court did not distinguish between three categories of perceived disability when it analyzed the plaintiff's case. Instead the court imposed a strict requirement upon him that he prove that his employer's perception barred him for a class or broad series of jobs- that was not appropriate for the type of perceived disability he alleged. The strict requirement may be appropriate for actual disability cases and the first two categories of perceived disability, but not the third, where an essential quality is the falsity of the employer's perception.

Cannon v. St. Joseph's Hospital

No. 97-8491 (11th Cir. 1997) 11 pps. **$25.00**.

AB (Klein for Gay and Lesbian Advocates, et al.) Brief Of Justice For All, Et Al. As *Amici Curiae* By In Support Of Respondent

Congress defined disability in the ADA to ensure that individuals who are capable of working are not precluded from doing so because of discrimination against them based on a wide range of impairments. The text and purpose of the ADA demonstrate that certain impairments invariably meet the statutory definition of disability. An employer violates the ADA when it acts on inaccurate assumptions or beliefs that an individual's mental or physical characteristic make that individual unqualified or unsafe to retain. Plaintiff was fired because of his vision impairment and not on his skills and abilities to perform the job, indicating defendant regarded Plaintiff as disabled. The court of appeals opinion should be affirmed.

Albertsons, Inc. v. Kirkingburg

No. 98-591 (U.S. Supreme Ct. 1998) 46pps. **$55.00**

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Albertson's, Inc. v. Kirkingburg

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AB (Carter for EEOC) Appeal From D.C., N.D. Texas
The district court erred in holding that plaintiff's self accommodation was unreasonable because, in the court's view it conflicted with his medical condition. Plaintiff presented sufficient evidence to reach a jury on whether his proposed accommodation was reasonable, and therefore on whether he is a "qualified individual" with a disability.
Lopez v. Tyler Refrigeration
No. 99-10637 (5th Cir. 1999) 21pps. **$35.00**

AB (Owsley for EEOC) Brief in Support of Plaintiff-Appellant on Appeal from the D.C., D.Kan.
The district court erred by finding that the plaintiff did not submit enough evidence to show that she is limited in a major life activity because the plaintiff's learning and mental disability limits her major life activity of learning. Moreover, the plaintiff should not have been required to make a showing regarding additional discretionary factors provided for in the regulations in order to get her claim to a jury.
Anderson v. General Motors Corp.
No. 97-3388 (10th Cir. 1998) 24 pps. **$35.00**
Also Available: Addendum Brief, Keck v. New York State Office of Alcoholism and Substance Abuse Services, _F.Supp._, No. 94-1428,1998 WL 379104 (N.D.N.Y. June 24, 1998). 7 pps. **$15.00**

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Cannon v. St. Joseph's Hospital
No. 97-8491 (11th Cir. 1997) 11 pps. **$25.00**

PB (Moran for EEOC) Brief for Plaintiff-Appellant on Appeal from D.C., D. Mass.
An employer who terminates an individual for conduct related to the individual's disability has terminated the individual "because of her disability" within the meaning of the ADEA. The district court erred in granting summary judgment based on defendant's assertion that Guglielmi could not be trusted to administer medications since she was qualified to perform the essential functions of her job and defendant did not prove by undisputed evidence that she posed a direct threat to safety. There are material issues of fact as to whether defendant could have reasonably accommodated Guglielmi by reassigning her to a behavior therapist position.
EEOC v. Amego. Inc.
No. 96-1837 (1st Cir. 1996) 43 pps. **$55.00**
Also available: Memorandum and Order, EEOC v. Amego. Inc., granting defendant's motion for summary judgment. 18 pps. **$25.00**

AB (Goldstein & Quinto for EEOC) In Support of Plaintiff-Appellant on Appeal from the D.C., E.D., Pa.
The district courts finding that the plaintiff's ulcerative colitis was not a disability within the meaning of the ADA was in err because a disability within the meaning of the ADA should be assessed without regard to the availability of mitigating measures. The district court also erred in concluding that plaintiff was not qualified because he could not perform what the court termed an essential function of his job, that is, the ability to refrain for "befouling himself," which is not a job duty required by defendant. The ADA mentions reassignment as a possible accommodation, and the district court erred in holding that Prudential was under no obligation to transfer plaintiff.
Pangalos v. Prudential Insurance Co.
No. 96-2922 (3rd Cir. 1996) 33 pps. **$35.00**

AB (Bogas for EEOC) In Support of Appellant on Appeal from the D.C., D. Md.

One who has an asymptomatic HIV infection, is an individual with a disability for purposes of the American With Disabilities Act (ADA), because the impairment substantially limits the major like activities of procreation and intimate sexual relations (42 U.S.C.§ 12102(2) (A). Based on the evidence that NationsBank regarded the condition as a disability, the plaintiff raised a question of fact as to whether his infection was a disability under Section 120102(c).
Runnebaum v. NationsBank of Maryland
No. 94-2200 (4th Cir. 1996) 26 pps. **$35.00**

AB (Bruner for EEOC) In Support of Plaintiff-Appellant on Appeal from the D.C., D. Kan.
The district court misapplied the definition of "disability" under the ADA when it held that an individual who has high blood pressure that, when unmedicated, limits his ability to walk, lift, see, climb, perform manual tasks, eat, exercise, and work. Such individual may have a "disability" within the meaning of the ADA, even though his medicated condition does not substantially limit him in any major life activities. Moreover, he district court wrongly concluded that the plaintiff was not a qualified individual with a disability, where his inability to qualify for the mechanic position was based on UPS unjustifiable denial of DOT certification.
Murphy v. UPS, Inc.
No. 96-3380 (10th Cir. 1996) 20 pps. **$25.00**

AB (Bruner for EEOC) In Support of Plaintiff-Appellant on Appeal from the D.C., M.D. La.
The ADA's prohibition against disability-related inquiries protects all job applicants, not just those with disabilities, and therefore an applicant does not have to be a qualified individual with a disability to challenge an employer's violation of that provision. The plain language of § 102(d)(2)(A) protects all applicant's from improper medical inquired during the pre-offer stage.
Armstrong v. Turner Industries, Ltd.
No. 9-30104 (5th Cir. 1996) 17 pps. **$25.00**

PB (Gregory for EEOC) Brief of EEOC as Plaintiff-Appellant on Appeal from D.C., D. N.M.
Summary judgment should be reversed because the district court applied an incorrect standard, ignoring 10th Circuit precedent in*Lowe*, which held that lifting is a major life activity and plaintiff was not legally required to produce specific evidence comparing her ability to lift with the ability of the average person. The Commission's evidence that plaintiff had a permanent physical impairment in her lower back, severely restricting her ability to lift, is sufficient to withstand summary judgment on the issue of whether she had a disability within the meaning of the ADA.
EEOC v. United Airlines, Inc.
No. 98-2076 (10th Cir. 1998) 34 pps. $**45.00**
Also available: Reply Brief of Plaintiff-Appellant on Appeal from D.C., D. N.M., making similar arguments. 24 pps. **$35.00**

AB (Gregory for EEOC) Brief *amicus curiae* on Appeal from D.C., D. Del.
The district court erred in ruling that the ADA's anti-retaliation provision applies only to individuals who meet the ADA's definition of disability. The discriminatory acts of being assigned to"punishment shifts" and singled out for discipline, were sufficient to trigger the protections of the ADA. The district court erred in its legal analysis that plaintiff was not substantially limited in the major life activity of working because his limited education and job skills caused his "employability problems."
Mondzelewski v. Pathmark Stores, Inc. and Supermarkets General Corp.
No. 97-7475 (3rd Cir. 1998) 28 pps. $**35.00**

PB (Suhre for EEOC) Proof Brief of the EEOC as Appellee on Appeal from D.C., E.D. Mich.
The undisputable evidence establishes that Chrysler withdrew its offer to hire plaintiff as an electrician because it regarded his diabetes as substantially limiting his ability to work.
EEOC v. Chrysler Corporation
No. 97-1793 (6th Cir. 1998) 29 pps. $**35. 00**

AB (Danis for EEOC) Brief *amicus curiae* on Appeal from D.C., N.D. Cal.
The district court erred in granting summary judgment regarding the ADA's definition of "qualified individual" and "direct threat." Where plaintiff had a stress-related fainting disorder controllable by taking medical leave, she was a "qualified individual" because the term includes individuals who can work with reasonable accommodations. Regarding "direct threat" the district court applied incorrect legal standards in considering whether plaintiff posed a significant risk of substantial harm and defendant no evidence to support that conclusion. Plaintiff is not precluded, by her application for disability benefits, from asserting that she is a qualified individual within the meaning of the ADA.
Nunes v. Wal-Mart Stores, Inc.
No. 97-17147 (9th Cir. 1998) 38 pps. **$45.00**

AB (Gregory for EEOC) Brief *amicus curiae* on Appeal from D.C., M.D. Penn.
In a "regarded as" case under the ADA, the plaintiff need not be able to perform all functions of the job, including non-essential functions, without accommodation, in order to be considered a "qualified individual with a disability." The panel's ruling is inconsistent with the clearly expressed intent of Congress, as reflected in the text, history, and context of the ADA, and the decision undermines the important policy goals of the ADA.
Deane v. Pocono Medical Center
No. 96-7174 (3rd Cir. 1997) 23 pps. **$35.00**

AB (Sloan for EEOC) Brief *amicus curiae* on Appeal f rom D.C., D. R.I.
Medication and other mitigating measures should not be considered in determining whether an impairment substantially limits major life activities and, thus, constitutes a "disability" within the meaning of the ADA.
Hodgens v. General Dynamics Corp.
No. 97-1704 (1st Cir. 1997) 27 pps. **$35.00**

AB (Sloan for EEOC) Brief *amicus curiae* on Appeal from D.C., S.D. Tex.
In determining whether an impairment substantially limits a major life activity, a court should not consider the effects of medication or other measures which mitigate the severity of the impairment.
Washington v. HCA Health Services of Texas, Inc.
No. 97-20310 (5th Cir. 1997) 27 pps. **$35.00**

AB (Bruner for EEOC) Brief *amicus curiae* in support of Plaintiff-Appellant on Appeal from D.C., D. Kan.
Genuine issues of material fact exist as to whether plaintiff is a qualified individual with a disability because of his high blood pressure. The district court's grant of summary judgment on plaintiff's ADA claim was inappropriate because it used evidence of his medicated state to determine whether he had a disability and substantial evidence established that, without medication, plaintiff could not perform major life activities. Also, the district court erroneously concluded that plaintiff was unqualified based on UPS' denial of DOT certification to plaintiff, where such denial of certification was solely based on his blood pressure readings. The district court incorrectly held that plaintiff's termination did not violate the ADA where it mistakenly believed that DOT regulations barred plaintiff's ADA claims and evidence established that his discharge was directly linked to his high blood pressure.
Murphy v. United Parcel Service
No. 96-3380 (10th Cir. 1997) 26 pps. **$35.00**

AB (Sloan for EEOC) Brief *amicus curiae* on Appeal from D.C., D. Me.
The district court erred in considering the effects of medication and other mitigating measures in determining whether plaintiff's impairment limits one or more major life activities. A diabetic condition, which would result in death if untreated, is a disability within the meaning of the ADA.
Arnold v. United Parcel Service
No. 97-1781 (1st Cir. 1997) 26 pps. **$35.00**

AB (Bruner for EEOC) Brief *amicus curiae* in Support of Plaintiffs-Appellants' Petition for Rehearing with a Suggestion of Rehearing *En Banc* on Appeal from D.C., D. Colo.
The Panel erroneously concluded that plaintiffs were not actually disabled because their vision, corrected by eyeglasses or contact lenses, did not substantially limit a major life activity. The Panel's interpretation of the ADA's definition of disability frustrates clearly expressed Congressional intent that the determination of whether a person has a disability should be made without consideration of mitigating measures, and the Panel's decision conflicts with decisions of other courts of appeals.
Sutton v. United Air Lines, Inc.
No. 96-1481 (10th Cir. 1997) 58 pps. **$65.00**

AB (Feldblum for AIDS Action Council, et al.) In Support of Respondents on Writ of Certiorari to 1st Circuit
People with AIDS and HIV infection are a covered group under the ADA. The definition of "disability" under the Act is intentionally broad to achieve the civil rights purposes of the law. Congress explicitly rejected attempts to exclude people with AIDS and asymptomatic HIV infection from the definition of disability. Asymptomatic HIV infection always meets the statutory definition of "disability" because its inherent characteristics substantially limit several major life activities including reproduction, sexual intimacy, caring for oneself, interaction with others and living life itself.
Bragdon v. Abbott et al.
No. 97-156 (U.S. Supreme Ct. 1998) 56 pps. **$65.00**

AB (Carter for EEOC) Brief in Support of Plaintiff-Appellant on Appeal from the D.C., E.D. Ok.
The district court erred in granting Defendant's motion for judgment as a matter of law. Sleeping and concentrating are major life activities under the ADA because major life activity includes any basic activity that the average person in the general population can perform with little or no difficulty and are significant in our lives and day-to-day existence. Moreover, it erred in holding that, even if sleeping and concentrating are major life activities, Plaintiff did not present enough evidence for a reasonable jury to conclude that she was substantially limited.
Pack v. Kmart Corporation and Nichols
No. 97-7120 (10th Cir. 1998) 26 pps. **$35.00**

AB (Cukjati for NELA) Brief in Support of Plaintiff-Appellant on Appeal from the D.C., W.D. Tex.
Insulin-dependent diabetics are disabled for purposes of the ADA. The conclusion that insulin-dependent diabetics pose a safety risk, and are thus not "otherwise qualified", must be determined by a fact-specific individual assessment and not by generalizations embodied in a blanket exclusion from the police force. Application of a blanket exclusion also precludes a showing that the Defendant attempted to reasonably accommodate the Plaintiff pursuant to the requirements of the ADA.
Kapche v. City of San Antonio
No. 98-50345 (5th Cir. 1998) 20 pps. **$25.00**

AB (Gregory for EEOC) Brief in Support of Plaintiff-Appellant on Appeal from the D.C., D. Ore.
Insulin dependent diabetes is a disability under the ADA because the determination must be made without regard to mitigating measures. The district court erred in contradicting 9th Circuit precedent on the issue, *Holihan v. Lucky Stores, Inc.*, EEOC regulations, and congressional intent.
Graham v. Connie's Incorporated
No. 98-35242 (9th Cir. 1998) 30 pps. **$35.00**

PB (Suhre for EEOC) Final brief of Plaintiff-Appellee on Appeal from the D.C., E.D. Mich.
Plaintiff-Appellee had a "regarded-as impairment" that qualified him as disabled for purposes of the ADA, because defendant-appellant considered him unable to perform a class of jobs or a broad range of jobs within various classes.
EEOC v. Chrysler Corp.
No. 97-1793 (6th Cir. 1998) 29 pps. **$35.00**

AB (McKnight for NELA) Brief in Support of Plaintiff-Appellee/ Cross-Appellant on Appeal from the D.C., E.D. La.
The employer both discriminated against the plaintiff and expressed its (erroneous) belief in the plaintiff's impairment by restricting his duties, via the ultimate restriction of firing him. If the employer's erroneous belief was shared by other employers, the plaintiff would have been excluded from a class of jobs, thus, substantially limiting him in the major life activity of working.
Ferrier v. Raytheon Corporation and Raytheon Aerospace Company
No. 98-30163 (5th Cir. 1998) 23 pps. **$35.00**

AB (Clark for EEOC) Appeal of Judgment by D.C., D. R.I.
Whether obesity is a disability under the Rehabilitation Act or the ADA must be decided on a case by case basis. Morbid obesity is a "physical impairment" under Section 504 of the Rehabilitation Act. Whether this impairment "substantially limits one or more major life activities" under Section 504 depends on the extent and duration of the condition.
Cook v. State of Rhode Island
No. 93-1093 (1st Cir. 1993) 68 pps. **$75.00**

AB (Coleman for EEOC) In Support of Plaintiff-Appellant
Because plaintiff qualifies to receive long-term disability benefits, she is a "qualified individual with a disability" under Title I of the ADA for purposes of challenging those benefits. Defendant may be a "covered entity" under Title I of the ADA because it administers co-defendant's long-term disability benefits plan.
Parker v. Metropolitan Life Ins. Co.
No. 95-5269 (D.C., W.D. Tenn. 1995) 22 pps. **$35.00**

PB (Moran for EEOC) Appeal from D.C., N.D. Cal.
An individual with a disability, who is unable to work for a limited time, may still be "a qualified individual with a disability" under the ADA, if a leave of absence would allow him to perform the essential functions of his job within a reasonable period of time. Employers could easily evade the prohibitions of the ADA if the courts follow defendants' argument that "... a person who can not perform the essential functions of his job, even for a brief period, is not a 'qualified individual with a disability' and can not complain under the ADA of any adverse action taken during the time he was unable to do his job."
Sanders v. Arneson Products, Inc.
No. 95-15349 (9th Cir. 1995) 25 pps. **$35.00**

AB (Suhre for EEOC) In Support of Plaintiff-Appellant
The district court erred in limiting its analysis entirely to whether plaintiff's neurological condition significantly limited her ability to work, thereby overlooking evidence that the condition significantly limited other major life activities, notably lifting.
Lowe v. Angelo's Italian Foods, Inc.
No. 95-3064 (10th Cir. 1995) 15 pps. **$25.00**

AB (Bernstein for EEOC) In Support of Plaintiff-Appellant
Uncontroverted medical evidence that plaintiff could not survive without daily hormone replacement therapy, along with testimony that she experienced extreme symptoms before taking the medicine were sufficient evidence to establish that her hypothyroidism is a disability under the ADA.
Ferguson v. Western Carolina Regional Sewer Authority
No. 96-1277 (4th Cir. 1996) 30 pps. **$35.00**

AB (Gregory for EEOC) In Support of Plaintiff-Appellant
The record shows genuine issues of material fact that preclude summary judgment. Plaintiff can establish she has a "disability" under the ADA without showing she is "generally foreclosed" from comparable employment if she can show her impairment substantially limits a "major life activity" other than "working." The district court erred in applying the

McDonnell Douglas standard to plaintiff's claim that she was denied reasonable accommodation for her disability and unless it can show undue hardship, an employer must provide a reasonable accommodation (including reassignment to a vacant position) to an employee's disability even if the accommodation is not "obviously reasonable."
Williams v. Avnet, Inc.
No. 96-1072 (4th Cir. 1996) 38 pps. **$45.00**

AB (Bernstein for EEOC) In Support of Petition for Rehearing on Appeal from D.C., N.D. Tex.
The court misinterpreted the ADA definition of disability and EEOC regulations and guidance in holding that plaintiff's uninterrupted work attendance and adequate job performance during months of severe discomfort and anxiety caused by her breast cancer did not constitute a "disability" within ADA coverage.
Ellison v. Software Spectrum, Inc.
No. 95-10704 (5th Cir. 1996) 23 pps. **$35.00**

AB (Offen-Brown for EEOC) In Support of Plaintiff-Appellant
The trial court erred in granting summary judgment because there was genuine issues of fact regarding whether plaintiff was substantially limited in a major life activity and whether the employer regarded him as having a substantially limiting impairment thus qualifying plaintiff as having a disability under the ADA. Plaintiff had substantial problems with his hearing unless he was wearing a hearing aid.
Deforrest v. Stanley Smith Security, Inc.
No. A072441 (Cal. Ct. of Appeal, 1st District 1996) 22 pps. **$35.00**

PB (Marcosson for EEOC) Reply Brief on Appeal from D.C., N.D. Ill.
The court erred in dismissing the complaint which sought a preliminary injunction barring defendants from terminating long term disability benefits of plaintiff pending the completion of the EEOC proceedings on her charge of disability discrimination. Plaintiff is still considered a qualified individual with a disability even though she receives long term disability benefits.
EEOC v. CNA Insurance Co., et al.
No. 96-1304 (7th Cir. 1996) 16 pps. **$25.00**

PB (Moran for EEOC) Brief as Appellant
An employer violates the ADA if it fires a qualified individual with a disability because of the specific attributes of his disability. Specifically, the court erred in granting summary judgment to defendant who fired plaintiff because of seizures due to his epilepsy. The court's attempt to separate a disability from its necessary and inevitable consequences in opposed to both the language and purpose of the ADA.
EEOC v. Kinney Shoe Corp.
Nos. 95-1555 & 95-1556 (4th Cir. 1996) 42 pps. **$55.00**

PB (Fischer) Opposition to Motion for Summary Judgment
The motion for summary judgment should be denied because plaintiffs were perceived as individuals with disabilities under the ADA entitled to reasonable accommodation due to their severe obesity and/or increased heart rate after exercise. They should not have been terminated due to one doctor's determination they were disqualified from being school bus drivers.
Henderson, et al. v. Durham Transportation
No. 9:95CV168 (D.C., E.D. Tex. 1996) 30 pps. **$35.00**

PB (Marcosson for EEOC) Brief as Appellant
Under the ADA, a person who is qualified to receive benefits under a disability benefit plan, but who is not capable of performing the job held before becoming unable to work, is a "qualified individual with a disability" with respect to the disability benefit plan. It is irrelevant whether the employee is able to hold her previous position. She can still challenge discrimination in disability benefits.

EEOC v. CNA Insurance Co., et al.
No. 96-1304 (7th Cir. 1996) 63 pps. **$75.00**

AB (Marcosson for EEOC) In Support of Plaintiff-Appellant
The plaintiff's challenge to the impending termination of his benefits pursuant to defendant's long term disability plan is ripe for adjudication. A person who is qualified to receive long-term disability leave, but is not capable of performing the functions of the job held previously to becoming unable to work, is a "qualified individual with a disability" under the ADA.
Leonard F. v. Israel Discount Bank of New York
No. 95-6420 (2nd Cir. 1996) 28 pps. **$35.00**

PB (Moran for EEOC) Reply Brief of EEOC as Appellant
The district court did not hold plaintiff was unqualified for his job as a matter of law and the court misread this court's decision in *Tyndall*. Material factual disputes exist over whether plaintiff was qualified for his job. The district court properly held that plaintiff did not pose a direct threat to the health or safety of others or to himself. There is no evidence that plaintiff made any affirmative representations to the Social Security Administration that he was totally disabled.
EEOC v. Kinney Shoe Corp.
Nos. 95-1555 & 95-1556 (4th Cir. 1996) 29 pps. **$35.00**

ADA - MAJOR LIFE ACTIVITIES

AB (Dunaway for AARP and NELA) Brief In Support of Appellant
Under *Sutton v. United Airlines, Inc.*, 119 S.Ct. 2139, whether an individual is disabled in the major life activity of working must be determined on a case-by-case basis. Plaintiff's evidence that he suffered from a permanent back impairment, along with evidence that he had a limited education, a lack of training and skills, and a history of performing unskilled, heavy labor jobs, was sufficient for a jury to find that he was substantially limited in his ability to work.
Duncan v. Washington Metropolitan Transit Authority
No. 99-7073 (D.C. Cir. 2000) 17 pps. **$25.00**

PB (Carter for EEOC) Appeal from N.D. Ill.
The district court erred in granting summary judgment to Sears because a reasonable jury could have found that plaintiff was disabled under the ADA and that Sears had failed to reasonably accommodate her, resulting in her constructive discharge. A rational jury could have found that plaintiff was substantially limited in the major life activity of walking even though she used a cane because even with the assistance of this mitigating measure, plaintiff could not walk more than one city block without having her entire leg go numb. Furthermore, the testimony of defendant's employees that plaintiff's job performance was satisfactory established that plaintiff was a qualified individual. Plaintiff put Sears on notice of her disability and Sears repeatedly failed to accommodate her. This made the conditions of work so intolerable that a reasonable person would have been compelled to resign. Because the Seventh Circuit has previously noted that a constructive discharge claim "would seem to arise under the general prohibition against discrimination with respect to terms or conditions of employment," the court should reverse the district court's decision to award summary judgment to Sears.
EEOC v Sears, Roebuck & Co.
Nos. 99-3734 & 99-4037 (7th Cir. 2000) 38 pps. **$45.00**
Addendum 15 pps. **$25.00**

AB (Carter for EEOC) In Support Of The Plaintiff-Appellant's Petition For Rehearing And Suggestion For Rehearing *En Banc*
Concentrating is a major life activity under the ADA following the Supreme Court's reasoning in *Bragdon v. Abbott*, 118 S. Ct. 2196 (1998). Plaintiff presented the jury in this case with at least as much evidence as was deemed

sufficient in *Lowe v. Angelo's Italian Foods*, 87 F.3d 1170 (10th Cir. 1996). It was error for the panel to hold that plaintiff was required to present evidence outlining the average person's ability to sleep.
Pack v. Kmart Corp.
No. 97-7120 (10th Cir. 1999) 19pps. **$25.00**

ADA - REASONABLE ACCOMMODATION

AB (Carter for EEOC) Appeal from N.D. Ill. In Support Of The Plaintiff's Petition For Rehearing And Rehearing En Banc
Defendant was not entitled to prevail as a matter of law notwithstanding the jury's decision to award punitive damages to plaintiff. *Kolstad v. American Dental Association*, 527 U.S. 526 (1999) does not create such a high standard of proof that it requires a plaintiff to show that her employer discriminated with the subjective understanding that its actions might violate federal law. Under the Civil Rights Act of 1991 a plaintiff may recover punitive damages where defendant engaged in a discriminatory practice with malice or reckless indifference. Reckless indifference may be shown with evidence that the employer had knowledge of facts that would have placed a reasonable person on notice of the risk. Thus, an employer's subjective belief that it was acting within the confines of the law does not preclude an award of punitive damages because a jury may find that a reasonable employer would have known that its policies might violate the law.
Gile v. United Airlines, Inc.
No. 99-2509 (7th Cir. 2000) 18 pps. **$25.00**
Addendum 8 pps. **$15.00**

PB (Bernstein for EEOC) On Appeal from the U.S. D.C., N.D., Illinois
The evidence, viewed most favorably to the EEOC, would permit a jury to find that defendant violated the ADA by offering plaintiff a job she could not perform effectively, at a reduced wage, and refusing to reassign her to a vacant entry level clerical job, comparable in pay and status. Defendant's reassignment of Plaintiff to her previous job, which she could only perform with one arm, diminished her employment opportunity and status, and therefore was not a reasonable accommodation within the meaning of the ADA. The District Court erred in finding, as a matter of law, that all of the Defendant's office jobs were of higher grade and thus outside the scope of defendant's duty under the ADA. Defendant's refusal to reassign Plaintiff to an equivalent vacant office job to accommodate her physical limitations violated the ADA.
EEOC v. Humiston-Keeling, INC. ,Cardinal Health, INC, and Whitmore Distribution Corp.
No. 99-3281 (7th Cir. 1999) 52 pps. **$65.00**
Also Available: Appendix to brief including exhibits - 50 pps. **$55.00**

AB (Gregory for EEOC) Supplemental Brief of EEOC As Amicus Curiae In Support Of The Petition For Rehearing
Under the ADA an employer must reassign an employee with a disability to a vacant position for which he is qualified when reassignment is necessary to accommodate his disability and will not cause the employer undue hardship. An employer's failure to accommodate a qualified individual with a disability is a form of discrimination expressly prohibited by the ADA. The ADA requires an employer to make a reasonable accommodation, short of undue hardship to the known disabilities of its employees. The statutory definition of "reasonable accommodation" includes "reassignment to a vacant position." The ADA requires employers to provide these accommodations to individuals with disabilities, including reassignment, even though they are not available to others.
Barnett v. U.S. Air, Inc.
No. 96-16669 (9th Cir. 2000) 12 pps. **$25.00**

AB (Starr for EEOC) In Support Of Petition For Rehearing With Suggestion For Rehearing *En Banc*
The court in *Buckingham v. U.S. Postal Serv.*, 998 F.2d 735, 740 (9th Cir. 1993), held that "plaintiffs must only provide evidence sufficient to make 'at least a facial showing that reasonable accommodation is possible.'" Congress intended that the burden of proof to show that a reasonable accommodation poses undue hardship on the employer does not rest

with the employee, but on the employer. The panel majority wrongly decided that an employer never has a duty to engage in an interactive process with any employee who requests a reasonable accommodation.
Barnett v. U.S. Air, Inc.
No. 96-16669 (9th Cir. 1998) 20pps. **$25.00**

AB (Danis for EEOC) In Support Of Appellant And In Favor Of Reversal
The district court erred in assigning the plaintiff the burden of proving that plaintiff's requested reasonable accommodation did not pose an undue hardship on defendant. A defendant cannot prevail on summary judgment based on undue hardship without presenting specific evidence of hardship. The district court failed to recognize that an accommodation requiring modification of an existing workplace policy is reasonable, like a flexible leave policy, if it is plausible that the leave would allow the employee to return to work.
Ayala v. Lederle Parentals, Inc., et al.
No. 98-2291 (1st Cir. 1999) 37pps. **$45.00** Appendix (Court Decision, Watkins v. J & S Oil Co., No. 98-1002, 98-1003, 1998 WL 895921 (1st Cir. Dec. 30. 1998) 6pps. **$15.00**

AB (Coleman for EEOC) In Support Of Appellee And For Affirmance
The district court properly instructed the jury that plaintiff could win only if a reasonable accommodation would have allowed him to perform the essential functions of his job. Plaintiff was "disabled" within the meaning of the Americans with Disabilities Act (ADA) because he had a record of advanced cancer. Involuntary leave from the workplace cannot be a reasonable accommodation for an employee who is willing and able to return to work. The ADA does list reallocation of marginal job functions as a form of reasonable accommodation. The district court acted within its discretion in not instructing the jury about the medical inquiry provisions of the ADA when this case was not about the legality of a pre-employment medical exam, but was, instead, about the defendant's pretextual use of a functional capacity test to fire the plaintiff because of his cancer.
Bizelli v. Parker Amchem and Henkel Corp.
No. 98-3560 (8th Cir. 1999) 38pps. **$45.00**

PB (Zimberlin) Brief Of The Plaintiff-Appellant
Accommodation provided by the Commission on Human Rights and Opportunities was inadequate because it failed to provide an opportunity for plaintiff, a person with a disability, to achieve the same level of performance or to enjoy the benefits and privileges equal to those of a similarly situated, non-disabled individual. Reasonable accommodations for plaintiff, who was diagnosed with Chronic Fatigue Syndrome, meant being allowed a work site accommodation closer to home, to work past 4:30, start before 11:30 when able, and keep track of her time the same way as non-disabled employees.
Ezikovich v. Comm'n On Human Rights And Opportunities, et al.
No. A.C. 18470 (Conn. App. Ct. 1998) 39pps **$45.00** Appendix 27pps **$35.00**
Also Available: Reply Brief of the Plaintiff-Appellant, making similar arguments. 16pps **$25.00** *Appendix 15pps* **$25.00**

PB (Zimberlin) Reply Brief Of The Plaintiff-Appellant
Under the ADA, it is the employer's burden conduct an adequate investigation, which it failed to do. Accommodations by the employer must be effective to be reasonable. In this case, the employer changed the accommodations by eliminating plaintiff's job location, by limiting her hours to a part time schedule, and by denying her the use of flexible unpaid leave. Under *Ansonia Bd. of Education v. Philbrook*, unpaid leave constitutes a reasonable accommodation, and the court's failure to apply *Ansonia* to this case, does not constitute harmless error as Defendants claim.
Ezikovich v. Comm'n On Human Rights And Opportunities, et al.
No. A.C. 18470 (Conn. App. Ct. 1998) 16pps **$25.00** Appendix 15pps **$25.00**
Also Available: Brief of the Plaintiff-Appellant, making similar arguments. 39pps **$45.00** *Appendix. 27pps* **$35.00**

AB (Suhre for EEOC) Brief Of The Equal Employment Opportunity Commission As*Amicus Curiae* In Support Of Plaintiff-Appellant
Plaintiff could establish that defendant violated the ADA by failing to provide him with a reasonable accommodation which
would not have caused the company undue hardship. The company could have accommodated plaintiff by allowing him to
return to work part-time, three days a week, while continuing to work at home after his injury. Plaintiff's statements in his applications to the Social Security Administration, that he was unable to work, and his statement to UNUM (company's long term disability benefits insurer) that he was completely incapacitated are not inconsistent with his claim in his ADA action that he was qualified to perform his job with or without reasonable accommodation. The reasoning behind this is that plaintiff's statement to the Social Security Administration was made in the narrow context of the legal standards as applied to that agency. Likewise, the statement made to UNUM was made in the context of a definition of disability that does not consider whether an individual can work when provided with reasonable accommodations.
Parker v. Sony Pictures Entertainment, Inc., Columbia Pictures Indus., & Sony Corp. of America, Inc.
No. 99-7104 (L) (2nd Cir. 1999) 30pps. **$35.00**

PB (Gardenshire) Petition of Writ of Certiorari for the 10th Circuit
Certiorari should be granted to clarify whether a person with epilepsy, whose disability is in a state of mitigation because of medication, is considered handicapped under the Rehabilitation Act of 1973, and whether the federal agency has an affirmative duty to accommodate such a disabled applicant. The district court's refusal to address whether defendant met its duty under the Act is a violation of the Due Process Clause and calls for an exercise of the court's supervisory powers. Courts below have not squarely addressed the issue of whether persons who have mitigated the effects of their impairment are under the protection of the Act. The court should also resolve the conflict in the circuits and find that manifestations (such as poor performance or misconduct) of a disabling medical condition do not abrogate an employer's affirmative duty under the Act to reasonably accommodate a handicapped person seeking employment.
Gresham v. Henderson, Postmaster General, U.S. Postal Serv.
No. 98-1968 (U.S. Supreme Ct. 1998) 63pps. **$75.00**

PB (Moran for EEOC) Brief for Plaintiff-Appellant on Appeal from D.C., D. Mass.
An employer who terminates an individual for conduct related to the individual's disability has terminated the individual "because of her disability" within the meaning of the ADEA. The district court erred in granting summary judgment based on defendant's assertion that Guglielmi could not be trusted to administer medications since she was qualified to perform the essential functions of her job and defendant did not prove by undisputed evidence that she posed a direct threat to safety. There are material issues of fact as to whether defendant could have reasonably accommodated Guglielmi by reassigning her to a behavior therapist position.
EEOC v. Amego. Inc.
No. 96-1837 (1st Cir. 1996) 43 pps. **$55.00**
Also available: Memorandum and Order, EEOC v. Amego. Inc., granting defendant's motion for summary judgment. 18 pps. **$25.00**

AB (Sloan for EEOC) In Support of Plaintiff-Appellant on Appeal from D.D.C.
The district court erred in concluding that a collective bargaining agreement relieved the defendant of its obligation to reasonably accommodate plaintiff's disability based on a misreading of the agreement that reassignment would violate the collectively bargained job posting and selection procedures. The collective bargaining agreement also gave the defendant "sole discretion" to reassign handicapped employees where such assignment is feasible. Thus, the defendant was permitted to reassign plaintiff without regard to the posting and selection procedures and failure to reassign an employee without a showing of undue hardship is an abuse of discretion.
Aka v. Washington Hospital Center
No. 96-7089 (D.C. Cir. 1996) 21 pps. **$35.00**

AB (Goldstein for EEOC) In Support of Plaintiff-Appellant on Appeal from the D.C., D. Ore.
Applying for disability benefits does not preclude a plaintiff as a matter of law from establishing that she is a "qualified individual" under the ADEA. In addition, summary judgement should not have been granted to the bank because there was evidence that plaintiff was qualified for one of her former position.
Miller v. U.S. Bancorp
No. 96-35678 (9th Cir. 1996) 33 pps. **$45.00**

AB (Sloan for EEOC) Appeal from D.C., N.D. Ala.
The district court erroneously concluded that Taylor's assertion in this action that he is qualified to work as a bagger at Food World is inconsistent with his application for disability benefits, which the court viewed as an "implicit" representation that he could not work. Under the doctrine of judicial estoppel, the district court erred in holding that Taylor is barred form maintaining a suit under the ADA. A reasonable jury could find that the defendant violated the ADA when it fired Taylor and that Food World could have reasonably accommodated Taylor's disability-related mannerism (autistic).
Taylor v. Food World, Inc.
No. 97-6017 (11th Cir. 1997) 79 pps. **$85.00**

AB (Moran for EEOC) Reply Brief in support of Plaintiff-Appellant on Appeal from D.C., D. Mass.
When defendant terminated an employee for suicide attempts caused by her depression and bulimia, it terminated her because of her disability, thus the district court erred in holding that an employee was not terminated because of her disabilities as a matter of law
The ADA reaches termination decisions based not only on an individual's underlying disability, but also on the consequences of that disability. Material issues of fact preclude summary judgement on whether defendant could had reasonably accommodated employee by reassigning her to a behavior therapist position.
EEOC v. Amego, Inc.
No. 96-1837 (1st Cir. 1996) 23 pps. **$35.00**

AB (Bernstein for EEOC) On Appeal from the D.C., N.D. Ill.
The ADA prohibits an employer from discharging a qualified individual with a disability in a RIF because of the persons medical restrictions or need for accommodation, unless the layoff selection criteria are job-related and consistent with business necessity and the person's limitations cannot reasonably be accommodated without undue hardship.
Matthews v. Commonwealth Edison
No. 96-3665 (7th Cir. 1996) 20 pps. **$25.00**

AB (Goldstein & Quinto for EEOC) In Support of Plaintiff-Appellant on Appeal from the D.C., E.D. Pa.
The district courts finding that the Plaintiff's ulcerative colitis was not a disability withing the meaning of the ADA was in err because a disability within the meaning of the ADA should be assessed without regard to the availability of mitigating measures. The district court also erred in concluding that Plaintiff was not qualified because he could not perform what the court termed an essential function of his job, that is, the ability to refrain for "befouling himself", which is not a job duty required by defendant. The ADA mentions reassignment as a possible accommodation, and the district court erred in holding that Prudential was under no obligation to transfer plaintiff.
Pangalos v. Prudential Insurance Co.
No. 96-2922 (3rd Cir. 1996) 33 pps. **$35.00**

AB (Gregory for EEOC) Brief in Support of Plaintiff-Appellant's Petition for Rehearing with Suggestion for Rehearing *En Banc* on Appeal from D.C., D. Kan.
Rehearing should be granted because the panel misconstrued the Commission's Interpretive Guidance on the ADA, which advises that reassignment should generally be considered when the employee is unable to perform her job in her current position, even with reasonable accommodations. The panel also noted a distinction between the Commission's position on reassignments under the Rehabilitation Act and the ADA, which does not exist. Furthermore, the panel's

decision is inconsistent with *Milton v. Scrivner, Inc.* and *White v. York Int'l Corp*, which assume that the ADA's reassignment accommodation extends to circumstances in which an individual is no longer able to perform the essential functions of her current position. *Woodman v. Runyon*, decided under the Rehabilitation Act, also reenforces this view. The panels' interpretation of the ADA is without credible legal support and conflicts with text and history of the ADA.
Smith v. Midland Brake, Inc.
No. 96-3018 (10th Cir. 1998) 36 pps. $**45.00**

AB (Gregory for EEOC) Brief in Support of Plaintiff-Appellant on Rehearing *En Banc* on Appeal from D.C. D. Kansas
The ADA should be construed as obligating an employer, in the absence of undue hardship, to reassign an employee to a vacant position for which she is qualified when she becomes unable, due to a disability, to perform the essential functions of the current job with or without reasonable accommodation. A broad reading of the reassignment accommodation is consistent with the text, history, and purpose of the ADA. The federal regulation issued under the Rehabilitation Act does not compel a narrow reading of the ADA's reassignment accommodation. The Commission has consistently interpreted the ADA as imposing a duty of reassignment in those cases in which an existing employee is unable to perform the essential functions of his or her job.
Smith v. Midland Brake, Inc.
No. 96-3018 (10th Cir. 1998) 25 pps. $**35.00**

AB (Sloan for EEOC) Response to Appellee's Petition for Rehearing and Suggestion for Rehearing *En Banc*
There is no reason to reconsider the court's former decision holding that the Hospital violated the ADA by failing to reassign plaintiff to a vacant position for which he was qualified when he became unable, due to a disability, to continue working as an orderly. The Hospital's argument, that the proposed accommodation would conflict with a collective bargaining agreement, was properly rejected because the collective bargaining agreement authorized the hospital to reassign disabled employees, consistent with its duties under the ADA, and in the event of a conflict, the duty to reassign would depend on whether the accommodation was reasonable or would result in undue hardship.
Aka v. Washington Hospital Center
No. 96-7089 (D.C. Cir. 1997) 15 pps. **$25.00**

AB (Cukjati for NELA) Brief in Support of Plaintiff-Appellant on Appeal from the D.C., W.D. Tex.
Insulin-dependent diabetics are disabled for purposes of the ADA. The conclusion that insulin-dependent diabetics pose a safety risk, and are thus not "otherwise qualified," must be determined by a fact-specific individual assessment and not by generalizations embodied in a blanket exclusion from the police force. Application of a blanket exclusion also precludes a showing that the defendant attempted to reasonably accommodate the plaintiff pursuant to the requirements of the ADA.
Kapche v. City of San Antonio
No. 98-50345 (5th Cir. 1998) 20 pps. **$25.00**

AB (Gregory for EEOC) In Support of Plaintiff-Appellant
The district court erred in assigning the ultimate burden of proof to plaintiff and improperly granted summary judgment on plaintiff's claim of reasonable accommodation when plaintiff produced sufficient evidence to meet his threshold burden with respect to accommodation.
Benson v. Northwest Airlines, Inc.
No. 94-2824 (8th Cir. 1994) 26 pps. **$35.00**

AB (Ramshaw for EEOC) In Support of Plaintiff-Appellant
The statements made to defendant by plaintiff's sister and social worker were sufficient to put defendant on notice of plaintiff's disability which required accommodation.
Miller v. National Casualty Co.
No. 95-1001 (8th Cir. 1995) 21 pps. **$35.00**

AB (Dunaway for AARP) In Support of Plaintiff-Appellant on Appeal from D.C., S.D. Ind.
Employers and Unions are prohibited from relying on the collective bargaining agreement (CBA) to automatically deprive a "qualified individual with a disability" of the right to reasonable accommodation. CBA-created seniority rights which automatically "trump" the right of a qualified individual to reasonable accommodation debilitates the essential reasonable accommodation component of the ADA.
Eckles v. Consolidated Rail Corp., et al.
No. 95-2856 (7th Cir. 1995) 25 pps. **$35.00**

AB (Bernstein for EEOC) In Support of Plaintiff-Appellant
A negotiated variance from collectively bargained seniority rules that does not unduly burden other employees may under some circumstances constitute a reasonable accommodation required under the ADA. The district court incorrectly adhered to a *per se* rule. Such a rule applies to Title VII cases and Rehabilitation Act cases, but not ADA cases because the ADA contemplates a broader range of potential accommodations than the Rehabilitation Act. Congress has also indicated a clear intent to depart from the per se rule and has provided sufficient guidance to make a case by case determination whether such a variance would unduly burden other employees
Eckles v. Consolidated Rail Corp., et al.
No. 95-2856 (7th Cir. 1995) 43 pps. **$55.00**

AB (Laden for ELC, Dryovage for CELA, and Feingold for DREDF) In Support of Plaintiff-Respondent
Where an employer knows that an employee is having work-related problems connected to his or her known disability, the employer has a duty to offer reasonable accommodation. Where an employee reasonably requests assistance regarding his or her disability, the employer has a duty to offer reasonable accommodation; no "magic words" are required. The employer's duty to accommodate encompasses the duty to provide available information regarding accommodation options, including options under the employer's policies.
Perrault v. Educational Testing Service
No. A068437 (Cal. Ct. of Appeal, 1st District 1995) 23 pps. **$35.00**

