



and professional duty to “blow whistles,” when necessary, to protect workplace and public health and safety, regardless of possible employment retribution and career damage. He actually has a “doubly sworn duty” - as a PE and a PE federal employee - to do so.

Mr. Carson thinks the same argument applies to the Special Counsel at OSC, who is required by law at 5 USC 1211 to be a licensed attorney; to members of the MSPB who are licensed attorneys; and to other attorneys at these agencies who have formal responsibilities by their position descriptions to implement aspects of the specific law these agencies are charged to implement - that they also “doubly sworn” - as lawyers and as federal lawyers - to ensure this happens and to “blow whistles” if it does not, regardless of possible professional retribution.

Additionally, it is possible that apparently previously unrecognized non-compliance by MSPB and OSC with their respective statutory responsibilities to protect federal employees from PPP’s could taint the results in at least some of the cases considered by this Court involving PPP’s, particularly whistleblower reprisal since 1994, when the Federal Whistleblower Protection Act was last amended. This is because as 5 USC 7703(c) requires this Court to set aside any MSPB final decision found to be - “...otherwise not in accordance with law; [or] obtained without procedures required by law... having been followed.”

Mr. Carson's allegations of non-compliance by OSC and MSPB with their respective statutory duties to protect federal employees from PPP's, particularly whistleblower reprisal, include:

1. MSPB, contrary to the law's requirements at 5 USC 1204(a)(3) and (e)(3), does not conduct the necessary inquiries and reviews of OSC to ascertain its compliance with its statutory obligations to determine "whether the public interest in a civil service free of PPP's is being adequately protected." Additionally, it does not make this required report. This MSPB non-compliance with its statutory obligations enables OSC non-compliances with its statutory obligations to those who seek its protection. (See exhibits 1 and 2)
2. OSC, contrary to the law's requirements at 5 USC 1214(a)(1)(A), (b)(2)(A), (b)(2)(B), and/or (e), does not determine and/or appropriately report for each PPP complaint it receives and investigates "whether there are reasonable grounds to believe a PPP has occurred, exists, or is to be taken." When OSC fails to properly report its positive PPP determinations, it can significantly prejudice a federal employee's ability to obtain relief, via a whistleblower appeal at the MSPB and this Court. (See exhibits 3-6)
3. OSC, contrary to the law's requirements at 5 USC 1214(a)(1)(A), (C), and

(b)(2)(A), as 1214(a)(4) makes clear, when an employee files an IRA appeal per 1214(a)(3)(B), OSC will suspend or end its PPP complaint investigation, citing the IRA appeal as the reason. This can significantly prejudice the federal employee's efforts at the MSPB, as OSC might make a positive PPP determination during the pendency of the hearing, or provide useful information to him, even if it makes a negative one.

4. OSC, contrary to the law's requirements at 5 USC 1212(c)(2) and 1214(b)(2)(E), at least on occasion, includes prejudicial information in its notification to the whistleblower of his additional remedy at MSPB, made per 1214(a)(3)(A)(i), when OSC terminates its whistleblower reprisal investigation. By MSPB regulation, this OSC notification must be provided to it as part of the IRA appeal, prejudicing the MSPB adjudication, so the prejudice OSC can cause the employee's efforts to obtain relief at the Board or this Court is apparent. (See exhibits 7-8)
5. OSC, contrary to the law's requirements in the appendix to 5 USC 1214 and section 12(b) of Pub. L. 103-424 for the "termination statement," can and does fail and/or refuse to: 1) include the notification required by the "termination statement" in its whistleblower reprisal investigation termination letter, and/or 2) fail or refuse to respond to the complaint's reasonable

requests for information, made per the “termination statement.” This can significantly prejudice an employee’s ability to obtain relief at the Board in a subsequent IRA appeal. ( See exhibits 9-12. Note: This requirement was added to the law in 1994).

These non-compliances occur in a statutory context in which MSPB and OSC are charged with implementing the law’s mandate “that employee should not suffer adverse consequences as a result of prohibited personnel practices.” (See section 2(b)(1) of the Federal Whistleblower Protection Act, P.L. 101-12) and in which OSC is required to “act in the interests of employees who seek its assistance” (See section 2(b)(2)(B) P.L. 101-12, also provided in the appendix of 5 USC 1201).

### **Relief Sought**

Petitioner does not know what, if any, “Rules of Judicial Conduct,” apply to this Court, but he is aware that the ABA Model Rules of Judicial Conduct, 2004 Edition, Canon 3, section D(2) “Disciplinary Responsibilities,” appears to address his concerns. Consistent with his understanding, the petitioner respectfully requests:

1. If this Court determines, from the information provided during this appeal, there is a substantial likelihood that one or more lawyers at OSC and/or MSPB, who have responsibilities to implement aspects of these agencies’

respective statutory duties for the protection of federal employees from PPP's, have committed a violation of their rules of professional conduct, to take appropriate action by reporting it to the appropriate authority.

2. If this Court determines, from the information provided during this appeal, that it has knowledge that a one or more lawyers at OSC and/or MSPB, who have responsibilities to implement aspects of these agencies' respective statutory duties for the protection of federal employees from PPP's, have committed a violation of their rules of professional conduct that raises a substantial question as to their honesty, trustworthiness, or fitness as a lawyer in other respects, to inform the appropriate authority.

Petitioner has attached a statement of related cases, an affidavit, and a list of exhibits of documents from the case record to assist the Court's consideration of this motion.

Respectfully Submitted,

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**Certificate of Service**

I certify that the following documents for Carson v. Department of Energy, docket no. 2007-3134:

1. Motion to request referral of any attorney violations of rules of professional conduct to appropriate authority.
2. Statement of related cases
3. Related affidavit
4. List of exhibits and the exhibits from the case record

was sent, by commercial delivery, to:

Representative for Department of Energy:

Director, Commercial Litigation Branch  
Civil Division  
US Department of Justice  
1100 L. St, NW  
Washington, DC 20530

Other:

Clerk of the Board  
U.S. Merit System Protection Board  
1615 M St., NW  
Washington, DC 20419

US Office of Special Counsel  
1730 M St, NW  
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Washington, DC 20036

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Joseph P. Carson

April 3, 2007