

**FACTOR TWO ELEMENTS  
NATURE OF FUNCTIONS**

**LEVEL A**

**(1) RESEARCH AND PREPARATION OF DOCUMENTS**

The level of functions performed provides perspective to the level of responsibility factor. It reflects the maturity level of the attorney's endeavors in terms of what he does in connection with a case or legal problem. This element includes functions involved in trial, advisory, hearing, and legislative work. In some instances an attorney may lay the groundwork for presentation of the Government's case, but another attorney conducts the actual trial. In determining the level of trial work performed by the attorney who prepared the case, the extent of his participation is weighted. If he lays the complete groundwork for the Government's case, his position is credited as it would have been had he personally tried the case. (Pg. 8)

Searches case reports, legal documents, periodicals, and textbooks and prepares tentative drafts for use by higher-grade attorneys in the preparation of opinions, briefs, contracts, and other papers or legal documents. (Pg. 15)<sup>4</sup>

**LEVEL C**

Personally performs legal research in connection with cases pending hearing, trial, or on appeal; legal questions referred by administrative officials; or questions regarding impact of proposed legislation and/or agency policy changes. Refers questions back when further development of the facts is required indicating the precise nature of the information required. However, in some situations personally performs both the factual as well as the legal research required. Prepares necessary legal document or advisory opinions, drafts comments on proposed legislation or regulations; or recommends whether to proceed with administrative hearing, litigation, or other disposition. (Pg. 17-18)

**LEVEL E**

At the highest level of drafting or reviewing proposed agency decisions. Analyzes the records, including the transcription of testimony and pleadings, evaluates facts determines questions of law, and either recommends adoption of a decision prepared by another attorney or drafts his own decision for consideration and adoption by agency officials who exercise final authority in such matters. This does not preclude the use of this level for positions at subordinate organizational echelons if, in fact, the drafting or reviewing of proposed agency decisions at such echelons is independently done, is directly submitted (with no further technical review) to agency officials who exercise final authority, and is given weight and effect equal to the recommendations of incumbents of positions at the highest agency level of drafting or review. (Pg. 22)

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<sup>4</sup> Page numbers in this document are references to the OPM 905 Classification Standards.

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	LEVEL A	LEVEL C	LEVEL E
(2) LITIGATION	<p>Assists attorney in charge by interviewing and selecting appropriate witnesses, preparing them for testimony, conducting direct examination, suggesting questions for cross examination, cross-examining witnesses after questions are settled, and drafting findings of fact, conclusions of law, and orders based on the record. (Pg. 15)</p> <p>Drafts complaints, orders to show cause, preliminary motions, and supporting affidavits and briefs. (Pg. 15-16) Drafts pleadings, motions and interrogatories. (Pg. 16)</p>	<p>When litigation is undertaken, prepares and/or presents or provides technical guidance during the hearing, trial or appeal of the Government's case. Prepares legal documents or pleadings preparatory or incident to the trial of the case. (Pg. 18) Participates in pretrial or prehearing conferences, examines and cross-examines witnesses, argues motions before the court or hearing officer, and summarizes the case. (Pg. 18)</p>	<p>Acts as principal attorney in charge of the preparation and presentation of cases before administrative tribunals or before the trial or appellate courts, where the cases (a) are of such scope that they may, in many instances, warrant the assistance of one or more attorneys of lower grade or other specialists and (b) are of such importance that they frequently involve matching professional skills against some of the most distinguished and highly paid legal talent in the country. The principal attorney exercises full responsibility for the development and presentation of the case. (Pg. 22)</p>
(3) LEGAL ADVICE AND COUNSEL	<p>Conducts investigations of limited scope to obtain facts, studies legal precedents, and prepares recommendations for review of a supervisor. (Pg. 16)</p>	<p>Regarding contractual matters, negotiates (usually as a member of a team) and drafts the necessary contracts and other legal documents. (Pg. 18)</p> <p>Acts regularly as the legal advisor on a single program or activity, characterized usually as a distinct entity with separate identifiable operations. May also serve as the assigned specialist on a single program or a major phase of several related programs or major activities. (Pg. 19)</p>	<p>Acts as legal counsel to the head of major operating program of the department or agency (e.g., a bureau, command, technical service, or regional office or field installation when the field installation has been delegated unusual authority or authority commonly of a higher echelon). Is responsible for advising on questions of law or administrative policy involved in the operations of the organization and in its contacts with industry, private and professional associations, State, local or foreign governments or the</p>

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LEVEL C

Reviews for legal soundness and accuracy program material emanating from operating units of the organization. (Pg. 19)

LEVEL E

general public. Advises on laws, regulations (including those that have the effect of law) of his own and other federal agencies, opinions of the Comptroller General or the agency's general counsel, common law, administrative law, etc. Answers questions, which are covered by interpretations of the Comptroller General or other legal authority. Is responsible for recognizing those questions, which require an interpretation by such legal authority. Prepares recommended interpretation outlining the facts and the applicable law. Is responsible for developing the material which, in effect, becomes the agency's justification for the conduct of litigation on behalf of the agency by a litigating agency. (Pg. 23)