PB (Fischer) Opposition to Motion for Summary Judgment
The motion for summary judgment should be denied because plaintiffs were perceived as individuals with disabilities under the ADA entitled to reasonable accommodation due to their severe obesity and/or increased heart rate after exercise. They should not have been terminated due to one doctor's determination they were disqualified from being school bus drivers.
Henderson, et al. v. Durham Transportation
No. 9:95CV168 (D.C., E.D. Tex. 1996) 30 pps. **$35.00**

PB (Shirk) Pretrial Memo
An employer has a duty to transfer an employee to a vacant position as a form of reasonable accommodation under the ADA. The burden of proving that reasonable accommodation can not be made (e.g. that reassignment is unreasonable) is always on the employer. Medical exams and inquiries are forms of prohibited discrimination under the ADA.
Walker v. City of Austin
No. A-94-CA-610-SC (D.C., W.D. Tex. 1996) 6 pps. **$15.00**

AB (Gregory for EEOC) In Support of Plaintiff-Appellant
The record shows genuine issues of material fact that preclude summary judgment. Plaintiff can establish she has a "disability" under the ADA without showing she is "generally foreclosed" from comparable employment if she can show her impairment substantially limits a "major life activity" other than "working." The district court erred in applying the *McDonnell Douglas* standard to plaintiff's claim that she was denied reasonable accommodation for her disability and unless it can show undue hardship, an employer must provide a reasonable accommodation (including reassignment to a vacant position) to an employee's disability even if the accommodation is not "obviously reasonable."
Williams v. Avnet, Inc.
No. 96-1072 (4th Cir. 1996) 38 pps. **$45.00**

DB (Fogel) Appellant's Brief in Reply to *amicus* Brief by CELA, DREDF, ELC
The defendant's duty to explore reasonable accommodations never arose because plaintiff never asked defendant for an accommodation for his disability (plaintiff must tell the employer that the accommodation is needed for his disability). Even if defendant had such a duty, it discharged it by offering accommodations that would have allowed plaintiff to perform the essential functions of his job. The law requires no more (it does not have to be any certain accommodation).
Perrault v. Educational Testing Service
No. 707306-7 (Cal. Ct. of Appeal, 1st District 1995) 23 pps. **$35.00**

AB (Clark for EEOC) In Support of Plaintiff-Appellant
The district court erred in granting summary judgment for defendant by holding that the allegation in plaintiff's complaint that carpal tunnel syndrome impairs his ability to type defeats his assertion that he can perform the essential functions of his position as medical director. The district court also erred in granting summary judgment by holding that plaintiff's statement that defendant made an accommodation defeats his claim that defendant failed to reasonably accommodate his disability.
Feliberty v. Kemper Corp.
No. 95-1724 (7th Cir. 1995) 34 pps. **$45.00**

ADA - CARPAL TUNNEL SYNDROME

AB (Wheeler for EEOC) In Support of Appellant's Petition for Rehearing and Suggestion for Rehearing En Banc
The panel majority misapplied controlling ADA regulations and ignored compelling evidence when they concluded that the plaintiff's carpal tunnel syndrome does not substantially limit her in working. For insupportable reasons, the panel discounted plaintiff's presentation of expert testimony that she is significantly restricted in her ability to perform any medium or heavy work in that she can not lift 10 pounds.
McKay v. Toyota Motor Manufacturing
No. 95-5617 (6th Cir. 1995) 41 pps. **$55.00**

AB (Coleman for EEOC) In Support of Plaintiff-Appellant
Plaintiff is disabled within the meaning of the ADA because CTS substantially limits her ability to perform manual labor, which is the only type of work that is relevant in this case.
McKay v. Toyota Motor Manufacturing, U.S.A., Inc.
No. 95-5617 (6th Cir. 1995) 23 pps. **$35.00**

AB (Clark for EEOC) In Support of Plaintiff-Appellant
The district court erred in granting summary judgment for defendant by holding that the allegation in plaintiff's complaint that carpal tunnel syndrome impairs his ability to type defeats his assertion that he can perform the essential functions of his position as medical director. The district court also erred in granting summary judgment by holding that plaintiff's statement that defendant made an accommodation defeats his claim that defendant failed to reasonably accommodate his disability.
Feliberty v. Kemper Corp.
No. 95-1724 (7th Cir. 1995) 34 pps. **$45.00**

ADA - JUDICIAL ESTOPPEL

AB (Gregory for EEOC) Amicus Brief Suggesting The Need For Rehearing En Banc
The Panel's decision that plaintiff was precluded from asserting a claim under the ADA because he simultaneously applied for social security disability benefits conflicts with the Supreme Court's decision in *Cleveland*. Under *Cleveland* the differences in statutory standards will be sufficient, in most cases, to avoid any preclusion of an ADA claim, at least at the summary judgment stage. The Panel's heightened "additional rationale" standard is inconsistent with the *Cleveland* decision. Under the holding in *Cleveland* a person may be disabled enough to qualify for receipt of disability

benefits, yet still be able to assert an ADA claim. The claimant need only provide an explanation for the apparent inconsistency. The difference in legal standards will be sufficient in most cases to explain away the apparent inconsistency in positions.
Motley v. New Jersey State Police & State Troopers Fraternal Assoc.
No. 97-5715 (3rd Cir. 2000) 19 pps. **$25.00**

AB (Sloan for EEOC) Appeal from the D.C., D. Kan.
A plaintiff is not precluded as a matter of law, under the doctrine of judicial estoppel, from showing that she was qualified for her job for purposes of establishing a claim under the ADA merely because, after she was terminated, she successfully applied for disability benefits under the Social Security Act.
Lowe v. Angelo's Italian Foods, Inc.
No. 97-3139 (10th Cir. 1996) 40 pps. **$55.00**

AB (Gregory for EEOC) In Support of Plaintiff-Appellee on Appeal from the D.C., D. N.M.
The district court properly refused to apply judicial estoppel to the plaintiff's ADA claim where the plaintiff purportedly certified that he was "totally disabled" in his application for disability benefits under the Social Security Act. In addition, the district court properly ruled that U.S. West is liable for it's failure to provide a reasonable period of unpaid leave to permit the plaintiff to obtain necessary treatment for his disability. Additional unpaid leave for necessary treatment can be a reasonable accommodation.
Rascon v. U.S. West Communication
No. 96-2194 (10th Cir. 1996) 58 pps. **$65.00**

AB (Koslow for AARP) In Support of Plaintiff-Appellant on Appeal from D.C., E.D. Pa.
The district court's holding that persons who qualify for disability benefits because of a total and permanent disability are thereby precluded from suing under the ADA for disability-based discrimination, contravenes the clear purposes of the ADA and undermines the Act's efficacy in guaranteeing equal employment for persons with disabilities.
McNemar v. The Disney Stores, Inc.
No. 95-1590 (3rd Cir. 1996) 19 pps. **$25.00**

AB (Gregory for EEOC) Appeal from D.D.C.
The district court erred in ruling that plaintiff was precluded from maintaining her claim of disability discrimination because of her statements on certain disability benefit applications that she was "totally disabled." The doctrine of judicial estoppel does not apply in this context because it would undermine the enforcement goals of the anti-discrimination statutes without advancing any legitimate interest that might be served by judicial estoppel.
Whitbeck v. Cital Signs, Inc.
No. 96- 7193 (D.C. Cir. 1996) 24 pps. **$25.00**

AB (Gregory for EEOC) Appeal form the D.D.C.
The district court erred in ruling that the plaintiff was precluded as a matter of law from maintaining a claim of unlawful discharge under the ADA because, following his termination the plaintiff applied for and received disability benefits under the SSAD. The SSAD does not take into account the issue of reasonable accommodation in assessing eligibility for disability benefits, meaning that an individual can be considered "disabled" for purposes of receiving social security disability benefits while still able to perform his prior job with a reasonable accommodation.
Swanks v. WMATA
No. 96-7078 (D.C. Cir. 1996) 60 pps. **$65.00**

AB (Danis for EEOC) Brief in Support of Plaintiff-Appellant on Appeal from D.C., N.D. Cal.
Plaintiff is not judicially estopped by virtue of her application for disability benefits from asserting that she is a qualified individual with a disability within the meaning of the ADA. Because SDI does not consider reasonable accommodation, there is no inherent inconsistency between plaintiff's SDI application and her AHA claim. Other evidence in the record

confirms that plaintiff has not taken inconsistent positions. The court should follow the case-by-case summary judgment standard it used in *Kennedy*, rather than judicial estoppel, to determine whether a disability benefits applicant is a "qualified individual." Plaintiff raised a genuine issue of material fact regarding this issue; the district court erred.
Hunt v. Long's Drug Stores
No. 97-17003 (9th Cir. 1998) 61 pps. $**75.00**

AB (Gregory for EEOC) Brief *amicus curiae* on Appeal from D.C., N.D. Tex.
Plaintiff's claims are barred by this court's decision in *Cleveland,* if at all, only if plaintiff had specific factual representations on her social security benefit application that are incompatible with her assertion in this case that she was capable of performing the essential functions of the job with reasonable accommodation. The Social Security Administration, the Commission, and every circuit court to have addressed the issue have rejected the expansive application of judicial estoppel in this statutory context. *Cleveland* is properly read as barring suit under the doctrine of judicial estoppel, if at all, only in those cases where there is a specific factual contradiction between the positions advanced in the statutory contexts. The ADA embraces claims of hostile environment discrimination.
McConathy v. Dr. Pepper/Seven Up Corp.
No. 96-10612 (5th Cir. 1997) 46 pps. **$55.00**

AB (Coleman for EEOC) Brief *amicus curiae* on Appeal from D.C., D. S.C.
The district court did not abuse its discretion in refusing to apply judicial estoppel to bar plaintiff's claim under the ADA. Judicial estoppel only applies where a party's previous statement was successful, but here the Social Security Administration rejected plaintiff's claim that she was totally disabled at the time of her discharge. Judicial estoppel requires that the conflict between a party's previous and current positions, but there is no conflict between plaintiff's assertion of "total disability" under the Social Security Act and her claim that she is a "qualified individual" protected from discrimination under the ADA. The application of judicial estoppel would be bad public policy.
Cathcart v. Flagstar Corp.
No. 97-1977 (4th Cir. 1997) 52 pps. **$65.00**

AB (Gregory for EEOC) Brief *amicus curiae* on Appeal from D.C., N.D. Tex. in Support of Petition for Rehearing
The panel's ruling that an application for, or receipt of, disability benefits presumptively estops an individual from establishing the qualifications element of his or her ADA claim is inconsistent with the decisions of a majority of circuit courts. The panel's expansive application of judicial estoppel is inconsistent with the decisions of this court.
Cleveland v. Policy Management Systems Corp., et al.
No. 96-11247 (5th Cir. 1997) 42 pps. **$55.00**

AB (Waxman, Solicitor General of the United States) Writ of Certiorari to the 5th Circuit
Application for or receipt of Social Security Disability (SSD) benefits may be fully consistent with a valid ADA claim because the determination of SSD eligibility differs in material ways from the "qualified individual with a disability" standard of the ADA and because the two statutes serve disabled individuals in complementary, not conflicting, ways. Therefore, application for or receipt of SSD benefits should not create a presumption that the employee is judicially estopped from asserting a claim under the ADA. Writ of Certiorari should be granted.
Cleveland v. Policy Management Systems Corp., et al.
No. 97-1008 (U.S. Supreme Ct. 1997) 15 pps. **$25.00**

PB (Hornberger) Respondent's Brief in Opposition to Petition for Writ of Certiorari to the Sixth Circuit
The circuit court was correct not to judicially estop Plaintiff's claim because he had received Social Security Disability (SSD) benefits. Writ of Certiorari should not be granted because circuit courts make decisions in light of all the available evidence whether they are applying judicial estoppel or using a traditional summary judgment analysis. Therefore, they will always consider a claimant's sworn assertions on a SSD application, thus, review by the court will not eradicate the need for future case-by-case factual analysis.
Wal-Mart Stores Inc. v. Griffith

No. 97-1991 (U.S. Supreme Ct. 1997) 15 pps. **$25.00**

AB (Gregory for EEOC) Brief in Support of Plaintiff-Appellant on Appeal from the D.C., D. NJ.
Plaintiff's claim of a "permanent and total disability" for purposes of receiving state accidental disability insurance is not *per se* inconsistent with his claim of being a "qualified individual" within the meaning of the ADA. Therefore the district court erred in applying the doctrine of judicial estoppel to the Plaintiff's ADA claim. Furthermore, the court *en banc* should overturn
McNemar v. The Disney Store, Inc., 91 F.3d 610 (3rd Cir. 1996), which the Defendant relies on, because it is inconsistent with the Social Security Administration findings, the rules of most other circuits that have considered the issue and the Supreme Court's position on the issue.
Motley v. The New Jersey State Police and The State Troopers Fraternal Association of New Jersey
No. 97-5715 (3rd Cir. 1998) 52 pps. **$65.00**

AB (Rosenfeld for the United States on behalf of the SSA) Brief in Support of Plaintiff-Appellant on Appeal from the D.D.C.
A claim for SSA disability benefits has enough significant differences from a claim under the ADA that a prior SSA disability benefits claim and award is not a *per se* bar to an ADA claim. The most important significant differences between the two types of claims are: 1) SSA does not factor in potential "reasonable accommodations" that could be made by the employer when making its determinations; 2) SSA may award benefits based solely on a showing that the claimant has a listed impairment without consideration of the claimant's residual functional capacity. However, award and application of SSA disability benefits may be relevant evidence in the ADA case.
Swanks v. Washington Metropolitan Area Transit Authority
No. 96-7078 (D.C. Cir. 1997) 16 pps. **$25.00**

AB (Bernstein for EEOC) Brief in Support of Plaintiff-Appellant on Appeal from D.C., W.D. Ill.
The district court erred in judicially estopping plaintiff's Title VII claim of retaliatory discharge because her receipt of disability benefits was not a judgment, or assertion on her part, that she was unable to return to work. The district court further erred in not applying the continuing violation exception to Title VII's 300-day limitations period, and thus only considering one harassing incident, despite that the plaintiff complains of hostile environment harassment.
Wilson v . Chrysler Motors Corp.
No. 98-1833 (7th Cir. 1998) 25 pps. **$35.00**

AB (Gregory for EEOC) Brief of EEOC in support of Plaintiffs-Appellants on Appeal from D.C., S.D. Fla.
The court erred in applying the doctrine of judicial estoppel to bar plaintiff's claim because there is no inconsistency between the assertion of an ADA claim and the receipt of social security disability benefits, given the different legal standard that apply under the respective statutes. Even if plaintiff had advanced inconsistent positions, she made the prior statement on a benefit application, and not part of a judicial proceeding. Judicial estoppel guards against those who would manipulate the court system through the assertion of inconsistent positions in separate judicial proceedings. The doctrine does not apply to oaths undertaken in administrative filings.
Talavera v. School Board of Palm Beach County, et al.,
No. 96-4756 (11th Cir. 1996) 20 pps. **$25.00**

AB (Sloan for EEOC) Appeal from the D.C., N.D. Ala.
The district court erroneously concluded that Taylor's assertion in this action that he is qualified to work as a bagger at Food World is inconsistent with his application for disability benefits, which the court viewed as an "implicit" representation that he could not work. Under the doctrine of judicial estoppel, the district court erred in holding that Taylor is barred form maintaining a suit under the ADA. A reasonable jury could find that the defendant violated ADA when it fired Taylor and that Food World could have reasonably accommodated Taylor's disability-related mannerism (autism).
Taylor v. Food World, Inc.

No. 97-6017 (11th Cir. 1997) 79 pps. **$85.00**

AB (Gregory for EEOC) In Support of Plaintiff-Appellee on Appeal from the D.C., D. N.M.
The district court properly refused to apply judicial estoppel to the plaintiff's ADA claim where the plaintiff purportedly certified that he was "totally disabled" in his application for disability benefits under the Social Security Act. In addition, the district court properly ruled that U.S. West is liable for its failure to provide a reasonable period of unpaid leave to permit the plaintiff to obtain necessary treatment for his disability. Additional unpaid leave for necessary treatment can be a reasonable accommodation.
Rascon v. U.S. West Communication
No. 96-2194 (10th Cir. 1996) 58 pps. **$65.00**

AB (Ramshaw for EEOC) Appeal from the D.C., E.D. N.Y.
Simons statement in his application for benefits is not a proper predicate for judicial estoppel because it was not made in a judicial proceeding and it is not necessarily inconsistent with his assertion in his action that he was qualified to work for Safelite as a glass installer. Estopping plaintiffs from suing for employment discrimination of the basis of statements in application for disability benefits is against the public interest since it would hamper enforcement of federal law.
Simon v. Safelite Glass Corp.
No. 96-9558 (2nd Cir. 1996) 28 pps. **$35.00**

AB (Bernstein for EEOC) Appeal from the D.C., D. S.C.
Based on statements made in support of plaintiff's application for disability benefits that she was disabled and unable to work, the district court erred in applying judicial estoppel to preclude the plaintiff from pursuing her ADA claim of failure to accommodate and her Title VII charge of retaliatory discharge.
Hindman v. Greenville Hospital
No. 9-2784 (4th Cir. 1996) 46 pps. **$45.00**

AB (Sloan for EEOC) Appeal from the D.C., D. Kan.
A plaintiff is not precluded as a matter of law, under the doctrine of judicial estoppel, from showing that she was qualified for her job for purposes of establishing a claim under the ADA merely because, after she was terminated, she successfully applied for disability benefits under the Social Security Act.
Lowe v. Angelo's Italian Foods, Inc.
No. 97-3139 (10th Cir. 1996) 40 pps. **$55.00**

AB (Gregory for EEOC) In Support of Plaintiff-Appellant on Appeal from the D.C., E.D., Ark.
The plaintiff's ADA claim should not have been judicially estopped because the plaintiff applied for social security disability benefits. There is no inconsistency in the claim of disability under the SSA and qualification under the ADA because of the different legal standards involved in the 2 claims. This conclusion is supported by public policy and 8th Circuit precedent in *Budd v. ADT Security*.
Moore v. Payless Shoe Source
No. 97-2110 (8th Cir. 1997) 24 pps. **$25.00**

AB (Gregory for EEOC) In Support of Plaintiff-Appellant on Appeal from the D.C., C.D. Cal.
Judicial estoppel does not apply to the plaintiff's ADA claim where the plaintiff was receiving disability benefits under the Social Security Act at the time he sought employment with the defendants, having certified that he was "unable to work" within the meaning of the legal standards applied by the Social Security Administration in determining eligibility for social security disability benefits.
Lujan v. Pacific Maritime Association et al.
No. 97-55024 (9th Cir. 1997) 82 pps. **$85.00**

AB (Rosenfeld for DOJ) *amicus curiae* brief for the U.S. on Appeal from the D.D.C.

The Social Security Administration (SSA) states that an application for, and an award of, social security disability benefits does not constitute an admission as a matter of law that the individual is physically unable to work, and thus it does not bar as a matter of law his claim under the ADA. According to the SSA, there is nothing inherently inconsistent between a plaintiff's claim for disability benefits under the SSA and his claim of qualifications under the ADA. This brief can be used in all Commission cases raising the estoppel issue and may be used to fend off employers reliance on the estoppel defense.

Swanks v. Washington Metropolitan Area Transit Authority

No. 96-7078 (D.C. Cir. 1996) 15 pps. **$25.00**

AB (Bogas for EEOC) In Support of Plaintiff-Appellant

The district court erred when it held that the plaintiff's representations regarding his disability in his application for Social Security Administration (SSA) disability benefits precluded him from asserting that he was otherwise qualified for a sales associate position with the defendant for purposes of his ADA claim. The doctrine of judicial estoppel precludes a party from asserting a position in a judicial proceeding where the party is shown to have taken a contrary position under oath at a prior proceeding and the prior position was accepted by the court. The plaintiff's request for SSDI benefits, nor his responses to questions on SSDI application forms are inconsistent with his claiming to be otherwise qualified for the position of sales associate at the times when Wal-Mart transferred and fired him.

Griffith v. Wal-Mart Stores, Inc.

No. 96-7920 (6th Cir. 1996) 39 pps. **$45.00**

AB (Gregory for EEOC) Appeal from D.D.C.

The district court erred in ruling that Plaintiff was precluded from maintaining her claim of disability discrimination because of her statements on certain disability benefit applications that she was "totally disabled". The doctrine of judicial estoppel does not apply in this context because it would undermine the enforcement goals of the anti-discrimination statutes without advancing any legitimate interest that might be served by judicial estoppel.

Whitbeck v. Cital Signs, Inc.

No. 96- 7193 (D.C. Cir. 1996) 24 pps. **$25.00**

ADA - DIRECT THREAT

AB (Goldstein for EEOC) On Appeal From The United States District Court For The District Of Minnesota

The District Court erred in giving a jury instruction that required plaintiff to prove she did not pose a direct threat. Where an employer's requirement that an individual not pose a direct threat screens out an individual with a disability, the ADA places the burden of proving direct threat on the employer. The ADA provides employers only with a good faith defense to damages, not liability. While a showing of good faith by an employer will preclude an award of compensatory or punitive damages for failure to provide a reasonable accommodation, there is no good faith defense to liability under the ADA.

Stafne v. Unicare Homes, Inc.

No. 99-3562 (8th Cir. 2000) 33 pps. **$45.00**

AB (Goldstein for EEOC) Appeal from the U.S. D.C.,W.D., TX. Rehearing EN BANC

Prior decisions properly required Defendant to establish with objective evidence that Plaintiff-Appellee's hearing disability made her a direct threat to the children she was driving. An employer who imposes qualification standards that screen out or tend to screen out an individual with a disability is in violation of the ADA and must establish the individual poses a significant risk to the safety of others. In addition an employer can request disability-related information under the ADA where the employer reasonably believes such information is necessary to the direct threat inquiry.

Rizzo v. Children's World Learning Centers, INC.

No. 97-50367 (5th Cir. 1999) 37 pps. **$45.00**

PB (Minsky) Appellant's Opening Brief

In evaluating direct threat evaluation, Chevron, an employer, has a duty to gather sufficient information from not only the applicant but also from qualified experts who can objectively evaluate whether the individual can safely perform the job. When an employer seeks to exclude an applicant based on a direct threat, the employer must prove there is a substantial likelihood of imminent harm. Because a direct threat is defined as a significant risk to the health and safety of others that cannot be eliminated by reasonable accommodation, the defendant employer has the burden to prove that the direct threat could not be eliminated through reasonable accommodation. Chevron's act of notifying plaintiff's employer about his medical condition resulted in plaintiff's termination from the company. Chevron's conduct disrupted/destroyed Plaintiff's relationship with his employer.

Echazabal v. Chevron U.S.A., Inc. and Irwin Indus., Inc.

No. 98-5551 (9th Cir. 1998) 48pps. **$55.00**

Also available: Brief of the EEOC on behalf of Plaintiff-Appellant, making similar arguments on direct threat. 21pps. **$35.00**

AB (Carter for EEOC) Brief of the Equal Employment Opportunity Commission as *Amicus Curiae*

The district court erred in holding that defendant employer made a reasonable medical judgment in concluding that plaintiff would pose a direct threat. A reasonable jury could find that if the employer had considered current medical knowledge and the best available objective evidence at the time of its decision, the employer would have learned that plaintiff, who was suffering from chronic active hepatitis C, would not have posed a direct threat in the job he desired. Employer's determination fell woefully short of meeting the applicable "reasonable medical judgments" standard under the ADA, the Rehabilitation Act, and *School Board of Nassau County, Fla. v. Arline*, when it made its risk assessment. The employer limited its assessment to the opinions of two of its own doctors, neither of whom had any specialized knowledge about plaintiff or hepatitis C.

Echazabal v. Chevron U.S.A., Inc. and Irwin Indus., Inc.

No. 98-5551 (9th Cir. 1998) 21pps. **$35.00**

Also available: Appellant's Opening Brief. 48pps. **$55.00**

DB (Kardassakis) Appellee's Brief

An employer who conducts an individualized assessment of an applicant may rely on the objective evidence available to it when deciding whether the applicant will pose a direct threat to his or her health and safety in the job offered. Expert declarations submitted by an applicant after the employment decision has been made are insufficient to create a genuine issue of fact, especially when those declarations contradict the opinions of the applicants' treating physicians on which the employer relied at the time it made its employment decision. Plaintiff's intentional interference with contract claim fails because there is no evidence that Chevron engaged in conduct designed to sever or disrupt Plaintiff's employment relationship with Irwin, his employer.

Echazabal v. Chevron U.S.A., Inc.

No. 98-55551 (9th Cir.) 77pps. **$85.00**

Also available: Brief Amicus Curiae of the Equal Employment Advisory Council and the Chamber of Commerce of the United States In Support of Defendant-Appellee, making similar arguments. 29pps. **$35.00**

Also available: Brief of the Employers Group as Amicus Curiae, making similar arguments. 49pps. **$55.00**

AB (Reesman) Brief *Amicus Curiae* Of The Equal Employment Advisory Council and The Chamber of Commerce Of The United States In Support Of Defendant-Appellee

The district court properly granted summary judgment because the employer's conclusion that continued occupational exposure to liver toxic chemicals would pose a direct threat to plaintiff's health was based on a reasonable medical judgment. An individualized assessment based on a reasonable medical judgment is sufficient to meet the employer's burden in proving direct threat. The opinion of an in-house occupational physician, when developed in consultation with plaintiff's own physician, can constitute a reasonable medical judgment.

Echazabal v. Chevron U.S.A., Inc.

No. 98-55551 (9th Cir.) 29pps. **$35.00**

Also available: Appellee's Brief, making similar arguments. 77pps. **$85.00**

Also available: Brief of the Employers Group as Amicus Curiae, making similar arguments. 49pps. **$55.00**

AB (Alvarez) Brief Of The Employers Group As *Amicus Curiae* [In Support Of Defendant-Appellee]
The district court properly concluded that the employer made a reasonable medical judgment, based on the best available objective evidence. A direct threat defense does not require an employer to reach a medically unassailable conclusion or to engage specialists and experts in the face of uncontroverted medical opinion. The heightened burden for direct threat assessment proposed by plaintiff and the EEOC is unworkable.
Echazabal v. Chevron U.S.A., Inc.
No. 98-55551 (9th Cir.) 49pps. **$55.00**
Also available: Appellee's Brief, making similar arguments. 77pps. **$85.00**
Also available: Brief Amicus Curiae of the Equal Employment Advisory Council and the Chamber of Commerce of the United States In Support of Defendant-Appellee, making similar arguments. 29pps. **$35.00**

PB (Ramshaw for EEOC) Appeal from the D.C., W.D. Mich.
After an employee informed his employer that he was HIV-positive, defendant immediately removed him from his job as a produce clerk and then fired him when he refused to submit to a medical examination. The district court properly granted summary judgement to the EEOC because there is no credible evidence supporting defendant's purported justifications for the actions it took against the employee because of his condition. There is no credible evidence to support defendant assertion that the employee posed a direct threat in his job as a produce clerk. In addition, there is no credible evidence that a medical examination of the employee was job-related and consistent with business necessity.
EEOC v. Prevo's Family Market, Inc.
No. 97-1001 (6th Cir. 1996) 39 pps. **$45.00**

AB (Carter for EEOC) Brief in Support of Plaintiff-Appellant on Appeal from the D.C., C.D. Cal.
The district court erred in awarding summary judgment to the defendants because a reasonable jury could have found that Chevron did not base its determination that plaintiff would pose a "direct threat" on a reasonable medical judgment as required by congressional intent, the prevailing case law and the applicable regulations.
Echazabal v. Chevron U.S.A., Inc.
No. 98-55551 (9th Cir. 1998) 20 pps. **$25.00**

AB (Cukjati for NELA) Brief in Support of Plaintiff-Appellant on Appeal from the D.C., W.D. Tex.
Insulin-dependent diabetics are disabled for purposes of the ADA. The conclusion that insulin-dependent diabetics pose a safety risk, and are thus not "otherwise qualified", must be determined by a fact-specific individual assessment and not by generalizations embodied in a blanket exclusion from the police force. Application of a blanket exclusion also precludes a showing that the Defendant attempted to reasonably accommodate the Plaintiff pursuant to the requirements of the ADA.
Kapche v. City of San Antonio***
No. 98-50345 (5th Cir. 1998) 20 pps. **$25.00**

ADA - PUNITIVE DAMAGES

AB (Carter for EEOC) Appeal from N.D. Ill. In Support Of The Plaintiff's Petition For Rehearing And Rehearing En Banc
Defendant was not entitled to prevail as a matter of law notwithstanding the jury's decision to award punitive damages to plaintiff. *Kolstad v. American Dental Association*, 527 U.S. 526 (1999) does not create such a high standard of proof that it requires a plaintiff to show that her employer discriminated with the subjective understanding that its actions might violate federal law. Under the Civil Rights Act of 1991 a plaintiff may recover punitive damages where defendant engaged in a discriminatory practice with malice or reckless indifference. Reckless indifference may be shown with evidence that the employer had knowledge of facts that would have placed a reasonable person on notice of the risk. Thus, an employer's subjective belief that it was acting within the confines of the law does not preclude an award of punitive damages because a jury may find that a reasonable

employer would have known that its policies might violate the law.
Gile v. United Airlines, Inc.
No. 99-2509 (7th Cir. 2000) 18 pps. **$25.00** Addendum 8 pps. **$15.00**

REHABILITATION ACT

PB (Gardenshire) Petition of Writ of Certiorari for the 10th Circuit
Certiorari should be granted to clarify whether a person with epilepsy, whose disability is in a state of mitigation because of medication, is considered handicapped under the Rehabilitation Act of 1973, and whether the federal agency has an affirmative duty to accommodate such a disabled applicant. The district court's refusal to address whether defendant met its duty under the Act is a violation of the Due Process Clause and calls for an exercise of the court's supervisory powers. Courts below have not squarely addressed the issue of whether persons who have mitigated the effects of their impairment are under the protection of the Act. The court should also resolve the conflict in the circuits and find that manifestations (such as poor performance or misconduct) of a disabling medical condition do not abrogate an employer's affirmative duty under the Act to reasonably accommodate a handicapped person seeking employment.
Gresham v. Henderson, Postmaster General, U.S. Postal Serv.
No. 98-1968 (U.S. Supreme Ct. 1998) 63pps. **$75.00**

PB (Marshall) Memorandum of Plaintiff in Opposition to Defendant's Motion to Dismiss
The ADA and the Rehabilitation Act of 1973, as amended, target states and were enacted pursuant to Congress' plenary power to enforce the equal protection clause. In exercising its plenary power under § 5 of the Fourteenth Amendment, congress may enact norms of equality different that those established by judicial precedent.
Nihiser v. State of Ohio
No. C2-94-1258 (S.D., E.D. Ohio 1996) 20 pps. **$25.00**

PB (Mooney) Appeal from D.C., S.D. Ohio
Plaintiff is a handicapped person under the Rehabilitation Act, 29 U.S.C. §706(8)(B)(iii), because he (1) was "regarded as" having an impairment which substantially limits major life activities, and because he (2) "has a record of" a such an impairment. The denial of a single job by a single employer is sufficient to qualify an applicant as handicapped. The legislative history of the definition of handicap as used in the Rehabilitation Act and the ADA support interpretation of handicap in the broadest possible manner.
Taylor v. U.S. Post Office
No 90-4087 (6th Cir. 1991) 61 pps. **$75.00**

PB (Auvil) Memorandum in Opposition to Defendant's Motion for Summary Judgment
The U.S. Postal Service moved for summary judgment relying on only one incident of discrimination against handicapped plaintiff, ignoring other aspects of the formal complaint filed by plaintiff at the administrative stage. Plaintiff argues that the whole pattern of discrimination that took place over a five year period should be reviewed before the question of summary judgment.
Grover v. Frank, et al.
No. A:88-1046 (D.C., S.D. W.Va. 1989) 22 pps. **$35.00**

PB (Hornberger) Post Trial Brief
Plaintiff, a handicapped black janitor alleged that the Post Office discriminated against him on basis of race (Title VII) and disability (Section 501) by constructively discharging him, and by not following EEO procedures, by violating its own return to work and seniority rules, and by revising job description to exclude him from the job.
Haithcock v. Frank
No. C-3-89-291 (D.C., S.D. Ohio 1990) 78 pps. **$85.00**

PB (Hornberger) Motion to Review
The magistrate's conclusion that plaintiff failed to notify the EEO counselor within 30 days of the discrimination is

erroneous. The magistrate concluded had the claim been timely filed, he would have found handicap discrimination. Plaintiff, a handicapped black janitor alleged that the Post Office continually discriminated on the basis of race and disability by constructively discharging him, not following EEO procedures, violating its own return to work and seniority rules, and by revising its job description to exclude plaintiff.
Haithcock v. Frank
No. C-3-89-291 (D.C., S.D. Ohio 1991) 72 pps. **$85.00**

AB (Rowan for Atlanta Legal Aid Society) In Support of Appellant
The appropriate statute of limitations for claims made in Georgia under the Vocational Rehabilitation Act, which has no time limitation, is the two year limitation of Georgia's personal injury statute.
Hendrickson v. Pain Control and Rehabilitation Institute of Georgia, Inc., et al.
No. A92A1549 (Ga. Supreme Ct. 1993) 13 pps. **$25.00**

AB (Clark for EEOC) Appeal of Judgment by D.C., D. R.I.
Whether obesity is a disability under the Rehabilitation Act or the ADA must be decided on a case by case basis. Morbid obesity is a "physical impairment" under Section 504 of the Rehabilitation Act. Whether this impairment "substantially limits one or more major life activities" under Section 504 depends on the extent and duration of the condition.
Cook v. State of Rhode Island
No. 93-1093 (1st Cir. 1993) 68 pps. **$75.00**

AB (Rowan of Atlanta Legal Aid Society, NELA, et al.) In Support of Appellant's Petition for Writ of Certiorari, Georgia Court of Appeals
The Court of Appeals erred in limiting the statute of limitations for the Vocational Rehabilitation Act of 1973 ("VRA") to six months from the two year statute of limitations adopted in other jurisdictions, because contrary to the court's belief, there are significant differences between the VRA and the O.C.G.A. § 34-6A-1 et seq. (the "EEOC"), to which the court analogized the VRA.
Hendrickson v. Pain Control and Rehabilitation Institute Georgia, Inc., et al.
No A92A1549 (Ga. Supreme Ct. 1992) 12 pps. **$25.00**

AB (Marcosson, Moran for EEOC, Flynn and Fried for Dept. of Justice) In Support of Plaintiffs-Appellants
Under the Rehabilitation Act, an employer must provide accommodations to a qualified individual with a disability which are reasonable in both theory and practice.
Marett v. New York City Department of Personnel
No. 94-7699 (2nd Cir. 1994) 27 pps. **$35.00**

AB (Kilb for DREDF, et al.) In Support of Petitioner on Writ of Certiorari for the District of Columbia Circuit
It is necessary to recognize a damages remedy against the federal government for violations of Section 504 of the Rehabilitation Act in order to implement Congressional intent that people with disabilities be afforded effective remedies. Congress intent to waive sovereign immunity against the federal government in such cases is clear and unequivocal.
Lane v. Pena, Secretary of Transportation, et al.
No. 95-365 (U.S. Supreme Ct. 1995) 30 pps. **$35.00**

AB (Bernstein for EEOC) In Support of Plaintiff-Appellant
A negotiated variance from collectively bargained seniority rules that does not unduly burden other employees may under some circumstances constitute a reasonable accommodation required under the ADA. The district court incorrectly adhered to a per se rule. Such a rule applies to Title VII cases and Rehabilitation Act cases, but not ADA cases because the ADA contemplates a broader range of potential accommodations than the Rehabilitation Act. Congress has also indicated a clear intent to depart from the per se rule and has provided sufficient guidance to make a case by case determination whether such a variance would unduly burden other employees
Eckles v. Consolidated Rail Corp., et al.

No. 95-2856 (7th Cir. 1995) 43 pps. **$55.00**

FAIR LABOR STANDARDS ACT

PB (Ho for ELC) Brief in Support of Plaintiff
California Civil Code sec. 47(b) does not confer upon defendant unqualified immunity from any liability for its communications with the Immigration and Naturalization Service (INS) because of preemption principles and congressional policy that all employees, regardless of immigration status, should be afforded the FLSA's protections, including the protection against retaliation. The plaintiff should be entitled to the entire range of damages available under common law, including punitive damages as illustrated by congressional intent in the 1977 FLSA amendments and by other circuit court decisions.
Contreras v. Corinthian Vigor Insurance Brokerage, Inc.
No. C 98-2701 SC (D.C., N.D. Cal. 1998) 20 pps. **$25.00**

PB (Cotiguala) Plaintiff's Response to Defendants' Motion to Dismiss
Seminole Tribes of Florida v. Florida does not strip the court of jurisdiction over the case. Illinois waived 11th Amendment immunity both by voluntarily participating in federal programs where Congress conditioned participation on the state's consent to suit in federal court and by providing in the Illinois Minimum Wage Law that it can be a defendant in court for violation of that law. In amending the FLSA, Congress unequivocally expressed its intent to abrogate the 11th Amendment as to state government employees pursuant to its power under Section 5 of the 14th Amendment. Individual defendants cannot be dismissed under the 11th Amendment.
Digiore. et al. v. State of Illinois, et al.
No. 96 C 1785 (D.C., N.D. Ill, 1996) 12 pps. **$25.00**
Also available: Memorandum opinion and order, Bankston. et al. v. State of Illinois. et al finding a violation of FLSA by the State of Illinois for failure to pay police officers overtime. 6 pps. **$10.00**

PB (Cotiguala) Second Amended Complaint
Plaintiff's second amended complaint seeks punitive damages under Federal Labor Standards Act.
Gunther v. Electronic Data Systems, Inc.
No. 89 C 8987 (D.C., N.D. Ill. 1990) 9 pps. **$15.00**

PB (Cotiguala) Response to Defendant's Motion to Dismiss Count III Pursuant to F.R.C.P. 12(b)(6) and for Summary Judgment as to Counts II and IV
The district court should deny defendant's motion to dismiss and for summary judgment. Defendant refused to work with plaintiff and would not permit him on its premises in retaliation for filing a lawsuit to recover overtime pay under the Fair Labor Standards Act, and under Illinois Minimum Wage Law.
Gunther v. Electronic Data Systems, Inc.
No. 89C8987 (D.C., N.D. Ill. 1990) 17 pps. **$25.00**

PB (Peace-Jackson for Dept. of Labor) Brief of the Secretary of Labor on Appeal from D.C., S.D. N.Y.
Employees required to make-up, draw upon their personal leave, or incur a loss of pay on an hour by hour basis for any absence of less than a day, are not paid on a "salary basis" under the FLSA, and hence the employer is not exempt from the FLSA overtime pay requirements. The employer who deliberately does not pay employees on a salary basis, is not absolved from liability for prior practices by changing to salary basis compensation.
Martin (Secretary of Labor, U.S. Dept. of Labor) v. Malcolm Pirnie, Inc.
No. 91-6138 (2nd Cir. 1991) 50 pps. **$55.00**
Also available: Reply Brief on Petition for Rehearing En Banc. 10 pps. **$15.00**

PB (Marcosson for EEOC) Reply Brief on Appeal from D.C., W.D. Va.
The district court abused its discretion when it refused to grant prejudgment interest on back pay awarded to the victims of defendant's past FLSA violations, or to enjoin defendant from future violations of the FLSA.

