

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOSEPH P. CARSON,

Petitioner,

v.

U.S. OFFICE OF SPECIAL COUNSEL,

Respondent.

C.A. No. 05-0537 (PLF/DAR)

June 5, 2006

**RESPONDENT'S OPPOSITION TO PETITIONER'S MOTION
FOR MISCELLANEOUS RELIEF TO DIRECT AN
APPROPRIATE EMPLOYEE OF RESPONDENT BE PRESENT
AT UPCOMING MOTIONS HEARING**

The U.S. Office of Special Counsel (OSC), by and through the undersigned, files this memorandum in opposition to the petitioner's motion requesting that the Court direct that an "experienced" OSC attorney or "other knowledgeable employee" appear at the upcoming motions hearing.¹ Petitioner asserts that this case is about "respondent's implementation of law"

primarily 5 U.S.C. §§ 1214(e) and 1214(b) and that an OSC representative should be available to answer "probing questions about the respondent's understanding and implementation of the law in question." *Id.* at 2. Essentially, it appears that petitioner wants a witness to discuss the OSC's application of the law to his various claims, and the OSC's practices in general. Petitioner's

¹ See Petitioner's Motion for Miscellaneous Relief to Direct an Appropriate Employee of Respondent Be Present at Upcoming Motions Hearing (hereinafter "Pet. Motion") at 1.

continued attempt to broaden the permissible scope of the district court's jurisdiction² should not be entertained in this way and this latest motion should be denied.

Mr. Carson is simply not entitled to what he seeks from the Court, which is essentially to compel the OSC to produce a witness at the hearing on the OSC's motion to dismiss the petition for mandamus. The motion to dismiss asks the Court to adjudicate that – as a matter of law – the petition fails to state an actionable claim to mandamus relief over which the district court has subject matter jurisdiction. A hearing on that motion is not a forum for Mr. Carson to examine any witness, particularly on matters that are clearly irrelevant.

The gravamen of respondent's pending motion to dismiss is that the limited scope of the district court's jurisdiction with regard to review of OSC action makes inquiry into the OSC's general understanding and implementation of the law irrelevant in this petition for mandamus. The scope of the court's review extends only to determining whether the OSC has conducted an investigation of a complainant's allegations. See *Carson v. U.S. Office of Special Counsel*, C.A. No. 04-0315 (PLF)(D.D.C. March 27, 2006)(Opinion at 5-7, and cases cited). The results of the investigation – including the OSC's understanding and application of 5 U.S.C. § 1214 – are not reviewable by this court. *Id.* Here, there is no dispute that the OSC conducted and completed investigations in the four administrative complaints at issue. Rather, petitioner challenges the

results of those investigations and seeks to open an inquiry into the manner in which OSC goes about its work. Petitioner made this clear at the status hearing and it would appear that he hopes

² Petitioner attempted to obtain discovery regarding the same issues. That motion was denied at the status hearing.

at the motions hearing to go beyond the district court's narrowly focused jurisdiction.

Accordingly, the "testimony" of an OSC employee for the purposes petitioner envisions should be denied.

Finally, if it is not a witness he seeks, and what Mr. Carson really wants is for the Court to bypass counsel of record and query the OSC about the legal arguments asserted in the OSC's motion to dismiss, then what petitioner is asking this Court to do is to let him select the respondent's counsel. That, of course, is not a reasonable request.

CONCLUSION

For the reasons set forth above, and in the entire record, the court should deny petitioner's motion. A proposed order consistent with this result accompanies this opposition.

Respectfully submitted,

/s/

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