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	LEVEL A	LEVEL C	LEVEL E
<p>(1) RESEARCH/ INSTRUCTION</p> <p>Supervision and guidance received is another element necessary in evaluating the attorney's level of responsibility. With more or less supervision and guidance, the attorney's responsibilities decrease or increase as the case may be. The attorney who is given a problem to resolve with no accompanying instruction obviously has a greater degree of responsibility than another attorney who is given a similar problem with detailed instruction as to what to do and how to do it. (Pg. 8)</p>	<p>Legal research is performed in accordance with preliminary instructions as to methods of approach, source material available, and policy and precedent of the office.</p>	<p>Incumbents of positions at this level are expected independently to plan, organize and conduct studies of the run of the mill legal problems, cases, or legislative proposals encountered in their respective programs. They are apprised of any unusual circumstances surrounding the case or the problem, any background information, which must be considered, and any important policy considerations that will govern development of the case or the solution.</p> <p>Beyond this, they normally work independently in investigating the facts, searching legal precedents, defining the legal and factual issues, drafting the necessary legal documents, and developing conclusions and recommendations.</p>	<p>Attorneys at this level are expected to carry out any assignments within their area of responsibility without preliminary instruction. At the time an assignment is made the supervisor may discuss the significance of the problem and give any background information received. From this point, the incumbent independently conducts the investigation or negotiation, plans the approach and develops the completed decision, report, brief, opinion, contract, or other products or represents the Government at the conference, hearing, or trial. (Pg. 24).</p>
<p>(2) LITIGATION</p>	<p>Participation in hearings is limited to examination or cross examination where the line of questioning has been carefully laid down by the attorney in charge of the case and where the issues with respect to the points</p>	<p>Before a case is presented in an administrative hearing or before a court, the supervisor discusses the presentation, the line of approach, the possible lines of opposition to be encountered, and other aspects of the case to</p>	<p>Or represents the Government at the hearing or trial</p>

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of testimony are well defined and narrow in scope.

**LEVEL C**

insure the proper groundwork has been laid for successful prosecution of the case. (Pg. 19-20)

**LEVEL E**

**(3) SUPERVISOR REVIEW**

Completed written work is thoroughly reviewed usually by a higher grade attorney who points out errors, omissions, and inadequacies, and corrects or directs the incumbent to correct them. (Pg. 16)

Completed work is normally assumed to be accurate with respect to legal citations, treatment of facts and other aspects of technical treatment. However, all written work is subject to review for soundness of approach and argument, application of legal principles, and consistency with governing policies, procedures, and regulations of the employing agency.

Completed work in the advisory or regulatory areas is reviewed before it is signed out for consistency with agency policy, for possible precedent effect, and for overall effectiveness. (Pg. 23-24)

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	LEVEL A	LEVEL C	LEVEL E
<p>(1) LITIGATION</p> <p>The personal work contacts element is another reflector of the attorney's level of responsibility. Other things being equal, the more important his contacts - the greater his responsibilities. Many attorneys, however, while performing very difficult and important work, do not have need to contact persons other than their immediate associates. Positions of attorneys performing these non-contact functions are not to be penalized if they have the other characteristics of a particular level of responsibility. (Pg. 8-9)</p>	<p>Interviews prospective witnesses and may examine witnesses along lines of inquiry laid down by a higher grade attorney</p>	<p>Attorneys participate in pretrial or prehearing conferences with industry representatives or private citizen claimants, defendants, or petitioners and their attorneys, explain points of law, charges or claimant qualifications, and refers suggested settlements or compromise offers to superiors with recommendations.</p>	<p>Tries cases before courts or administrative bodies. (Pg. 24)</p>
<p>(2) LEGAL ADVICE AND PARTICIPATION</p>	<p>Contacts initiated by the incumbent are principally for fact gathering and may advise agency personnel on minor matters. Attendance at conferences with higher level officials and those outside the agency is largely as an observer to gain experience.</p>	<p>(a) Advises negotiating officials in legal contractual matters by recommending appropriate clauses, provisions and general wording.</p> <p>(b) Participates in conferences with representatives of operating programs, State and local governments, industry, private organizations, or other Government agencies in developing or evaluating proposed changes in legislation or agency policy or regulations.</p> <p>(c) Participates in negotiations with State officials concerning conflicts in State and Federal</p>	<p>Confers or negotiates with top administrative personnel in the agency, private business, or State, local or foreign governments on important legal and policy questions. (Pg. 24)</p>

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regulations. (Pg. 20)

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### LEVEL A

The nature and scope of recommendations and decisions is again an element which indicates the level of an attorney's responsibility. The more important and authoritative his recommendations and decisions, the greater his degree of responsibility. An attorney rendering substantive advice on the terms of a contract has a greater degree of responsibility than an attorney reviewing the same contract for legal sufficiency and inclusiveness of the language. (Pg. 9)

Incumbents are responsible for the accuracy of factual information and legal citations, which are incorporated in decisions, opinions, briefs, and other legal documents prepared by higher grade attorneys. Legal opinions, analysis, and conclusions are not ordinarily expected to be in final form (except for relatively routine legal correspondence). (Pg. 16)

### LEVEL C

Recommendations to those outside the agency or to administrative officials at higher levels are normally made through the supervisor. Examples include: LITIGATION (a) Whether to initiate criminal or civil suits. (b) Settlement of claims brought by private citizens. (c) The organization, order of presentation, and line of argument to be used in the presentation of cases or hearings delegated to the incumbent as the trial attorney. (d) Settlement of suits brought by the government against others. LEGAL ADVICE AND COUNSEL (a) Replies to requests for legal advice or interpretation of law arising out of the day-to-day operations of agency programs. (b) substantive changes in legislation and agency policies and regulations to make them more equitable, responsive to needs, or easier to administer. (c) whether to approve a contract or other legal document in its proposed form and context. (Pg. 20-21)

### LEVEL E

Recommendations characteristic of this level are similar to those characteristic of level C. The major difference is that at this level advice on the interpretation of law or on proposed changes in legislation, policy, and regulations is often given directly to heads of programs, bureau chiefs, cabinet officers, members of congress, or representatives of State and local governments. In some instances recommendations are made through supervisors, as at level C, but these recommendations are usually tantamount to final decision.

Incumbents are responsible for recognizing when the matter under discussion is of such precedent-setting nature or of such importance or delicacy that his advice must be cleared with superiors before it is given out. (Pg. 24-25)