Dole and EEOC v. Shenandoah Baptist Church
No. 89-2341/2369 (4th Cir. 1989) 10 pps. **$15.00**

AB (Gibbs) Appeal from D.C., N.D. Ala.
The minimum wage and overtime pay requirements of the FLSA apply to all employees without regard to immigration status. In adopting the Immigration Reform and Control Act of 1986, Congress did not intend to change existing law with regard to labor standards protection for undocumented workers.
Patel v. Sumani Corporation
No. 87-7411 (11th Cir. 1987) 43 pps. **$55.00**
PB (Levy) Petition for Writ of Certiorari to 10th Circuit
An employee's settlement of an overtime compensation dispute under FLSA does not bar an ADEA claim, under the doctrine of *res judicata*. Waiver of rights under the ADEA must be voluntary and knowing.
Clark v. Haas Group
No. 91- (U.S. Supreme Ct. 1991) 41 pps. **$55.00**

PB (Cotiguala, Sun) Response Brief on Main Appeal and Opening Brief in Cross Appeal, D.C., N.D. Ill.
Defendants are not entitled to judgment as a matter of law because there is ample evidence to support the jury verdict finding that plaintiffs were not exempt from the requirements of the FLSA. The trial court acted within its discretion in awarding liquidated damages because defendants failed to show they acted in good faith or had a reasonable basis for believing they were not in violation of the FLSA. The district court properly acted within its discretion in awarding costs to plaintiffs. The district court erred in failing to use the uncontested market rate in awarding attorney's fees.
Bankston, et al. v. State of Illinois, et al.
No. 93-C-39 (7th Cir. 1994) 45 pps. **$55.00**

PB (Still) Post-Trial Brief
Houseparents are entitled to be paid for "sleep time" during which time they are on duty.
Nelson v. Alabama Institution for the Deaf and Blind
No. CV-93-AR-1377-E (D.C., N.D. Ala. 1994) 11 pps. **$25.00**

PB (Fischer) In Opposition to Motion for Summary Judgment
The dairy farm operations of defendants constituted a single "enterprise" such that plaintiffs were entitled to receive the minimum wage required by the FLSA. Defendants are not exempt even though they are in the agricultural business because they do not qualify as a small agricultural business protected by the FLSA.
Gutierrez v. Walley
No. 9:95CV19 (D.C., E.D. Tex. 1996) 15 pps. **$25.00**

FAMILY AND MEDICAL LEAVE ACT

FMLA - GENERAL

PB (Lonnquist) Plaintiff-Appellant's Opening Brief on Appeal from D.C., W.D. Wa.
Contrary to the policy reflected in the safe-harbor provisions of the ADA, the ruling of the district court would deny all ADA and by extension, Washington Law Against Discrimination (WLAD) protections to rehabilitated drug users. The purchase of illegal drugs is conduct that is so inextricably intermingled with the nature of the disability, that the addict cannot lawfully be terminated for such activity. Defendant had no legitimate reason to terminate the plaintiff and as such violated the ADA, the WLAD and (the right to return provision of) FMLA.
Doe v. King County
No. 97-35876 (9th Cir. 1998) 28 pps. **$35.00**
Also Available: Plaintiff-Appellant's Reply Brief on Appeal from D.C., W.D. Wa., making similar arguments. 13 pps. ***$25.00***

DB (Lonnquist) Appellee's Brief on Appeal from D.C., W.D. Wa.
Because the plaintiff was a current drug user under the ADA and by extension, the Washington Law Against Discrimination (WLAD) he was not afforded its protections. Plaintiff is not otherwise qualified under the ADA because he no longer had the trustworthiness required for the job. Plaintiff was terminated not because of his disability of addiction, but because of his illegal activities while employed as a bailiff. The timing of a termination after a FMLA leave does not automatically violate the "right to return" provisions of FMLA.
Doe v. King County
No. 97-35876 (9th Cir. 1998) 40 pps. **$45.00**

AB (Lichtman, Lenhoff, Guerin for WLDF; Farrugia for NELA) In Support of Plaintiff-Appellant
The district court erred in imposing a notice requirement (that the employee actually refer to the FMLA) in order to qualify for FMLA's protections and in allowing the defendant to use plaintiff's FMLA leave against her as part of a "no-fault" absence policy.
Manuel v. Westlake Polymers Corp.
No. 95-30050 (5th Cir. 1995) 25 pps. **$35.00**
AB (Lenhoff for WLDF & NELA, et al.) In Support of Plaintiff-Appellant
Summary judgment was not appropriate. The district court erred in holding that plaintiff's condition did not meet the test for a "serious health condition" under FMLA or "require periodic visits for treatment" or multiple treatments. The court also erred in holding that plaintiff's condition did not constitute an "episodic" period of incapacity under FMLA. The condition need not be specifically mentioned in the legislative history to be a "serious medical condition."
Bauer v. Varity Dayton-Walther Corp.
No. 96-5603 (6th Cir. 1996) 54 pps. **$65.00**

FMLA - ELEVENTH AMENDMENT

AB (Wayman for NELA) In Support Of Appellant In Appeal From D.C., N.D., Alabama
Where a state has not consented to be sued by one of its own citizens, Congress has the authority to override the state's 11th Amendment immunity when a court finds: (1) Congress has unequivocally expressed its intent to abrogate immunity under the FMLA and ADA, which it has, and (2) when Congress has passed statutes pursuant to valid constitutional power, namely here Section 5 of the 14th Amendment. This court should find the 11th Amendment did not preclude the district court from hearing claims brought under the FMLA and the ADA and reverse the judgment.
Garrett v. Bd. of Trustees for the Univ. of Alabama in Birmingham
No. 98-6069 (11th Cir. 1998) 39pps. **$45.00**

AB (Wayman for NELA) Brief in Support of Plaintiff-Appellant on Appeal from the D.C., S.D. Ohio.
In passing the FMLA, Congress unequivocally expressed its intent to abrogate the states' 11th Amendment immunity to be sued in Federal court, and did so pursuant to a valid exercise of legislative power pursuant to Section 5 of the 14th Amendment as defined by *Katzenbach v. Morgan*, 384 U.S. 641 (1966).
Thomson v. The Ohio State University Hospital
No. 98-3613 (6th Cir. 1998) 27 pps. **$35.00**

EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA)

ERISA - GENERAL

PB (Riemer for Plaintiff) Reply Brief of Plaintiff-Appellant)
Any application of the arbitrary and capricious standard of review would be premature. Plaintiff has asserted a valid claim for benefits under ERISA regardless of whether the arbitrary and capricious standard is applied. The Met Life plan required the payment of the present value of any accrued benefits. The language of the plan must be interpreted to mean that if Met Life's payment was delayed, benefits should be paid as if such determination had not been delayed. Thus, interest was as a matter of law an implied term of the plan. Met Life's actions delaying payment

and making payment as a lump sum as opposed to monthly violated the plan. Because of the delayed payment, Met Life also violated the plan by failing to pay interest. Met Life owed plaintiff a fiduciary duty which it breached by engaging in prohibited transactions. Met Life did not act exclusively in the interest of plaintiff, but rather profited at plaintiff's expense. As a result of these violations plaintiff is entitled to interest, which is restitution and not a consequential damage under the terms of ERISA. The district court's refusal to certify the class in this action was premature because the facts alleged by plaintiff were sufficient to sustain an individual claim of interest.
Dunnigan v. Metropolitan Life Ins. Co.
No. 00-7399 (2nd Cir. 2000) 35 pps. **$45.00**

DB (Rumeld for Met Life) Appeal From SD NY
Plaintiff failed to state a claim under § 502(a) of ERISA because the written terms of the plan do not authorize interest payments. Nor is interest on retroactive payments an implied term of the plan. Plaintiff's claim is properly characterized as one for extracontractual damages, for which ERISA provides no recovery and not one for equitable relief. Even if interest were a proper for of equitable relief, plaintiff has failed to state a claim for breach of fiduciary duty, absent which, plaintiff is not entitled to any equitable relief. It would be erroneous to expand ERISA to include a claim for breach of the implied covenant of good faith and fair dealing. But even if the court were to do so plaintiff failed to plead individual facts necessary to support such a claim. Finally, the court's decision to dismiss plaintiff's class action complaint, with leave to assert an individual claim, was in fact a ruling on the merits of plaintiff's claim.
Dunnigan v. Metropolitan Life Ins. Co.
No. 00-7399 (2nd Cir. 2000) 60 pps. **$65.00** Appendix and Addendum 45 pps. **$55.00**

AB (Signorille for AARP) Appeal From DC NY
Plaintiff is entitled to interest on her untimely paid disability benefits because Met Life breached an implied contract term by delaying payment for 55 months. The court should adopt a common law rule that an implied term exists in ERISA plans requiring interest as a remedy for late performance, even where there is no such express provision. Plaintiff is also entitled to restitution or other equitable relief because Met Life was unjustly enriched by violating the implied term of the ERISA plan for timely payment. Met Life profited by delaying to pay the plaintiff's claim and plaintiff is therefore entitled to equitable relief.
Dunnigan v. Metropolitan Life Ins. Co.
No. 00-7399 (2nd Cir. 2000) 19 pps. **$25.00**

PB (Kavitz) Appellant's Opening Brief
The district court erred in finding that the plain language of the defendant's Plan was ambiguous. Defendant violated ERISA section 204(c)(3) by failing to pay plaintiff the actuarial equivalent of his accrued benefit. Deviation from the determined payment procedure of a retirement plan requires that any assumptions that are to be used, in this case a nine-month age set-forward, must be specified with in the Plan in a manner that precludes employer discretion. Defendant's 1996 amendment of their Plan, adding the nine-month set-forward, constituted an illegal cutback of plaintiff's benefits, as it was not stated in the Plan. Interpretations of whether ERISA has been violated are questions of law, requiring a *de novo* review. Judgment should be reversed and the case should be remanded so that the district court can properly administer the correct calculation of the benefits.
McDaniel v. Chevron Corp., et al.
No. 98-16363 (9th Cir. 1998) 55pps. **$65.00**
Also available: AB of Legal Services for the Elderly, AARP, and NELA In Support Of Plaintiff Appellant, making similar arguments. 26pps. **$35.00**

AB (Pauk for Legal Services for the Elderly, Signorille for AARP and Brantner for NELA) In Support Of Plaintiff Appellant On Appeal From D.C., N.D. California
By allowing defendant to ignore the company's retirement plan language, plaintiff's lump sum distribution violated defendant's own plan and ERISA's provisions. Defendant should be bound by its unambiguous plan language and not be allowed to use a actuarial assumption not set forth in the plan. Even assuming the plan's language needed interpretation, it must be interpreted to be lawful and consistent with ERISA and other laws.

McDaniel v. Chevron Corp., et al.
No. 98-16363 (9th Cir. 1998) 26pps. **$35.00**
Also available: Appellant's Opening Brief Appellee's Brief, making similar arguments. 55pps **$65.00**

DB (Gordon) Appellees' Brief On Appeal From D.C., N.D. California
The district court correctly ruled that the plan language was ambiguous and thus requiring interpretation by the plan administrator. The interpretation was consistent with the plan language and funding practices. There is no law that prevents the plan administrator from using its discretion to interpret the mortality assumption. Mere procedural violations of ERISA should not entitle the plaintiff to any award benefits.
McDaniel v. Chevron Corp., et al.
No. 98-16363 (9th Cir. 1998) 80pps. **$85.00**

AB (Signorille for AARP) Brief *Amicus Curiae* Of AARP In Support Of Plaintiff-Appellant Urging Reversal Of The District
Court's Decision
Under ERISA's definitions, a cash balance plan is a defined benefit plan, not a defined contribution plan, and, accordingly,
must comply with all the requirements for defined benefit plans. The defendant employer's retirement plan permitting the distribution of the participant's hypothetical account balance as the entire accrued benefit violates ERISA's requirement
of actual equivalence and cannot stand.
Lyons, et al. v. Georgia-Pacific Corp. Salaried Employees Retirement Plan and Georgia-Pacific Corp.
No. 99-10640-GG (11th Cir. 1999) 34pps. **$45.00**
Also available: Appellant's Reply Brief, making similar arguments. 39pps. **$45.00**

DB (Bassett) Appeal From D.C., N.D. Georgia
The district court properly granted summary judgment for defendants on the ground that Treasury Regulations, 26 C.F.R. §§ 1.411 and 1.417, could not lawfully require defendants' cash balance retirement plan to utilize the "discounting-to-present-value" methodology described in § 1.417 to compute the amount of the lump sum distribution to plaintiffs. The legislative history of ERISA § 203(e) and § 1.411 does not abrogate the plain language of the regulations. Sections 1.411 and 1.417 do not invest plan holders with substantive rights and cannot expand the substantive provisions of ERISA §203(e). Assuming §§ 1.411 and 1.417 are enforceable as to voluntary distributions, they do not apply to the defendants' plan, as advocated by plaintiff, because the "present value" is embodied in the plan and is always known, there is no mechanism for projecting future interest in ERISA or in §§ 1.411 and 1.417, and applying § 1.417 to plans in which the interest component of the plan is based on a variable rate, more closely aligned to market fluctuations than to § 1.417's discount rate, would create inconsistent and capricious results. Moreover, sections 1.411 and 1.417 do not dictate the computation of an "accrued benefit" greater than that determined by defendants' plan. Defendants fell squarely within the express safe harbor provisions of IRS Notice 96-8, which provided guidance on the mandatory application of § 1.417. Two favorable IRS determination letters received by defendants' plan on the issue of compliance with §§ 1.411 and 1.417 are entitled to judicial deference.
Lyons, et al. v. Georgia-Pacific Corp. Salaried Employees Retirement Plan and Georgia-Pacific Corp.
No. 99-10640-GG (11th Cir. 1999) 80pps. **$85.00**

PB (Geller) Appellant's Reply Brief
The statutory language and legislative history confirm that ERISA § 203(e)(2) applies to all lump sum distributions. Treasury Regulations 26 C.F.R. §§ 1.411 and 1.417 are substantive legislative regulations entitled to the full force and effect of law for the following reasons: they are incorporated into ERISA § 203(e) and, therefore, create substantive rights for plan participants; they seek to implement ERISA § 203(e)(2); they govern the computation of all lump sum distributions, as held by this court in *Piggly Wiggly S. Inc. v. PBGC;* and, to the extent that they are ambiguous, IRS interpretation is controlling. Discounting to "present value" is not inimicable to a cash balance plans as shown by

the terms of defendants' plan itself. The defendants' plan provides the "interest crediting rule" to be projected to age 65. Ample guidance existed on the valuation rules long before 1991, when plaintiff received his lump sum. IRS Notice 96-8's "safe harbor provisions" apply solely to tax qualifications of a plan. No basis exists for excepting cash balance plans from ERISA's valuation rules. Defendants' hypothetical computation of plaintiff's "accrued benefit" is patently erroneous and inconsistent with the requirements of the employer's plan itself. IRS determination letters are entitled to no weight.

Lyons, et al. v. Georgia-Pacific Corp. Salaried Employees Retirement Plan and Georgia-Pacific Corp.
No. 99-10640-GG (11th Cir. 1999) 39pps. **$45.00**
Also available: AB of AARP in support of Plaintiff-Appellant Urging Reversal, making similar arguments. 34pps. **$45.00**

AB (Signorille for AARP) Brief *Amici Curiae* of AARP, NELA, and National Senior Citizens Law Center In Support Of Neither Party

Respondent's state law claims cannot be brought under ERISA's enforcement provisions where petitioners were sued for actions in running their health care business, not for actions they took as fiduciaries administering or managing an ERISA plan. Proper removal of a state law claim to Federal court jurisdiction requires that it can be brought under section 502(a) of ERISA. Where HMOs act as medical entrepreneurs rather than in an ERISA capacity, there is no ERISA-governed relationship and state laws regulating them, as such, are not preempted by section 514(a) of ERISA. ERISA fiduciaries are liable to the plan for restitution of bonuses and profits which they gain by their commission of fiduciary breaches.

Pegram, et al. v. Herdrich
No. 98-1949 (U.S. Supreme Ct. 1998) 33pps. **$45.00**

AB (Signorille for AARP) Brief *Amicus Curiae* Of AARP In Support Of Plaintiff-Appellants-Cross Appellees' Appeal Urging Reversal

When reviewing a denial of an ERISA benefits claim, a court should use the *de novo* standard of review "unless the benefit
plan gives the administrator or fiduciary, discretionary authority to determine eligibility for benefits or to construe the terms of the plan." Even under the more deferential standard of review, utilizing the arbitrary and capricious standard, the defendant's mishandling of plaintiff's case satisfies this standard, and as such the district court's decision should be reversed.

Juliano v. Health Maintenance Org. of New Jersey, Inc., d/b/a U.S. Healthcare
No. 98-9662 (2nd Cir. 1999) 20pps. **$25.00**

AB (Feinberg for NELA) Brief *Amicus Curiae* In Support Of Respondent On Writ Of Certiorari From 9th Circuit

The court should affirm the decision of the lower court in holding that ERISA saves state laws from preemption under the Savings Clause. Congress intended the interpretation of ERISA insurance policies be guided by state insurance law doctrines consistent with the McCarran-Ferguson Act. In addition, there is well-established precedent where federal courts have looked to state insurance law for rules of decision on ERISA cases.

UNUM Life Ins. Co. of America v. John E. Ward
No. 97-1868 (U.S. Supreme Ct. 1998) 21pps. **$35.00**
Also available: AARP's AB in Support of Respondent, making similar arguments. 25pps. **$35.00**

Also available: Plaintiff's Supplemental Brief, making similar arguments. 4pps. **$15.00**

AB (Signorille & Radowitz for AARP) In Support Of Respondent On Writ Of Certiorari From 9th Circuit

The decision in *Pilot Life Ins. Co. v. Dedeaux* must be reexamined in light of recent preemption decisions and because of the traditional supremacy clause analysis. State laws regulating insurance industry require a more critical analysis under ERISA. Compliance with both CA's notice-requirement rule and ERISA is physically possible and CA's notice-prejudice rule cannot be found to stand as an obstacle to the accomplishment and execution of

congressional purposes and objectives.
UNUM Life Ins. Co. of America v. Ward
No. 97-1868 (U.S. Supreme Ct. 1999) 25pps. **$35.00**
Also available: NELA's AB in Support of Respondent, making similar arguments. 21pps. **$35.00**
Also available: Plaintiff's Supplemental Brief, making similar arguments. 4pps. **$15.00**

PB (Bacon) Plaintiff's Supplemental Brief On Writ Of Certiorari From 9th Circuit
Submitted to bring attention what petitioner believes are significant errors contained in respondent's supplemental brief as to the holding of this Court's recent decision in *Humana Inc. v. Forsyth.*
UNUM Life Ins. Co. of America v. Ward
No. 97-1868 (U.S. Supreme Ct. 1999) 4pps. **$15.00**
Also available: NELA's AB in Support of Respondent, making similar arguments. 21pps. **$35.00**
Also available: AARP's AB in Support of Respondent, making similar arguments. 25pps. **$35.00**

AB (Wayman for NELA) In Support Of Plaintiff On Appeal From D.C., S.D. Ohio
Defendant violated its Long Term Disability (LTD) plan and breached its fiduciary duty under ERISA, by providing inaccurate and misleading information to plaintiff concerning the filing of his disability claim. This breach led to the denial of plaintiff's claim for being untimely. Because plaintiff relied on defendant's misleading information and genuine issues of material facts are in dispute, defendant should be estopped from dismissing plaintiff's claim.
Torello v. UNUM Life Ins. Co. and G & J Pepsi Bottlers, Inc.
No. 98-4338 (6th Cir. 1998) 32pps. **$45.00**

AB (Signorille for AARP) Brief in Support of Plaintiff-Appellants on Appeal from D.C, S.D. Ill.
The district court's ruling allows a reduced pension benefit for women, exacerbating an inherent inequity between men and women's retirement resources based generally on pay inequity and family responsibilities and specifically on defendant's policy of involuntary pregnancy leave. The impact on women receiving lower incomes while working and fewer benefits during retirement is devastating for them.
Ameritech Benefit Plan Committee, et al. v. Communication Workers of America, AFL-CIO & Bernabei v. Ameritech Corp., et al.
Nos. 98-3096, 98-3101 & 98-3102 (7th Cir. 1998) 20 pps. **$25.00**

AB (Lewis for NELA) Writ of Certiorari to the 2nd Circuit
The Court should reverse the Second Circuit Court of Appeals and develop a more workable framework for analyzing ERISA's preemption clause in order to achieve Congress' intent of uniform administration of employee benefit plans and prevent ERISA preemption from being used as a sword, not a shield. Under this framework, New York State's law taxing hospitals is not preempted by ERISA because the law does not directly conflict with ERISA, does not duplicate a claim under ERISA § 502, does not reference an ERISA plan, and is a state law in a traditional area of state regulation that neither regulates an ERISA-governed relationship nor produces an acute indirect economic effect.
De Buono, et al. v. NYSA-ILA Medical and Clinical Services Fund, et al.
No. 95-1594 (U.S. Supreme Ct. 1995) 28 pps. **$35.00**

AB (Signorille and Radowitz for AARP) In support of Plaintiff on Appeal from D.C., D. Conn.
The plaintiff did not receive a full and fair review of her benefit claims denial because the plan administrator's review did not consider the record as a whole. A full and fair review requires that the fiduciary consider all available relevant information and that the final decision be supported by substantial evidence in light of the administrative record as a whole. In addition, any third party who regularly reviews benefit claims for a plan administrator is not an independent expert but an integral part of the benefit claims process. Thus, the plaintiff's claim should be remanded to an independent fiduciary for decision.

Crocco v. Xerox Corporation
No. 977-7304 (2nd Cir. 1997) 17 pps. **$25.00**

AB (Tobias for NELA) In Support of Appellants on Appeal from the D.C., W.D. Wa.
Microsoft employees did not fall within any exclusions of the employment plans for contractors, temporary employees or leased employees. Since Microsoft cannot simply exclude the plaintiffs from the plans by intentionally misclassifying otherwise eligible employees, the panel was correct in holding that plaintiffs who were common law employees were covered the ESPP Stock Option plan as a matter of contract law. In addition, the panel was correct in holding that plaintiffs were also covered by the SPP 401(k) savings plan because based on the doctrine of contra proferentem the plaintiffs were on the United States payroll of Microsoft within the meaning of the plan document covered by ERISA.
Vizcaino v. Microsoft Corporation
No. 94-35770 (9th Cir. 1994) 22 pps. **$35.00**

DB (Liebross & Thomas) Brief in Support of Defendant's Motion to Dismiss
The Hewlett-Packard employee benefit plan fiduciaries do not have standing where the benefit plans have not suffered any injury in fact which the plan fiduciaries may seek to prevent. In addition, the court lacks subject matter jurisdiction where ERISA does not authorize an action by the fiduciaries against defendant on whether the definition of wages in the Workers' Compensation Act is preempted by ERISA.
Hewlett-Packard Company v. Judith Diringer
No. 95-N-1435 (D.C., D. Colo. 1995) 9 pps. **$15.00**

AB (Ventrell-Monsees for AARP) In Support of Petitioner for Writ of Certiorari
A state law that directly conflicts with ERISA is preempted because it frustrates Congress' intent to avoid a multiplicity of regulation in order to promote the uniform administration of employee benefit plans. This means that Louisiana's community property law is preempted by ERISA because if conflicts with Congress' intent to promote uniform administration of employee benefit plans and to improve spousal pension protections.
Boggs v. Thomas F. Boggs, et al.
No. 96-79 (U.S. Supreme Ct. 1996) 13 pps. **$25.00**

AB (Signorille for AARP) Brief *amicus curiae* in Support of Neither Party on Writ of Certiorari to 9th Circuit
The lower courts need more comprehensive guidelines for analyzing fiduciary breach allegations arising from an employer's amendment of its plan. An employer is generally free to amend its employee benefit plan as long as ERISA's substantive provisions, the express terms of the plan, or ERISA's procedures are not violated. An employer's amendment of a plan does not necessarily immunize its post-amendment actions. Transactions of plan assets which include employee contributions must be scrutinized more strictly than other transactions. Participants are entitled to either their promised benefit or their own contributions plus interest, whichever is greater. Upon termination, participants are entitled to their proportionate share of any surplus.
Hughes Aircraft Co. v. Stanley Jacobson, et al.
No. 97-1287 (U.S. Supreme Ct. 1998) 25 pps. **$35.00**

AB (Signorille for AARP) Brief *amicus curiae* in Support of Plaintiff-Appellant on Appeal from D.C., C.D. Cal.
The statute of limitations should not begin to run to preclude participant's lawsuits appealing benefit denials unless plans strictly comply with ERISA's claims procedure because the procedure was enacted to protect participants when resolving benefits disputes with the plan. Requiring strict compliance with ERISA is consistent with the administrative exhaustion requirement imposed on participants and substantial compliance is not enough.
Wertzel v. Lou Ehlers Cadillac Group Long Term Disability Insurance Program & Reliance Standard Life Insurance Co.
No. 97-56437 (9th Cir. 1998) 22 pps. **$35.00**

AB (Signorille for AARP) On Petition for a Writ of Certiorari to the 6th Circuit in Support of Petitioners
The Court should grant review because a conflict exists between the circuits and because the 6th Circuit's holding that contracts providing enhanced ERISA benefits to retirees in return for an employee's release of potential legal claims are unenforceable, upsets the status quo for both employers and employees and shatters security for retirees.
Sprague, et al. v. General Motors Corp.
No. 97-1639 (U.S. Supreme Ct. 1998) 17 pps. **$25.00**

AB (Ventrell-Monsees for AARP) Brief *amicus curiae* of American Association of Retired Persons in Support of Appellants' Petition for Rehearing With Suggestion for Rehearing *En Banc*
Voting rights are plan assets because plan assets are not limited to plan investments, which interpretation is supported by ERISA's protective purposes and structure and because voting rights may be monetarily valued. The 6th Circuit's panel decision that the term "plan assets" should be interpreted as plan investments threatens funds, retirement security and potentially undermines fiduciary protections.
Grindstaff v. Green
No. 96-5628 (6th Cir. 1998) 12 pps. **$25.00**

AB (Signorille for AARP) Brief in Support of Plaintiffs-Appellees on Appeal from the D.C., S.D. NY.
Congress has consistently indicated a presumption against pension plan terminations and asset reversion to employers. Thus, when an employer terminates a pension plan and the plan's assets exceed its liabilities, the employer must absolutely comply with ERISA requirements in order to recapture surplus benefits.
Shepley, et al. v. New Coleman Holdings, Inc., et al.
No. 98-7519 (2nd Cir. 1998) 24 pps. **$35.00**

AB (Feinberg, Saltzman for NELA) In Support of Plaintiff-Appellee on Appeal from D.C., C.D., Cal.
Employees who become disabled depend upon long-term disability plans under ERISA. Employees should be able to secure a de novo standard of review to allow an independent review of a claim denial. This assures that the abuse of discretion standard will only be applied if a plan clearly meets the requirements for an exception to the de novo standard.
Snow v. Standard Insurance Co.
No. 95-55515 (9th Cir. 1995) 19 pps. **$25.00**

AB (Signorille for AARP and NELA) Writ of Certiorari To 4th Circuit
Defendant took unscrupulous actions to evade judgment upon the courts' determination in an action alleging various breaches of fiduciary duties. Defendant attempts to use ERISA to shield him from wrongdoing. Plaintiff maintains that where any defendant attempts to evade judgment, equitable remedies are established under Federal Rules of Civil Procedure and should be used.
Peacock v. Thomas
No. 94-1453 (U.S. Supreme Ct. 1994) 11 pps. **$25.00**

AB (Bruner for EEOC) In Support for Attorney Fee Award from D.C., N.D. Tex.
Abundant case law supports the district court's discretionary award of fees for time invested in the first trial, where plaintiff prevailed on all of his ADEA and ERISA claims. Past decisions also support the proposition that an ultimately-prevailing plaintiff's should receive attorney's fees for prosecution of an appeal, even if they were unsuccessful. Lack of success in plaintiff's cross-appeal does not warrant a reduction in attorney's fees.
Olitsky v. Spencer Gifts, Inc.
No. 91-7221 (5th Cir. 1992) 17 pps. **$25.00**

PB (Miller, Klimaski, Beckett) Memorandum of Law in Opposition to Motion for Partial Summary Judgment
Plaintiffs' state law claims (based on the D.C. Human Rights Act, breach of contract, and intentional infliction of emotional distress), are not related to defendant's employee benefit plan and therefore are not preempted by ERISA. If preempted, state law claims should be subsumed within ERISA through the court's power to create federal

common law, and thus plaintiffs have analogous federal common law claims. A right to a jury trial is constitutionally required and ERISA grants an implied statutory right to a jury.
McDonald and McDonald v. Consolidated Electric Supply, Inc., et al.
No. 90-3051 (D.C., D.C. 1991) 36 pps. **$45.00**

AB (Zaleznick for AARP) Appeal from D.C., D. Colo.
An employer violated the ADEA and ERISA when it increased its pension benefit threshold requirements for a lump sum payment without grandfathering employees who had already satisfied the plan's conditions. The employees were constructively terminated when they had to retire early in order to receive the lump sum payment which they were already entitled to.
Mitchel v. Mobil Oil Corp.
No. 89-1019 (10th Cir. 1989) 25 pps. **$35.00**

PB (Wisehart) Writ of Certiorari to 2nd Circuit
Presented as issue of first impression is whether a district court has discretion to require an actuarial adjustment of a pension benefit in order to avoid a confiscation, and to remedy discrimination intended to penalize older employees and interfere with the attainment of their vested pension benefits.
Chambless v. Masters, Mates & Pilots Pension Plan
No. 89- (U.S. Supreme Ct. 1989) 71 pps. **$85.00**

AB (Zaleznick, Ventrell-Monsees, Stein for AARP) Writ of Certiorari to 9th Circuit
Under ERISA, a plan participant may sue a non-fiduciary person (here, the employer) who knowingly participates in a fiduciary's breach of trust that results in the insolvency of the pension plan.
Mertens v. Hewitt Associates
No. 91-1671 (U.S. Supreme Ct. 1992) 14 pps. **$25.00**

DB (Davis) Writ of Certiorari to 6th Circuit
Sixth Circuit decision that employee's claim for severance pay benefits under employee welfare benefit plan covered by ERISA does not "relate to" such an ERISA-covered benefit plan and, thus, is not preempted by federal law is in error, and petition for writ of certiorari should be granted.
General Motors Corporation v. Duerr
No. (U.S. Supreme Ct. 1990) 62 pps. **$75.00**

PB (Liebross for AARP) Appeal from D.C., W.D. N.Y.
Section 202(a) prohibits employer from requiring employee to sign a "waiver of participation" in company's benefit plan at the time of hire because employee's age at date of hire (58) made it costly for employer to fund his pension.
Laniok v. Brainerd Manufacturing Co. Pension Plan
No. 90-9089 (2nd Cir. 1991) 23 pps. **$35.00**

AB (Liebross for AARP) Appeal from D.C., W.D. Wa.
ERISA did not repeal by implication the jurisdiction of the federal courts under LMRA Section 302(E) to review whether multiemployer pension plan eligibility rules comply with "exclusive benefit" rule of LMRA Section 302(c)(5) which prevents multiemployer plan trustees from adopting arbitrary and capricious rules limiting eligibility for benefits.
Phillips v. Alaska Hotel and Restaurant Employees Pension Fund
No. 89-35735 (9th Cir. 1990) 21 pps. **$35.00**

AB (Arterton for NELA) Writ of Certiorari to Texas Supreme Court
ERISA preempts only those state laws that both relate to employee benefit plans and purport to regulate the terms and conditions of those plans. ERISA does not preempt a state common law that prohibits an employer from

discharging an employee in order to avoid contributing to or paying benefits under the employee's pension fund.
Ingersoll-Rand v. McClendon
No. 89-1298 (U.S. Supreme Ct. 1990) 21 pps. **$35.00**

AB (Mackaronis for AARP) Writ of Certiorari to 3rd Circuit
Participants denied benefits under an ERISA plan, are entitled to de novo judicial review of eligibility determinations, as well as standing to seek penalties when they have been denied information to determine their legal rights.
Firestone Tire & Rubber Co. v. Bruch
No. 87-1054 (U.S. Supreme Ct. 1987) 28 pps. **$35.00**

PB (Golden and Burkett) Brief of Plaintiff-Appellant. Oral Argument Requested
Plaintiff's claim for future pension benefits as part of her wrongful discharge action is not preempted by ERISA. The award of future pension benefits does not impose an administrative, fiscal or legal burden upon the pension plan or an administrator or a fiduciary of the plan. Thus, it does not relate to a pension plan within the meaning of ERISA, and Michigan law is not preempted.
Teper v. Park West Galleries
No. 79642 (Mich. Supreme Ct. 1988) 42 pps. **$55.00**

PB (Weinhaus) Writ of Certiorari to 8th Circuit
Duration of benefits are by law and custom not tied to the term of the labor agreement providing them. The 8th Circuit erroneously requires retirement benefit plan participants to prove that the plan's description and other objective explanations the participants are given over the years are consistent with the actual private intent of the drafters as to vesting.
Anderson v. Slattery Group Inc.
No. 87-2022 (U.S. Supreme Ct. 1987) 36 pps. **$45.00**

PB (Whatley) Appeal from D.C., M.D. Ala.
The trial court's awarding of a small civil penalty and attorney's fees to the plaintiff in an ERISA case was not an abuse of discretion. The trial court did not err in awarding attorney fees to plaintiff's counsel as the prevailing party under 29 USC §1132 in action to obtain copies of documents concerning defendant's pension plan where court imposed $800 penalty for failure to produce documents.
Curry v. Contract Fabricators, Inc., Profit Sharing Plan
Nos. 88-7235 & 88-7448 (11th Cir. 1988) 24 pps. **$35.00**

PB (Liebross) Appeal of Summary Judgment by D.C., N.D. Okla.
A contract between a corporation and its wholly-owned subsidiary, which provided for coverage of subsidiary employees under the corporation's existing pension plan, establishes an enforceable ERISA plan. An ERISA plan exists where state contract law recognizes the employer's obligation or the contract qualifies as an ERISA plan amendment. The corporation's failure to formally amend its existing ERISA plan or reveal the plan to the subsidiary employees do not protect it from liability. If ERISA does not apply, the employee may enforce the contract as a third party beneficiary under Oklahoma law.
Lohmann v. Green Bay Packaging
No. 93-5037 (10th Cir. 1993) 139 pps. **$145.00**

AB (Bruce for NELA) In Support of Appellant on Appeal of Judgment by D.C., E.D. Va.
Individuals who have a colorable, good faith claim to ERISA benefits should be given written information about the ERISA plan upon request. Employers are subject to sanctions for failure to provide ERISA plan information to individuals with colorable claims, regardless of whether the individual's claim ultimately prevails.
Keleher v. Dominion Insulation, et al.
No. 91-1261 (4th Cir. 1992) 11 pps. **$25.00**

AB (Ventrell-Monsees for AARP) Writ of Certiorari U.S. Court of Appeals
ERISA should not preempt the District of Columbia's Workers' Compensation Law, which requires employers to pay to the injured employee for up to 52 weeks, the cost of health insurance coverage that the employee possessed before the injury. Since the District's Workers' Compensation law gives the employer the option of providing this compensation under an ERISA plan, it is not preempted under *Shaw v. Delta Air Lines, Inc*., 463 U.S. 85 (1983).
District of Columbia v. Greater Washington Board of Trade
No. 91-1326 (U.S. Supreme Ct. 1991) 21 pps. **$35.00**

AB (Gorlick for AARP) Appeal from D.C., N.D. Cal.
Annuity holders of insurance contracts purchased by pension plans have standing to assert claims against the plan fiduciary for breach of fiduciary duty in the selection of an insurance carrier. The determination of standing should not be based on whether the Department of Labor has filed a related action in the matter.
Miller v. Pacific Lumber Company
No. 93-16271 (9th Cir. 1993) 13 pps. **$25.00**

AB (Signorille for AARP) Appeal form D.C., C.D. Cal.
The district court's reasoning that ERISA affords less protection to participants and beneficiaries of employee benefit plans than the common law of trusts, and its application of the "business judgement rule" as the standard for determining whether the disputed transactions violate ERISA, are contrary to 9th Circuit's decisions.
Howard, et al. v. Say, et al.
No. 93-56605 (9th Cir. 1994) 15 pps. **$25.00**

PB (Sapir) Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment
Defendants can not deny plaintiff's disability pension on the basis that she did not meet additional requirements for eligibility based on a post hoc interpretation by the pension plan trustees.
Pagan v. The Nynex Plan and The Nynex Corp
No. 9l3 Civ. 1336 (VLB) (D.C., S.D. N.Y. 1994) 12 pps. **$25.00**

PB (Stix) Motion for Summary Judgment
De novo review is the proper standard for reviewing defendant board's disability pension denials because said board had no discretion as evidenced by the definition of disability in the pension plan coupled with the complete absence of any disability pension denials prior to the plant closure announcement. Alternatively, if the board had such discretion, it wielded said discretion in an arbitrary and capricious manner.
Albares v. Uniroyal Goodrich Tire Co.
No. 94-C-0516-C (D.C., W.D. Wisc. 1995) 19 pps. **$25.00**

PB (Lankenau) In Opposition to Defendant's Motion to Strike Jury Demand
Plaintiff has a right to a jury trial in an ERISA-based suit to recover money damages.
Algie v. RCA Global Communications, Inc.
No. 89 Civ. 5471 (D.C., S.D. N.Y. 1994) 17 pps. **$25.00**

AB (Zaleznick, Signorille for AARP) In Support of Respondents
Petitioner did not comply with its own amendment procedure and therefore does not meet the requirements of ERISA Section 402(b)(3). Petitioner's reservation of rights clause is not a procedure within the plain language of ERISA Section 402(b)(3) and thus that section's requirements are not met. Section 502(a)(1) of ERISA authorizes a remedy whereby the respondents receive the benefits they would have absent the illegally promulgated plan amendment.
Curtiss-Wright Corp. v. Schoonejongen
No. 93-1935 (U.S. Supreme Ct. 1994) 18 pps. **$25.00**

AB (Lichtman, Lenhoff for WLDF; Zaleznick and Signorille for AARP) In Support of Plaintiff-Appellee

Because the retirement plain does not require the 1967 adjustment to plaintiff's service commencement date, the adjustment was discretionary and therefore ERISA applies to her claim for pension benefits.
Carter v. AT&T Corp.
No. 95-3213 (D.C., S.D. Oh. 1995) 13 pps. **$25.00**

AB (Feinberg for NELA and Signorille for AARP) In Support of Plaintiff-Appellants
Any documents which will assist participants in determining their rights and obligations under benefit plans must be disclosed under the full disclosure policy embodied in ERISA Section 104 (b)(4). ERISA's fiduciary duties include a duty of disclosure consistent with the common law of trusts.
Faircloth v. Lundy Packing Co.
No. 95-1275 (D.C., E.D. N.C. 1995) 26 pps. **$35.00**

AB (Zaleznick, Signorille for AARP) In Support of Plaintiffs-Appellants
To give ERISA's prudence obligation effect, Section 404© can not be interpreted to relieve fiduciaries of liability for their investment decisions. *Case predates regulation at 57 Fed. Reg. 46,906.*
Meinhardot v. Unisys Corp.
Nos. 95-1156, 95-1157 & 95-1186 (D.C., E.D. Pa. 1995) 18 pps. **$25.00**

AB (Ventrell-Monsees, Gorlick for AARP) In Support of Plaintiff's Motion for Summary Judgment and In Opposition to Defendant's Motion for Summary Judgment
Defendants are subject to ERISA's fiduciary duty obligations regardless of whether or not they administered the plan in accordance with a collective bargaining agreement. The trustees were acting as fiduciaries in indirectly transferring the funds.
Marine Engineer Pensioners, Inc. v. Defries
No. WN-93-1796 (D.C., D. Md. 1994) 11 pps. **$25.00**

AB (Ramshaw for EEOC) In Support of Plaintiff's Motion for Rehearing *En Banc*
Pre-emption of state age discrimination claims relating to employee benefit plans would impair the joint state/federal enforcement scheme embodied in the ADEA and is therefore barred by Section 514(d) of ERISA.
Warner v. Ford Motor Co.
No. 93-1312 (6th Cir. 1994) 16 pps. **$25.00**

AB (Zaleznick, Ventrell-Monsees for AARP) In Support of Plaintiff-Appellant's Motion for Rehearing *En Banc*
Removal based on an ERISA Section 514 pre-emption defense is improper where plaintiff's claims arise solely under state discrimination law.
Warner v. Ford Motor Co.
No. 93-1312 (6th Cir. 1994) 8 pps. **$15.00**

AB (Bruce for NELA) In Support of Respondents
ERISA Section 502(a)(3) offers a cause of action to participants who are harmed by a breach of fiduciary duty.
Vanity Corporation v. Howe
No. 94-1471 (8th Cir. 1995) 39 pps. **$45.00**

AB (Feinberg for NELA) In Support of Plaintiff-Appellant
The California “notice-prejudice” rule is not preempted by ERISA and should be applied as a state law regulating insurance. Thefederal courts have used state insurance law doctrines in developing federal common law of ERISA-governed insurance contracts. If the court finds that the notice-prejudice rule is preempted by ERISA, the rule should be adopted as federal common law.
Doherty v. Unum Life Ins. Co.,
No. 96-55147 (9th Cir. 1996) 17 pps. **$25.00**

AB (Ventrell-Monsees for AARP) In Support of Respondent
The Older Workers Benefit Protection Act (OWBPA) does not sanction an employer's use of pension plan assets to purchase releases of potential claims from employees. Defendant also violated ERISA by using plan assets to buy releases of potential claims from employees. OBRA 1986's prohibition of age discrimination in pension plans requires older workers who retire after Jan. 1, 1988 to receive pension credit for all pre-act years of service.
Lockheed Corp. v. Spink
No. 94-809 (U.S. Supreme Ct. 1995) 39 pps. **$45.00**

AB (Bruce for NELA) In Support of Respondent
Defendant's purchase of general releases from its employees with pension plan assets violates ERISA. Defendant violated the 1986 Omnibus Budget Reconciliation Act (OBRA) amendments by reducing plaintiff's benefit accruals on account of his reaching the age of 60 before he was hired. An employer can not impose a limit on the number or years of service or years of participation which are taken into account for purposes of determining benefit accrual under the plan based on an employee's attainment of a certain age.
Lockheed Corp. v. Spink
No. 95-809 (U.S. Supreme Ct. 1995) 37 pps. **$45.00**

AB (Zaleznick for AARP and NELA) In Support of Plaintiffs-Appellants
Defendant committed a per se violation of ERISA when it amended its retirement plan to change the normal retirement age from 65 to 67. The lower court erred in holding that ERISA only requires employees to be able to retire by age 65, not that they be entitled to receive the full benefits available upon reaching the normal retirement age under their employer's plan. This violated the plain meaning and purpose of ERISA.
Lindsay v. Thiokol Corp.
No. 96-4033 (10th Cir. 1996) 12 pps. **$25.00**

AB (Zaleznick for AARP & NELA) In Support of Plaintiff-Appellant
The decision of the Ameritech Benefit Committee to deny plaintiff's request for lump sum distribution of her deceased husband's pension was an abuse of discretion. Because Ameritech breached its fiduciary duty under ERISA to convey complete and accurate information to the decedent regarding his eligibility for a lump sum pension, plaintiff is entitled to appropriate equitable relief.
Swaback v. American Information Technologies Corp.
No. 96-1183 (7th Cir. 1996) 20 pps. **$25.00**

AB (Signorille for AARP & NELA) In Support of Appellant
Any document which will assist participants in determining their rights and obligations under employee benefit plans must be disclosed under the full disclosure policy in ERISA. The fiduciary duties of ERISA include a duty of disclosure consistent with the common law of trusts which would include any information reasonably necessary to enable him or her to enforce his or her rights under the trust or to prevent a breach of the trust.
Weinstein v. Board of Trustees of the CWA/ITU Negotiated Pension Plan
No. 96-7488 (2nd Cir. 1996) 23 pps. **$35.00**

AB (Signorille for AARP & NELA) In Support of Neither Party on Writ of Certiorari for the 9th Circuit
The court should develop a more precise test for determining when a state law "relates to an employee benefit plan" so that ERISA's preemption clause will be uniformly applied. A state law "relates to an employee benefit plan" when it regulates the same principal relationship that ERISA regulates.
State of California, et al. v. Dillingham Construction, N.A., Inc., et al.
No. 95-789 (U.S. Supreme Ct. 1995) 18 pps. **$25.00**

AB (Zalennick & Signorille for AARP & NELA) In Support of Respondent
Mertens does not preclude corporate veil piercing as a remedy in this case. *Mertens* does not apply because this is

an action to vindicate the court's actions and authority, not to invoke ERISA's enforcement mechanisms.
Peacock v. Thomas
No. 94-1453 (U.S. Supreme Ct. 1994) 20 pps. **$25.00**

AB (Lewis, Dean for NELA, Zaleznick, Signorille for AARP) In Support of Plaintiff-Appellee
Corporate veil-piercing as a means to equitably remedy fraud and other improprieties is appropriate where corporate assets which would have been available to satisfy a previous judgment were moved around to avoid payment of the judgment.
Peacock v. Thomas
No. 94-1453 (U.S. Supreme Ct. 1994) 20 pps. **$25.00**

AB (Feinberg, Saltzman for NELA) In Support of Plaintiff-Appellee
De novo standard of review should have been applied where the insurance company made final and binding affirmations of benefits claims without authority.
Snow v. Standard Insurance Co.
No. 95-55515 (9th Cir. 1995) 20 pps. **$25.00**

ERISA - SECTION 510 - INTERFERENCE WITH PROTECTED RIGHTS

AB (Signorille for AARP) In Support Of Appellants On Appeal From D.C., C.D. California
ERISA prohibits employees from terminating employees to avoid paying them benefits. It has been established that courts must apply the *McDonnell Douglas* standard for employment discrimination cases to ERISA §510 cases when individuals claim they were treated differently for the purpose of interference with their benefits. Plaintiff presented sufficient circumstantial evidence to establish a prima facie case under ERISA §510 that defendants reason was pretextual. Plaintiff conditionally accepted defendant's offer of employment. Defendant then withdrew offer and treated plaintiffs as "voluntary quit," knowing plaintiffs had no intention of quitting. Treating plaintiffs as such provided an easy way out for defendants to avoid payments to plaintiffs as continued employees.
Aparicio, Holmes and Lotocky v. General Motors Corp., et al.
No. 98-56352 (9th Cir. 1999) 22pps. **$35.00**

AB (Dean and Signorille for NELA and AARP) In Support of Petitioners on Writ of Certiorari to the 9th Circuit
The plain language of ERISA § 510 protects participants from interference with rights attainable under welfare benefit plans. Congress did not distinguish between pension and welfare plans, vested and non-vested benefits, or present and future benefits in ERISA § 510, although it did in other sections of ERISA. Moreover, the protection of welfare plan rights under § 510 is consistent with ERISA's structure regarding reporting and disclosure, fiduciary responsibilities and preemption of state law claims. Finally, the legislative history of § 510 corroborates this interpretation of the plain language of the statute.
Stein v. Atchison, Topeka and Santa Fe Railway Co., et al.
No. 96-491 (U.S. Supreme Ct. 1996) 11 pps. **$25.00**

AB (Zaleznick for AARP) Appeal from D.C., S.D. Tex.
Defendant's decision to reduce coverage (for treatment of AIDS) under the employer's health plan to deprive plaintiff of coverage, constitutes unlawful discrimination under Section 510 of ERISA. Employee need not have an entitlement to continued benefits before the removal violates Section 510.
McGann v. H & H Music Co.
No 90-2672 (5th Cir. 1990) 21 pps. **$35.00**

PB (Whatley) Appeal from D.C., M.D. Ala.
The trial court did not err in awarding attorney's fees to plaintiff, as the prevailing party under 29 USC §1132, in an action to obtain copies of documents concerning defendant's pension plan. The court imposed an $800 penalty to defendant

for failure to produce documents.
Curry v. Contract Fabricators, Inc., Profit Sharing Plan
Nos. 88-7235 & 88-7448 (11th Cir. 1988) 24 pps. **$35.00**

AB (Signorille for AARP) Appeal from D.C., E.D. Pa.
Section 510 prohibits employers from amending their employee benefit plan in order to intentionally discriminate against an individual employee. A plan administrator's bad faith is not a precondition to awarding statutory penalties under Section 502 © (1) of ERISA.
Haberern v. Kaupp Vascular Surgeons
No. 93-1892 (3rd Cir. 1993) 20 pps. **$25.00**

ERISA - ATTORNEY'S FEES & COSTS

AB (Pension Rights Center) Appeal from D.C., District Md.
The court should adopt a presumption in favor of awarding attorney's fees to prevailing ERISA plan participants in order to encourage private enforcement of benefit rights.
Rodriguez v. MEBA Pension Trust
Nos. 91-2336 & 91-2358 (4th Cir. 1992) 6 pps. **$15.00**

AB (Bruner for EEOC) In Support for Attorney Fee Award by D.C., N.D. Tex.
Abundant case law supports the district court's discretionary award of fees for time invested in the first trial, where plaintiff prevailed on all of his ADEA and ERISA claims. Past decisions support the preposition that ultimately-prevailing plaintiffs should receive attorney's fees for prosecution of an appeal, even if they were unsuccessful. Lack of success in plaintiff's cross-appeal does not warrant a reduction in attorney's fees.
Olitsky v. Spencer Gifts, Inc.
No. 91-7221 (5th Cir. 1992) 17 pps. **$25.00**
PB (Hafif) Appeal from D.C., C.D. Cal.
The court's decision reducing the fee award by 67% was an abuse of discretion and should be reversed. Worthy ERISA claimants are being denied effective court access due to low fee awards. Reasonable fee awards are essential in order to enforce ERISA's goals.
D'Emanuele v. Montgomery Ward & Co.
No. 88-6505 (9th Cir. 1988) 64 pps. **$75.00**

PB (Whatley) Appeal from D.C., M.D. Ala.
The trial court's awarding of a small civil penalty and attorney's fees to the plaintiff in an ERISA case was not an abuse of discretion. The trial court did not err in awarding attorney fees to plaintiff's counsel as the prevailing party under 29 USC §1132 in action to obtain copies of documents concerning defendant's pension plan where court imposed $800 penalty for failure to produce documents.
Curry v. Contract Fabricators, Inc., Profit Sharing Plan
Nos. 88-7235 & 88-7448 (11th Cir. 1988) 24 pps. **$35.00**
PB (Koch) Appeal from D.C., S.D. N.Y
The court erred by applying an invalid standard in determining lodestar rates. The court applied rates of small to medium law firms to plaintiff's attorney, while defendant's attorney was paid rates of large law firms. Plaintiff and defendant's attorneys were both paid out of the same pension insurance fund.
Chambless v. Masters Mates & Pilots Pension Plan
Nos. 88-7892 & 88-7928 (2nd Cir. 1989) 28 pps. **$35.00**

PB (Sapir) Memorandum of Law in Support of Plaintiff's Motion for Summary Judgement
It is unconscionable that the trustees denied plaintiff's disability pension benefits, and forced her to subsist on meager Social Security disability benefits. All five factors required for an award of attorney's fees pursuant to *Miles v. N.Y.S Teamsters Pension Fund* are met here.

Pagan v. The Nynex Plan and The Nynex Corporation
No. 9l3 Civ. 1336 (VLB) (D.C., S.D. N.Y. 1994) 14 pps. **$25.00**

AB (Signorille, Gorlick for AARP and Lewis for NELA) In Support of Plaintiff-Appellants
The awarding of attorney's fees is necessary to implement the enforcement scheme of ERISA.
Sheldon Co. Profit Sharing Plan & Trust v. Smith
No. 94-1239 (D.C., W.D. Mich. 1994) 13 pps. **$25.00**

ERISA - PREEMPTION

AB (Signorille for AARP) Brief *Amici Curiae* of AARP and NELA
The federal court lacks jurisdiction because plaintiff's state law claims cannot be brought under ERISA's civil enforcement provisions since defendants were merely acting as health care service providers to an ERISA plan. Therefore plaintiff's state law claims are not preempted by Section 514(a) of ERISA. Because plaintiff's claims could not have been brought under ERISA, the district court did not have jurisdiction and her state law claims were improperly removed. Defendant HMO was not subject to suit under section 502(a) of ERISA because the HMO was acting as a provider of health care services and not in any ERISA capacity. Where HMO's act as medical entrepreneurs, rather than in an ERISA capacity, ERISA does not preempt state laws. The bonus arrangement between the HMO and its participating physicians was a contractual promise and did not implicate any determination of plan eligibility, or management of plan assets, or other plan administration. Even if the district court had jurisdiction, plaintiff still has a cognizable claim under ERISA's fiduciary duty rules. The ERISA fiduciaries are liable to the plaintiffs for restitution of bonuses and profits they obtained by breaching their fiduciary duties.
Pegram v Herdrich
No. 98-1949 (U.S. Sup. Crt. 2000) 31 pps. **$45.00**

UNEMPLOYMENT COMPENSATION

AB (Osborne for PELA) Appeal from D.C., D. Va.
The court improperly applied the doctrine of collateral estoppel to the agency's finding that plaintiff was terminated for "misconduct" and hence ineligible for unemployment compensation.
Rubin v. Accotink Academy
No. CA-88-22 (4th Cir. 1988) 11 pps. **$25.00**

RULE 11 SANCTIONS

PB (Franklin) Appeal to the United States Court of Appeals for the Ninth Circuit
The lower court's decision was based on an erroneous view of the law. Rule 11's "Safe Harbor" provision requires pre-filing service on the opposing party. Because defendant's served and filed their Rule 11 motion simultaneously, with no notice to plaintiffs they failed to comply with the 21-day "Safe Harbor" provision. To uphold Rule 11 sanctions under these facts would effectively eliminate the "Safe Harbor" provision. Furthermore, because the inclusion of the problematic accusation had no appreciable effect on the litigation, Rule 11 sanctions are inappropriate. Plaintiff's complaint was not frivolous and plaintiff did not need to provide direct evidence to prove that. The evidence proffered could have led to the inference that the facts alleged in plaintiff's complaint were in fact true. Finally, the lower court's decision to award sanctions in the amount of $75,000 was erroneous because the court failed to clarify the basis for the sanction imposed.
Radcliffe v. Rainbow Construction Co.
No. C-96-01852 CAL (9th Cir. 2000) 63 pps. **$75.00**

AB (Aung for Asian Law Caucus and NELA) Brief in Support of Plaintiff's Request for Reversal
Plaintiffs should not have to plead or offer proof of claims at the pleading stage. To impose Rule 11 sanctions for failure to provide such proof will have a chilling effect on civil rights plaintiffs and their attorneys. This is especially true where

the plaintiff seeks to bring an action alleging a conspiracy because the evidentiary proof will be "largely in the hands of the alleged conspirators."
Radcliffe v. Rainbow Construction Co.
No. C-96-01852 CAL (9th Cir. 2000) 15 pps. **$25.00**

AB (Harris for NELA) Appeal from S.D.N.Y.
The revocation of pro hac vice admission based upon accusations by Class Counsel was improper because it rewarded the unprofessional attack. The revocation cannot be justified on the grounds that there was no response to the accusations. Rule 11 Sanctions were improvidently granted because the court gave no notice or opportunity to be heard. The hearing in question in this case was for the purpose of receiving testimony and documents regarding the merits of the arguments made in the motion to enforce the settlement agreement, yet the court did not address any of the merits. Aside from depriving the movants of their counsel of choice, the court's order has a chilling effect on attorneys which may translate into a chilling effect on the ability of plaintiffs to raise legitimate concerns about the settlement of a class action suit. The order of the district court made a statement that "if you represent women who are displeased with the efforts of their class counsel, you will obtain, not a fair hearing, but only personal attacks."
Martens v. Shearson Lehman Hutton (Spriggs)
No. 00-768(L) (2nd Cir. 2000) 20 pps. **$25.00**

PB (Pohl and Rogow) Appeal from Post-Judgment Order and Final Judgment of U.S. D.C., Fla., Imposing Sanctions Against Counsel
The district court abused its discretion in imposing sanctions under 28 U.S.C. § 1927, where the correct standard to be applied is whether counsel acted "unreasonably and vexatiously" to prolong litigation in "bad faith." Where defendant's Rule 11 sanctions failed due to the "safe harbor" provision of the rule, the application of § 1927 was in error as this is not a "catch all" provision, nor a fall-back statute for failure to comply with Rule 11. The district court erred in equating a weak 42 U.S.C. § 1986 case with bad faith, rather than recognizable willful misconduct. Plaintiff's attempt to use the "integrated enterprise" theory of liability against defendant's related corporate entities, some of which did not directly employ plaintiffs, was not in bad faith.
Barnett v. Doctor's Associates, Inc.
No. 99-13843-H (11th Cir. 2000) 61 pps. **$75.00**

AB (Eisenberg for NELA) Brief in Support of Appellant on Appeal from D.C., S.D. N.Y.
An administrative agency finding of no probable cause in a case is an improper basis for Rule 11 sanctions because such a finding is not dispositive of the merits of the case. The district court's ruling otherwise undermines the public policy of enabling victims of discrimination to obtain legal representation.
Merrill Lynch, Fenner & Smith, Inc., et al. v. Forbes (Nuwesra)
No. 98-7649 (2nd Cir. 1998) 16 pps. **$25.00**
AB (Eisenberg for NELA) Brief in Support of Appellant on Appeal from D.C., S.D. N.Y.
A court may not assess sanctions under Rule 11 of the Federal Rules of Civil Procedure without due process, which includes notice and an opportunity to be heard. A court should not assess Rule 11 sanctions solely because the attorney based claims on his client's representations, for a court to do so, would undermine Congress' intent to secure private representation for people whose civil rights have been violated. The court cannot be an overseer of the of the reasonableness of fees between an attorney and his client in a Title VII case.
Uy v. Bronx Muni. Hosp. Center (Kinigstein)
No. 98-7921 (2nd Cir. 1998) 18 pps. **$25.00**

PB (Bernstein for EEOC) On Appeal from the D.C., E.D. La.
The Defendant failed to file a timely motion requesting fees or sanctions in the district court and thereby waived any claim for costs or attorneys' fees under Title VII or Rule 11. The EEOC's investigation and suit caused defendant to correct its discriminatory waiter hiring practices. The bar was not a "prevailing party" within the meaning of Title VII's fee provision.
EEOC v. Pat O'Brien's Bar

No. 96-30786 (5th Cir. 1996) 40 pps. **$55.00**

AB (Roseman for NELA) In Support of Petitioners
Appellate review of the mixed factual-legal issue of whether a party has made an adequate pre-filing inquiry under Rule 11 should be de novo. Attorney fees for an unsuccessful Rule 11 appeal should be awarded, unless the appeal is frivolous.
Cooter & Gell v. Hartmarx Corp., et al.
No. 89-275 (U.S. Supreme Ct. 1989) 17 pps. **$25.00**

AB (Joseph for ATLA) In Support of Petitioners on Writ of Certiorari for the D.C.
A voluntary dismissal pursuant to Fed.R.Civ.P. 41(a)(1)(i) deprives the court of the power to impose Rule 11 sanctions. Rule 11 sanctions may be reviewed under an abuse of discretion standard. A Rule 11 attorney's fees award should not be automatically imposed upon affirmance of a Rule 11 sanction.
Cooter & Gell v. Hartmarx Corp., et al.
No. 89-275 (U.S. Supreme Ct. 1989) 40 pps. **$45.00**

AB (Morrison for Public Citizen Litigation Group) Brief Urging Reversal
The district court should not have reached the merits of the Rule 11 motion because the filing of a Rule 41(a)(2) dismissal deprived the court of the power to pass on that motion. Rule 41(a)(1) contains specific exceptions that do not include motions under Rule 11 and Rule 12. This promotes the policy of encouraging plaintiffs to dismiss cases that they no longer wish to continue.
Cooter & Gell v. Hartmarx Corp., et al.
No. 89-275 (U.S. Supreme Ct. 1989) 26 pps. **$35.00**

AB (Johnson for Texas NELA) In Support of Plaintiffs
Unwarranted expansion of the court's Rule 11 sanctioning power would curb the filing of many valid claims of employee causes of action, most particularly those that are novel attempts to fashion solutions to systemic problems including problems associated with "runaway shops" and would chill employment practitioners representing employees in this field.
Fuerza Unida, et al. v. Levi Strauss Associates, Inc.
Nos. SA-90-CA-0480 & SA-91-CA-0720 (D.C., W.D. Tex. 1993) 48 pps. **$55.00**

PB (McCracken) In Support of Sanctions
Defendant's destruction of its affirmative action plan after it had notice of a pending action should expose defendant to the most severe sanctions.
Saccuci v. Bull, Inc.
No. CV 92-05533 (Superior Ct. of Ariz., Maricopa 1994) 49 pps. **$55.00**

FEDERAL ATTORNEY'S FEES STATUTES

DB (Davidson) Defendant-Appellee's Brief on Appeal from D.C., N.D. Ill.
The district court properly assessed the attorney's fees portion as limited where appellant did not take issue with the finding of fractional success on both her back pay and front pay claims. The court's lodestar reduction of damages should not be precluded.
Cook v. The City of Chicago
No. 99-3507 (7th Cir. 2000) 44 pps. **$55.00**

PB (Rubenstein for NELA) Brief Of *Amicus Curiae* NELA In Support Of Appellant
The district court erred in drastically reducing appellant's attorney's fees. There was no evidence in this case to suggest to

the court that plaintiff's counsel in this case devoted an excessive number of hours in litigation of marginal claims or in delaying tactics or the like. On the contrary, plaintiff, through her counsel, successfully opposed four summary judgment motions. The trial court denied fees to plaintiff's attorney on the ground that the requested fee was not reasonable in comparison plaintiff's ultimate recovery. The court did not look at the time spent and chose not to apply the time-honored,
judicially sanctioned and straightforward cornerstone of fee requests, the lodestar/multiplier method of computation. The district court's action was inconsistent with the principles underlying civil rights fee shifting statutes, which is to address the practical problem which unemployed individuals or those with limited resources may face in their attempts to retain competent counsel who may be willing and able to take on cases that are difficult to prove even under the best of circumstances.

Keslar v. Bartu and State of Nebraska

No. 99-2242 (8th Cir. 1999) 23pps. **$35.00**

AB (Rosen) Writ of Certiorari to 2nd Circuit

Federal fee shifting statutes such as the Federal Civil Rights Attorney's Fee Award Act of 1976 mandate that the award be determined according to the relevant private market. Market analysis dictates that the prevailing attorney be compensated for the risk of bringing the litigation as well as for time spent. A contingent risk enhancement is appropriate when the prevailing party would have faced difficulty in finding an attorney without the risk enhancement. The enhancement should reflect the difference in market treatment of similar contingent cases as a class, rather than the riskiness of any particular case.

City of Burlington v. Dague

No. 91-810 (U.S. Supreme Ct. 1991) 49 pps. **$55.00**

LABOR LAW

AB (Gregory for EEOC) Brief *amicus curiae on* Appeal from D.C., S.D. N.Y.

This court should adopt the reasoning of the D.C. Circuit in *Cole v. Burns Int'l Security Servs.* and hold that a court, in the context of the ADEA, must apply a standard of review that is sufficiently rigorous to ensure that the arbitration panel correctly applied the statutory standards in resolving the claim. Under that standard, the arbitration award in this case must be vacated because, in the absence of a written opinion with a supporting rationale, the court has no meaningful way to determine that the arbitration panel acted in accordance with applicable statutory standards.

Chisolm v. Kidder, Peabody Asset Management, Inc.

No. 97-7828 (2nd Cir. 1997) 30 pps. **$35.00**

AB (Sloan for EEOC) Brief on Rehearing *En Banc* for EEOC as *amicus curiae* on appeal from D.D.C.

Under *Hicks*, a court should not grant summary judgment where the plaintiff has made out a prima facie case of discrimination and produced evidence sufficient to show that the employer's proffered reason for the challenged employment decision is unworthy of credence. The collective bargaining agreement in this case does not relieve the hospital of its obligation to reasonably accommodate plaintiff's disability.

Aka v. Washington Hospital Center

No. 96-7089 (D.C. Cir. 1997) 55 pps. **$65.00**

AB (Sloan for EEOC) Response to Appellee's Petition for Rehearing and Suggestion for Rehearing En Banc

There is no reason to reconsider the court's former decision holding that the defendant violated the ADA by failing to reassign plaintiff to a vacant position for which he was qualified when he became unable, due to a disability, to continue working as an orderly. The defendant's argument, that the proposed accommodation would conflict with a collective bargaining agreement, was properly rejected because the collective bargaining agreement authorized the defendant to reassign disabled employees, consistent with its duties under the ADA, and in the event of a conflict, the duty to reassign would depend on whether the accommodation was reasonable or would result in undue hardship.

Aka v. Washington Hospital Center

No. 96-7089 (D.C. Cir. 1997) 15 pps. **$25.00**

PB (Lipsitz) Appeal from D.C., W.D. N.Y.
A state law breach of employment contract action based on the employer's violation of a just cause requirement for terminations in an expired collective bargaining agreement was not properly removed to federal court. Section 301 of the Labor Management Relations Act does not provide federal jurisdiction over an employee's breach of contract action where no contract was in existence between the employer and plaintiff's labor organization at the time of breach. Questions of NLRB pre-emption must be addressed by the state court in which the complaint was filed.
Derrico v. Sheehan Emergency Hospital
No. 87-7415 (2nd Cir. 1987) 13 pps. **$25.00**
Also available: Joint Appendix with documents filed with Appeal. 61 pps. **$75.00**
Petition for Rehearing En Banc, making similar arguments. 19 pps. **$25.00**
Reply Brief on Appeal from D.C., W.D. N.Y, making similar arguments. 13 pps. **$25.00**

PB (Potter) Appeal from D.C., N.D. Ill.
The court should affirm the jury verdict, and remand with instructions to award plaintiff prejudgment interest and pension credits. Defendant union denied plaintiff job referrals because he was black (which interfered with plaintiff's right to contract, and constituted discrimination in enforcing terms of the collective bargaining agreement) and expelled plaintiff from the union because he filed charges, all in violation of Section 1981. Defendant's conduct also in breach of duty of fair representation under Section 301. Evidentiary rulings of court and jury instructions were appropriate.
Daniels v. Pipefitters Local No. 597
Nos. 90-3124 & 90-3261 (7th Cir. 1991) 85 pps. **$95.00**

AB (Posner for CELA) Appeal from California Superior Court, Ventura County
Precluding plaintiff from recovering payment for earned but untaken vacation constitutes a forfeiture and violates public policy. A statute of limitations begins to run when the last act necessary to the commission of the wrong occurs, and the wrongful act results in harm. Consequently, plaintiff had no claim under Labor Code § 227.3 until he terminated his employment with defendant and defendant refused to compensate him for his untaken vacation.
Sequeira v. Rincon-Vitova Insectaries, Inc.
No. B079614 (Cal. Ct. of Appeal, 2nd District, 1994) 13 pps. **$25.00**

AB (Moran for EEOC) In Support of Petition for Rehearing with a Suggestion for Rehearing *En Banc*
The panel's holding that a union may waive an employee's right to seek judicial redress for violations of federal anti-discrimination laws is directly contrary to a Supreme Court decision and directly conflicts with at least three other courts of appeals. This is true even though the collective bargaining agreement calls for arbitration of disputes under the agreement.
Austin v. Owens-Broadway Glass Container, Inc.
Nos. 94-1213 & 94-1265 (4th Cir. 1996) 18 pps. **$25.00**

AB (Hedin for NELA) In Support of Petition for Writ of Certiorari for the 1st Circuit
The court of appeals erred in holding that Massachusetts state anti-discrimination laws are preempted by the National Labor Relations Act. The lower court erroneously applied the law of federal labor preemption. The lower court decision also conflicts with Massachusetts court decisions holding that the state anti-discrimination laws fall into the "local interest" exception to *Garmon* preemption.
Mass. Commission Against Discrimination v. Chaulk Services, Inc.
No. 95-1679 (U.S. Supreme Ct. 1995) 21 pps. **$35.00**

AB (Moran for EEOC) In Support of Plaintiff-Appellant
Title VII prohibits a labor organization from subjecting its female employees to a sexually hostile work environment. The prohibition is not limited to discrimination in membership and referrals.
Yerdon v. Teamsters Local 1149, et al.
No. 95-7604 (2nd Cir. 1995) 19 pps. **$25.00**

PB (Moran for EEOC) Supplemental Brief of Appellee
The field monitor appointment order is a valid and reasonable exercise of the Administrator's powers as a special master to assist the district court in achieving compliance with its remedial orders to desegregate the defendant-union's membership. The Administrator clearly has the authority to require defendants to take certain action, or refrain for taking certain action, if necessary, to implement the district court's orders.
EEOC v. Local 638, et al.
Nos. 95-6047(L), 95-6049 & 95-6135 (CON) (2nd Cir. 1995) 24 pps. **$35.00**

OTHER FEDERAL STATUTES

PB (Newhouse) Proof Brief Of Appellant
The district court erred in granting summary judgment in respect to plaintiff's Equal Pay Act claims because she was paid less for doing substantially similar work as her male counterparts. It was error for the trial court to grant summary judgment
on plaintiff's sex discrimination claim when plaintiff clearly demonstrated that she was treated differently than male head coaches. The district court's dismissal of the plaintiff's case on Eleventh Amendment grounds was improper because plaintiff could have sued defendant, Ohio State University, under Titles VII and IX without the state's consent. The trial court erred as a matter of law by ruling that plaintiff lacked standing to raise a Title IX claim because she did not expressly invoke Title IX in voicing her complaints and, therefore, was not engaged in protected activity for the purpose of retaliation under Title IX.
Weaver v. Ohio State Univ., et al.
No. 98-4295 (6th Cir. 1999) 63pps. **$75.00**

PB (Albrecht) Petition For Writ Of Certiorari To The United States Supreme Court
A district court has inherent power to deny a Fed. R. Civ. P. 50 motion for judgment as a matter of law due to the movant's
serious misconduct in impermissibly relying upon post-verdict communications with jurors regarding the credibility of its key witness, whose truthfulness the movant had argued to the jury was critical to the verdict. The Seventh Amendment to
the U.S. Constitution precludes a court of appeals from reversing an age discrimination jury verdict under Fed. R. Civ. P. 50
where credibility regarding the key defense witness was not addressed by the appellate court and this credibility evidence and additional circumstantial evidence permitted the jury to find age discrimination. The court of appeals decision conflicts with the proof methodology set forth in *St. Mary's Honor Center v. Hicks.*
Diettrich v. Northwest Airlines, Inc.
No. 98-1837 (U.S. Supreme Ct. 1999) 41pps. **$55.00**

PB (Kaplan) Appellee's Petition And Suggestion For Rehearing *En Banc*
The Smithsonian Institution exercises substantial independent governmental authority so as to constitute an agency under
the Administrative Procedure Act (APA). The Smithsonian is subject to sufficient federal control and supervision so as to constitute an authority of the government of the United States subject to the Privacy Act.
Dong v. Smithsonian Inst., Hirshhorn Museum & Sculpture Garden
No. 96-5303 (D.C. Cir. 1997) 27pps. **$35.00**

AB (Morgan for NELA) Brief Of *Amicus Curiae* Of National Employment Lawyers Association In Support Of Respondent
Private citizens acting as *qui tam* relators have standing under Article III to bring actions under the False Claims Act. A long and unbroken history of Supreme Court decisions as well as 400 years of pre-constitutional antecedents supports *qui tam* relators standing as a cost effective way to ferret out and prosecute violations of law. Most *qui tam* relators are not merely members of the general public, rather, most are persons whose motivations extend well beyond the monetary rewards promised by the False Claims Act; persons who blow the whistle are most often quality-control

engineers, security personnel, or petroleum engineers who are committed to righting apparent wrongs and who, inevitably, suffer ostracization, career stagnation or job loss as a result of their public-minded duty.
Vermont Agency of Natural Resources v. United States ex rel. Stevens
No. 98-1828 (U.S. Supreme Ct. 1998) 63pps. **$75.00**

AB (Waxman for U.S.) Brief for the United States Supporting Petitioner on Writ of Certiorari to the 8th Circuit
A terminated employee's right to continuation coverage of health benefits under COBRA does not cease because of pre-existing coverage under another plan. After the employee has elected to continue coverage, an employer may only terminate continuation coverage when the beneficiary becomes covered for the first time, by another plan. This conclusion is supported by the plain meaning of the statute, its underlying purposes, and policy considerations.
Geissal v. Moore Medical Corp., et al.
No. 97-689 (U.S. Supreme Ct. 1997) 31 pps. **$45.00**
Also available: *Brief amici curiae of the American Association of Retired Persons and the National Employment Lawyers Association in Support of Petitioner, making similar arguments.* 15 pps. **$25.00**

AB (Kitchens & Weber) On Appeal from the D.C., M.D. Ga.
The district court held for the first time that non-statutory claims of discrimination lodged by federal employees are preempted by the Civil Service Reform Act (CSRA) of 1978. The Civil Service Reform Act (CSRA) of 1978 preempts the long recognized constitutional tort remedy for discrimination claims under *Davis v. Passman*, for excepted service federal employees expressly excluded from Title VII. Thus, the appellant/plaintiff, a United States Probation Officer, specifically excluded from Title VII coverage, is entitled to judicial review of his claim of race discrimination concerning his demotion and subsequent termination from his position as a United States Probation Officer.
Lee v. Hughes and Lanford
No. 97-8423 (11th Cir. 1997) 12 pps. **$25.00**

PB (Payne) Writ of Certiorari to 4th Circuit
The court should rule that state common law actions which do not clearly, actually, and significantly conflict with §210 of the Energy Reorganization Act are not preempted by that statute.
English v. General Electric Co.
No. 89-152 (U.S. Supreme Ct. 1989) 62 pps. **$75.00**

AB (Murply for NELA) Appeal from Cal. Court of Appeal, 1st District
The National Bank Act, 12 U.S.C. §24(Fifth) does not preempt tort claims. It would be manifestly unjust to interpret the "at pleasure" provision of the Act as granting banks a special license, not held by any other institution, to fire officers for discriminatory, unlawful or tortious reasons.
Wells Fargo Bank v. Superior Court
No. S014994 (Cal. Supreme Ct. 1990) 24 pps. **$35.00**

EMPLOYMENT CONTRACTS

EMPLOYMENT CONTRACTS - GENERAL

PB (Minsky) Appellant's Opening Brief
In evaluating direct threat evaluation, Chevron, an employer, has a duty to gather sufficient information from not only the applicant but also from qualified experts who can objectively evaluate whether the individual can safely perform the job. When an employer seeks to exclude an applicant based on a direct threat, the employer must prove there is a substantial likelihood of imminent harm. Because a direct threat is defined as a significant risk to the health and safety of others that cannot be eliminated by reasonable accommodation, the defendant employer has the burden to prove that the direct threat could not be eliminated through reasonable accommodation. Chevron's act of notifying plaintiff's employer about his medical condition resulted in plaintiff's termination from the company. Chevron's conduct

disrupted/destroyed Plaintiff's relationship with his employer.
Echazabal v. Chevron U.S.A., Inc. and Irwin Indus., Inc.
No. 98-5551 (9th Cir. 1998) 48pps. **$55.00**
Also available: Brief of the EEOC on behalf of Plaintiff-Appellant, making similar arguments on direct threat. 21pps. **$35.00**

AB (Carter for EEOC) Brief of the Equal Employment Opportunity Commission as *Amicus Curiae*
The district court erred in holding that defendant employer made a reasonable medical judgment in concluding that plaintiff would pose a direct threat. A reasonable jury could find that if the employer had considered current medical knowledge and the best available objective evidence at the time of its decision, the employer would have learned that plaintiff, who was suffering from chronic active hepatitis C, would not have posed a direct threat in the job he desired. Employer's determination fell woefully short of meeting the applicable "reasonable medical judgments" standard under the ADA, the Rehabilitation Act, and *School Board of Nassau County, Fla. v. Arline*, when it made its risk assessment. The employer limited its assessment to the opinions of two of its own doctors, neither of whom had any specialized knowledge about plaintiff or hepatitis C.
Echazabal v. Chevron U.S.A., Inc. and Irwin Indus., Inc.
No. 98-5551 (9th Cir. 1998) 21pps. **$35.00**
Also available: Appellant's Opening Brief. 48pps. **$55.00**

DB (Kardassakis) Appellee's Brief
An employer who conducts an individualized assessment of an applicant may rely on the objective evidence available to it when deciding whether the applicant will pose a direct threat to his or her health and safety in the job offered. Expert declarations submitted by an applicant after the employment decision has been made are insufficient to create a genuine issue of fact, especially when those declarations contradict the opinions of the applicants' treating physicians on which the employer relied at the time it made its employment decision. Plaintiff's intentional interference with contract claim fails because there is no evidence that Chevron engaged in conduct designed to sever or disrupt Plaintiff's employment relationship with Irwin, his employer.
Echazabal v. Chevron U.S.A., Inc.
No. 98-55551 (9th Cir.) 77pps. **$85.00**
Also available: Brief Amicus Curiae of the Equal Employment Advisory Council and the Chamber of Commerce of the United States In Support of Defendant-Appellee, making similar arguments. 29pps. **$35.00**
Also available: Brief of the Employers Group as Amicus Curiae, making similar arguments. 49pps. **$55.00**

AB (Reesman)Brief *Amicus Curiae* Of The Equal Employment Advisory Council and The Chamber of Commerce Of The United States In Support Of Defendant-Appellee
The district court properly granted summary judgment because the employer's conclusion that continued occupational exposure to liver toxic chemicals would pose a direct threat to plaintiff's health was based on a reasonable medical judgment. An individualized assessment based on a reasonable medical judgment is sufficient to meet the employer's burden in proving direct threat. The opinion of an in-house occupational physician, when developed in consultation with plaintiff's own physician, can constitute a reasonable medical judgment.
Echazabal v. Chevron U.S.A., Inc.
No. 98-55551 (9th Cir.) 29pps. **$35.00**
Also available: Appellee's Brief, making similar arguments. 77pps. **$85.00**
Also avbailable: Brief of the Employers Group as Amicus Curiae, making similar arguments. 49pps. **$55.00**

AB (Alvarez) Brief Of The Employers Group As *Amicus Curiae* In Support Of Defendant-Appellee
The district court properly concluded that the employer made a reasonable medical judgment, based on the best available objective evidence. A direct threat defense does not require an employer to reach a medically unassailable conclusion or to engage specialists and experts in the face of uncontroverted medical opinion. The heightened burden for direct threat assessment proposed by plaintiff and the EEOC is unworkable.

Echazabal v. Chevron U.S.A., Inc.
No. 98-55551 (9th Cir.) 49pps. **$55.00**
Also available: Appellee's Brief, making similar arguments. 77pps. **$85.00**
Also available: Brief Amicus Curiae of the Equal Employment Advisory Council and the Chamber of Commerce of the United States In Support of Defendant-Appellee, making similar arguments. 29pps. **$35.00**

PB (Johnson) Plaintiff's Amended Brief in Opposition to Defendant Equity's Motion to Stay Proceeding and Compel Arbitration
The Defendant's arbitration agreement does not meet the statutory requirements of the Federal Arbitration Act. The defendant has not entered into a binding contract to arbitrate because its handbook is not a contract and it has not agreed to be bound by any particular arbitration agreement including the one in the employee handbook.
Morgan Silvers v. Equity
No. 96-12062 (D.C., D. Tex. 1996) 37 pps. **$45.00**

AB (Tobias for NELA) In Support of Appellants on Appeal from the D.C., W.D. Wa.
Microsoft employees did not fall within any exclusions of the employment plans for contractors, temporary employees or leased employees. Since Microsoft cannot simply exclude the plaintiffs from the plans by intentionally misclassifying otherwise eligible employees, the panel was correct in holding that plaintiffs who were common law employees were covered by the ESPP Stock Option plan as a matter of contract law. In addition, the panel was correct in holding that plaintiffs were also covered by the SPP 401(k) savings plan because based on the doctrine of contra proferentem the plaintiffs were on the United States payroll of Microsoft within the meaning of the plan document covered by ERISA.
Vizcaino v. Microsoft Corporation
No. 94-35770 (9th Cir. 1994) 22 pps. **$35.00**

AB (Murply for NELA) Appeal from Cal. Court of Appeals, 1st District
The National Bank Act, 12 U.S.C. § 24(Fifth) does not give national banks the unrestricted right to breach contracts without penalty when terminating any employee it calls an officer. Its purpose is to allow the quick removal of any officer whose continued employment "threatens immediate ruin to the institution."
Wells Fargo Bank v. Superior Court
No. S014994 (Cal. Supreme Ct. 1990) 24 pps. **$35.00**

PB (Miller, Klimaski, Burkett) Memo of Law in Opposition to Motion for Partial Summary Judgment
Plaintiffs' state law claims (based on the D.C. Human Rights Act, breach of contract, and intentional infliction of emotional distress), are not related to defendant's employee benefit plan and therefore are not preempted by ERISA. If preempted, state law claims should be subsumed within ERISA through the court's power to create federal common law, and thus plaintiffs have analogous federal common law claims. A right to a jury trial is constitutionally required and ERISA grants an implied statutory right to a jury.
McDonald v. Consolidated Electric Supply, Inc., et al.
No. 90-3051 (D.D.C. 1991) 36 pps. **$45.00**

DB (Sedey) Support of Summary Judgment by Illinois Circuit Court, 20th Judicial Circuit
A confidentiality agreement is void (for lack of time and geographical limitations) as unreasonably overbroad in its definition of confidentiality materials. The covenant not to compete is also unenforceable when plaintiff does not have a legitimate business interest to protect, and the agreement lacks a reasonable geographic and activity limitation on its scope.
Marsh Company v. Luttrell
No. 5-92-0701 (Ill. App. Ct., 5th Cir. 1992) 35 pps. **$45.00**

PB (Leech) Combined Appellant's Reply and Appellee's Brief on Appeal from D.C., N.D. Ill.
Defendants breached an employment contract as a matter of law, where they stopped making payments to plaintiff. The

1991 Civil Rights Act, §102, providing compensatory and punitive damages in an intentional discrimination Title VII claim, and §107, providing for declaratory relief, are to be applied to cases pending at the time of enactment. Retroactive application of §102 is not manifestly unjust because it is purely remedial. Plaintiff is entitled to judgment on a quid pro quo sexual harassment claim where the trial court found that sex was a motivating factor and defendant satisfied its burden of persuasion under *Price Waterhouse*. Defendant's repeated sexual harassment was severe and outrageous enough to constitute intentional infliction of emotional distress. Plaintiff need not stop defendant's conduct in order to prevail.
Bristow v. Drake Street, Inc., et al.
Nos. 92-1381, 92-1409 & 92-1497 (7th Cir. 1992) 54 pps. **$65.00**

PB (Ryan) Appeal from Judgment of Mass. Superior Court
An employee may present a claim of promissory estoppel to the jury where the employer's promise of permanent employment reasonably induced the employee to leave his job. Under Massachusetts law, which provides for 12% prejudgment interest for compensatory damages, some prejudgment interest should be added to the back pay award where the jury did not specify how much of the back pay award corresponded to the years since termination.
Boothby v. Texon, Inc.
No. 05977 (Mass. Supreme Judicial Ct. 1992) 13 pps. **$25.00**

PB (Schwartz) Memo of Law in Opposition to Defendant's Request for Issue Preclusion
The resolution of issues in workman's compensation for the emotional injury plaintiff suffered during the course of her employment, should not preclude plaintiff's action for age discrimination, breach of employment contract, breach of implied covenant of good faith and fair dealing, loss of consortium and negligent infliction of emotional distress.
Latourelle and Latourelle v. Compugraphic Corp.
No. 85-9712 (Mass. Superior Ct. 1985) 8 pps. **$15.00**

EMPLOYMENT CONTRACTS - IMPLIED CONTRACTS

AB (Quackenbush for CELA) Brief in Support of Respondent
Implied good-cause contracts include three distinct limitations on the power of employers to terminate employees. The stated reason for termination must reflect a serious business concern of the employer, the stated reason must not be pretextual and the facts underlying the stated reason must be substantially accurate.
Cotran v. Rollins Hudig Hall International, Inc., et al.
No. S057098 (Cal. Supreme Ct., 1997) 27 pps. **$35.00**

PB (Arterton) Memo in Support of Motion to Strike
Once an employer establishes a formal employee performance appraisal procedure, a duty of reasonable care in administering the appraisal procedures arises from defendant's contractual undertaking or from the foreseeability of emotional distress to plaintiff. Therefore, plaintiff states a claim for negligent performance appraisals.
Madden v. Yale-New Haven Hospital
No. CV 89-0287634 (Conn. Superior Ct., New Haven District 1990) 15 pps. **$25.00**

AB (Gittes for NELA) In Support of Plaintiff-Appellant
The jury could find the requisite consideration for an implied contract, and the necessary detrimental reliance for promissory estoppel, from evidence that an employee knowing of employer's affirmative representations that termination would only occur for cause, continued to work for the employer.
Baker v. Pease Co.
No. 91-547 (Ohio Supreme Ct. 1991) 157 pps. **$165.00**

PB (Feldman) Opposition to Motion for Re-Argument
The order granting summary judgment in plaintiff's favor should not be set aside. Defendant is responsible for implementing the reduction in force and defendant did not consider displacing an employee of less tenure in order to

provide plaintiff with a position.
Price v. Ford Aerospace Corporation
No. 39CV03264 (GEB) (D.C., D. N.J. 1992) 15 pps. **$25.00**

PB (Weiss) Petition to N.J. Superior Court, Appellate Division
Plaintiff, manager of twenty years, was discharged in violation of defendant's personnel policy manual. A mandatory clause stating that either the employer or employee could terminate the agreement "at any time" is not controlling.
Ware v. Prudential Insurance Co.
No. 27, 910 (N.J. Supreme Ct. 1987) 34 pps. **$45.00**

PB (Salese) Trial Memo
Plaintiff was fired for having embarrassed her employer during her testimony in a committee hearing. Defendants breached an implied contract for not following disciplinary and warning procedures, violated public policy by discharging plaintiff for testifying truthfully, and breached the implied covenant of good faith and fair dealing.
Lemme v. Palo Verde Mental Health Services, et al.
No. 218769 (Ariz. Superior Ct., Pima County 1986) 26 pps. **$35.00**

AB (Mezibov for PELA) Appeal from Ohio Court of Appeals, 10th District
Whether the employer made statements of job security and length of employment to an at-will employee, and whether the employee reasonably relied on the statements, foregoing other possibilities of employment should preclude summary judgment.
Helmick v. Cincinnati Word Processing
No. 88-1156 (Ohio Supreme Ct. 1989) 17 pps. **$25.00**

AB (Quackenbush) Appeal from Cal. Superior Court, Los Angeles County
In action for breach of an implied employment contract to terminate only for good cause, an employer may not introduce evidence of employee's misconduct that the employer found after-acquired evidence that did not contribute to the termination. An employer may not use after-acquired evidence to avoid liability under federal and state employment discrimination laws. While some federal Ct.s have limited plaintiff's remedies based on after-acquired evidence, California discrimination law is broader than federal law, and hence plaintiff's remedies under FEHA should not be limited.
Cooper v. Rykoff-Sexton, Inc.
No. B069065 (Cal. Ct. of Appeal, 2nd District 1993) 33 pps. **$45.00**

AB Reply (Posner for CELA) Appeal from California Superior Court, Los Angeles County
Employer should be barred from presenting after-acquired evidence defense, since the information had no bearing on the employer's decision to terminate, and permitting its use is bad policy.
Cooper v. Rykoff-Sexton, Inc.
No. B069065 (Cal. Ct. of Appeal, 2nd District 1993) 10 pps. **$15.00**

AB (Graves for NELA) Writ of Certiorari to the 9th Circuit
The FDIC, as receiver, may not deprive a bank manager's property right of employment without due process of law, under the U.S. Constitution, and the Fifth Amendment. An implied agreement under California law is a property right protected by the U.S. Constitution, and the Fifth Amendment. Due process requires that the bank manager be provided notice and a pre-deprivation hearing where the FDIC has no compelling interest in quick action.
Federal Deposit Insurance Corporation v. Meyer
No. 92-741 (U.S. Supreme Ct. 1993) 36 pps. **$45.00**

PB (Lipsitz) Appeal from D.C., W.D. N.Y.
A state law breach of employment contract action based on the employer's violation of a just cause requirement for terminations in an expired collective bargaining agreement was not properly removed to federal court. Section 301 of the

Labor Management Relations Act does not provide federal jurisdiction over an employee's breach of contract action where no contract was in existence between the employer and plaintiff's labor organization at the time of breach. Questions of NLRB pre-emption must be addressed by the state court in which the complaint was filed.
Derrico v. Sheehan Emergency Hospital
No. 87-7415 (2nd Cir. 1987) 13 pps. **$25.00**

EMPLOYMENT CONTRACTS - DISCLAIMERS

PB (Tobias) Plaintiff's Answer to Motion for Summary Judgment
Plaintiff's lay off warrants recovery under the Ohio *Mers* case because oral promises concerning job security are enforceable as contracts or under the promissory estoppel doctrine. Any alleged "disclaimer" does not apply to plaintiff when written evidence shows the existence of a three year employment agreement.
Harlan v Intergy, Inc., et al.
No C-86-4313 (D.C., N.D. Ohio, 1988) 20 pps. **$25.00**

AB (Marshall for NELA) In Support of Plaintiff-Appellant
Disclaimers in a personnel manual created an unconscionable contract of adhesion when the manual itself, and the employer's oral representations were inconsistent with the disclaimer. The disclaimer was only one factor or circumstance which the trier of fact should have considered in determining whether an at-will employment exists.
Parsons v. Denny's Restaurants
No. 89-228 (Ohio Supreme Ct. 1989) 38 pps. **$45.00**

AB (Marshall for NELA) In Support of Plaintiff-Appellant
Disclaimer in personnel manual created an unconscionable contract of adhesion when the manual itself and the employer's oral representations were inconsistent with it. The disclaimer was only one factor or circumstance which should have been considered by the trier of fact in determining whether an at-will employment existed.
Karnes v. Doctors Hospital
No. 88-2174 (Ohio Supreme Ct. 1989) 38 pps. **$45.00**

WHISTLEBLOWER STATUTES

AB (Hedin for NELA) Application For Leave To File A Brief Of An *Amicus Curiae* and Brief In Support Of Appellant
The intermediate court in finding that there is a public policy requirement under the Minnesota whistleblower statute, disregarded the plain meaning of the statute and statements to the contrary in *Hedglin v. City of Willmar.* In *Hedglin* the court rejected the argument that an employee must identify only a law or rule of public importance which is believed to have been violated to state a cause of action under the whistleblower statute. The intermediate court in this case superimposed a requirement that to make a prima facie case, the whistleblower must cite only a law effecting the morals, health, safety or welfare of the public, rejecting *Hedglin*. There exists a factually identical case, *McGrath*, in which the Supreme Court accepted an abbreviated procedure to review, seeing as the appeals court's decision was also at odds with prior decisions. This court should do the same.
Donahue v. Schwegman, Lundberg, Woessner & Kluth
No. C7-98-1018 (Sup. Ct. Minn. 1998) 5pps. **$15.00**

AB (Morgan for NELA) Brief Of *Amicus Curiae* Of National Employment Lawyers Association In Support Of Respondent
Private citizens acting as *qui tam* relators have standing under Article III to bring actions under the False Claims Act. A long and unbroken history of Supreme Court decisions as well as 400 years of pre-constitutional antecedents supports *qui tam* relators standing as a cost effective way to ferret out and prosecute violations of law. Most *qui tam* relators are not merely members of the general public, rather, most are persons whose motivations extend well beyond the monetary rewards promised by the False Claims Act; persons who blow the whistle are most often quality-control

engineers, security personnel, or petroleum engineers who are committed to righting apparent wrongs and who, inevitably, suffer ostracization, career stagnation or job loss as a result of their public-minded duty.
Vermont Agency of Natural Resources v. United States ex rel. Stevens
No. 98-1828 (U.S. Supreme Ct. 1998) 63pps. **$75.00**

AB (Helmer for NELA) Brief in Support of Appellant on Appeal from the D.C., S.D. Tex.
Appelants in *qui tam* actions under the False Claims Act have standing under Article III. *Qui tam* plaintiffs also have individual standing due to the injury-in-fact they suffer via the potential ramifications to their employment status. Thus, the district court's ruling should be reversed.
United States ex rel. Riley v. St. Luke's Episcopal Hospital, et al.
No. 97-20948 (5th Cir. 1998) 27 pps. **$35.00**

AB (Kleiman for NELA) Brief *amicus curiae* in Support of Petitioner on Writ of Certiorari to the 11th Circuit
This nation's policy granting citizens their right of access to the courts is easily discerned and indisputable. 42 U.S.C. § 1985(2) was rooted in the need to protect federal witnesses. Access to the courts is of paramount importance under our constitution. The legislative history of §1985 shows it was intended to protect the enjoyment of life and liberty, with the right to acquire property of every kind. The 11th Circuit misconstrues the law and is out of step with the weight of decisional authority. That an employee may be subject to "at-will" termination does not permit a firing in violation of federal law. Sections 1985(2) and (3) protect witnesses, not just parties, from intimidation and retaliation. Without clear protection under §1985(2), the rights of employees will depend on the vagaries of geography and circumstance.
Haddle v. Garrison, et al.
No. 97-1472 (U.S. Supreme Ct. 1998) 23 pps. $**35.00**

AB (Kohn for National Whistleblower Center) Brief in support of petitioner on writ of certiorari to the 11th Circuit
The plain and unambiguous meaning of "person" and "property" contained in 42 U.S.C. §1985(2) protects "at-will" employees fro retaliation. The lower court in this case failed to apply the analysis for statutory interpretation set forth in *Robinson v. Shell Oil Co.* The drafters of the Civil Rights Act of 1871 understood the right to labor as protected under both the "person" and "property" terms used in 42 U.S.C. §1985(2). §1985(2) should be interpreted consistent with its legislative intent in the light of the inconsistency created by the lower courts. Congress intended to provide a remedy for witnesses and parties to federal proceedings who are denied the right to sell their labor as a result of private conspiracies. Congress intended to uphold the integrity of the judicial process.
Haddle v. Garrison et al.
No. 97-1472 (U.S. Supreme Ct. 1998) 31 pps. $**45.00**

AB (Hedin for MN NELA) In Support of Appellant
Minnesota's whistle-blower statute permits retaliatory discharge and breach of implied contract actions by house counsel against a former employer. An attorney's obligation to maintain client confidences are not inconsistent with the maintenance of a wrongful discharge action against a former employer.
Nordling v. Northern States Power Co., et al.
No. CX-90-1500 (Minn. Supreme Ct. 1991) 26 pps. **$35.00**

AB (Hedin for MN NELA) In Support of Appellant
After-acquired evidence should not bar a suit under a Minnesota statute for retaliatory discharge for voicing objections to illegal company activity, even where the employee signed an "acknowledgment" on a the job application that false answers are grounds for dismissal
Wallraff v. Gelco Corp., d/b/a G.E. Capital Fleet Services
No. C9-93-918 (Minn. Ct. of Appeals 1993) 43 pps. **$55.00**

PB (Stix) Answer Brief to Defendant's Motion to Dismiss
Plaintiff exposed design errors in nuclear and non-nuclear power plants. Federal Atomic Energy Statutes do not apply

to wrongful discharge claims in non-nuclear plants; Illinois law controls.
Thakore v. Sargent & Lundy
No. 82-C-7166 (D.C., N.D. Ill. 1987) 5 pps. **$15.00**

STATE CIVIL RIGHTS/FAIR EMPLOYMENT STATUTES

PB (Posner) Plaintiff-Appellant's Opening Brief on Appeal from Superior Court, Los Angeles County
Plaintiff is entitled to protections of the Fair Employment and Housing Act (FEHA) whether he is actually disabled, the employer perceives him as such, or both. Direct evidence of biased statements by the employer or its agents showing discriminatory intent, which alone is sufficient to defeat a motion for summary judgment, was ignored by the trial court. The employer's decision to fire plaintiff based solely on his perception of the plaintiff's medical restrictions, its complete failure to make any good faith efforts at reasonable accommodations, and ignoring its obligation to eliminate discrimination once plaintiff brought the situation to light, are blatant violations of FEHA. The trial court's error in granting summary judgment entitles the plaintiff to present his case to a jury wherein he should be allowed to present evidence of his future loss of earnings, and is entitled to attorneys fees for the appeal.
Ervin v. Northrop Grumman Corp.
(Cal. Ct. of Appeal, 2nd Dist., 2000) 54 pps. **$65.00**

PB (Dunaway for AARP) Brief *Amici Curiae* In Support Of Appellant
It is contrary to the purpose of the Pennsylvania Human Relations Act, 43 PA. CONS. STAT. ANN. § 951 *et seq.* for the trial court to deny awarding the prevailing plaintiff attorney's fees. The Pennsylvania Human Relations Act, like Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq*., and the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 *et seq*., is to effectuate the vital public policy of creating and maintaining equal employment opportunities in the workplace. Because state fair employment practices agencies and the Equal Employment Opportunity Commission have too few resources to litigate the thousands of meritorious claims filed every year, the Legislature provided for private enforcement of these statutory rights. Fee shifting provisions of the Pennsylvania Human Relations Act, Title VII, and the ADEA were designed to encourage the private bar to bring these cases.
Hoy v. Village Super Market, Inc. d/b/a Shop-Rite of Easton
No. (Sup. Ct. Penn. 1997) 21pps. **$35.00**

DB (Franklin) Appellant's Opening Brief
A retaliation plaintiff must show an adverse employment decision occurred. To satisfy this element, a retaliation plaintiff must show a significant or tangible detriment of some kind. When the verdict is so great as to require a finding of passion or prejudice, *remittitur* is not sufficient, and a new trial is required because the prejudice might have affected the verdict as to liability as well. To be entitled to punitive damages, a plaintiff must show an evil motive on the part of defendant, and a deliberate disregard for plaintiff's federally-protected right against discrimination. The district court erred as a matter of law in awarding attorney's fees and expenses for distinct claims on which the plaintiff did not prevail. Washington law apportions attorney's fees between successful and unsuccessful employment claims. Here, plaintiff only prevailed on one of six of her claims. Her fees should be adjusted accordingly.
Passantino v. Johnson & Johnson Consumer Products, Inc.
Nos. 97-36191, 98-35036 (9th Cir. 1998) 89pps. **$90.00**
Also available: Brief Amicus Curiae Of The Equal Employment Advisory Council In Support Of Defendant-Appellant, making similar arguments, on Requirement Of Retaliation For A Claim Of Retaliation Under Title VII. 27pps. **$35.00**
Also available: Brief Of Amicus Curiae, Chamber Of Commerce Of The United States, In Support Of Appellant, making similar arguments on Damages. 75pps. **$85.00**

AB (Bien for U.S. Chamber of Commerce) Brief Of *Amicus Curiae*, Chamber Of Commerce Of The United States, In Support Of Appellant
In response to many concerns about damage remedies authorized by civil rights awards, Congress and the Washington

State Legislature intended damage awards to be small and closely monitored by the courts to that end. The EEOC followed Congress's lead by adopting strict requirements of proof of actual injury. The district court abused its discretion when it adopted an "excessive" laxreview of the evidence. It was further error for the district court to allocate every compensatory award to plaintiff's retaliation claim and leave nothing to be capped under the federal law but the punitive damages award. This is error because if federal caps could be evaded by simple expedient of allocating compensatory awards to state law claims, the federal caps would effectively disappear as meaningful limits on monetary relief under Title VII.

Passantino, et al. v. Johnson & Johnson Consumer Products, Inc.

Nos. 97-36191, 98-35036 (9th Cir. 1998) 75pps. **$85.00**

Also available: Brief Amicus Curiae Of The Equal Employment Advisory Council In Support Of Defendant-Appellant ,making similar arguments on Requirement Of Retaliation For a Claim Of Retaliation Under Title VII. 27pps. **$35.00**

Also available: Appellant's Opening Brief. 89pps. **$90.00**

AB (Reesman) Brief *Amicus Curiae* Of The Equal Employment Advisory Council In Support Of Appellant-Defendant

Without a materially adverse employment action, a claim of retaliation fails as a matter of law. To be materially adverse, an action must materially alter the employment relationship, it cannot just be treatment that the plaintiff doesn't like. Important policy reasons, such as running a business, and not being subjected to frivolous suits for every subsequent employer's action, dictate that an employment action be materially adverse before Title VII retaliation can be proven.

Passantino v. Johnson & Johnson Consumer Prod., Inc.

Nos. 97-36191, 98-35036 (9th Cir. 1998) 27pps. **$35.00**

Also Available: Appellant's Opening Brief, making similar arguments. 89pps. **$90.00**

Also available: Brief Of Amicus Curiae, Chamber Of Commerce Of The United States, In Support Of Appellant, making similar arguments on Damages. 75pps. **$85.00**

PB (Zimberlin) Brief Of The Plaintiff-Appellant

Accommodation provided by the Commission on Human Rights and Opportunities was inadequate because it failed to provide an opportunity for plaintiff, a person with a disability, to achieve the same level of performance or to enjoy the benefits and privileges equal to those of a similarly situated, non-disabled individual. Reasonable accommodations for plaintiff, who was diagnosed with Chronic Fatigue Syndrome, meant being allowed a work site accommodation closer to home, to work past 4:30, start before 11:30 when able, and keep track of her time the same way as non-disabled employees.

Ezikovich v. Comm'n On Human Rights And Opportunities, et al.

No. A.C. 18470 (Conn. App. Ct. 1998) 39pps **$45.00** Appendix 27pps **$35.00**

Also Available: Reply Brief of the Plaintiff-Appellant, making similar arguments. 16pps **$25.00** *Appendix. 15pps* **$25.00**

PB (Zimberlin) Reply Brief Of The Plaintiff-Appellant

Under the ADA, it is the employer's burden conduct an adequate investigation, which it failed to do. Accommodations by the employer must be effective to be reasonable. In this case, the employer changed plaintiff's accommodations by eliminating plaintiff's job location, by limiting her hours to a part time schedule, and by denying her the use of flexible unpaid leave. Under *Ansonia Bd. of Education v. Philbrook*, unpaid leave constitutes a reasonable accommodation, and the court's failure to apply *Ansonia* to this case, does not constitute harmless error as Defendants claim.

Ezikovich v. Comm'n On Human Rights And Opportunities, et al.

No. A.C. 18470 (Conn. App. Ct. 1998) 16pps **$25.00** Appendix 15pps **$25.00**

Also Available: Brief of the Plaintiff-Appellant, making similar arguments. 39pps **$45.00** *Appendix. 27pps* **$35.00**

DB (Shiu For The Employment Law Center) Appellant Lawrence Shelton's Opening Brief

In a race discrimination case, it was error for the trial court to allow the defendant to introduce evidence of plaintiff's personnel files dating all the way back to 1981, more than 10 years before the events in this case occurred. These documents were acquired well after the defendants' refusal to consider plaintiff for the vacant position. Furthermore,

the admission of the personnel files and related testimony, and the jury instructions regarding this evidence constituted prejudicial error requiring reversal of the judgment. Moreover, the suppression of relevant circumstantial evidence of the discriminatory animus of defendant's agent, a decision-maker in the hiring process was an abuse of discretion constituting prejudicial error requiring reversal of the judgment.
Southern California Physicians Ins. Exch., et al. v. William Kirksey & Associates Agency, Inc. & Shelton v. Southern California Physicians Ins. Exch., et al.
No. B099817 (Cal. Ct. App. 1999) 73pps. **$85.00**

PB (Posner) Appellant's Opening Brief
It was error for the trial court to overlook the statements made by defendant to plaintiff that "he did not want her around because she was too old and female." This statement is evidence of a clear discriminatory intent and should not have been ignored by the trial court. It was also error for the trial court to ignore evidence of an ongoing pattern of hostility and harassment inflicted upon female employees because of their sex. The trial court also erred when it ignored evidence that the defendant failed to take action to correct the hostile atmosphere and to prevent retaliation against the plaintiff.
Moody v. Boy Scouts of America, et al.
No. 2nd Civ. B129296 (Cal. Ct. App. 1999) 55pps. **$65.00**

AB (Pizer for Lambda Legal Defense and Education Fund, Inc.) Proposed Brief Of *Amicus Curiae* In Support Of Appellant
The Unruh Act requires schools to take reasonable steps to intervene when student prejudice, including antipathy to gay people, creates a hostile environment that deprives another student of "full and equal" access to the school's facilities and
services. The Unruh Act does not allow a school to fail to respond to a student's need for protection and official action to
end fellow students' violent or intimidating misconduct, due to the victim's sex or sexual orientation.
Bigornia v. Univ. of La Verne
No. B125031 (Cal. Ct. App. 1999) 64pps. **$75.00**

AB (Posner for CELA) In Support Of Respondent
The legislative history of SB 1989 confirms that the legislature adopted the term "managing agent" to codify the court's decision in *Egan v. Mutual of Omaha*, 24 Cal. 3d 809 (1979). Given the well-settled state of California law in 1979, Civil Code Section 3294(b) cannot be viewed as silently repealing *Egan* nor *Agarwal v. Johnson*, 25 Cal. 3d 932 (1979). An employer is liable for punitive damages where a managing agent commits a tortious act with the requisite malice, oppression, or conscious disregard when that manager's actions determine the company's policies in "actual" practice.

White v. Ultramar
No. S070177 (Cal. Sup. Ct. 1999) 30pps. **$35.00**

PB (Ramshaw for EEOC) In Support Of Denial Of Defendant's Motion To Dismiss
Submitting a charge of discrimination to the EEOC and requesting that it be filed with both the EEOC and the relevant state agency is sufficient to comply with section § 706(c) of Title VII even where the charge fails to expressly refer to state law. The failure to institute state proceedings in compliance with § 706(c) does not deprive the district court of subject matter jurisdiction over an ADA claim. If plaintiff's failure to comply with § 706(c) was caused by incorrect legal advice from the EEOC the district court should hold the case in abeyance and give plaintiff an opportunity to comply with the statute.
Flippo v. American Home Products Corp.
No. 3:98CV804 (D.C., E.D. Va. 1999) 12pps. **$25.00**

AB (Posner for CELA) In Support Of Petitioner's Petition For Review
Pursuant to Civil Code §1714, individual liability should be enforced against persons who deliberately destroy the careers of their fellow employees by underhanded, nefarious conduct. There should be no difference in treatment in holding

personally liable those individuals who injure another while driving and not paying attention and those who willfully falsify and alter records in order to destroy someone's career. To hold less is to promote personal irresponsibility and disrespect for the law.
Sheppard v. Freeman, et al.
No. S074936 (Cal. Sup. Ct. 1998) 4pps. **$15.00**

Letter Brief (Posner for CELA) Request For De-publication
Stafford's conclusion that an award that exceeds the amount an attorney would be due under a contingency arrangement is unreasonable as a matter of law and should not remain in a published decision. The opinion is so broad that in may be mis-applied to other fee-shifting statutes in civil rights cases.
Stafford v. Sipper
65 Cal. App. 4th District 748 (July 21, 1998) Court of Appeal # B102770 8pps. **$15.00**

AB (Osborne for AARP) Brief *amicus curiae* in Support of Appellant on Appeal from Cal. Ct. of Appeal
Plaintiff's burden at summary judgment is to produce evidence which raises a material issue of fact; summary judgment is not appropriate in this case. Appellant's evidence of pretext is sufficient to avoid summary judgment. Even at trial appellant need not meet the standard advocated by respondent, that plaintiff must establish a causal connection between his protected status and the adverse employment decision to survive summary judgment.
Guz v. Bechtel National, Inc., et al.
No. S062201 (Cal. Supreme Ct. 1998) 25 pps. $**35.00**

AB (Posner for CELA) Request by CELA for Permission to File *amicus* Brief in Support of Plaintiffs on Appeal from Cal. Ct. of Appeal, 2nd District
Most discrimination cases involve the type of subtle evidence which plaintiffs present. Bigots today are silent but deadly. The judge's view of the case is not atypical. Such bench viewpoints are on the upswing, and trial judges have begun to force plaintiffs over higher and higher hurdles. The proliferation of such judicial attitudes will undercut enforcement of the civil rights laws.
Lane v. Hughes Aircraft Co.
No. S059064 (Cal. Supreme Ct. 1998) 19 pps. **$25.00**

AB (Berstein for EEOC) Brief *amicus curiae* on Appeal from D.C., N.D. Ill.
An employer, who informs an individual's current employer of her pending discrimination suit and medical restrictions in retaliation for filing the suit, is not insulated from liability by the "absolute litigation privilege" under Illinois law, which affords attorneys immunity from liability for communications pertinent to pending litigation.
Steffes v. Stepan Co.
No. 97-2625 (7th Cir. 1997) 20 pps. **$25.00**

AB (Posner for CELA) Brief in Support of Plaintiff and Appellant on Appeal from Superior Court of Los Angeles County
Summary judgment was improperly granted because defense-taken deposition submitted in support of motion and the motion itself distorted reality by focusing on irrelevancies and minor discrepancies in plaintiff's testimony. The court of appeals should also reaffirm the continuing violation theory in hostile work environment cases since many trial courts are hostile to it.
Cavalier v. Holden
No. B115206 (Cal. Ct. of Appeal, 2nd District 1998) 14 pps. **$25.00**

AB (Posner for CELA) Supplemental *amicus* Brief in support of Respondent Dillon on Appeal from Cal. Court of Appeal, Second District
The California Supreme Court should hold that a worker can file a disability discrimination claim even if the disability occurred on the job. The Worker's Compensation Act was never intended to be a vehicle for protecting a worker's civil rights. Furthermore, the focus of the issue is not how the injury came about, but on the employer's response to the disabled worker.

City of Moorpark v. Dillon
No. S057121 (Cal. Supreme Ct. 1998) 8 pps. **$15.00**

PB (Ebner & Love) In Support of Appellant on Appeal from the Superior Court of Los Angeles County
An employer cannot use the fact of a collective bargaining agreement to require the plaintiff/employee to grieve and arbitrate her FEHA claims and preclude a civil suit. A collective bargaining agreement (CBA) cannot limit the right of a union member employee to initiate court action to enforce her independent statutory rights under FEHA. In addition, the rights conferred by the FEHA are defined and enforced under state law without reference to the terms of any CBA.
Valdez v. Owens-Brockway Glass Container, Inc., et al.
No. B110855 (Cal. Ct. of Appeal, 2nd District, 1997) 30 pps. **$35.00**

PB (Ebner and Love) Appeal from the Superior Court of Los Angeles County
An employer may not use the fact of a collective bargaining agreement to require the plaintiff/employee to grieve and arbitrate her FEHA claims and preclude a civil suit. The rights conferred by the FEHA are defined and enforced under state law without reference to the terms of any collective bargaining agreement. A union employee is not required to participate in any grievance procedure established by a collective bargaining agreement as a prerequisite to instituting court action to resolve a claim of employment discrimination based on violation of state law or of Title VII, 42, U.S.C. § 2000e. In addition, a collective bargaining agreement cannot limit the right of a union member employee to initiate court action to enforce her independent statutory rights under FEHA.
Valdez v. Owens-Brockway Glass Container, Inc., et al.
No. Civil B110855 (Cal. Ct. of Appeals, 2nd District 1997) 30 pps. **$45.00**

AB (Auvil for WVELA) Motion in Support of Plaintiff
This motion address the certified question of whether the West Virginia Human Rights Act recognizes a claim of same gender sexual harassment, and if so, what are the elements of the claim. The sexual orientation of the harasser and victim is irrelevant to the existence of a cause of action for sexual harassment.
Lack v. Wal-Mart Stores, Inc.,
No. 24152 (Va. Supreme Ct. 1996) 9 pps. **$15.00**

PB (Shea) Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Class Certification
This case alleges claims for sexual harassment and sexual discrimination under Title VII of the Civil Rights Act of 1964 and the California Fair Employment and Housing Act on behalf of a class comprised of all current and former applicants and the female employees of MMWD - a class comprised of well over 75 members - based on claims that MMWD's management has systematically denied all these women workers opportunities for advancement due to their sex and tolerated and encouraged a sexually hostile working environment.
Loutas/Turchie v. Marin Municipal Water District
No. C 96-0024 CAL (D.C., N.D. CA. 1996) 21 pps. **$25.00**
Also available: Notice of Motion and Motion for an Order Certifying Class (FRCP Rule 23). 5 pps. **$15.00**

AB (Bagenstos for EEOC) Prop. 209 on Appeal from the D.C., N.D. Cal.
The district court did not abuse its discretion in entering the preliminary injunction because the court employed the appropriate legal standards in finding that plaintiffs had established a probability of success on the merits. Specifically, a state may not single out racial and gender issues for special treatment in the political process and thereby impose unusual burdens on the ability of minorities and women to obtain legislation to overcome the special condition of prejudice.
Coalition for Economic Equity v. Californians
Nos. 97-15030 & 97-15031 (9th Cir. 1997) 45 pps. **$55.00**

AB (Barboza) Appeal from Cal. Superior Court, Los Angeles County
Prudential Insurance Company of America should be held strictly liable under the FEHA for rape and sexual assault

committed by one of its Sales Managers, vested with substantial supervisor authority. Under FEHA, employers are held strictly liable for sexual harassment committed by a supervisor. Prudential did not deny that its Sales Manager committed these acts of sexual abuse but claims that its Sales Manager was a "co-worker" and not a "supervisor." Yet the trial court erred by disregarding the applicable California law and instead, relied upon federal authority construing the term "agent" under Title VII. Thus, judgment should be reversed in light of the material factual disputes.
Lai v. Prudential Insurance Company of America
No. BC16110 (Cal. Ct. Of Appeal, 2nd District 1996) 24 pps. **$35.00**

AB (Posner for CELA) Appeal from the Cal. Ct. of Appeal, 2nd District
The only exhaustion requirement that exists under the Fair Employment and Housing Act is the statutory requirement to exhaust remedies with the DFEH. Any court-imposed exhaustion of internal of employer-created remedies requirement before the filing of either a DFEH charge or a lawsuit would run directly counter to the statutory requirement that the administrative charge be filed within one year, and that a lawsuit be filed within one year of the right-to-sue letter. In addition, the U.S. Supreme Court has held that exhaustion of an employer's administrative remedies is not required to bring a suit under 42 U.S.C. § 1993.
Carrillo v. University of California at Los Angeles
No. SC 039495 (Cal. Supreme Ct. 1997) 13 pps. **$15.00**

AB (Posner for CELA) *amicus* Letter to Cal. Supreme Court in Support of Petition for Rehearing
The Court should reverse its ruling that expert witness fees are not a component of costs recoverable by the prevailing party, as authorized in FEHA under Cal. Govt. Code § 12965(b), because it makes it economically more difficult to prosecute cases and discourages practitioners from taking such cases.
Davis v. KGO-TV
No. S057813 (Cal. Supreme Ct. 1998) 5 pps. **$15.00**

AB (Posner for CELA) Brief *amicus curiae* in Support of Plaintiff-Respondent on Appeal from Cal. Court of Appeal, Fist Appellate District
Supervisors are equally liable as employers employment discrimination. The distinctions between different types of Fair Employment and Housing violations do not correspond to what happens in the real world of work. Allowing individual tortfeasors to escape liability would promote irresponsibility and disrespect for the law. Many federal courts have allowed the imposition of individual liability to motivate individual supervisors to obey the law.
Reno v. Baird
No. S065473 (Cal. Supreme Ct. 1998) 24 pps. **$35.00**

AB (Posner for CELA) Brief in Support of Plaintiff-Appellant on Appeal from the Cal. Ct. of Appeal, 4th District
Enforcing individual liability regardless of an individual's status as a supervisor is necessary to effectuate the goals of FEHA by encouraging personal responsibility and respect for the law.
Carrisales v. Department of Corrections, et al.
No. S073601 (Cal. Supreme Ct. 1998) 15 pps. **$25.00**

PB (Lonnquist) Plaintiff-Appelant's Opening Brief on Appeal from D.C., W.D. Wa.
Contrary to the policy reflected in the safe harbor provisions of the ADA, the ruling of the district court would deny all ADA- and by extension, Washington Law Against Discrimination (WLAD)- protections to rehabilitated drug users. The purchase of illegal drugs is conduct that is so inextrecably intermingled with the nature of the disability, that the addict cannot lawfully be terminated for such activity. Defendant had no legitimate reason to terminate the plaintiff and as such violated the ADA, the WLAD and (the right to return provision of) FMLA.
Doe v. King County
No. 97-35876 (9th Cir. 1998) 28 pps. **$35.00**
Also Available: Plaintiff-Appellant's Reply Brief on Appeal from D.C., W.D. Wash,. making similar arguments. 13 pps. ***$25.00***

DB (Pailca) Appellee's Brief on Appeal from D.C., W.D. Wa.
Because the plaintiff was a current drug user under the ADA- and by extension, the Washington Law Against Discrimination (WLAD)- he was not afforded its protections. Plaintiff is not otherwise qualified under the ADA because he no longer had the trustworthiness required for the job. Plaintiff was terminated not because of his disability of addiction, but because of his illegal activities while employed as a bailiff. The timing of a termination after a FMLA leave does not automatically violate the "right to return" provisions of FMLA.
Doe v. King County
No. 97-35876 (9th Cir. 1998) 40 pps. **$45.00**

PB (Vassallo) Motion for New Trial
The circumstantial and direct evidence produced was sufficient to establish a *prima facie* case of handicap or perceived handicap discrimination under the FHRA. The district court erred in jury exclusions and instructions in an ADEA claim.
Woodard v. General Management Services
No. 91-8319-CIV-Gonzalez (D.C., S.D. Fla. 1992) 15 pps. **$25.00**

AB (Rowan of Atlanta Legal Aid Society, NELA, et al.) In Support of Appelant's Petition for Writ of Certiorari, Georgia Court of Appeals
The court of appeals erred in limiting the statute of limitations for the Vocational Rehabilitation Act of 1973 ("VRA") to six months from the two year statute of limitations adopted in other jurisdictions because contrary to the court's beliefs, there are significant differences between the VRA and the O.C.G.A. § 34-6A-1 et seq. (the "EEOC"), to which the court analogized the VRA.
Hendrickson v. Pain Control and Rehabilitation Institute Georgia, Inc., et al.
No. A92A1549 (Ga. Supreme Ct. 1992) 12 pps. **$25.00**

PB (Lardiere) Appeal from Ohio 10th Appellate District
State courts have concurrent subject matter jurisdiction with federal courts over Title VII actions.
Manning v. State Library Board
No. 89AP-1304 (Ohio Supreme Ct. 1990) 27 pps. **$35.00**

AB (Mullin, et al. for NELA, NJ) In Support of Plaintiff on Petition for Certification
The after-acquired evidence doctrine (*Summers*) is contrary to New Jersey Law Against Discrimination's prohibition of employer retaliation against employees who file charges or complaints of discrimination. The equitable doctrine of "clean hands" is only a defense to equitable remedies. It only applies to conduct related to the lawsuit and, hence, does not provide precedent for the *Summers* doctrine. The public wrong of discrimination will go unremedied if plaintiff's private misconduct provides a defense. The *Summers* doctrine is contrary to federal precedent and traditional labor law principles.
Nicosia v. Wakefern Food Corp.
No. 36, 851 (NJ Supreme Ct. 1993) 24 pps. **$35.00**

AB (Totenberg for Georgia NELA) In Support of Plaintiffs
The CEO's past practice of paying private counsel a reduced hourly fee, $50.00 per hour, with the express understanding that full market based fees would be recoverable upon plaintiff's prevailing in the case, ensures the availability of competent and experienced counsel to represent CEO claimants seeking to enforce their statutory rights against their employers under Georgia's Fair Employment Practices Act enforcement scheme.
Georgia Department of Corrections v. Finney
No. S92C0830 (Ga. Supreme Ct. 1992) 28 pps. **$35.00**

B (Levenson) Post Trial Memorandum
Defendant employer violated the Maine Human Rights Act by refusing to hire plaintiff (who was blind) for a telephone operator position. Plaintiff could perform the job with reasonable accommodation at no cost to the employer.

LeBlond v. Sentinel Service
No. CV-91-439 (Me. Superior Ct. 1992) 11 pps. **$25.00**

AB (Quackenbush) Appeal from Cal. Ct. of Appeal, 6th District
In an action under California's FEHA plaintiff's burden should be to establish by a preponderance of the evidence that her disability, gender, etc., was a "substantial factor" in the adverse employment decision.
Cassista v. Community Foods
No. S028230 (Cal. Supreme Ct. 1993) 39 pps. **$45.00**

AB (Posner) Appeal from Cal. Ct. of Appeal, 6th District
The California legislature included persons perceived as having a handicap protected under the California Fair Employment and Housing Act. The proper burden of proof is whether there was a causal connection between discriminatory intent and the employer's adverse decision.
Cassista v. Community Foods
No. S028230 (Cal. Supreme Ct. 1993) 18 pps. **$25.00**

AB (Hobson for VELA) Appeal from Lamoille Superior Court. Vt.
Right to trial by jury and unlimited compensatory damages in Fair Employment Practices Act cases should be allowed since statute authorizes an award of "damages."
Hodgdon v. Mt. Mansfield Co.
No. 91-346 (Vt. Supreme Ct. 1992) 14 pps. **$25.00**

AB (Zaleznick for AARP) Writ to Overturn Order from Cal. Superior Court, Los Angeles County
The Federal Arbitration Act (FAA) does not apply to employment contracts, and therefore employers can not compel employees to arbitrate statutory claims of discrimination under the California Fair Employment and Housing Act. Plaintiffs belong to a class of workers engaged in interstate commerce within the meaning of FAA Section 1.
Higgins v. Superior Court of California for the County of Los Angeles
No. B 057028 (Cal. Ct. of Appeal, 2nd District 1991) 29 pps. **$35.00**

PB (Hornberger) Pretrial Brief
Defendants discriminated against plaintiff regarding pay, working conditions, and others terms and conditions of employment in violation of Equal Pay Act and Kentucky civil rights statutes, and constructively discharged plaintiff.
Kraus v. Kentucky Bancorporation, Inc.
No. 88-195 (D.C., E.D. KY. 1991) 15 pps. **$25.00**

AB (Helmer for NELA) In Support of Plaintiffs
Defendant's motion to dismiss alleging that plaintiffs failed to exhaust their OCRC sex discrimination remedies under Ohio law should be denied. Section 4112.99 clearly provides for an immediate and independent remedy from Section 4112.05, and one is not barred from a sex discrimination claim for failing to pursue a remedy under Section 4112.04. The two provisions compliment each other; one does not override the other.
Crain and Lepper v. Cincinnati Automobile Club, et al.
No. 88-0295 (S.D. D.C., Ohio 1989) 23 pps. **$35.00**

PB (Miller, Klimaski, Beckett) Memo of Law in Opposition to Motion for Partial Summary Judgment
Plaintiffs' state law claims, based on the D.C. Human Rights Act, breach of contract, and intentional infliction of emotional distress, are not related to defendant's employee benefit plan and therefore are not preempted by ERISA. If preempted, state law claims should be subsumed within ERISA through the court's power to create federal common law, and thus plaintiffs have analogous federal common law claims. A right to a jury trial is constitutionally required and ERISA grants an implied statutory right to a jury.
McDonald and McDonald v. Consolidated Electric Supply, Inc., et al.

No. 90-3051 (D.D.C. 1991) 36 pps. **$45.00**

PB (Rivin) Memo of Points and Authorities In Opposition to Motion for Summary Adjudication
Collateral estoppel can not be applied to plaintiff's cause of action for discrimination/retaliation under the California Fair Employment and Housing Act (FEHA) or its federal counterpart, Title VII. The issues presented in plaintiff's workers' compensation trial and the FEHA case are not identical.
Broussard v. Hughes Aircraft Co., et al.
No. SWC103 047 (Cal. Superior Ct., Los Angeles County 1991) 16 pps. **$25.00**

AB (Posner for CELA) Appeal from Cal. Superior Court, Tulare County
A handicap discrimination victim must be able to pursue the full panoply of remedies under the California Fair Employment and Housing Act. An employer's independent tortious activity, committed after and separate from the industrial injury, gives rise to independent tort rights against the employer.
Hartman v. Mathis & Bolinger Furniture Co.
No. S021903 (Cal. Superior Ct. 1991) 16 pps. **$25.00**

PB (Posner) Appeal from Cal. Superior Court, Los Angeles County
Where employer's policies violate the California Fair Employment and Housing Act, employee is entitled to recover all damages in a civil suit on a statutory theory, even where employee has concurrent rights under the Workers Compensation Act. Recent California Supreme Court cases emphasize right of discrimination victim to pursue all civil remedies in order to enforce public policy.
Baldwin v. Trans World Airlines
Nos. B052196 & B053196 (Cal. Ct. of Appeal, 2nd District 1991) 37 pps. **$45.00**

PB (Posner) Reply Brief on Appeal from Cal. Superior Court, Los Angeles County
California's Fair Employment & Housing Commission has reiterated its *Hyde* analysis in a post-*Pickrel* decision, and this court should follow the FEHC's interpretation. *Rojo* makes clear that a plaintiff has the right to pursue either a California state FEHA claim, or an application for increased benefits under California Labor Code Section 132a, or both.
Baldwin v. Trans World Airlines
No. B053196 (Cal. Ct. of Appeal, 2nd District 1991) 22 pps. **$35.00**

AB (Gittes, Schulte for NELA, et al.) Reply of *amici curiae* to Defendant-Appellee's Response in Opposition to Motion of *amici* for Leave to File in Support of Plaintiff-Appellant on Appeal from D.C., S.D. Ohio
This case involves the issue of whether independent contractors are protected by Ohio Rev. Code Chap. 4112, which is of concern to all persons, not only the handicapped. There need not be any showing that counsel for plaintiff needs assistance.
Eyerman v. Mary Kay Cosmetics, Inc.
No. 91-3083 (6th Cir. 1991) 6 pps. **$15.00**

AB (Gittes, Schulte for NELA, et al.) Brief in Support of Plaintiff-Appellant on Appeal from D.C., S.D. Ohio
Ohio Rev. Code Chap. 4112, which makes it unlawful for "any employer" to discriminate against "any person" on specified bases, applies to persons whose relationships are not technically those of masters and servants or employers and employees, particularly in light of the remedial goals and public policies underlying Ohio's anti-discrimination laws.
Eyerman v. Mary Kay Cosmetics, Inc.
No. 91-3083 (6th Cir. 1991) 49 pps. **$55.00**

AB (Gittes, Schulte for NELA, et al.) Reply Brief on Appeal from D.C., S.D. Ohio
Defendant's assertions that the broad definition of "person" in Ohio Rev. Code Chap. 4112 should be narrowed and that federal courts have restricted Title VII coverage only to traditional employer-employee relationship, are wrong.
Eyerman v. Mary Kay Cosmetics, Inc.
No. 91-3083 (6th Cir. 1991) 13 pps. **$25.00**

AB (Helmer for NELA) Reply Brief in Support of Plaintiffs-Appellants' Appeal of Summary Judgment on Appeal from Ohio Court of Appeals, Hamilton County
Ohio Rev. Code § 4112.99 is a remedial amendment and should be applied retroactively to all victims of sexual harassment whose claims are pending. The six year statute of limitations found in Ohio Rev. Code §2305.07 should be applied to sexual harassment claims brought pursuant to §4112.99.
Kerans v. Porter Paint Co.
No. 90-1036 (Ohio Superior Ct. 1991) 25 pps. **$35.00**

PB (Posner) Appeal from California Superior Court, Los Angeles County
Under the California Fair Employment Act, plaintiff's burden of proof was only to show that age was one of the factors that influenced his firing, and court must uphold the jury's finding that defendant was motivated by age discrimination. Statements of company managers were properly admitted to prove intentional discrimination. If court reverses, plaintiff should be allowed to recover for fraud and deceit.
Lawrence v. Miller Brands
No. B038431 (Cal. Ct. of Appeal, 2nd District 1991) 49 pps. **$55.00**

PB (Sedey, Moench, Gilbert) Memorandum in Opposition to Defendant's Motion to Strike Jury Demand and Damages Plea
The Missouri Workers' Compensation law does not preclude recovery for emotional distress resulting from sexual harassment because the Missouri Human Rights Act preempts that section of the Workers' Compensation law. Furthermore, defendant's behavior was intentional, and Workers' Compensation does not apply to intentional acts.
LaVenture and Frericks v. Doe
No. 625729 (Mo. Cir. Ct., St. Louis County) 10 pps. **$15.00**

PB (Ballard) Motion in Limine to Preserve Right to a Jury Trial with Respect to Claim Under New Jersey Law Against Discrimination
Plaintiff states a claim for legal as well as equitable relief under the New Jersey Law Against Discrimination, and is therefore entitled to a jury trial on her claim of salary discrimination, sexual harassment, and retaliation.
Reiner v. State of New Jersey Office of Administrative Law, et al.
No. 88-1373 (D.C., D. N.J. 1989) 7 pps. **$15.00**

AB (Helmer for NELA) In Support of Plaintiffs
Defendant's motion to dismiss claiming that plaintiffs failed to exhaust their OCRC sex discrimination remedies under Ohio law should be denied. §4112.99 clearly provides for an immediate and independent remedy from §4112.05, and one is not barred from a sex discrimination claim solely because she failed to pursue remedy under §4112.05. The two provisions compliment each other; one does not override the other.
Crain and Lepper v. Cincinnati Automobile Club, et al.
No. 88-0295 (D.C., S.D. Ohio, 1989) 20 pps. **$25.00**

AB (Johnson for NELA) Application for Writ of Error
The Texas Commission on Human Rights Act does not require a trial judge to grant or deny equitable relief before submitting factual issues to the jury.
Cabellero v. Central Power and Light
No. D-1001 (Tex. Superior Ct. 1991) 25 pps. **$35.00**

AB (Starr for D.C. EEOC) Appeal from California Superior Court, Los Angeles County
FEHA does not mandate naming all potential individual defendants in the caption of administrative charges filed against separate entity employers. If FEHA does make this requirement, under principles of equity, the plaintiffs suit should not be dismissed because naming defendants in the caption was the responsibility of EEOC and DFEH.

Martin v. Texaco Refining & Marketing
No. B065501 (Cal. Ct. of Appeal, 2nd District 1992) 18 pps. **$25.00**

AB (Quackenbush) Appeal from California Superior Court, Los Angeles County
An employer may not use after-acquired evidence to avoid liability under federal and state employment discrimination laws. While some federal courts have limited plaintiff's remedies based on after-acquired evidence, California discrimination law is broader than federal law, and hence plaintiff's remedies under FEHA should not be limited.
Cooper v. Rykoff-Sexton, Inc.
No. B069065 (Cal. Ct. of Appeal, 2nd District 1993) 33 pps. **$45.00**
AB (Posner for CELA) Appeal from California Superior Court, Los Angeles County
An employer may not use evidence of an employee's wrongdoing acquired after terminating the employee to avoid liability for a wrongful termination.
Cooper v. Rykoff-Sexton, Inc.
No. B069065 (Cal. Ct. of Appeal, 2nd District 1993) 12 pps. **$25.00**

PB (Fogel) Memo of Law in Opposition to Motion for Summary Judgment
The Florida Human Rights Act does not require an individual to exhaust all administrative remedies before filing suit. Therefore, plaintiff's failure to file a timely administrative complaint does not bar his civil suit.
Moyer v. Levi Strauss & Company
No. 88-1008-CIV (D.C., S.D. Fla., 1989) 11 pps. **$25.00**

PB (Ballard) Motion in Limine
Plaintiff states a claim for legal as well as equitable relief under the New Jersey Law Against Discrimination and is therefore entitled to a jury trial on her claim of salary discrimination, sexual harassment, and retaliation.
Reiner v. State of New Jersey Office of Administrative Law
No. 88-1373 (D.C., D. N.J. 1989) 7 pps. **$15.00**

AB (Lipman for NELA NY) In Support of Plaintiff-Appellant
The appellate division incorrectly construed NY State Labor Law, § 740 to require a showing of "substantial and specific danger" to the public health or safety under subsection 2(c) which allows employees to refuse to engage in activity, policy, or practice that is in violation of a law, rule, or regulation.
Remba v. Federation Employment and Guidance Service
No. 35952 (N.Y. Ct. of Appeals 1990) 20 pps. **$25.00**

PB (Franklin) Motion to Remand Removed Action
It is improper to remove a suit based on state statutory and tort claims to federal court. Federal law (Section 301(a) of the Labor Management Relations Act) preempts state law only where the state claims are inextricably intertwined with the terms of a collective bargaining agreement.
Brooks v. Lucky Stores, Inc.
No. 94-01669 (D.C., N.D. Cal. 1994) 30 pps. **$35.00**

PB (Auvil) In Opposition to Stay of Execution
The power to stay execution should be exercised with caution and only where justice demands. It should not be exercised where the moving party has engaged in dilatory practices.
Marshall v. Manville Sales Corp.
No. 91-C-1254 (Cir. Ct. W. Va., Wood County 1994) 3 pps. **$15.00**

AB (Posner for CELA) In Support of Plaintiff-Appellant
Individuals who violate the Fair Employment and Housing Act are liable individually for their torts just as any other tortfeasor is. Imposition of such individual liability furthers the purpose of FEHA by making individuals think twice before they commit acts of discrimination.

Caldwell v. Montoya
No. S043156 (Cal. Superior Ct. 1995) 10 pps. **$15.00**

PB (Cornish) Plaintiff's Substitute Brief in Support of Her Motion For Summary Judgment
Plaintiff is entitled to summary judgment. Defendant's prescription drug use reporting requirement violates the ADA because it violates the confidentiality provisions and the restriction on disability-related inquiries. Defendant's policies (requiring disclosure of prescription drug use, prohibition of legal non-prescription drugs and random drug testing in non-sensitive jobs) also violates Colorado common law right of privacy and public policy. Finally, plaintiff should be entitled to injunctive relief.
Roe v. Cheyenne Mountain Conference Resort
No. 95-WY-2152 (D.C., D. Colo. 1995) 63 pps. **$75.00**

AB (Roberts for Washington ELA and Northwest Women's Law Center) In Support of Plaintiff-Appellee
Washington law expressly authorizes the award of punitive damages in a disability discrimination case. The trial court incorrectly instructed the jury 1) by requiring intentional conduct to define reckless indifference, 2) by instructing the jury to concentrate on the relationship between actual and punitive damages, and 3) by improperly defining a "managing agent."
McGinnis v. Kentucky Fried Chicken of California, Inc.
No. 93-35667 (9th Cir. 1994) 22 pps. **$35.00**

AB (Roberts for Washington ELA) For Leave to File *amicus*
The WELA requests leave to apprise the court of the substantial public interest at stake in this case.
McGinnis v. Kentucky Fried Chicken of California, Inc.
No. 93-35667 (9th Cir. 1994) 4 pps. **$15.00**

AB (Abramson) In Support of Appellee
State pension funds can not be utilized for any purpose other than funding benefits to a certain class of state employees.
Wisconsin Retired Teachers Association, Inc. v. Employee Trust Funds Board
No. 94-0712 (Wisc. Ct. of Appeals 1994) 16 pps. **$25.00**

AB (Posner for CELA) In Support of Plaintiff
A violation of Labor Code Section 970 (regarding employer fraud) is a violation of a well-established fundamental policy of this state for which plaintiff is entitled to recover either a statutory or a common law action or both.
Lazar v. Rykoff-Sexton, Inc.
No. S044234 (Cal. Superior Ct. 1995) 13 pps. **$25.00**

AB (Mantell for Mass. NELA) In Support of Plaintiff-Appellee
Distributing photocopied pictures representing plaintiff in the nude constituted sexual harassment and created a hostile work environment.
Bowman v. Commissioner of the Department of Public Welfare, et al.
No. 93-P-973 (Mass. Ct. of Appeals 1994) 20 pps. **$25.00**

PB (Rosen) Plaintiff's Trial Brief
Plaintiff was sexually harassed as a result of her refusal of her supervisor's sexual advances. This ultimately created an intolerable and hostile work environment. Plaintiff is entitled to damages arising from violations of the Washington Law Against Discrimination by her employer and her former supervisor.
Timmons v. City of Seattle
No. 86-2-10064-4 (Superior Ct. of Wash. 1989) 59 pps. **$65.00**

AB (Hedin for Minnesota ELA) In Support of Appeal

A claim under Minnesota's Whistleblower Act is not barred just because the plaintiff brought a parallel claim under the Minnesota Human Rights Act.
Williams v. St. Paul Ramsey Medical Center, Inc.
No. C9-94-2257 (Minn. Ct. of Appeals 1994) 34 pps. **$45.00**

PB (Endriss) Plaintiff's Trial Brief
Defendant discriminated against plaintiff because of her age when it did not hire her, when it denied her merit increases, and when it selected her for layoff. Plaintiff is entitled to recover compensatory damages including those for her mental suffering and humiliation under Washington law.
Allison v. Housing Authority of the City of Seattle
No. 86-2-02739-4 (Superior Ct. of Wash. 1989) 21 pps. **$35.00**

PB (Breskin, Todd, Feldman) Plaintiffs' Trial Brief
Plaintiffs are entitled to damages for age and handicap discrimination, breach of implied contract, promissory estoppel, intentional and negligent misrepresentation, and negligence. (Includes extensive discussion of various burdens of proof.)
Pannell, et al. v. Services Group of America, Inc., et al.
No. 87-2-07728-4 (Superior Ct. of Wash. 1989) 45 pps. **$55.00**
Also available: Judgment on Jury Verdict. 11 pps. **$15.00**

AB (Frank, Strong, Ardit for NELA, Washington) In Support of Plaintiff-Appellee
The trial court properly refused to give defendant's proposed instruction on relative qualifications and did not commit reversible error when it failed to instruct the jury that "but for" plaintiff's age he would have been selected for the promotion.
Selberg v. United Pacific Ins. Co.
No. 21521-3-I (Wa. Ct. of Appeals, Division I 1988) 37 pps. **$45.00**

AB (Turner for AIDS Network, et al.) In Support of Plaintiff
An individual who is seropositive for antibodies to HIV is handicapped under the West Virginia Human Rights Act, prior to the 1989 amendments. This will extend handicap discrimination protection to all stages of HIV or AIDS.
B.R. v. Orkin Exterminating Company, Inc.
No. 19277 (W. Va. 1989) 38 pps. **$45.00**

AB (Ramshaw for EEOC) In Support of Plaintiff's Motion for Rehearing *En Banc*
Pre-emption of state age discrimination claims relating to employee benefit plans would impair the joint state/federal enforcement scheme embodied in the ADEA and is therefore barred by Section 514(d) of ERISA.
Warner v. Ford Motor Co.
No. 93-1312 (6th Cir. 1994) 16 pps. **$25.00**

PB (Roth) Plaintiff-Respondent's Brief
Substantial evidence supports the conclusion that plaintiff's layoff was due to disability discrimination and that defendant failed to reasonably accommodate plaintiff's disability in violation of FEHA. Defendant was not entitled to have future medical damages reduced because it has waived the issue and the collateral source rule was properly applied. The trial court also correctly awarded non-economic damages and emotional distress damages based on defendant's post-termination actions of discouraging plaintiff from filing a FEHA claim.
Perrault v. Educational Testing Service
No. 707306-7 (Cal. Ct. of Appeal, 1st District 1995) 57 pps. **$65.00**

DB (Fogel) Appellant's Brief in Reply to Amicus Brief by CELA, DREDF, ELC
The defendant's duty to explore reasonable accommodations never arose because plaintiff never asked defendant for

an accommodation for his disability (plaintiff must tell the employer that the accommodation is needed for his disability). Even if defendant had such a duty, it discharged it by offering accommodations that would have allowed plaintiff to perform the essential functions of his job. The law requires no more (it does not have to be any certain accommodation).
Perrault v. Educational Testing Service
No. 707306-7 (Cal. Ct. of Appeal, 1st District 1995) 23 pps. **$35.00**

AB (Cornish for ACLU, Colorado) in Support of Respondents/Cross-Petitioners
The court should award a damage remedy where government officials trespass on citizens' rights protected by the state constitutional Bill of Rights. The respondents should be entitled to compensation under Art. 2, Section 25 of the Colorado Constitution for economic harm they suffered as a result of an alleged arbitrary and discriminatory denial of their application for use by special review.
Board Of County Commissioners of Douglas County v. Sundheim
No. 95-SC 330 (Colo. Supreme Ct. 1996) 39 pps. **$45.00**

PB (Wood, Gilpin) Petition for Writ of Certiorari to the 5th Circuit
The lower court erred when it incorrectly interpreted and applied FRCP 50(b) when it excused defendant from strict compliance with the rule by allowing its judgment notwithstanding the verdict (now judgment as a matter of law) to be considered in the absence of a timely motion for directed verdict (now renewed judgment as a matter of law). The lower court's departure from accepted procedure by applying a pre-September 1, 1989 standard for disability under Texas state law to a post-September 1, 1989 claim calls for an exercise of the Supreme Court's power of supervision. If the district court correctly decided the state law disability claim, the court of appeals departed from accepted procedure in rendering judgment instead of reversing when there was no judgment as a matter of law in the trial court so as to call for exercise of the Supreme Court's power of supervision.
Hall v. Savings of America
No. 95-1132 (U.S. Supreme Ct. 1995) 96 pps. **$105.00**

AB (McCann for AARP) In Support of Plaintiff and Petitioner
A finding that age discrimination in employment violates a fundamental public policy of the state of California is wholly consistent with this court's standards and prior decisions. Age discrimination can not and should not be distinguished from other forms of discrimination.
Stevenson v. Superior Court of Los Angeles County
No. S052588 (Cal. Supreme Ct. 1996) 29 pps. **$35.00**

AB (Goldstein for EEOC) In Support of Petition for Certification
The lower court erred in holding that once the plaintiff received an EEOC determination on his Title VII claim, that he could no longer pursue a claim under the New Jersey Law Against Discrimination in the law division.
Hernandez v. Region Nine Housing Corp.
No. 41,777 (N.J. Supreme Ct. 1996) 22 pps. **$35.00**

AB (Hedin for NELA) In Support of Petition for Writ of Certiorari
The court of appeals has erred in holding that Massachusetts state anti-discrimination laws are preempted by the National Labor Relations Act. The lower court erroneously applied the law of federal labor preemption. The lower court decision also conflicts with Massachusetts court decisions holding that the state anti-discrimination laws fall into the "local interest" exception to *Garmon* preemption.
Massachusetts Commission Against Discrimination v. Chaulk Services, Inc.
No. 95-1679 (U.S. Supreme Ct. 1995) 21 pps. **$35.00**

AB (Dunaway for AARP) In Support of Plaintiff, Respondent and Cross-Appellant
Age discrimination disparate impact claims are cognizable under both California and federal laws prohibiting discrimination. Contrary to defendant's assertions, older workers are truly disadvantaged in today's economy and suffer

from employment discrimination, (including as a result of restructuring and downsizing).
Bonsangue v. Automatic Data Processing
No. G015787 (Cal. Ct. of Appeal, 4th District 1996) 26 pps. **$35.00**

AB (Fujiwara for NELA) In Support of Plaintiff-Appellant
The Hawaii Civil Rights Commission and state courts are not precluded from awarding compensatory damages to employees who were discriminated against on claims filed with the HCRC even in light of a 1992 amendment to the worker's compensation exclusivity provision, notwithstanding the statutory exemption contained in H.R.S. sec. 368-17(b)(1991). The lower court misinterpreted the exemption and the amendment to implicitly repeal the HCRC exemption and exclude relevant evidence.
Furukawa v. Honolulu Zoological Society
No. 18735 (Haw. Supreme Court 1995) 12 pps. **$25.00**

AB (Signorille & Nelson for AARP) In Support of Plaintiffs-Appellees
State and local government pension plans have become more significant to the economy and the participants in the last 25 years, and New York state's retirement system has mirrored the national trend. The number of retirement age people is greatly increasing and at a faster rate then assets are growing. Thus, future New York state taxpayers may have to pay for the promises made to New York state employees because of the legislature's refusal to properly fund them.
McCall v. State of New York
No. 95198130 (N.Y. Ct. of Appeals 1996) 14 pps. **$25.00**

AB (Posner for CELA) Request to File *amicus curiae* and Brief In Support of Appellant
The California legislature has declared that injured workers have the same rights under the Fair Employment and Housing Act as they do under the ADA, and those rights include the ability to enforce them in a civil action. Recent changes to the Labor Code also reflect the legislative intent to give disabled workers the full range of anti-discrimination remedies available to them. Recent changes to the Civil Code also support that plaintiffs have a right to pursue a civil action. Any other construction of the FEHA would be illogical and nonsensical.
Cammack v. GTE Corp.
No. B092027 (Cal. Ct. of Appeal, 2nd District 1996) 30 pps. **$35.00**

AB (Posner for CELA, DREDF, ELC) In Support of Real Party in Interest
The California legislature has declared that injured workers have the same rights under the Fair Employment and Housing Act as they do under the ADA, and those rights include the ability to enforce them in a civil action. Recent changes to the Labor Code also reflect the legislative intent to give disabled workers the full range of anti-discrimination remedies available to them. Recent changes to the Civil Code also support that plaintiffs have a right to pursue a civil action. Any other construction of the FEHA would be illogical and nonsensical.
City of Moorpark, et al. v. Superior Court of California, County of Ventura
No. B093952 (Cal. Ct. of Appeal, 2nd District 1995) 23 pps. **$35.00**

AB (Posner for CELA) In Support of Plaintiffs-Petitioners
Precedent supports recovery for employer misconduct which does not result in termination. Reversing the verdict would encourage employer misconduct. Damages in constructive discharge cases can be computed with greater certainty than in termination cases. Wrongful demotion cases can inflict far greater damage than if the employee is actually fired. The lower court violated the Substantial Evidence Rule and disregarded the jury's determination because of its apparent dislike for the verdict.
Scott v. Pacific Gas & Electric
No. S042601 (Cal. Supreme Ct. 1995) 12 pps. **$25.00**

PB (Posner) Appellant's Reply Brief
Where proof of intent for a termination comes directly from the perpetrator's mouth, plaintiff need not show that her

actions or protests were her motivation for the company to get rid of her. Tax evasion involves fundamental public policy. Plaintiff is entitled to recover for the defendant's defamatory conduct after her termination. *Foley* is irrelevant to this case.
Anderson v. R&B Realty Group, et al.
No. B087213 (Cal. Ct. of Appeal, 2nd District 1995) 20 pps. **$25.00**

PB (Posner) Appellant's Opening Brief on Appeal from Superior Court, Los Angeles County
The summary judgment must be reversed because the question of the company's intent in a sex discrimination case in violation of the California Fair Employment and Housing Act can not be decided in a summary judgment proceeding.
Klatt v. Anheuser-Busch, et al.
No. B087254 (Cal. Ct. of Appeal, 2nd District 1995) 18 pps. **$25.00**

PB (Posner) Appellant's Reply Brief on Appeal
There is significant evidence of a hostile environment for women by defendant and it is relevant to show discriminatory animus. Defendant only replaced plaintiff with a woman once it found plaintiff was claiming sex discrimination. A jury could find that defendant created false charges to cover up its true reasons for firing plaintiff. The company violated its own rules by telling plaintiff up front it expected her to fail and repeating this throughout her probation. Defendant's own records that plaintiff was doing well up until her termination.
Klatt v. Anheuser-Busch, et al.
No. B087254 (Cal. Ct. of Appeal 1995) 16 pps. **$25.00**

AB (Posner for NELA) In Support of Plaintiff-Appellant
Congress specifically intended in enacting the 1964 Civil Rights Act that both the states and the federal government share enforcement responsibilities in order to eradicate illegal discrimination. Plaintiffs have a right to seek relief under either federal or state anti-discrimination statutes. Subsequent employment rights legislation also demonstrates a joint federal-state purpose to eradicate certain evils, from which banks are not exempted.
Marques v. Bank of America
No. CV 966157 (Cal. Ct. of Appeal, 1st District 1996) 22 pps. **$35.00**

PB (Azrael) Memo of Law in Opposition ot Motion to Dismiss
There is subject matter jurisdication over plaintiff's Title VII claims. Plainitiff"s claim was timely filed and the right to sue letter can be issued before 180 days after the filing of the charge. The 60 day period for deferral by the EEOC to the Maryland Commission on Human Relations was properly waived. The court also has diversity jurisidication, thus an issue of supplemental jurisdiction is moot. The allegations of count VI are sufficient to state a claim aginst defendant for assault and claims under the New York State Human Rights Law.
Vasconcellos v. Lumex, Inc.
No. CV96-2515 (LDW) (E.D.N.Y. 1996) 73 pps. **$85.00**

STATE EMPLOYMENT TORTS

STATE TORT - GENERAL

AB (Hedin for Minnesota Chapter of NELA) Brief In Support Of Appellant
A party asserting a promissory estoppel claim is entitled to trial by jury under Article 1, Section 4, of the Minnesota constitution. Promissory estoppel actions must be tried by a jury because they are “cases at law” under the Minnesota Constitution. Promissory estoppel claims are claims at law because they are founded upon contract law, provide a legal remedy in the form of money damages, the majority of jurisdictions permit jury trials, and federal courts have held that the Seventh Amendment requires a jury trial in promissory estoppel actions.
Olson v. Synergistic Technologies Business Systems, Inc. et al.
Nos. CO-99-769 and C8-99-776 (Minn. Sup. Crt. 2000) 13 pps. **$25.00** Addendum 5 pps. **$15.00**

STATE TORT - WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY

DB (Satriana) Opening Brief Of Defendant-Petitioner
Allegations by plaintiff that his employer tried to cover up their misconduct by terminating him is insufficient as a matter of law to support a determination that the employer's conduct was so extreme as to go beyond all possible bounds of decency, and regarded as utterly intolerable in a civilized community. There is no basis for a public policy claim when the plaintiff did not refuse to perform the act which is later alleged to be the basis for the discharge. Additionally, plaintiff public policy claim does not allege that the defendants' conduct undermines expressed public policy, rather he asserts that the defendant terminated him to "cover up" certain alleged misconduct.
Coors Brewing Co. v. Floyd
No. 97-SC821 (Colo. Sup. Ct. 1998) 14pps. **$25.00**
Also Available: Reply Brief for Defendant-Petitioner, making similar arguments. 11pps. **$25.00**

DB (Satriana) Reply Brief for Defendant-Petitioner
The trial court did not err in dismissing the fifth claim for relief for alleged outrageous conduct based upon the allegations of the complaint. Plaintiff did not seek to amend his complaint, and there is no allegation that he was harassed, that there was an abuse of authority directed at him, that the employer desired to inflict severe emotional distress upon him, discriminated against him, or that there was a pattern of repeated conduct that, when considered in totality, was outrageous. The trial court also did not err in dismissing in the sixth claim for relief for wrongful discharge in violation of public policy based upon the complaint's allegations. The Court of Appeals decision is erroneous as a matter of law and should be reversed.
Coors Brewing Co. v. Floyd
No. 97-SC821 (Colo. Sup. Ct. 1998) 11pps. **$25.00**
Also Available: Opening Brief Of Defendant-Petitioner, making similar arguments. 14pps. **$25.00**

AB (Arckey for PELA) Brief Of *Amicus Curiae* Of The Plaintiff Employment Lawyers Association To The Supreme Court Of Colorado For Respondent
Plaintiff's complaint alleging a vast network of conspiracy and illegality, if proven, could be viewed by a reasonable person
as grounds for outrageous conduct liability. Accordingly, the trial court erred in dismissing plaintiff's outrageous conduct claim, and the Supreme Court of Colorado should remand the case for further proceedings. The trial court furthermore, improperly dismissed plaintiff's claim for wrongful discharge against public policy because there is a substantial public interest in deterring employers from directing employees to perform illegal acts and in deterring employers from concealing their own illegal conduct by terminating their employees. Because the court of appeal correctly reversed the trial court on both counts, its opinion should be upheld by the Supreme Court of Colorado.
Coors Brewing Co. v. Floyd
No. 97-SC 821 (Colo. Sup. Ct. 1998) 36pps. **$45.00** Appendix (Colorado Court of Appeals Decision: Coors Brewing Co. v. Floyd, 1997 WL 411731), 14pps. **$25.00**
Also available: Answer Brief of Plaintiff-Respondent, making similar arguments. 20pps. **$25.00**

PB (Doyle) Answer Brief for Respondent To The Supreme Court Of Colorado
The appeals court correctly overturned the trial court's dismissal of plaintiff's claim of outrageous conduct. Sealed documents before the Colorado supreme court support plaintiff's theories that he was terminated to cover up the illegal acts of defendant which included covert illegal narcotics investigations of Coors' employees, money laundering through Coors' law firm, and illegal use of state and federal criminal justice records. The court of appeals also correctly overturned the trial court's dismissal of plaintiff's claim of wrongful discharge in violation of public policy. Plaintiff sufficiently pled his case asserting that he was ordered by his employer to participate in a covert operation, which subjected him to criminal liability. The holding of *Crawford Rehabilitation Service v. Weissman*, 938 P.2d 540 (Colo. 1997) on public policy discharge applies.
Coors Brewing Co. v. Floyd

No. 97-SC 821 (Colo. Sup. Ct. 1998) 20pps. **$25.00**
Also available: Brief Of Amicus Curiae Of The Plaintiff Employment Lawyers Association To The Supreme Court Of Colorado For Respondent. 36 pps. **$45.00** *Appendix (Colorado Court of Appeals Decision: Coors Brewing Co. v. Floyd, 1997 WL 411731), 14pps.* **$25.00**

AB (Berstein for EEOC) Brief *amicus curiae* on Appeal from D.C., N.D. Ill.
An employer, who informs an individual's current employer of her pending discrimination suit and medical restrictions in retaliation for filing the suit, is not insulated from liability by the "absolute litigation privilege" under Illinois law, which affords attorneys immunity from liability for communications pertinent to pending litigation.
Steffes v. Stepan Co.
No. 97-2625 (7th Cir. 1997) 20 pps. **$25.00**

AB (Bredehoft for NELA) On a Question Certified to and Accepted by the Court from the D.C., W.D., Va.
The Va. Code § 2.1-725(D) does not prohibit a common law cause of action based upon the public policies reflected in the Virginia Human Rights Act, Va. Code § 2.1-714. Termination of an at-will employee because of unlawful discrimination remains actionable under the common law of Virginia. The 1995 amendments to the Virginia Human Rights Act do not bar a common law claim for wrongful termination based on the policies underlying the Act. Moreover, the limited scope and availability of the statutory remedies indicates that the common law remedy has been retained.
Doss v. Jamco, Inc.
No. 970703 (Va. Supreme Ct. 1997) 24 pps. **$35.00**

DB (Arnold) Brief of Appellants
The circuit court erred by permitting the employee to present a claim based upon the purported broad public policy that mandates that an employer cannot discharge an employee because she has given testimony or may be a witness, in a disposition or trial. In addition the circuit court erred by refusing to enter judgement for petitioners because legitimate grounds existed for the employee's termination and the employee's evidence was insufficient to support a claim of wrongful discharge. Also, the circuit court erred by permitting the employee to present a pretext discrimination law theory in her Harless action.
Jacqueline Page v. Columbia Natural Resources, Inc., and R. Neal Pierce
No. 23469 (W. Va. Supreme Court of Appeals, 1996) 42 pps. **$45.00**
Also available: Reply to Brief of Appellee and Cross Appeal making similar arguments. 12 pps . **$25.00**

PB (Karlin) Appeal from the Circuit Court of Kanawha County
This appeal raises the issue of the inter-relationship between pretext and mixed motive discrimination, and the scope of a public policy wrongful discharge cause of action. In addition, the issue of the excessiveness of a $150,000 emotional distress award where there is no medical evidence is discussed.
Jacqueline Page v. Columbia Natural Resources, Inc., and R. Neal Pierce
C.A. No. 92-C-4816 (W. Va. Supreme Court of Appeals, 1996) 42 pps. **$45.00**

AB (Posner for CELA) Brief*amicuscuriae* in Support of Plaintiff-Appellant on Appeal from Cal. Court of Appeal, Second Dist.
Summary judgment on a wrongful termination in violation of public policy claim should be denied when the public policy asserted is contained in Federal Aviation Administration (FAA) regulations. The federal legislative scheme indicates that Congress has articulated a strong public interest in aviation safety. FAA regulations should be recognized by this court as an adequate source of public policy.
Green v. Ralee Engineering Co. et al.
No. S0 60370 (Cal. Supreme Ct. 1998) 11 pps. **$25.00**

PB (Posner) Reply Brief on Appeal from Cal. Superior Court, Los Angeles County
An employee can recover where his employer fired him in retaliation for complaining about unsafe work environment,

thereby violating public policy. He can recover for defamation where he was compelled to explain to prospective employers that he had been fired, and for internal company statements. The wrongful termination and defamation claims should go to the jury without mention of dispositive rulings on other parts of the case to avoid prejudice.
Dolney v. Anheuser-Busch, Inc.
No. B 067008 (Cal. Ct. of Appeal, 2nd District 1993) 17 pps. **$25.00**

PB (Schaffner) Appeal from Illinois Circuit Court, Cook County
Plaintiff's tort action for retaliatory discharge is (1) not preempted by federal law, and (2) not barred by election of remedies because tort was filed after plaintiff pursued remedy under collective bargaining agreement. The decision of joint union-employer grievance panel is not entitled to preclusive effect in tort action.
Brazinski v. Transport Service Co.
No. 86-3058 (Ill. Appellate Ct., 1st District 1987) 19 pps. **$25.00**

AB (Posner for CELA) Appeal from Cal. Ct. of Appeal, 3rd District
A discharge for speaking out against sexual harassment and cooperating with state officials investigating constitutes wrongful discharged in violation of public policy. A plaintiff terminated in violation of public policy may recover all tort damages, including damages for emotional distress.
Gantt v. Sentry Insurance Co.
No. S014212 (Cal. Supreme Ct. 1991) 18 pps. **$25.00**

AB (Posner for CELA) Appeal from Cal. Ct. of Appeal, 3rd District
Plaintiff may sue for wrongful discharge in violation of public policy whether or not the policy is grounded in a California statute or constitutional provision, in order to enforce important public interests.
Gantt v. Sentry Insurance Company
No. S 014212 (Cal. Supreme Ct. 1991) 16 pps. **$25.00**

PB (Sedey) Appeal from Mo. Circuit Court, St. Louis County
The circuit court erred in dismissing plaintiff's suit because plaintiff stated a cause of action based upon Missouri's public policy exception to the at will employment doctrine when he was fired for refusing his employer's instructions to violate the law.
Petersimes v. Crane Company, d/b/a/ Crane National Vendors
No. 60908 (Mo. Ct. of Appeals, Eastern District 1992) 27 pps. **$35.00**

PB (Sedey) Reply Brief on Appeal from Mo. Circuit Court, St. Louis County
Defendants violated public policy by firing plaintiff for refusing to make false statements to the federal government about the quality and safety of the materials produced by defendant.
Petersimes v. Crane Company, d/b/a/ Crane National Vendors
No. 60908 (Mo. Ct. of Appeals, Eastern District 1992) 7 pps. **$15.00**

PB (Sedey) Plaintiff's Counter Suggestion to Defendant's Motion for Transfer on Appeal from Mo. Appellate Court
Defendants violated public policy by firing plaintiff for refusing to make false statements to the federal government about the quality and safety of the materials produced by defendant. Making false statements would have been a criminal violation of 18 U.S.C. § 1001.
Petersimes v. Crane Company, d/b/a/ Crane National Vendors
No. 75136 (Mo. Supreme Ct. 1992) 6 pps. **$15.00**

PB (Sedey) Reply Brief on Appeal from Mo. Circuit Court, St. Louis City
The public policy exception applies when an employer does not renew a term contract for improper reasons, such as the one presented here, where defendant fired plaintiff for carrying out his legal obligations imposed by state and federal law.
Luethans v. Washington University

No. 61127 (Mo. Ct of Appeals, Eastern District 1992) 12 pps. **$25.00**

PB (Sedey) Opposition to Motion to Transfer
The district court should deny transfer to the Missouri Supreme Court because the panel decision was consistent with controlling legal principles and sound policy when it held that plaintiff, an at will employee, was fired in retaliation for reporting violations of the standards required by the Federal Animal Welfare Act (AWA).
Luethans v. Washington University
No. 61127 (Mo. Ct. of Appeals, Eastern District 1992) 7 pps. **$15.00**

PB (Sedey) Appeal from Mo. Circuit Court, St. Louis
Plaintiff stated a cause of action based upon Missouri's Public Policy Wrongful Discharge doctrine by pleading that he was fired from his employment when, in performing his duties as a veterinarian, he reported violations of the Federal Animal Welfare Act (AWA) to his superiors.
Luethans v. Washington University
No. 61127 (Mo. Ct. of Appeals, Eastern District 1992) 40 pps. **$45.00**

PB (Salese) Trial Memo
Plaintiff was fired for having embarrassed her employer by her testimony in a committee hearing. Defendants breached an implied contract for not following disciplinary and warning procedures, violated public policy by discharging plaintiff for testifying truthfully, and breached the implied covenant of good faith and fair dealing.
Lemme v. Palo Verde Mental Health Services, et al.
No. 218769 (Ariz. Superior Ct., Pima County 1986) 25 pps. **$35.00**

AB (Santini for Wyoming Trial Lawyers Assciation) In Support of Appellant
The Wyoming Trial Lawyer's Association urges the court to recognize the existence of the public policy exception to the employment at will doctrine in Wyoming. In the present case, the public policy of the state is to provide for a worker's compensation system for the benefit of employees injured in industrial accidents.
Griess and Pate v. Consolidated Freightways Corp. Of Delaware, et al.
No. 89-9 (Wyo. Supreme Ct. 1989) 16 pps. **$25.00**

AB (Gross, Wolfram) In Support of Plaintiff
Allowing a narrow exception to New York's at-will rule for attorneys who are discharged for reporting ethical violations to the proper officials, will further the integrity of the legal system.
Wieder v. Skala, et al.
No. 17278/88 (NY Supreme Ct., 1st Dept. 1990) 21 pps. **$35.00**

PB (Valdeck, et al.) Appellant's Brief
New York's at-will rule does not preclude wrongful discharge actions by attorneys discharged for reporting ethical violations to the proper officials.
Wieder v. Skala, et al.
No. 17278/88 (NY Supreme Ct. 1st Dept. 1990) 37 pps. **$45.00**

PB (Monaghan) Opposition to Petition for Writ of Mandate and Prohibition
Plaintiffs state a cause of action for wrongful discharge in violation of public policy where it is alleged that employer reduced the entire workforce in order to get rid of blacks and women (even though some discharged were white males) in order to hire a workforce willing to work overtime for no pay, in violation of the Fair Labor Standards Act, and to prevent the fired workforce from organizing a union, in violation of the Labor-Management Relations Act.
Kyocera International v. Superior Court of San Diego
No. 491146 (Cal. Ct. of Appeal, 4th District 1992) 84 pps. **$95.00**

AB (Banov for MWELA) Reply of MWELA to Appellee's Opposition to Motion for Leave to Participate in Support of Appellant's Petition for Rehearing *En Banc*
As an association of lawyers specializing in labor and employment law, the Metropolitan Washington Employment Lawyers Assoc. have an interest in participating as an *amicus curiae* in a lawsuit involving wrongful discharge in violation of public policy.
Gray v. Citizens Bank of Washington
No. 90-1021 (D.C. Ct. of Appeals 1992) 8 pps. **$15.00**

PB (Crosby) Opposition to Summary Judgment
An employer's investigation of sexual relations between two employees violated the employees' California constitutional right to privacy. Whether the employer's interests are compelling and outweigh the employees' right to privacy are jury questions. Malice is not an element and inadvertence is not a defense to invasion of the right to privacy. Firing an employee for having sexual relations with a co-employee constitutes wrongful termination in violation of public policy.
Bingham v. Industries, Inc.
No. 637458 (Cal. Superior Ct., San Diego County 1992) 34 pps. **$45.00**

PB (Posner) Appeal of Nonsuit by Cal. Superior Court, Los Angeles County
Plaintiff is entitled to recover for wrongful termination in violation of public policy where plaintiff was fired for complaining about the safety hazard of intoxicated co-workers, and for complying with jury service. An individual can be held liable for wrongful termination in violation of public policy, regardless of his agency status with the employer.
Dolney v. Anheuser-Busch, Inc.
No. B067008 (Cal. Ct. of Appeal, 2nd Dist. 1992) 41 pps. **$55.00**

PB (Posner) Petition for Review of Decision by Cal. Ct. of Appeal, 2nd District
The court should grant review to establish who has the burden of proof of the existence or absence of malice in a common law defamation case based on compelled republication, to establish the standard of proof where a plaintiff sues for firing in retaliation of jury service, and to reinforce the idea that employer retaliation for employee complaints about workplace safety is prohibited under *Gantt*.
Dolney v. Anheuser-Busch, Inc.
No. B067008 (Cal. Supreme Ct. 1993) 53 pps. **$65.00**

AB (Posner for CELA) Appeal from Cal. Ct. of Appeal, 4th District
Plaintiff, who quit his job under protest, is entitled to seek recovery for wrongful termination in violation of public policy where defendant directed its employees to violate the federal Alcohol Beverage Control Act, and engage in commercial bribery, theft, and vandalism. The issue of reasonableness of plaintiff's remaining on the job and resignation is a jury question of fact. The statute of limitations in a constructive discharge case is two years, and begins to run when the employee resigns.
Turner v. Anheuser-Busch, Inc.
No. S029985 (Cal. Supreme Ct. 1993) 22 pps. **$35.00**

AB (Quackenbush) Appeal from Cal. Ct. of Appeal, 4th District
In order to establish constructive discharge, plaintiff must show the conditions causing plaintiff to resign were violative of public policy, a reasonable person would have resigned, and the employer had actual or constructive knowledge of the conditions and their impact on plaintiff, and could have remedied them.
Turner v. Anheuser-Busch, Inc.
No. S029985 (Cal. Supreme Ct. 1993) 28 pps. **$35.00**

AB (Posner for CELA) Appeal from Cal. Superior Court, Ventura County
Precluding plaintiff from recovering payment for earned but untaken vacation condones a forfeiture and violates public policy.

Sequeira v. Rincon-Vitova Insectaries, Inc.
No. B079614 (Cal. Ct. of Appeal, 2nd District 1994) 13 pps. **$25.00**

AB (Posner for CELA) In Support of Plaintiff-Petitioner
The California legislature has declared unequivocally that discrimination because of age violates public policy. Therefore, any employer who discriminates because of age is liable for wrongful termination in violation of public policy.
Stevenson v. Huntington Memorial Hospital
No. B089375 (Cal. Ct. of Appeal, 2nd District 1995) 27 pps. **$35.00**

PB (Posner) Plaintiff-Appellant's Brief
Plaintiff has the right to recover for wrongful termination in violation of public policy because defendant's purpose in hiring her was to cover up his tax evasion. Plaintiff is entitled to recover for defamation for the company's conduct in making her a pariah before her co-employees.
Anderson v. R & B Realty Group, et al.
No. B087213 (Cal. Ct. of Appeal, 2nd District 1995) 23 pps. **$35.00**

AB (Posner for CELA) In Support of Plaintiff-Petitioner
The California legislature has declared that age discrimination violates public policy, thus, any employer who discriminates in this way is liable for termination in violation of public policy. Age is immutable and affects everyone, thus, age discrimination is an affront to a large growing segment of the U.S. population. Unless we dispel the myths surrounding older workers with effective enforcement of public policy, age discrimination is likely to increase.
Stevenson v. Superior Court of Los Angeles County
No. S052588 (Cal. Supreme Ct. 1996) 27 pps. **$35.00**

PB (Posner) Appellant's Reply Brief
Where proof of intent for a termination comes directly from the perpetrator's mouth, plaintiff need not show that her actions or protests were her motivation for the company to get rid of her. Tax evasion involves fundamental public policy. Plaintiff is entitled to recover for the defendant's defamatory conduct after her termination. *Foley* is irrelevant to this case.
Anderson v. R&B Realty Group, et al.
No. B087213 (Cal. Ct. of Appeal, 2nd Dist. 1995) 20 pps. **$25.00**

STATE TORT - DEFAMATION

PB (Posner) Appeal From Judgment Of The Superior Court Of Los Angeles County Granting Summary Judgment
Summary judgment is inappropriate when the evidence is susceptible of different interpretations or inferences by the trier of fact. The trial court was duty bound to believe those facts submitted by plaintiff. Courts are granting too many summary judgment motions in employment cases. The employer must make an adequate investigation which includes notice of the claimed misconduct to the employee, and a chance for the employee to respond. Failure to do so doesn't meet the minimum standards for investigation where an employee is accused of misconduct. If malice is shown in a defamation case, then no privilege arises.
Ayoubpour v. J. Robert Scott, Inc.
No. BC 167639 (Cal. Ct. App., 2nd Dist. 1999) 15pps. **$25.00**

PB (Posner) Appeal From Superior Court Of Los Angeles County
The superior court erred in granting summary judgment to the defendant by refusing to protect plaintiff's right, granted by the California Constitution, to be free from slander at her place of work. The plaintiff can overcome the fact that the defendants statements took place on a privileged occasion by showing that (1) the charges which the company made against plaintiff were false, (2) the charges were defamatory, and (3) defendants acted with malice. The superior court could not determine the question of malice from affidavits alone which is an issue for a jury. Private persons suing a non-

media defendant need only show negligence to establish malice.
Ayoubpour v. Scott, Inc., et al.
No. B123876 (Cal. Ct. App., 2nd Dist. 1999) 40pps. **$45.00**

PB (Posner) Appellant's Reply Brief On Appeal From California Superior Court, Los Angeles County
Employer without doing a proper investigation, falsely accused and fired plaintiff for allegedly stealing and being disloyal to the company. Plaintiff sued fellow employee and employer for defamation. The plaintiff does not have to prove either actual malice or ill will to recover as a private figure suing in a private controversy. All plaintiff needs to prove is negligence and having done so, the defendant's demurer to the defamation claim should be reversed.
Keshishian v. Nordstrom, Inc., et al.
No. BC-175777, 2nd Civil No. B 122529 (Cal. Sup. Ct., 2nd Dist. 1999) 18pps. **$25.00**

PB (Posner) Plaintiff-Appellant's Opening Brief on Appeal from Los Angeles County Superior Court
Plaintiff is entitled to recover for wrongful discharge in violation of the public policy against defamation. Because the false statements were said with malice there is no privilege. The plaintiff's privacy rights under the California Constitution were also violated by her firing for other work she did on her own time.
Keshishian v. Nordstrom, Inc., et al.
No. B 122529 (Cal. Ct. of Appeals, 2nd Dist. 1998) 29 pps. **$35.00**

PB (Posner) Plaintiff-Respondent's Brief on Appeal from California Superior Court, Los Angeles County
The jury verdict should be upheld as the court instructed the jury properly on damages, and the jurors awarded both compensatory and punitive damages. Since the settlement with the first group of tortfeasors was solely for economic damages, the trial court properly ruled that defendants were not entitled to a set off.
Birdseye v. Alpha Property Management Co. et al.
Nos. B101301 & BC094408 (Cal. Ct. of Appeal, 2nd District 1996) 53 pps. **$65.00**

AB (Mastroianni for EEOC) In Support of Defendant's Motion for Summary Judgment
Defendant's investigation of sexual harassment by plaintiff was required by Title VII and is a qualified privilege barring plaintiff's defamation charge.
Stockley v. AT&T Information Systems, Inc.
No. 86 Civ. 1643 (RJD) (D.C., E.D. N.Y. 1987) 24 pps. **$35.00**

PB (Posner) Reply Brief on Appeal from Cal. Superior Court, Los Angeles County
An employee can recover where his employer fired him in retaliation for complaining about unsafe work environment, thereby violating public policy. He can recover for defamation where he was compelled to explain to prospective employers that he had been fired, and for internal company statements. The wrongful termination and defamation claims should go to the jury without mention of dispositive rulings on other parts of the case to avoid prejudice.
Dolney v. Anheuser-Busch, Inc.
No. B067008 (Cal. Ct. of Appeal, 2nd District 1993) 17 pps. **$25.00**

AB (Posner for CELA) Request to Appear & Argue as *amicus*
Because CELA is admitted as *amicus* in a similar case, it should be admitted as *amicus* here.
Davaris v. Cubaleski
No. B056296 (Cal. Ct. of Appeal, 2nd District 1993) 3 pps. **$15.00**

AB (Posner for CELA) Request to File *amicus curiae* and Brief in Support of Petitioner on Appeal from Cal. Ct. of Appeal, 2nd District
The Workers Compensation Act has no application in a defamation claim, and a defamed ex-employee may pursue a civil action for damages to reputation. An former-employee should be able to pursue a defamation claim for the sound public policy reason of deterring obnoxious conduct.
Livitsanos v. Superior Court of the State of California for the County of Los Angeles

No. S017174 (Cal. Supreme Ct. 1991) 16 pps. **$25.00**

AB (Posner for CELA) Request to File *amicus curiae* and Brief in Support of Petitioner on Appeal from Cal. Superior Court, Los Angeles County
Defamation is not subject to the exclusivity provision of the California Workers' Compensation Act. A defamed employee may pursue a civil action for defamation because the essence of defamation is injury to reputation not covered by workers' compensation, and because defamation is extreme and outrageous behavior outside the normal scope of the employment relationship.
Livitsanos v. Superior Court of the State of California for the County of Los Angeles
No. B051999 (Cal. Ct. of Appeal, 2nd District 1992) 22 pps. **$35.00**

AB (Posner for CELA) Request to File Supplemental *amicus curiae* and Brief In Support of Petitioner on Appeal from California Court of Appeal, 2nd District
Defamation is not subject to the exclusivity provision of the California Workers' Compensation Act. A defamed employee may pursue a civil action for defamation because the essence of defamation is injury to reputation not covered by workers' compensation, and because defamation is extreme and outrageous behavior outside the normal scope of the employment relationship.
Livitsanos v. Superior Court of the State of California for the County of Los Angeles
No. S017174 (Cal. Supreme Ct. 1992) 15 pps. **$25.00**

PB (Ford) Appeal from Georgia Superior Court, Fulton County
Summary judgment for defendant on the invasion of privacy claim, intentional infliction of emotional distress claim, and defamation claim was based on erroneous factual determinations which should not have been made by the lower court. Plaintiff's claims stem from defendant's retaliation for testifying in an age discrimination suit brought by another employee.
Yarbray v. Southern Bell Telephone and Telegraph Co.
No. A90A1299 (Ga. Ct. of Appeals 1990) 35 pps. **$45.00**

PB (Crosby) Opposition to Summary Judgment
Where an employer wrongfully terminates plaintiff, employer is liable for defamation for failing to prevent the circulation of false reasons for plaintiff's termination.
Bingham v. Industries, Inc.
No. 637458 (Cal. Superior Ct., San Diego County 1992) 34 pps. **$45.00**

PB (Posner) Appeal of Nonsuit by Cal. Superior Court, Los Angeles County
Plaintiff may recover for defamation, for defendant's false accusations made internally within a company, and for plaintiff's compelled republication of defendant's false accusations in interviews with prospective employers.
Dolney v. Anheuser-Busch, Inc.
No. B067008 (Cal. Ct. of Appeal, 2nd District 1992) 41 pps. **$55.00**

PB (Posner) Petition for Review of Decision by California Court of Appeal, 2nd District
The court should grant review to establish who has the burden of proof on the existence or absence of malice in a common law defamation case based on compelled self-republication, to establish the standard of proof where a plaintiff sues for firing in retaliation of jury service, and to reinforce the idea that employer retaliation for employee complaints about workplace safety is prohibited under *Gantt*.
Dolney v. Anheuser-Busch, Inc.
No. B067008 (Cal. Supreme Ct. 1993) 53 pps. **$65.00**

PB (Posner for CELA) Petition for Review
Plaintiff has a right to vindicate an injury to her reputation under the California Constitution. The court needs to address

liability for compelled republication of defamatory charges to prospective employers.
Kowalski v. KFF Management, Inc.
No. B084617 (Cal. Supreme Ct. 1995) 29 pps. **$35.00**

PB (Posner for CELA) Appellant's Opening Brief
Plaintiff sustained a compensable injury to her reputation by way of compelled republication of defamatory charges to prospective employers.
Kowalski v. KFF Management, Inc.
No. B084617 (Cal. Ct. of Appeal, 2nd District 1994) 24 pps. **$35.00**
Also available: Appellant's Reply Brief. 20 pps. **$25.00**

PB (Posner) Appellant's Reply Brief
Where proof of intent for a termination comes directly from the perpetrator's mouth, plaintiff need not show that her actions or protests were motivation for the company to get rid of her. Tax evasion involves fundamental public policy. Plaintiff is entitled to recover for the defendant's defamatory conduct after her termination. *Foley* is irrelevant to this case.
Anderson v. R&B Realty Group, et al.
No. B087213 (Cal. Ct. of Appeal, 2nd District 1995) 20 pps. **$25.00**

STATE TORT - RIGHT TO PRIVACY

AB (Hedin for NELA) Brief of *Amicus Curiae* For The Appellants
This brief presents a proposal on how a right of privacy may be recognized by the Minnesota Supreme Court while maintaining fidelity to its precedent. Additionally, the brief addresses why the Minnesota legislature has not enacted privacy legislation and why the Minnesota Supreme Court should act.
Lake and Weber v. Wal-Mart Stores, Inc. et al.
No. C7-97-263 (Minn. Sup. Ct. 1997) 20pps. **$25.00**

PB (Ford) Appeal from Georgia Superior Court, Fulton County
Summary judgment for defendant on invasion of privacy claim, intentional infliction of emotional distress claim, and defamation claim based on erroneous factual determinations which should not have been granted by the lower court. Plaintiff's claims stem from defendant's retaliation against her for testifying in an age discrimination suit brought by another employee.
Yarbray v. Southern Bell Telephone and Telegraph Co.
No. A90A1299 (Ga. Ct. of Appeals 1990) 35 pps. **$45.00**

PB (Anderson) Memo in Support of Plaintiff's Motion for Preliminary Injunction
Employer's surreptitious videotaping of employees in employee locker rooms violates the employees' common law right of privacy under West Virginia law.
Anderson, et al. v. Monongahela Power Company and The Allegheny Power System, Inc.
No. 92-C-483 (W. Va. Cir. Ct., Monongahela County 1992) 8 pps. **$15.00**
Also available: Complaint. 6 pps. **$15.00**

PB (Crosby) Opposition to Summary Judgment
An employer's investigation of sexual relations between two employees violated the employees' California Constitutional right to privacy. Whether the employer's interests are compelling and outweigh the employees' right to privacy are jury questions. Malice is not an element and inadvertence is not a defense to invasion of the right to privacy. Firing an employee for having sexual relations with a co-employee constitutes wrongful termination in violation of public policy. Plaintiff states a cause of action for intentional infliction of emotional distress, which is not pre-empted by the Workers' Compensation Act. Employer defamed plaintiff by failing to prevent the circulation of false reasons for plaintiff's termination.
Bingham v. Industries, Inc.

No. 637458 (Cal. Superior Ct., San Diego County 1992) 34 pps. **$45.00**

STATE TORT - EMOTIONAL DISTRESS

PB (Ewing and Foley) Plaintiff's Brief in Opposition to Defendant's Letter-Motion to Compel Psychological Records
Communications between patients and psychotherapists are privileged according to the United States Supreme Court and the Federal Psychotherapist-Patient Privilege. Thus, the defendant's request for discovery is improper. Even if the plaintiff put her mental state "in issue" to some degree, the court nonetheless would have to balance the likely value of this evidence against invading the plaintiff's private consultations.
Rybakoff v. Connolly Bove Lodge & Hutz
No. 96-79JJF (Del. District Ct. 1996) 15 pps. **$25.00**
Also available: Plaintiff's Sur-Reply Brief in Opposition to Defendant's Motion to Compel Psychological Records. 5 pps. **$15.00**

PB (Karlin) Appeal from the Circuit Court of Kanawha County
This appeal raises the issue of the inter-relationship between pretext and mixed motive discrimination, and the scope of a public policy wrongful discharge cause of action. In addition, the issue of the excessiveness of a $150,000 emotional distress award where there is no medical evidence is discussed.
Jacqueline Page v. Columbia Natural Resources, Inc., and R. Neal Pierce
C.A. No. 92-C-4816 (W. Va. Supreme Ct. of Appeals, 1996) 42 pps. **$45.00**

PB (Miller) Memo of Law in Opposition to Motion for Partial Summary Judgment
Plaintiffs' state law claims (based on the D.C. Human Rights Act, breach of contract, and intentional infliction of emotional distress), are not related to defendant's employee benefit plan and therefore are not preempted by ERISA. If preempted, state law claims should be subsumed within ERISA through the court's power to create federal common law, and thus plaintiffs have analogous federal common law claims. A right to a jury trial is constitutionally required, and ERISA grants an implied statutory right to a jury.
McDonald and McDonald v. Consolidated Electric Supply, Inc., et al.
No. 90-3051 (D.D.C. 1991) 36 pps. **$45.00**

PB (Arterton) Memo in Support of Motion to Strike
Once employer has established a formal employee performance appraisal procedure, a duty of reasonable care in administering its appraisal procedures arises from defendant's contractual undertaking or from the foreseeability of emotional distress to plaintiff. Therefore, plaintiff states a claim for negligent performance appraisals.
Madden v. Yale-New Haven Hospital
No. CV 89-0287634 (N.J. Superior Ct. 1990) 15 pps. **$25.00**

PB (Ford) Appeal from Georgia Superior Court, Fulton County
Summary judgment for defendant on the invasion of privacy claim, intentional infliction of emotional distress claim, and defamation claim based on erroneous factual determinations which should not have been granted by the lower court. Plaintiff's claims stem from defendant's retaliation against her for testifying in an age discrimination suit brought by another employee.
Yarbray v. Southern Bell Telephone and Telegraph Co.
No. A90A1299 (Ga. Ct. of Appeals 1990) 35 pps. **$45.00**

PB (Crosby) Opposition to Summary Judgment
Plaintiff states a cause of action for intentional infliction of emotional distress where the employer investigates sexual relations between plaintiff and a co-worker and fires plaintiff. Employer's acts were extreme and outrageous, and hence not pre-empted by the Workers' Compensation Act.
Bingham v. Industries, Inc.
No. 637458 (Cal. Superior Ct., San Diego County 1992) 34 pps. **$45.00**

AB (Lapidus for MELA) Writ of Certiorari from Maryland Court of Special Appeals
In determining what kind of conduct amounts to intentional infliction of emotional distress, the fact that the conduct occurred in the workplace is a pertinent jury consideration.
Kentucky Fried Chicken National Management Company v. Weathersby
No. 75 (Md. Ct. of Appeals 1991) 15 pps. **$25.00**

PB (Leech) Combined Appellant's Reply Brief and Appellee's Brief on Cross-Appeal from D.C., N.D. Ill.
Defendant's repeated sexual harassment was severe and outrageous enough to constitute intentional infliction of emotional distress. Plaintiff need not stop defendant's conduct in order to prevail.
Bristow v. Drake Street, Inc., et al.
Nos. 92-1381, 92-1409 & 92-1497 (7th Cir. 1992) 54 pps. **$65.00**

PB (Stix) In Opposition to Defendant's Motion to Dismiss
The municipal code of Chicago grants plaintiff a private cause of action. Plaintiff's intentional infliction of emotional distress claim is sufficient to overcome a 12(b)(6) motion to dismiss. Plaintiff's Section 1983 First Amendment claim is sufficient to overcome a motion to dismiss.
Mulligan v. City of Chicago
No. 93-C-2422 (D.C., N.D. Ill. 1993) 12 pps. **$25.00**

PB (Roth) Plaintiff-Respondent's Brief
Substantial evidence supports the conclusion that plaintiff's layoff was due to disability discrimination and that defendant failed to reasonably accommodate plaintiff's disability in violation of FEHA. Defendant was not entitled to have future medical damages reduced because it has waived the issue and the collateral source rule was properly applied. The trial court also correctly awarded non-economic damages and emotional distress damages based on defendant's post-termination actions of discouraging plaintiff from filing a FEHA claim.
Perrault v. Educational Testing Service
No. 707306-7 (Cal. Ct. Appeal, 1st Distict 1995) 57 pps. **$65.00**

STATE TORT - MISCELLANEOUS

DB (Owsley for EEOC) Brief Of The Equal Employment Opportunity Commission As *Amicus Curiae* In Support Of Defendant's Motion To Dismiss
Testers, who were denied a job offer as a result of their race, have standing to bring a racial discrimination claim under Title VII. Furthermore, participation in a legitimate employment discrimination testing program does not constitute fraud and supporting a discrimination lawsuit arising from a testing program does not constitute maintenance. The reason for this is because testers were not committing fraudulent acts, but striving to achieve the important policy objective of preventing and eliminating employment discrimination. The plaintiff's lawsuit asserting common law claims of fraud is preempted by Title VII. In *Hines v. Davidowitz,* the Supreme Court held that "state law is preempted because the state law stands as an obstacle to the accomplishment and execution of the full purposes of Congress." The Court should dismiss plaintiff's lawsuit against the testing program because it constitutes retaliation against it for engaging in protected activity. Furthermore, the court should dismiss plaintiff's claims under the unclean hands doctrine.
K & J Management, Inc. v. Kyles, Pierce, and Legal Assistance Found. of Chicago
No. 98 L 12726 (Cir. Ct. of Cook County, Ill. 1999) 29pps. **$35.00** Appendix 114pps**. $105.00**
Also Available under: Kyles and Pierce v. J.K. Guardian Security Services, Inc. Brief of the EEOC as Amicus Curiae On Appeal from D.C., N.D. Ill., making similar arguments. 22pps. **$35.00** *Addendum 7pps.* **$15.00**

DB (Eldridge) Brief Of Appellant, Paracelsus Healthcare Corporation
The trial court erred by limiting the second trial on remand to only the issue of punitive damages. Mississippi statutory and
case law specifically requires that punitive damages may be considered by a jury only if compensatory or actual damages

are first awarded. The punitive damages awarded were excessive and against the overwhelming weight of the evidence, and were rendered due to impermissible bias and prejudice of the jury.
Paracelsus Healthcare Corporation v. Willard; Paracelsus Healthcare Corporation v. Sumner
No. 97-CA-01494 (Miss. Sup. Ct. 1998) 44pps. **$55.00**

PB (Lewis) Appellant's Brief, On Appeal From The Circuit Court Of Tate County, Mississippi
The facts support an imposition of punitive damages for plaintiff's claim of retaliatory discharge. The court's denial of a punitive damages instruction for tortious breach of contract is reversible error. Under recent Mississippi and traditional tort principles, plaintiffs were entitled to recover all their damages including attorney's fees.
Willard v. Paracelsus Health Care Corp. and Sumner v. Paracelsus Health Care Corp.
No. 92-CA-0996 (Miss. Sup. Ct. 1993) 40pps. **$45.00**
Also Available: Appellant's Rebuttal Brief, On Appeal From The Circuit Court Of Tate County, Mississippi, making similar arguments. 20pps. **$25.00**

PB (Lewis) Appellant's Rebuttal Brief, On Appeal From The Circuit Court Of Tate County, Mississippi
This court should remand each case for trial on the merits on the issues of punitive damages for retaliatory discharge, an issue of first impression in Mississippi, and of tortious breach of an employment contract, with orders of appropriate jury instructions on both issues. *Bobbitt v. The Orchard, Ltd*., 603 So.2d 356 (Miss. 1992) is on point on the issue of termination procedures set out in an employee handbook and their consequent breach by the employer. A remand on the issue of attorney's fees is also appropriate, as these can be awarded even without an award of punitive damages, and in the absence of statutory provisions.
Willard v. Paracelsus Health Care Corp; Sumner v. Paracelsus Health Care Corp.
No. 92-CA-0996 (Miss. Sup. Ct. 1993) 20pps. **$25.00**
Also Available: Appellant's Brief, On Appeal From The Circuit Court Of Tate County, Mississippi, making similar arguments. 40pps. **$45.00**

AB (Dardarian & Kaufmann for Asian Law Caucus, et al.) In Support Of Plaintiff, Appellant And Respondent.
The court of appeal correctly held that the restitutionary remedy under California Business and Professions Code § 17203 may be based upon the overtime backpay the employer illegally withheld from its employees. Further, § 17203 does not allow a defendant who has violated the law to mitigate its exposure to restitution by claiming its illegal conduct was in good faith. Business and Professions Code § 17204 does not require class action procedures, but authorizes individual plaintiffs to bring non-class action claims to enforce the interests of the general public. The court of appeal correctly held that the statute of limitations for a violation of California's unfair competition law is four years.
Cortez v. Purolator Products Air Filtration Co.
No. S071934 (Cal. Sup. Ct. 1999) 40pps. **$45.00**

AB (Schleier) Opinion of the Ariz. Court of Appeals, Division One
In this opinion, the principles for employer liability for the intentional torts of its managing agents, including sexual harassment and intentional infliction of emotional distress are set forth. This brief can be used to defeat the typical employer arguments that sexual harassment is outside the course and scope of employment or authorization of a managing agent and therefore there is no employer liability. Moreover, the doctrine of collateral estoppel does not apply where a party has fully litigated the issue to a verdict by a jury but a judgement has not been entered because of a settlement between the parties. An employee's actions were within the terms of the state's insurance coverage because the sexually abusive acts of the employee while acting within his authorization as the director of the APAAC allowed him to maintain a sexually abusive work environment over APAAC employees (respondeat superior).
State of Arizona v. Schallock
No. CV 95-0565-PR (Ariz. Supreme Ct., 1995) 22 pps. **$25.00**

PB (Stix) Memo In Opposition to Motion to Dismiss and Memo In Support Thereof
Plaintiff, a naturalized American from India, states a cause of action under 42 USC Sec. 1981 for racial discrimination. The

U.S. district court has pendent jurisdiction over plaintiff's state law wrongful discharge and tort claims where proof of employment discrimination and the state law claims will involve the employment practices of defendant.
Thakore v. Sargent and Lundy
No. 82 C 7166 (D.C., N.D. Ill) 13 pps. **$25.00**

AB (Posner for CELA) Appeal from Cal. Superior Court, Ventura County
Court must uphold plaintiffs' recovery of emotional distress damages for the torts of defamation, intentional or negligent misrepresentation, and false imprisonment. Such claims are not preempted by the Workers Compensation Act.
Mangum v. Dayton-Hudson Corp.
No. B054002 (Cal. Ct. of Appeal 1991) 17 pps. **$25.00**

AB (Posner for CELA) Appeal from Cal. Superior Court, Tulare County
An employer's independent tortious activity, committed after and separate from the industrial injury, gives rise to independent tort rights against the employer.
Hartman v. Mathis & Bolinger Furniture Co.
No. S021903 (Cal. Supreme Ct. 1991) 16 pps. **$25.00**

AB (Posner for CELA) Appeal from Cal. Ct. of Appeal, 5th District
An employee who was fraudulently induced to resign should be able to recover all tort damages for fraud and deceit. The Workers Compensation Act does not preempt an employee's tort cause of action for fraud and deceit because such tortious acts are not ordinary risks of employment.
Hunter v. Up-Right, Inc.
No. S029708 (Cal. Supreme Ct. 1993) 24 pps. **$35.00**

PB (Ryan) Appeal from Judgment of Mass. Superior Court
An employee may present a claim of promissory estoppel to the jury where the employer's promise of permanent employment reasonably expected to induce employee to leave his job. A jury, not a judge, should make the determination of whether malice existed in a claim for intentional interference with an advantageous relationship. Under Massachusetts law providing for 12% prejudgment interest for compensatory damages, some prejudgment interest should be added to a back pay award, where the jury did not specify how the back pay award corresponded to the years since termination.
Boothby v. Texon, Inc.
No. 05977 (Mass. Supreme Judicial Ct. 1992) 13 pps. **$25.00**

AB (Posner for CELA) Appeal from Cal. Superior Court, Santa Barbara County
Evidence of tortious acts by defendants over a number of years is admissible to show motive, intent and course of conduct, even if some of the acts fall outside the statute of limitations.
Rockwood v. O'Connell
No. B070981 (Cal. Ct. of Appeal, 2nd District 1993) 16 pps. **$25.00**

AB (Posner for CELA) Appeal from Cal. Ct. of Appeal, 2nd District
False imprisonment is not a normal risk of employment, and hence the Workers' Compensation Act should not preempt an employee's tort cause of action against an employer for false imprisonment.
Fermino v. Fedco
No. S033096 (Cal. Supreme Ct. 1993) 15 pps. **$25.00**

PB (Schaffner) Reply Brief on Appeal from Ill. Circuit Court, Cook County
No preclusive weight can be given to the decision of the joint employer-union grievance panel. That a final and binding arbitration decision precludes plaintiff's retaliatory discharge tort is contrary to the evidence of record and of the law of Illinois. This court has previously addressed the effect of prior arbitral proceedings on a subsequent judicial proceeding

in the context of retaliatory discharge claims, and held that when an arbitrator does not decide the tort, the grievance is not a bar to the subsequent litigation.
Branzinski v. Transport
No. 86-3058 (Ill. Ct. of Appeal, 1st District 1987) 15 pps. **$25.00**

PB (Franklin) Motion to Remand Removed Action
It is improper to remove a suit based on state statutory and tort claims to federal court. Federal law (Section 301(a) of the Labor Management Relations Act) preempts state law only where the state claims are inextricably intertwined with the terms of a collective bargaining agreement.
Brooks v. Lucky Stores, Inc.
No. 94-01669 (D.C., N.D. Ca. 1994) 30 pps. **$35.00**

PB (Cornish) Plaintiff's Substitute Brief in Support of Motion For Summary Judgment
Plaintiff is entitled to summary judgment. Defendant's prescription drug use reporting requirement violates the ADA because it violates the confidentiality provisions and the restriction on disability-related inquiries. Defendant's policies (requiring disclosure of prescription drug use, prohibition of legal non-prescription drugs and random drug testing in non-sensitive jobs) also violates Colorado common law right of privacy and public policy. Finally, plaintiff should be entitled to injunctive relief.
Roe v. Cheyenne Mountain Conference Resort
No. 95-WY-2152 (D.C., D. Colo. 1995) 63 pps. **$75.00**

AB (Posner for CELA) In Support of Plaintiffs-Petitioners
Precedent supports recovery for employer misconduct which does not result in termination. Reversing the verdict would encourage employer misconduct. Damages in constructive discharge cases can be computed with greater certainty than in termination cases. Wrongful demotion cases can inflict far greater damage than if the employee is actually fired. The lower court violated the Substantial Evidence Rule and disregarded the jury's determination because of its apparent dislike for the verdict.
Scott v. Pacific Gas & Electric
No. S042601 (Cal. Supreme Ct. 1995) 12 pps. **$25.00**

PB (Azrael) Memo of Law in Opposition ot Motion to Dismiss
There is subject matter jurisdication over plaintiff's Title VII claims. Plainitiff"s claim was timely filed and the right to sue letter can be issued before 180 days after the filing of the charge. The 60 day period for deferral by the EEOC to the Maryland Commission on Human Relations was properly waived. The court also has diversity jurisidication, thus an issue of supplemental jurisdiction is moot. The allegations of count VI are sufficient to state a claim aginst defendant for assault and claims under the New York State Human Rights Law.
Vasconcellos v. Lumex, Inc.
No. CV96-2515 (LDW) (E.D. N.Y. 1996) 73 pps. **$85.00**

MANDATORY ARBITRATION OF EMPLOYMENT CLAIMS

AB (Bland and White for Trial Lawyers for Public Justice, NELA and ATLA) Brief In Support of Respondent
The Court of Appeals was correct in its decision to decline compelled arbitration because the arbitration clause at issue contained no rules or other protection insuring that consumer plaintiffs would not be required to pay prohibitive costs. Uncertainty in the costs of pursuing a claim creates a deterrence for plaintiffs who might otherwise pursue their statutory rights under the Truth in Lending Act ("TILA"). The court's refusal to recognize this arbitration clause because prohibitive costs might render it meaningless was consistent with the decisions of the U.S. Supreme Court and various lower courts. Even the possibility that prevailing plaintiffs may recover their arbitration fees cannot save this arbitration clause. The "Loser Pays Rule" also requires individuals to pay the defendant's attorneys' fees if they do not prevail. This discourages plaintiffs from seeking the protection of the law. Thus, the arbitration clause is unenforceable and plaintiff should not be made to pursue arbitration as a precondition of filing an appeal of an order compelling arbitration.

Green Tree Financial Corp. v. Randolph, No. 99-1235 (U.S. Sup. Court 2000) 39 pps. **$45.00**

AB (True for NELA) Brief Amicus Curiae in Support of Respondent
Because the employment relationship is an inherently unequal one Congress exempted employment agreements from the Federal Arbitration Act. Take it or leave it arbitration clauses in employee personnel policies were not contemplated by the drafters of the FAA as being subject to the Act. Extensive State and Federal Regulations govern the employment relationship and display a legislative intent that the workplace not only invites, but requires a governmental presence. Recognizing these clauses would require enforcing unfair provisions onto individual, non-represented employees. Circuit City's dispute resolution procedures exemplify this: they impose a one year statute of limitations, they obligate employees to pay half the cost of any arbitration, they vest complete discretion in the arbitrator to decide whether to award attorney's fees, they cap damages, and do not require the arbitrator to provide findings or reasoning in support of the arbitration award. The Arbitral forum is not an adequate substitute for the courtroom.
Circuit City Stores, Inc. v. Adams
No. 99-1379 (U.S. Sup. Court 2000) 37 pps. **$45.00**

AB (Baron, White and Schnapper for The Association of Trial Lawyers of America) Brief in Support of Respondent
It is not necessary to decide whether the exemption in the Federal Arbitration Act applies to all employees. The phrase "engaged in. . . interstate commerce" has been consistently interpreted to include the stream of interstate commerce from initial production through distribution. Because Circuit City is clearly "engaged in commerce" the exemption of the FAA extends to all employees who work for such an employer. Congress did not mean for the FAA to deprive a broad class of workers of the right to a jury trial.
Circuit City Stores, Inc. v. Adams
No. 99-1379 (U.S. Sup. Court 2000) 13 pps. **$25.00**

PB (Gregory for EEOC) Petition Of The EEOC For Rehearing And Suggestion For Rehearing En Banc
The Panel decision is inconsistent with Supreme Court precedent, with the controlling precedent of this court, and with the two circuit court decisions to have addressed the precise issue. A private arbitration agreement does not preclude the EEOC from suing in its own name to recover monetary damages under the ADA. The Commission did not sign an arbitration agreement. The Commission is entitled to bring its statutory claim in court and to seek the full panoply of statutory remedies. Thus, the Panel decision thwarts the objectives of both the ADA and the FAA.
The Panel Decision improperly gives effect to the arbitration agreement between the charging party and the defendant. There was no enforceable arbitration agreement under these circumstances. Arbitration provisions contained in generic corporate wide employment applications do not follow the party to whichever corporate facility hires him or her. Furthermore, if the employer requires an employee to agree to mandatory arbitration as a condition to obtaining or continuing employment, the employer must bear the cost of the arbitrator's fees.
EEOC v. Waffle House, Inc.
No. 98-1502 (4th Cir. 2000) 20 pps. **$25.00**

PB (Waxman for EEOC) Reply Brief for the Petitioner on Petition for Writ of Certiorari
Certiorari is warranted because there is a split among the courts of appeals that have decided the effect of a charging party's binding agreement to arbitrate employment-related disputes on the EEOC's ability to seek "make-whole" relief in a judicial forum on behalf of the charging party. The issue presented is an important one, and is not likely to be resolved without review by the Supreme Court which may wish to refrain from deciding the petition until a decision is reached in *Circuit City Stores, Inc. v. Adams*.
EEOC v. Waffle House, Inc.
No. 99-1823 (U.S. Supreme Court 2000) 6 pps. **$15.00**

AB (Dunaway for AARP) Appeal from S.D.N.Y.
Compulsory arbitration agreements threaten the protections afforded workers under Title VII, the ADEA, and other federal civil rights laws. The unequal bargaining power of employers and employees vitiates any voluntariness on the

part of the employee who must either accept arbitration or forfeit the job. The ordinary worker is helpless to exercise actual liberty of contract and therefore cannot exercise a waiver of his or her statutory rights in an arbitration provision. Arbitration does not allow for development of the law because there is no requirement for a written decision. Arbitration also limits employees' rights in several respects, including the unavailability of a jury trial, limited discovery, and the imposition of substantial fees which can undermine enforcement of Civil Rights Laws by discouraging or precluding an employee from arbitrating his or her claim.

Martens v. Shearson Lehman Hutton

No. 00-7688 (2nd Cir. 2000) 28 pps. **$35.00**

AB (Ventrell-Monsees for AARP) Brief *Amici Curiae* In Support Of Plaintiff

The court should recognize non-statutory grounds for *vacatur* of arbitrator's awards. For example, more factors should be considered by the court when it reviews an arbitrator's award in a discrimination case than the four factors promulgated by the Federal Arbitration Act. The court is called upon to consider whether public policy or expanded manifest disregard of the law standard constitute additional grounds for *vacatur*. Furthermore, without a written record there could be no meaningful judicial review of an arbitrator's decision.

Williams v. Cigna Fin. Advisors, Inc. and Cigna Individual Fin. Serv.

No. 97-10985 (5th Cir. 1997) 28pps. **$35.00**

DB (Hufstedler) Petition For Rehearing

The Court's attempt to graft a requirement that the ADR Clause requires an "unambiguous and unequivocal waiver" of jury trial violates federal law interpreting the Federal Arbitration Act. Further, it undermines the rule articulated in *Maddeen v. Kaiser Foundation Hospitals* regarding when parties may be bound to an arbitration agreement that they neither read or understood and which did not mention waiver of jury trial. Lastly, it ignores the trial court's findings regarding the use of ADR and arbitration in customer and client agreements.

Badie, et al. v. Bank of America

No. A068753 (Cal. Ct. App., 1st Dist. 1998) 26pps. **$35.00**

PB (Sturdevant) Petition For Rehearing

The court erroneously stated that plaintiffs did not have a deposit account with the defendant, when in actuality they had one until January 1993. As a result of this error the court did not discuss the nature of the agreements with deposit customers, only reviewed concerns with credit card account holders. Defendant unilaterally attempted to impose its ADR provisions' upon the plaintiff's deposit account, and all other converted deposit accounts, by means of a "conversion package" instead of a "bill stuffer" as was mailed to credit card holders. Declaratory relief is proper for all the bank deposit account holders, not just the credit card holders. Rehearing is necessary to clarify the extent to which this Court's determination of the invalidity of the ADR clause at-issue applies to persons other than the plaintiffs. Because the court's decision is ambiguous as to the rights and duties of other affected persons in regard to the resolution of the disputes with defendant, a rehearing is necessary.

Badie, et al. v. Bank of America

No. A068753 (Cal. Ct. App., 1st Dist. 1998) 18pps. **$25.00**

Also available: Plaintiff's Answer to Petition for Rehearing. 12pps. **$25.00**

PB (Sturdevant) Answer To Petition For Rehearing

Defendant raises no issue deserving consideration by this court. Defendant's out-of-context conclusion about the waiver of the jury trial ignores the court's opinion and the foundation points which gave rise to it. The court applied the correct standard of review along with correctly applying *Madden and Purdue*. Traditional dispute resolution was not an implied term of defendant's pre-existing customer agreements and the court correctly applied the covenant of good faith and fair dealing. The defendant's petition for rehearing should be denied.

Badie, et al. v. Bank of America

No. A068753 (Cal. Ct. App., 1st Dist. 1998) 12pps. **$25.00**

Also available: Plaintiff's Petition for Rehearing. 18pps. **$25.00**

AB (Posner for CELA) Letter Urging Court To Depublish Subject Case
Plaintiff never gave up her right to a jury trial on her statutory discrimination claim. The effects of this case mirror those of *Badie, et al. v. Bank of America,* where the Court of Appeals rejected an attempt to force arbitration on unwilling customers. Plaintiff at no time signed an integrated agreement containing all of the relevant terms and conditions, including a complete explanation of what her rights to a jury trial were, under what circumstances and what the effect of waiving those rights would be. The Court should depublish this case.
24 Hour Fitness v. Superior Court of Sonoma County
No. A079501, A079502 (Cal Ct. App., 1st Dist. 1998) 4pps. **$15.00**

AB (Palefsky for NELA) Petition for Writ of Mandate to Overturn Order of Cal. Superior Court, Los Angeles County
Plaintiff did not waive her right to a jury trial on the FEHA discrimination claim by signing a National Association of Securities Dealers form containing a mandatory arbitration clause. Waivers of jury trial of California discrimination claims must be knowing, intelligent and voluntary. The form at issue lacked specificity and clarity, and plaintiff was fraudulently induced and under economic duress upon signing.
Richardson v. The Capital Group
No. BC053610 (Cal. Ct. of Appeal, 2nd District 1992) 22 pps. **$35.00**

AB (Gregory for EEOC) In Support of Plaintiff-Appellant
The FAA broadly excludes all employment contracts. The controlling precedent of this circuit requires a broad reading of the FAA exclusion and this is how it should be read. Thus, the plaintiff's arbitration clause should not be enforced.
Miller v. Public Storage Management, Inc.
No. 96-10670 (5th Cir. 1996) 25 pps. **$35.00**

AB (Goldstein for EEOC) In Support of Petition for Rehearing *En Banc* on Appeal from the D.C., S.D. Ohio
Congress specifically exempted employment contracts from the Federal Arbitration Act's (FAA) coverage in response to concerns voiced about mandatory arbitration clauses inserted into employment contracts. The panel decision conflicts with a long line of sixth circuit precedent that correctly concluded that §1 of the FAA excludes all employment contracts.
Cosgrove v. Shearson Lehman
No. 95-3432 (6th Cir. 1995) 15 pps. **$25.00**

AB (Bogas for EEOC) In Support of Defendant on Appeal from the D.C., S.D. Ind.
The district court correctly held that the mandatory arbitration provisions contained in the collective bargaining agreement (CBA) did not divest the court of subject matter jurisdiction over the plaintiff's employment discrimination action. In *Alexander v. Gardner - Denver* a unanimous Supreme Court held that while "a union may waive certain statutory rights related to collective activity, the rights conferred by Title VII can form no part of the collective bargaining agreement." Therefore the CBA in this case could not waive the defendant's statutorily created right to pursue his Title VII, § 1981, and ADA claims in court.
Pryner v. Tractor Supply Company, Inc.
No. 96-2437 (7th Cir. 1996) 20 pps. **$25.00**

PB (Sloan for EEOC) Brief of Plaintiff-Appellant on Appeal from D.C., E.D. Mich.
The EEOC is not bound by the aggrieved individual's arbitration "agreement" with the defendant. The EEOC may bring its own action, independent of the aggrieved individual, in order to effectuate the purposes of Title VII. The district court improperly refused to consider a major portion of the Commission's evidence. The totality of evidence of racial harassment was sufficient to withstand summary judgment.
EEOC v. Northwest Airlines, Inc.
No. 98-1667 (6th Cir. 1998) 58 pps. **$65.00**

PB (Gregory for EEOC) Plaintiff-Appellee's Brief on Appeal from D.C., D.S.C.

The EEOC is not bound by arbitration "agreements" between the alleged disicriminatee and defendant because the EEOC has a right of action independent of a discriminatee's right to a private action. Moreover, there is no enforceable arbitration agreement between plaintiff and defendant because the "agreement" applied to a different location than the location where defendant was actually hired.
EEOC v. Waffle House, Inc.
No. 98-1502 (4th Cir. 1998) 46 pps. **$55.00**

AB (Bogas for EEOC) Brief In Support of Plaintiff-Appellant on Appeal from D.C., N.D. Ind.
The district court erred by enforcing an arbitration provision because defendant's arbitration process is incompatible with Title VII and the ADA. The district court's finding was also erroneous because plaintiff did not knowingly waive her right to judicial resolution of federal discrimination claims.
Gibson v. Neighborhood Health Clinics. Inc.
No. 96-2652 (7th Cir. 1996) 26 pps. **$35.00**

AB (Ehrman for NELA) In Support of Plaintiff
It is against public policy for the subject of legislation to be bypassed through coercive employer tactics. By forcing its employees to submit to securities industry arbitration as a condition of employment, Defendant Merrill Lynch is requiring its employees to not only forfeit their constitutional right to a jury trial, but is also requiring its employees to prospectively waive the right to have the federal civil rights laws applied and enforced.
Rosenberg v. Merrill, Lynch, Pierce, Fenner & Smity, Inc., and Wyllys
No. 96-12267-NG (District Ct. of Mass. 1996) 38 pps **$55.00**

PB (Johnson) Plaintiff's Amended Brief In Opposition to Defendant's Motion to Stay Proceeding and Compel Arbitration
While there may be a presumption in favor of arbitration when the parties have entered a contractual agreement to arbitrate there is no such presumption when there has been no such contraction. Moreover, issues as to fraud, unconscionability, adhesion contract or whether any forced arbitration contract is against public policy are issues for the court and not the arbitrator.
Morgan Silvers v. Equity
No. 96-12062 (District Ct. of Tex., Dallas 1996) 36 pps. **$45.00**

AB (Gregory and Goldstein for EEOC) Appeal from D.C., D. Colo.
The district court correctly held the arbitration agreement was invalid because the agreement hinders plaintiff from effectively vindicating his rights under the Federal Anti-Discrimination statutes. Repeated threats to fire plaintiff by the defendant unless he signed the arbitration agreement renders the agreement involuntary. The FAA does not extend to arbitration agreements that are contained in contracts of employment.
Shankle v. B-G Maintenance Management
No. 97-1130 (10th Cir. 1997) 20 pps. **$25.00**

AB (Gregory for EEOC) In Opposition to Plaintiff's motion for Preliminary Injunction
This case raises important issues concerning the mandatory arbitration of Title VII claims. The ultimate issue is whether the arbitration agreements at issue are enforceable under federal law. This brief advances that the agreements are 1) unenforceable because they are excluded from the terms of the FAA, 2) that the agreements are unenforceable because there are strong indications that Phillips did not knowingly enter into the agreements and 3) that the agreements achieve an impermissible prospective waiver of the remedial protections of Title VII.
Hooters v. Phillips
No. 4:96-3360-22 (D.C., D. S.C.) 34 pps. **$45.00**

PB (Palefsky, Rubin & Demain) Appeal from the D.C., N.D. Cal.
This brief presents five separate challenges to the enforceability of an arbitration agreement contained in the Form U-4 that the plaintiff was required to execute as a condition of her employment as a broker-dealer in the U.S. securities

industry. First, plaintiff did not "knowingly" waive her statutory right to prosecute her Title VII claims in federal court, as required by the 1991 Civil Rights Act. Second, plaintiff did not "voluntarily" waive her statutory right to prosecute those claims in federal court, as the 1991 Civil Rights Act requires. Third, the mandatory arbitration procedure at issue violate Title VII as a substantive matter, because they fail to ensure that the arbitrators will follow statutory law. Fourth, mandatory arbitration in the securities industry imposes an unconstitutional condition of employment, in violation of Article III and the Fifth and Seventh Amendments. Fifth, the Form U-4's arbitration clause constitutes an unconscionable contract of adhesion.

Duffield v. Robertson Stephens & Company

No. 97-15698 (9th Cir. 1997) 63 pps. **$65.00**

Also available: Amicus Brief in Support of Plaintiff-Appellant making similar arguments. 13 pps. **$15.00**

AB (Holloway for NELA) In Support of Appellant in the U.S. Court of Appeals

Gibson, an at-will employee, had no contractual obligation to arbitrate in accordance with the defendant's (NHC) policy because NHC did not agree to arbitrate and such disclaimer of contractual intent on the employer's part is merely as illusory contract. In addition, NHC's grievance and arbitration system as written violates the federal public policy of providing reasonable notice and time limit for presenting a claim.

Gibson v. Neighborhood Health Clinics, Inc.

No. 96-2652 (7th Cir. 1996) 12 pps. **$25.00**

AB (Goldstein for EEOC) In Support of Petition for Rehearing *En Banc* on Appeal from D.C., S.D. Ohio

Congress specifically exempted employment contracts from the Federal Arbitration Act's (FAA) coverage in response to concerns voiced about mandatory arbitration clauses inserted into employment contracts. The panel decision conflicts with a long line of sixth circuit precedent that correctly concluded that §1 of the FAA excludes all employment contracts.

Cosgrove v. Shearson Lehman

No. 95-3432 (6th Cir. 1995) 15 pps. **$25.00**

PB (Johnson) Plaintiff's Amended Brief in Opposition to Defendant Equity's Motion to Stay Proceeding and Compel Arbitration

The Defendant's arbitration agreement does not meet the statutory requirements of the Federal Arbitration Act. The defendant has not entered into a binding contract to arbitrate because its handbook is not a contract and it has not agreed to be bound by any particular arbitration agreement including the one in the employee handbook.

Morgan Silvers v. Equity

No. 96-12062 (D.C., D. Tex.. 1996) 37 pps. **$45.00**

AB (Starr for EEOC) In Support of petition for rehearing on Appeal from the D.C., E.D. Penn.

The federal law prohibits enforcement of a collective bargaining agreement provision requiring an individual, as a condition of employment, to forego the statutory right of action provided under Title VII if the agreement permits both the individual and the union to initiate grievance procedures.

Martin v. Dana Corp.

No. 96-1746 (3rd Cir. 1996) 22 pps. **$35.00**

AB (Gottesman) Petition for a Writ of Certiorari to the U.S. Court of Appeals, 6th Cir.

The petition addresses the issue raised in *Gilmer* about the application of the Federal Arbitration Act to contracts of employment and specifically whether Section 1 of the FAA excludes all employment contracts from the coverage of the Act or only employment contracts in the transportation industry and if so, may an employer require a clerical employee to agree at the time of hire, as a condition of employment, that any employment-based claim thereafter arising will be subject to arbitration then preclude access to a judicial forum on the basis of that agreement when a statutory violation later occurs.

Cosgrove v. Shearson Lehman

No. (U.S. Supreme Ct. 1997) 31 pps. **$45.00**

AB (Gregory for EEOC) Opposition to Defendant's Motion to Dismiss and Compel Arbitration
The principle argument for denying enforcement of the Form U-4's arbitration provision is that the Plaintiff did not knowingly agree to arbitrate her Title VII and ADEA claims. Federal law prohibits enforcement of an agreement that requires an individual, as a condition of employment, to forego the statutory rights of action provided under Title VII and the ADEA.
Seus v. John Nuveen & Co., Inc.
No. 96-5239 (D.C. Cir.) 22 pps. **$35.00**

AB (Gregory for EEOC) Opposition to Defendant's Motion to Compel Arbitration
The Supreme Court's decision in *Gilmer* does not support the enforcement of arbitration agreements that are entered into as a condition of employment, particularly where the arbitration arrangement established under the agreement is an inadequate substitute for the judicial right of action established under Title VII and the ADEA and the agreement does not specifically refer to the arbitration of employment disputes.
Rosenberg v. Merrill, Lynch, Pierce, Fenner & Smith, Inc.
No. 96-12267-NG (D.C., D. Mass. 1996) 30 pps. **$45.00**

PB (Ebner & Love) In Support of Appellant on Appeal from the Superior Court of Los Angeles County
An employer cannot use the fact of a collective bargaining agreement to require the plaintiff/employee to grieve and arbitrate her FEHA claims and preclude a civil suit. A collective bargaining agreement (CBA) cannot limit the right of a union member employee to initiate court action to enforce her independent statutory rights under FEHA. In addition, the rights conferred by the FEHA are defined and enforced under state law without reference to the terms of any CBA.
Valdez v. Owens-Brockway Glass Container, Inc., et al.
No. B110855 (Cal. Ct. of Appeal, 2nd District 1997) 30 pps. **$35.00**

AB (Gregory for EEOC) Brief in support of plaintiff-appellee on appeal from D.C., D. Mass.
The Older Workers Benefits Protection Act ("OWBPA") precludes enforcement of any pre-dispute agreement to arbitrate plaintiff's ADEA claim. The Supreme Court has not ruled on the effect of the OWBPA on the enforceability of such agreements. The OWBPA evinces an intent to preclude the waiver of procedural rights under the ADEA, when the waiver occurs in a pre-dispute agreement. The Civil Rights Act of 1991 evinces an intent to preclude the mandatory arbitration of plaintiff's Title VII claims. Other grounds exist for affirming the district court's decision.
Plaintiff v. Merrill, Lynch and Wyllys
No. 98-1246 (1st Cir. 1998) 42 pps. $**55.00**

AB (Gregory for EEOC) Brief *amicus curiae* in Support of Plaintiff in D.C., N.D. Ga.
The court's order with respect to the arbitrability of plaintiff's individual claims does not deprive her of the ability to pursue her class claims. Defendant does not argue that her class claims are subject to arbitration, but that plaintiff cannot assert her class claims in court. The view that an employee may pursue a class claim of discrimination, even if her individual claim is subject to arbitration, finds support in *Gilmer* and is consistent with the basic principles of arbitrability and class action standing.
Bostick v. SMH (US) Inc.
Civil Action File No. 1:97-cv-3074-TWT (D.C., N.D. Ga. 1998) 18 pps. $**25.00**

AB (Danis for EEOC) Brief *amicus curiae* on Appeal from D.C., D. Md.
Gilmer requires that the arbitral forum provide the same substantive rights and protections as a judicial forum, thus defendant's truncation of substantive rights provided by §1981 precludes enforcement of its alleged arbitration agreement. These deprivations of substantive statutory rights render the agreement unenforceable. The district court properly held that there is no valid contract to arbitrate between defendant and plaintiff. Defendant's mandatory pre-dispute arbitration agreement cannot be enforced to preclude plaintiff's suit because it is against public policy.
Johnson v. Circuit City Stores, Inc.

No. 97-2408 (4th Cir. 1998) 96 pps. $**105.00**

AB (Palefsky for NELA) Brief *amicus curiae* in Support of Plaintiff-Appellant
Public policy does not "favor" mandatory arbitration of statutory employment rights. Arbitration agreements are only valid if they are knowing and voluntary. In connection with statutory employment claims, mandatory arbitration is not "just another forum" and employees are not able to effectively vindicate their rights. Numerous professional organizations, government agencies, law professors, and legal scholars have found that mandatory arbitration of statutory claims is not valid.
Desiderio v. NASD and SEC
No. 98-6100 (2d Cir. 1998) 52 pps. $**65.00**

AB (Waxman for the U.S. and EEOC) Brief in Supporting Petitioner on Writ of Certiorari to the 4th Circuit
An arbitration clause in a collective bargaining agreement does not bar an employee from filing his own lawsuit under an antidiscrimination statute. This case is controlled by *Alexander v. Gardner-Denver*. *Gilmer* reaffirms that an individual's federal statutory antidiscrimination claim cannot be waived in a collective bargaining agreement. Other distinctions between *Gilmer* and *Alexander* also suggest that this case is controlled by *Alexander*. Provisions in federal antidiscrimination statutes encouraging knowing and voluntary use of alternative means of dispute resolution do not authorize use of such means where a union, but not the claimant, has agreed to waive statutory judicial remedies.
Wright v. Universal Maritime et al.
No. 97-889 (U.S. Supreme Ct. 1998) 37 pps. **$45.00**

PB (Sloan for EEOC) Brief for EEOC as Appellant on Appeal from D.C., E.D. Mich.
The Commission is not bound by an employer's requirement that its employees arbitrate employment-related disputes. Frank's cannot obtain immunity from damages and equitable relief on Title VII enforcement actions brought by the Commission by requiring its employees to waive a judicial forum for their own Title VII claims.
EEOC v. Frank's Nursery & Crafts, Inc.
No. 97-1698 (6th Cir. 1997) 33 pps. **$45.00**

AB (Gregory for EEOC) Brief in D.C., N.D. Ala. in Opposition to Defendant's Motion to Compel Arbitration
Plaintiff should not be compelled to submit her Title VII gender discrimination claim to mandatory arbitration because she was required to sign a pre-dispute arbitration agreement as a condition of employment. Historically, courts have refused to enforce such agreements and the Supreme Court's decision in *Gilmer* does not broadly dictate the enforcement of such arbitration agreements.
Eye v. Prudential Securities, Inc. et al.
No. CV-97-S-337-NE (D.C., N.D. Ala. 1997) 35 pps. **$45.00**

AB (Gregory for EEOC) Brief *amicus curiae* in Support of Appellant on Appeal from D.C., E.D. Penn.
Plaintiff should not be compelled to submit her Title VII and ADEA claims to mandatory arbitration because she was required to sign a pre-dispute arbitration agreement as a condition of employment. Historically, courts have refused to enforce such agreements and the Supreme Court's decision in *Gilmer* does not broadly dictate the enforcement of such arbitration agreements.
Seus v. John Nuveen & Company, Inc.
No. 97-1498 (3d Cir. 1997) 61 pps. $**75.00**

AB (Gregory for EEOC) Brief *amicus curiae* on Appeal from D.C., D. Minn.
Plaintiff's claims under the ADA are not barred by a prior favorable settlement of his grievance under a collective bargaining contract, under *Alexander v. Gardner-Denver*. The ADA does not preclude the assertion of claims for disability discrimination under section 1983 where those claims are based on independent constitutional grounds.
Wallin v. Minnesota Dept. Of Corrections, et al.
No. 97-3309 (8th Cir. 1997) 27 pps. **$35.00**

AB (Gregory for EEOC) Brief *amicus curiae* on Appeal from D.C., N.D. Cal.
Federal law prohibits enforcement of arbitration agreements that purport to require an individual, as a condition of employment, to submit future employment discrimination claims to arbitration, particularly where the arbitration agreement established is an inadequate substitute for the judicial right of action established by the statute and the agreement does not expressly refer to the arbitration of employment discrimination claims. Historically, courts refused to enforce such agreements and the Supreme Court's decision in *Gilmer* does not broadly dictate the enforcement of such arbitration agreements.
Duffield v. Robertson Stephens & Co.
No. 97-15698 (9th Cir. 1997) 63 pps. $ **75.00**

AB (Carter for EEOC) Brief *amicus curiae* for Plaintiff-Appellant on Appeal from D.C., N.D. Tex.
Courts reviewing arbitration awards resolving statutory claims should apply a standard of review that is sufficiently rigorous to ensure that the arbitrators have properly interpreted the statutory law. Under a more rigorous standard of review, this court must vacate the arbitration award because the arbitration panel issued no rationale for its decision in favor of Cigna.
Williams v. Cigna Financial Advisors et al.
No. 97-10985 (5th Cir. 1997) 25 pps. **$35.00**

AB (Rubin for NELA, et al.) On Appeal from D.C., D. Mass.
Mandatory arbitration of plaintiff's Title VII and related claims cannot be compelled because her agreement was not voluntary. The securities industries' mandatory arbitration procedures do not adequately protect Title VII claimants' substantive statutory rights because securities industries arbitrators are not required to follow the law, often fail to follow Title VII requirements, and judicial review is not available to provide meaningful oversight. Furthermore, mandatory securities industry arbitration violates plaintiff's constitutional rights under article III, the 5th, and 7th amendments.
Rosenberg v. Merrill, Lynch and Wyllys
No. 98-1246 (1st Cir. 1998) 51 pps. **$65.00**

AB (Mollica for Lawyers' Committee for Civil Rights and AARP) Brief *amicus curiae* in Support of Petitioner on Petition for Writ of Certiorari from 4th Circuit
Collective bargaining agreement's arbitration provision should be analyzed under the LMRA and *Alexander v. Gardner-Denver Co.*, rather than the FAA. Arbitration agreements should be knowing and voluntary, and not impose potentially onerous costs on the claimant; procedures should provide remedies and safeguards co-extensive with those available in a judicial forum, and be fair and accountable; and awards must be subject to meaningful judicial review.
Wright v. Universal Maritime et al.
No. 97-889 (U.S. Supreme Ct. 1998) 20 pps. **$25.00**

AB (Palefsky for NELA) Brief in support of Petitioner on Petition for Writ of Certiorari from 4th Circuit
Public policy, as shown by the U.S. Constitution and federal statutes, does not "favor" arbitration of statutory claims, especially where the employment relationship is one of unequal bargaining power. Mandatory arbitration is not "just another forum" for resolution of statutory claims. Developments since *Gilmer* have demonstrated that mandatory arbitration of statutory employment claims is inappropriate. Unilaterally imposed arbitration is inconsistent with the consensual underpinnings of arbitration, and forces the courts to constantly review the validity and fairness of agreements.
Wright v. Universal Maritime et al.
No. 97-889 (U.S. Supreme Ct. 1998) 45 pps. **$55.00**

PB (Sloan for EEOC) Brief for the Plaintiff-Appellant on Appeal from D.C., E.D. Mich.
In bringing a suit on behalf of an individual alleging discrimination under Title VII, where the individual is not a party to the suit, the EEOC was not bound by the mandatory arbitration provisions in the aggrieved individual's application for employment, and therefore should not have been prevented from bringing suit to challenge alleged discrimination

and to obtain an award of substantive relief. The EEOC is not a proxy for aggrieved individuals in such cases, instead, it has independent power to bring its own claim and obtain a full range of relief in the public interest. The district court's decision permits a private individual to unilaterally limit the EEOC's independent authority to sue.
EEOC v. Frank's Nursery & Crafts, Inc.
No. 97-1698 (6th Cir. 1998) 30 pps. **$35.00**
Also available: Reply Brief of Plaintiff-Appellant on Appeal from D.C., E.D. Mich., making similar arguments. 29 pps. $35.00

PB (Sloan for EEOC) Reply Brief on Appeal from the D.C., S.D. NY.
An employee's arbitration "agreement" with the employer does not bar an EEOC claim brought in its own name because the EEOC's claim is independent from the complaint of the individual employee. The district court's decision had no legal basis and, if allowed to stand, woul eviscerate the EEOC's ability to enforce the law.
EEOC v. Kidder, Peabody & Company, Inc.
No. 97-6316 (2nd Cir. 1998) 30 pps. **$35.00**

AB (Moran for EEOC) In Support of Plaintiff Appellant
The district court erred in relying on *Gilmer* to conclude that the arbitration clause in plaintiff's collective bargaining agreement barred her from maintaining her ADA and Title VII claims.
Austin v. Owens-Brockway Glass Container, Inc.
No. 94-1213 (4th Cir. 1994) 21 pps. **$35.00**

AB (Bernstein for EEOC) In Support of Plaintiff-Appellant
The Railway Labor Act, in providing for compulsory exclusive arbitration of "minor disputes" arising under a collective bargaining agreement, does not deprive an airline worker of her federal statutory right to seek judicial resolution of a claim of unlawful employment discrimination under Title VII.
Condon v. Delta Airlines, Inc.
No. 94-9069 (11th Cir. 1995) 35 pps. **$45.00**

AB (Seymour, Vinick for Lawyer's Committee for Civil Rights Under Law, Schwartz for NELA) In Support of Plaintiff-Appellant
Supreme Court precedent establishes that the provisions of the Railway Labor Act which provide for mandatory arbitration of minor disputes do not deprive an airline worker of her right to seek redress in federal court for claims of employment discrimination arising under Title VII.
Condon v. Delta Airlines, Inc.
No. 94-9069 (11th Cir. 1995) 26 pps. **$35.00**

AB (Palefsky, Ehrman for NELA) In Support of Plaintiff-Appellant on Appeal from D.C., S.D. Ohio
The Federal Arbitration Act does not apply to employment contracts. Plaintiff is loosing substantive rights by being forced to arbitrate under the National Association of Securities Dealers Rules. It is against public policy for civil rights laws to be bypassed through employer tactics such as the prospective waiver.
Cosgrove v. Shearson, Lehman Brothers
No. 95-3432 (6th Cir. 1995) 53 pps. **$65.00**

AB (Goldstein for EEOC) In Support of Plaintiff-Appellant on Appeal from D.C., S.D. Ohio
The district court erred in applying the Federal Arbitration Act to compel plaintiff to arbitrate when this dispute, involving an employment contract, is exempt from the FAA under the plain language of that statute. An employment application containing a pre-dispute arbitration provision should not deprive a Title VII plaintiff of the integral right, contained in the statute, to *de novo* consideration of her statutory claim.
Cosgrove v. Shearson, Lehman Brothers
No. 95-3432 (6th Cir. 1995) 30 pps. **$35.00**

AB (Oakley for NELA) In Support of Respondent
Disputes not conclusively resolved by interpretation of the collective bargaining agreement are not appropriate for mandatory arbitration under the Railway Labor Act. Requiring arbitration under the RLA restricts substantive remedies and procedural rights.
Hawaiian Airlines, Inc. v. Norris
No. 92-2058 (U.S. Supreme Ct. 1993) 25 pps. **$35.00**

AB (Moran for EEOC) In Support of Plaintiff-Appellant
The Railway Labor Act does not require railroad workers to forego a judicial forum and submit their federal employment discrimination claims to binding arbitration.
McCord v. Burlington Northern Railroad Co.
No. 94-6574 (11th Cir. 1995) 32 pps. **$45.00**

AB (Gregory for EEOC) In Opposition to Defendant's Motion to Compel Arbitration and Stay Proceedings
A plaintiff can not be compelled to arbitrate her Title VII claims pursuant to an initial employment agreement where the agreement provides only 180 days for filing the complaint, limits the plaintiff's recovery to out of pocket damages and precludes any attorney's fees.
Johnson v. Hubbard Broadcasting
No. 4-96-107 (D.C., D. Minn. 1996) 20 pps. **$25.00**

AB (Cole for Cal. Medical Assn., Cal. Dental Assn. and Cal. Healthcare Assn.) In Support of Defendants
Arbitration under the California Arbitration Act must remain flexible; a single model should not be imposed. Arbitration should balance fairness and efficiency according to the parties' interests. The Act and the arbitration agreement provide for an integrated proceeding where the arbitrators decide all procedural and substantive questions, including breach of contract and breach of the covenant of good faith and fair dealing.
Engalla v. Permanente Medical Group, Inc.
Nos. S048811 & A062642 (Cal. Supreme Ct. 1996) 29 pps. **$35.00**

AB (Marer & Philpot for Cal. Chamber of Commerce) In Support of Defendants-Appellants
This court should not make an exception to the existing policy favoring arbitration by creating a right of revocation of the agreement of the parties to arbitration based on a claim of inadequate disclosure. The health plan was also not under a fiduciary duty to make disclosures of information to prospective subscribers about how arbitration might work. In order for arbitration to be effective, once it commences, any intra-arbitral matters (including attorney misconduct) should be submitted to the arbitrator for resolution. In considering any rule that may circumscribe arbitration, this court should consider the critical role that arbitration plays in the resolution of commercial disputes.
Engalla v. Permanente Medical Group, Inc.
No. S048811 (Cal. Supreme Ct. 1996) 25 pps. **$35.00**

AB (Moran for EEOC) In Support of Petition for Rehearing with a Suggestion for Rehearing *En Banc*
The panel's holding that a union may waive an employee's right to seek judicial redress for violations of federal anti-discrimination laws is directly contrary to a Supreme Court decision and directly conflicts with at least three other courts of appeals. This is true even though the collective bargaining agreement calls for arbitration of disputes under the agreement.
Austin v. Owens-Broadway Glass Container, Inc.
Nos. 94-1213 & 94-1265 (4th Cir. 1996) 18 pps. **$25.00**

PUBLIC EMPLOYEES

PUBLIC EMPLOYEES - GENERAL

PB (Diederich Pro Se) Petition For Writ Of Certiorari To The U.S. Supreme Court
The Second Circuit's disregard for the New York merit system of public employment, and its prohibition against political influence with regards to non-exempt civil servants is contrary to the fundamental principles of federalism. The Second Circuit, furthermore, eviscerated public attorneys' right to free speech and thought, by making individual opinion (or silence) a basis for continued public employment. Under the Second Circuit's analysis, formerly protected public employees whose speech (public or private) might reflect an ideology different from the municipal employer can now be fired, and "friends" hired. First Amendment exempt policy making jobs should be determined based on individualized analysis of all relevant factors, including an analysis of duties actually performed in deciding whether patronage firing is permitted. Governmental retaliation for a citizen's exercise of First Amendment rights, by taking property, is abhorrent to the Constitution and actionable under § 1983. Finally, the Constitution's article IV, § 4 guarantee of a "republican form of government' is impaired, and participatory democracy undermined when the federal courts allow a municipality to intentionally deceive the public regarding local governance.
Diederich v. County of Rockland and C. Scott Vanderhoef, County Executive and Paul Nowicki, County Attorney
No. 98-1487 (U.S. Supreme Ct. 1999) 17pps. **$25.00**

AB (Cornish for NELA, APHA, ACLU) Brief In Support of Plaintiffs-Appellants on Appeal from D.C., N.D. Cal.
The district court erred in failing to recognize that invasions of privacy inherent in lab testing of plaintiff's blood and urine for sickle-cell trait, pregnancy and syphilis were independent of invasions that occurred during the medical examination process. Such lab testing is a search under the 4th Amendment. The court must balance the employee's privacy interest against the employer's asserted need for testing. In addition, the plaintiff did not consent to either the testing or the medical exams.
Norman-Bloodsaw v. Lawrence Berkeley Laboratory. et al.
No. 96-1652 (9th Cir. 1996) 43 pps. **$55.00**

AB (Cornish for NELA) Appeal from the D.C., N.D. Cal.
Genetic and biochemical testing of the body fluids of public employees by their employers is never constitutionally justified unless the employer demonstrates a strong need for the testing, or is the product of informed and voluntary consent. The Lawrence Berekely Laboratory is not entitled to summary judgment on Plaintiff's constitutional privacy claims because it has failed to show that it met the constitutional predicates when Plaintiffs' blood and urine for sickle-cell trait, pregnancy and syphilis were independent of the invasions of privacy which occurred during a medical examination.
Norman-Bloodsaw v. Lawrence Berkeley Laboratory, et al.
No. 96-16526 (9th Cir. 1996) 34pps. **$45.00**

AB (Dryovage for NELA) Brief in support of petitioner's interlocutory appeal to Merit Systems Protection Board
The MSPB has jurisdiction over grievances involving RIF's of Title 38 employees. Title 38 employees' rights to Board jurisdiction have been expanded by Congress over the years. Reductions in force of Title 38 employees are within the Board's jurisdiction.
Von Zemansky v. Department of Veteran's Affairs
No. PH-0351-98-0078-I-1 (M.S.P.B. 1998) 8 pps. **$15.00**

PB (Parker) In Support of Resistance to Motion to Dismiss
The doctrine of intramilitary immunity does not apply to a dual status employee of the Iowa Air National Guard who is essentially a full time civil service employee, performed military duties only one weekend per month, and is attempting to enforce a Department of Defense Inspector General's decision to be reinstated. The 11th Amendment does not bar this claim. Privacy Act claims are viable against the Iowa National Guard, as a federal employer.
Uhl v. Swanstrom, et al.
No. C91-4012 (D.C., N.D. Iowa 1991) 22 pps. **$35.00**

PB (Kaplan) Appellant's Application for Attorney's Fees and Costs
Memorandum of law in support of an application for attorney fees and costs under the Back Pay Act in a proceeding

before the Merit Systems Protection Board. Brief discusses the standards for recovery under 5 U.S.C. Section 7701 (g) and the MSPB's Allen criteria for recovery. Based on this submission, the agency paid approximately $35,000 in attorney fees.
Guillebeau v. Department of the Navy
No. ATO43290066 2I1 (M.S.P.B. 1993) 15 pps. **$25.00**

PB (Kaplan) Appellant's Post-Hearing Legal Memo On Issues Concerning Chapter 43, Title V, U.S. Code
Brief before the Merit Systems Protection Board, under 5 U.S.C. Chapter 43, concerning a government agency's requirements when placing an employee on a performance improvement period (PIP). Discussed in this brief are issues such as the requirement that performance standards be objective; that performance be attainable; and that the PIP must provide a bona fide opportunity to improve. Based on this brief, the agency was ordered to reinstate the employee.
Guillebeau v. Department of the Navy
No. ATO43290066 2I1 (M.S.P.B. 1993) 22 pps. **$35.00**

PB (Kaplan) Brief for Appellee on Appeal from Superior Court Of District of Columbia
Brief in the D.C. Court of Appeals, on appeal from a decision of D.C. Superior Court, which ordered plaintiff reinstated in the D.C. Controller's office, thereby overruling the decision of the D.C. Office of Employee Appeals sustaining Frost's discharge. The issues discussed are whether the hearing examiner wrongfully failed to consider plaintiff "double jeopardy" argument; and whether the OEA has jurisdiction of a claim that an employee's discharge is reprisal for protected activity.
Office of the D.C. Controller v. Frost
No. 92-CV-1992 (D.D.C. 1992) 48 pps. **$55.00**

PB (Kaplan) Petition for Review of Decision of Administrative Judge
Petition for review of a decision of an administrative judge which upheld the employee's removal for poor performance under 5 U.S.C. Chapter 75. The brief deals largely with issues of mitigation of penalty and the failure to provide the employee with a bona fide opportunity to demonstrate improved performance.
Markey v. Federal Deposit Insurance Corporation
No. DCO75292017611 (M.S.P.B. 1993) 27 pps. **$35.00**

AB (Misicka for EEOC) Petition for Review of the Merit Systems Protection Board
The Merit Systems Protection Board was correct in concluding that the Office of Personnel Management may not petition for reconsideration of a board decision on issues concerning the interpretation and application of the Rehabilitation Act of 1973 (29 U.S.C. §791) because it is not a civil service law within the meaning of 5 U.S.C. §7703 (d).
Horner v. Lynch
No. 89-3234 (Federal Circuit) 26 pps. **$35.00.**

PB (Hornberger) Appellant's Petition for Review
A federal employee with twenty-five years of service was assigned to two jobs, and when he complained he was told he could retire or "go work at McDonalds." His complaint for age discrimination and retaliation was dismissed by an Administrative Law Judge and the plaintiff appeals.
Price v. United States Postal Service
No. CHO7528910582, (M.S.P.B. 1989) 38 pps. **$45.00**

AB (Wheeler for EEOC) Appeal from D.C., S.D. W. Va.
The doctrine of legislative immunity does not bar challenge of a state statute setting the salaries of full time state faculty under the ADEA. The ADEA has been amended to apply to state and local governments as "employers" who therefore are subject to liability for discriminatory unemployment practices. To bar an ADEA suit against a state suit when the issue of intent is at issue would eviscerate the application of the ADEA to the states.
Nuchims v. West Virginia

No. 89-2487 (4th Cir. 1990) 29 pps. **$35.00**

DB (Wheeler for EEOC) Brief of EEOC as Defendant-Appellee on Appeal from D.C., D. Mont.
Dismissal of amended complaint was correct because plaintiff failed to comply with Rule 8 of Federal Rules of Civil Procedure and because the district court lacked subject matter jurisdiction over claims asserted against the EEOC. A federal employee who does not work for the EEOC can not sue the EEOC under Title VII, the Administrative Procedure Act or the Declaratory Judgment Act.
Burris v. Hiaring, et al.
No. 89-35128 (9th Cir. 1989) 32 pps. **$45.00**

PB (Hornberger) Motion to Review on Appeal from D.C., S.D. Ohio
Magistrate Judge erred in dismissing plaintiff's complaint on jurisdictional grounds because plaintiff timely attempted to notify the EEO's counselor of continuing violations of Title VII and Section 501. The magistrate was wrong in holding that plaintiff had to specifically allege a continuing violation to EEO counselor. Magistrate's conclusion that counseling sessions with EEO counselor, who failed to follow procedures, did not timely commence the continuing discrimination matters, is erroneous.
Haithcock v. Frank
No. C-91-3649 (6th Cir. 1991) 70 pps. **$75.00**

PUBLIC EMPLOYEES - FIRST AMENDMENT RIGHTS

PB (Diederich Pro Se) Petition For Writ Of Certiorari To The U.S. Supreme Court
The Second Circuit's disregard for the New York merit system of public employment, and its prohibition against political influence with regards to non-exempt civil servants is contrary to the fundamental principles of federalism. The Second Circuit, furthermore, eviscerated public attorneys' right to free speech and thought, by making individual opinion (or silence) a basis for continued public employment. Under the Second Circuit's analysis, formerly protected public employees whose speech (public or private) might reflect an ideology different from the municipal employer can now be fired, and "friends" hired. First Amendment exempt policy making jobs should be determined based on individualized analysis of all relevant factors, including an analysis of duties actually performed in deciding whether patronage firing is permitted. Governmental retaliation for a citizen's exercise of First Amendment rights, by taking property, is abhorrent to the Constitution and actionable under § 1983. Finally, the Constitution's article IV, § 4 guarantee of a "republican form of government' is impaired, and participatory democracy undermined when the federal courts allow a municipality to intentionally deceive the public regarding local governance.
Diederich v. County of Rockland and C. Scott Vanderhoef, County Executive and Paul Nowicki, County Attorney
No. 98-1487 (U.S. Supreme Ct. 1999) 17pps. **$25.00**

PB (Mladenka-Fowler) Petition For Writ Of Certiorari To The U.S. Supreme Court
There is an actionable First Amendment claim where there exists evidence that shows that a public employer has denied or
reduced deserved merit raises to public employees in retaliation for the exercise of their First Amendment rights. Salary discrimination is a cognizable injury in the context of race, or gender discrimination, and the First Amendment demands, at
minimum, no less protection.
Harrington and Levy v. Harris, et al.
(U.S. Supreme Ct. 1997) 28pps. **$35.00**

AB (Wayman for NELA) Brief *amicus curiae* in Support of Plaintiffs-Appellants from D.C., N.D. Ohio
Summary judgment should be reversed on the issue of the whether defendant is shielded from personal liability by qualified immunity in the discharge of plaintiffs in violation of the 1st and 14th amendments for their political affiliations. The court should reconsider the test it ordered the district court to apply in patronage dismissals and adopt a test which incorporates the burden of proof of the plaintiff and defendant concerning the qualified immunity issue.

Baker v. Hadley
No. 97-4229 (6th Cir. 1998) 33 pps. **$45.00**

AB (Marcosson for D.C. EEOC) Appeal from D.C., E.D. N.Y.
The district court erred in finding that application of the ADEA to teachers in parochial schools raised First Amendment issues since the ADEA is a secular law that does not lead to entanglement of the government in religious affairs.
DeMarco v. Holy Cross High School
No. 92-7914 (2d Cir. 1992) 33 pps. **$45.00**

PB (Sedey) Appeal from D.C., E.D. Mo.
Defendants, officials of the Department of Agriculture, are not shielded from liability for civil damages by qualified immunity as their conduct violates clearly established constitutionally protected First Amendment rights. An employee of the U.S. Department of Agriculture discharged in retaliation for exercising his First Amendment right to speak out on matters of public concern may bring a Bivens type of action for damages, where he has no remedy under civil service statutes, nor any other statutory remedy created by Congress. The district court erred in dismissing plaintiff's claim for equitable relief because federal courts have broad discretion under 403 U.S. 400-4006 to provide equitable relief for constitutional wrongdoing, where plaintiff was fired for reporting abuse of operations of the Department of Agriculture's farm and conservation programs.
Krueger, Jr. v. Lying
No. 90-1598EM (8th Cir. 1992) 39 pps. **$45.00**

AB (Tucker for NELA) Writ of Certiorari to the 7th Circuit
The firing of a public employee for uttering speech subjectively deemed by a public employer to be "insubordinate" is an unconstitutionally vague and over broad infringement of the employee's First Amendment rights. The public has a compelling interest in assuring a public employee's right to freedom of expression relating to public employment. Interpretations of the balancing of interest test enunciated in Connick v. Meyers appear to invite, if not justify, attempts to encroach on the guarantees of free speech.
Waters v. Churchill
No. 92-1450 (U.S. Supreme Ct. 1993) 40 pps. **$45.00**

PB (Leahy) Petitioners' and Cross-Respondents' Reply Brief on the Merits on Writ of Certiorari to 7th Circuit
Denial of important government employment benefits of promotion, transfer, recall from layoff and employment itself, because of political beliefs and affiliations, violates the First Amendment.
Rutan v. Republican Party of Illinois, et al.
Nos. 88-1872, 88-2074 (U.S. Supreme Ct. 1989) 14 pps. **$25.00**
Also available: Petitioners'and Cross-Respondents'Brief on the Merits of Writ of Certiorari to 7th Circuit. 25 pps. **$35.00**

DB (Suhre for EEOC) Appeal from D.C., N.D. Ala.
Plaintiff's argument that the first amendment precludes a federal agency from taking disciplinary action against an official spokesman based on the content of a press release he issued in his official capacity, is untenable. The district court properly dismissed plaintiff's claim for injunctive relief for failure to pursue his claims through the Civil Service Reform Act.
Perry v. Thomas
No. 88-7272 (11th Cir. 1988) 38 pps. **$45.00**

AB (Leahy for NELA) In Support of Petitioner
An employee of a public institution may criticize the expenditure of public funds by said institution and is protected from reprisal from that institution by the First Amendment.
Rahn v. Drake Center

No. 94-1668 (U.S. Supreme Ct. 1994) 16 pps. **$25.00**

PB (Villemez) Petition for Writ of Certiorari to the 10th Circuit
The Connick/Pickering test should be abandoned in favor of an analysis that will protect the free speech rights of public employees from the chilling effect of broad prior restraints.
Tytor v. The Board of Trustees of Laramie County School District No. 2, et al.
No. 95- (U.S. Supreme Ct. 1995) 35 pps. **$45.00**

CLASS ACTIONS

DB (Kneese for Star Enterprise) Reply Brief of Appellant
Allison v. Citgo Petroleum Corp., 151 F.3d 402 (5th Cir. 1992) established binding precedent that certification of cases involving claims and defenses that are too diverse and individualized is inappropriate. Plaintiffs have failed to distinguish the present action from *Allison* and the lower court ignored the diversity of issues in this case. The district court's decision to bifurcate the trial was an unsuccessful attempt to avoid the numerous individual issues and defenses involved in this case. There was no support for bifurcation in this case nor was it possible since *Allison* demonstrates that bifurcation of equitable and legal claims is not possible under Rule 23. Plaintiff's legal claims cannot be certified under 23(b)(3) because no predominance of common issues exists. And plaintiff's equitable claims cannot be certified under 23(b)(2), defeating any possibility for bifurcation. Therefore class certification is inappropriate and reversal is mandated.
Smith et al v. Texaco, et al
No. 00-40337 (5th Cir. 2000) 37 pps. **$45.00**

AB (Dunaway for AARP) In Support Of Appellant
The court erred in granting summary judgment despite the fact the appellant presented numerous issues of material fact. The standard for defeating summary judgment is less than that required to prevail at trial. Appellant presented direct documentary evidence of a program designed to eliminate or otherwise bypass older employees. By ruling that the appellant failed to establish a continuing violation, the court erroneously decided a disputed issue of material fact.
Thiessen v. General Electric Capital Corp., et al.
No. 98-3208 (10th Cir. 1998) 24pps. **$35.00**

AB (Tipton for NELA) In Support Of Appellant
The district court misapplied the standard for "similarly situated," when it decertified the class of putative plaintiffs pursuant to the collective action procedures under the ADEA. While proper class certification is largely a matter of first impression, the 11th Circuit has held that the ADEA requirement of § 216(b) is more elastic and less stringent than that found in FRCP 20 (joinder) and FRCP 42 (severance). Potential class members do not have to demonstrate that they performed the same job in the same location, so long as there is a discriminatory policy common to all. The record shows that the putative plaintiffs had been placed on a "blocker" program by Human Resources, by which they were offered early retirement; thereafter, their positions were eliminated, and younger employees were moved around them. The term "blockers" had been used by employer to mean well performing older employees who were blocking the advancement of younger, new recruits. Courts have held that a company-wide plan, or an employer's pattern or policy is sufficient to support a collective action. In *Vaszlavik v. Storage Technology Corp. (D.C. Colo., 1997)*, the court held that at the § 216(b) certification stage, disparities among the employment situations of the individual plaintiffs are irrelevant. Nor were the plaintiffs required to provide specific evidence that they were individually discriminated against. This court erred by requiring specific evidence of discrimination with respect to each putative plaintiff at the certification stage. In a pattern and practice case, such evidence would be presented at the second phase of the trial when plaintiffs must meet their burden of proving liability. Thiessen v. General Electric Capital Corp., et al.
No. 98-3208 (10th Cir. 1998) 23pps. **$35.00**

AB (Gregory for EEOC) Appeal From D.C. Georgia.
The arbitration agreement signed by plaintiff is unenforceable because its terms place an impermissible financial burden

on the plaintiff which interferes with the exercise of her Title VII rights and prejudices her claim of pay discrimination and retaliation. Even assuming plaintiff's claim is subject to arbitration, she is not deprived of the ability to act as class representative in pursuing her class claim of pay discrimination. A court may certify a Title VII class under Fed. R. Civ. P. 23(B)(2) even though the proposed class is seeking compensatory and punitive damages.
Bostick v. SMH (US), Inc.
No. 99-8220 (11th Cir. 1999) 44 pps. **$55.00**

PB (Gregory for EEOC) Proof Brief As Plaintiff-Appellee On Appeal From D.C., N.D. Ohio
When the EEOC moved to certify a class of contractors, the court denied the motion but ruled that the contractors could be joined as parties-defendants pursuant to FRCP 19(a) and 21. This brief maintains that there are no due process concerns raised by the joinder of third party defendants where they were joined to ensure that complete relief in a Title VII case could be awarded to plaintiffs on a prospective basis. The district court did not abuse its discretion in holding that joinder was proper under FRCP 19(a) and that contractors employing members of Local 120 would be subject to the same referral and reporting rules as Local 120. "Innocent" third parties can be required to share the burden of remedying the effects of illegal discrimination.
EEOC v. United Assoc. of Journeymen and Apprentices of the Plumbing and Pipefitters Industry, Local 120
Nos. 98-3987, 98-3988 (6th Cir. 1999) 21pps. **$35.00**

PB (Shea) Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Class Certification
This case alleges claims for sexual harassment and sexual discrimination under Title VII of the Civil Rights Act of 1964 and the California Fair Employment and Housing Act on behalf of a class comprised of all current and former applicants and the female employees of MMWD - a class comprised of well over 75 members - based on claims that MMWD's management has systematically denied all these women workers opportunities for advancement due to their sex and tolerated and encouraged a sexually hostile working environment.
Loutas/Turchie v. Marin Municipal Water District
No. C 96-0024 CAL (D.C., N.D. Cal. 1996) 21 pps. **$25.00**

PB (Selbin) Plaintiffs' Consolidated Opposition to Defendant Home Depot's Four Daubert Motions to Exclude Expert Testimony
This motion urges the court to deny each of Home Depot's four motions to exclude plaintiffs' expert testimony given the reliability of the theories and methods underlying the testimony offered by plaintiff's four experts, and that this testimony will assist the jury and the Court in determining whether Home Depot has discriminated against its women employees and applicants.
Vickie Butler, et al., and Teresa Frank et al., v. Home Depot, Inc.
Nos. C 94-4335-SI & C95-2182-SI (D.C., N.D. Cal. 1994, 1995) 41 pps. **$55.00**

AB (Ramshaw for EEOC) Brief *amicus curiae* on Appeal from D.C., E.D. Va.
Having found that the plaintiffs satisfy the requirements of Rule 23(a), the district court should have allowed them to litigate their claim that the defendant engaged in a pattern or practice of race discrimination as representatives of a class of other victims of the same pattern or practice. Having decertified the class, the district court acted properly in submitting the pattern or practice issue to the jury and in entering broad injunctive relief based on the jury's finding. The district court erred in refusing to apply the *Teamsters* presumption to plaintiffs' individual claims.
Lowery et al. v. Circuit City Stores, Inc.
Nos. 97-1372 & 97-1 470 (4th Cir. 1997) 40 pps. **$45.0**

AB (Finberg for NELA) Brief *amicus curiae* in Support of Appellants on Appeal from D.C., W.D. La.
The panel improperly affirmed denial of certification under Federal Rule of Civil Procedure 23(b)(2). The Supreme Court, in Amchem, and fifth circuit precedent allow certification of discrimination cases which involve damages as well as injunctive relief under Title VII and § 1981. The purpose of the Civil Rights Act of 1991 was to enhance remedies for victims of discrimination, not to restrict procedural rights. The panel failed to consider whether class members area able to prosecute cases on an individual basis and overturned years of well-established case law permitting bifurcation of

employment discrimination class actions. The panel's holding that resolution of disparate impact claims requires jury findings is without precedent and contrary to existing law.
Allison et al. v. Citgo Petroleum Corp.
No. 96-30489 (5th Cir. 1998) 22 pps. **$35.00**

AB (Reilly for EEOC) Appeal from D.C., D. Kan.
When an employee timely files an age discrimination suit, other employees can later be added to file a class action. ADEA requires class action notice.
Gray v. Phillips Petroleum Co.
No. 87-1145 (10th Cir. 1987) 39 pps. **$45.00**

AB (Ventrell-Monsees for AARP) Appeal from D.C., D. N.J.
Congress' selective incorporation of specific FLSA provisions into the ADEA demonstrates that Section 256 of the FLSA, which provides that a "collective or class action" under the FLSA is not commenced for each claimant until he is named as a party to the complaint or he files his consent in court, is inapplicable to the ADEA.
Mershon v. Elastic Stop Nut
No. 90-5597 (3rd Cir. 1990) 22 pps. **$35.00**

PB (Ramshaw for EEOC) Appeal from D.C., M.D. Penn.
Settlement agreement in private class action establishing a three-phase process for computing damages incurred by police officers who involuntarily retire in violation of ADEA was properly approved, despite objections by several individual officers. The court's role is to assess the overall agreement for adequacy and reasonableness, not to review individual awards for fairness and reasonableness. The EEOC never intended the agreement to require forfeiture of awards by claimants who filed objections.
Binker v. Pennsylvania v. McCloskey, et al.
Nos. 91-5745, 5746, & 5942 (3rd Cir. 1992) 46 pps. **$55.00**

PB (Franklin for EEOC) Appeal from D.C., W.D. Wa.
The district court abused its decision by ordering a consent decree sealed, settling a class action for employment discrimination over plaintiff's objection. No valid reason was established for sealing the consent decree, and under established legal principles it should have been fully disclosed.
EEOC v. The Erection Co., Inc.
No. 89-35131 (9th Cir. 1989) 23 pps. **$35.00**

AB (Brusoski for EEOC) Appeal from D.C., W.D. Ky.
A class representative should ordinarily recover reasonable attorney's fees for time spent presenting non-frivolous but unsuccessful claims for relief on behalf of individual members.
Wooldridge v. Marlene Industries Corp.
No. 88-5727 (6th Cir. 1988) 21 pps. **$35.00**

PB (Bogas for EEOC) Appeal from D.C., N.D. Tex.
The district court abused its discretion when responding to delays in expert discovery by excluding the EEOC's expert evidence, rather than granting a continuance. The court erred for the following reasons: (1) dismissing claims of class members as a discovery sanction without issuing a discovery order compelling further response to interrogatories on the identities of class members; (2) excluding evidence of defendant's rejection of applicants over age 40, which can prove pretext in an individual's intentional discrimination claim; and (3) excluding evidence of young hirees. Evidence that an employee filed fifteen charges of discrimination against other employers should be excluded on the basis that the probative value is outweighed by the danger of unfair prejudice and confusion.
EEOC v. General Dynamics Corp.
No. 92-1156 & 1393 (5th Cir. 1992) 60 pps. **$65.00**

AB (Bogas for EEOC) Appeal from D.C., S.D. N.Y.
The district court properly held that a Title VII class representative could file a proof of claim in a bankruptcy hearing on behalf of a Title VII class.
LTV Aerospace & Defense Co. v. Ales
No. 90-5002 (2nd Cir. 1990) 12 pps. **$25.00**

AB (Sloan for EEOC) In Support of Plaintiff's Motion for Class Certification
Where there is evidence that one racially discriminatory policy affects applicants and employees holding different positions in the same general fashion, named plaintiffs may represent a company-wide class including members whose claims or status are not identical to their own. Certification of the multi-level company-wide class is proper even though the employer claims that its decision making is decentralized.
Haynes, et al. v. Shoney's, Inc.
No. PCA 89-30093-RV (D.C., N.D. Fla.) 15 pps. **$25.00**

AB (Sloan for EEOC) In Support of Plaintiffs-Appellants on Appeal from D.C., D. Minn.
Plaintiff's challenge to defendant's ongoing hiring policy was timely because the policy was applied to plaintiff as well as other potential class members within the limitations period. The Title VII class members are not barred from seeking relief in federal court for alleged sex discrimination merely because the class representatives chose to litigate their individual state law claims in a private state court action.
Sondel, et al. v. Northwest Airlines, Inc., et al.
No. 94-2524 (8th Cir. 1994) 47 pps. **$55.00**

INDEPENDENT CONTRACTOR/ EMPLOYEE STATUS

AB (Sloan for EEOC) Appeal from S.D.N.Y.
Where a hiring party exercises nearly complete control over when, where and how long an individual works, as well as what she does at the workplace, the individual is an "employee," covered by Title VII, whether the hiring party chooses to withhold taxes from her or provide her with employee benefits. Under the common law "totality of the circumstances test" as expressed in *Nationwide Mutual Ins. Co. v. Darden*, plaintiff, who was subject to "nearly complete control" by defendant established that plaintiff was an "employee" for Title VII coverage purposes. Plaintiff's tasks were as the district court acknowledged "central" to defendant's business functioning as a moving and storage company. Further, defendant supplied all the instrumentalities for the job, required plaintiff to wear a T-shirt embossed with the company name, required plaintiff to work at its cite, controlled plaintiff's work schedule and paid plaintiff an hourly wage. Therefore, plaintiff was an "employee" and defendant should not be permitted to avoid compliance with Title VII, simply by failing to withhold taxes or pay out employee benefits.
Eisenberg v. Advance Relocation & Storage Inc.
No. 00-7216 (2nd Cir. 2000) 29 pps. **$35.00**

PB (Sedey) Opposition to Summary Judgment
Plaintiff is an employee under Illinois state law as he was paid a steady salary, was required to be in the hospital at least 40 hours a week, and has the right to bring retaliatory discharge actions.
Altug v. St. Anthony's Hospital
No. 91-L-447 (Ill. Cir. Ct., Madison County 1993) 19 pps. **$25.00**

PB (Starr for EEOC) Brief for the Plaintiff-Appellant on Appeal from the D.C., E.D. Va.
The job that the Plaintiff was considered for was an employment position, not an independent contractor position because the employer "controlled virtually every aspect of the employment sought". Therefore, the Defendant's motion for summary judgment should not have been granted and the Plaintiff should not have been denied Title VII protections. The award of attorney's fees to the Defendant cannot be reconciled with the strict fee-shifting standards of Title VII.

EEOC v. MCI Telecommunications, Inc.
No. 98-1195 (4th Cir. 1998) 27 pps. **$35.00**

PB (Starr for EEOC) Reply Brief of Plaintiff-Appellant on Appeal from the D.C., E.D Va.
The issue of independent contractor status is an issue of fact and thus should have been decided by a jury, not by the judge on motion. Plaintiff must be able to establish coverage in a hiring situation indirectly by showing an employment relationship between the person who was hired and the employer. *Cilicek* does not support dismissal of Plaintiff's Title VII claim.
EEOC v. MCI Telecommunications, Inc.
No. 98-1195 (4th Cir. 1998) 27 pps. **$35.00**

FOURTH AMENDMENT VIOLATIONS

PB (Whitehead) Petition for a Writ of Certiorari to the U.S. Court of Appeals for the 11th Circuit
Certiorari is appropriate in this case, where a public employee was terminated on the basis of alleged contraband seized during a mass campus police "dog sniff" search of the school premises and the employee's parked and unattended vehicle, and where no clear rule pertains in the circuit courts regarding the constitutionality of such searches. It is unclear whether a canine "sniff" of a public workplace of the exterior and interior of an employee's parked vehicle constitutes a "search," and whether it is a reasonable search absent "reasonable suspicion" or "special need" under the Fourth Amendment. The Eleventh Circuit has extended the so-called "automobile exception" to the warrant requirement to permit a public employer to seize contraband from a closed compartment in an employee's parked and unattended vehicle, on the pretext of enforcing the workplace "zero tolerance" drug policy. Where "reasonable suspicion" was based upon unlawfully seized evidence, plaintiff's case presents the important issue whether a public employer may terminate a tenured employee based upon her refusal to undergo a drug test. Respondent's search of the vehicle violated the "Drug Free Workplace" policy providing that employee vehicles could not be searched absent consent or a warrant based upon probable cause, and violated Fourth Amendment rights where the plaintiff held a reasonable expectation of privacy. And finally, plaintiff's case presents the important issue of whether the provisions of the "Drug Free Workplace" policy, requiring public school employees to undergo urinalysis drug testing upon "reasonable suspicion," and defining reasonable suspicion in vague, ambiguous and over broad terms, comported with guidelines set forth by the Court.
Hearn v. Brd. Of Public Education for the City of Savannah and the County of Chatham
(U.S. Supreme Court 2000) 84 pps. **$90.00**

TAXATION OF DAMAGES & ATTORNEYS' FEES

AB (Brantner for NELA) In Support Of Petitioners Urging Reversal
A plaintiff in an employment discrimination action whose attorneys' fees are paid by the defendant should not be required to report those fees as his or her income. The Commissioner's attribution of attorneys' fees to the plaintiff as income defeats the purpose of civil rights fee-shifting statutes by discouraging the prosecution of cases, preventing cost-effective pre-trial settlements, and by promoting confusion amongst attorneys and plaintiffs concerning their legal and ethical obligations. Plaintiffs who receive only nominal damages, back pay, or an injunction may end up owing much more to the IRS then they were awarded. Public Policy favors pre-trial settlement which is made more costly and therefore less likely by substantially reducing the amount to be netted by plaintiff. The money received as attorneys' fees should be treated as property of the attorney and taxed as his or her income as opposed to being taxed twice, once as income to the plaintiff and again as income to the attorney, as the Commissioner's position would require.
Sinyard v. Commissioner of Internal Revenue
No. 99-71369 (9th Cir. 2000) 36 pps. **$45.00** Addendum 11 pps. **$15.00**

FALSE CLAIMS ACT - STANDING AS *QUI TAM*

AB (Morgan for NELA) In Support of Writ of Certiorari to the U.S. Court of Appeals for the 2nd Circuit
Many lower courts have found Article III standing where centuries of history and several independent lines of reasoning converge to afford private citizens, acting as *qui tam* relators, standing under the False Claims Act. Motivation of *qui tam* relators is more often due to frustration, despair and outrage occasioned by the unwillingness of a government contractor to do the right thing, not by the desire for monetary gain.
State of Vermont Agency for Natural Resources v. United States ex rel. Stevens
No. 98-1828 (2nd Cir. 1999) 38 pps. **$45.00**