

that MSPB is now doubly corrupt in: ²

1) knowingly and willfully failing or refusing, for 40 years now, to make its report - essential to American health, safety, security and welfare - to both the President and the Congress, "as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected," and, now,

2) AJ Bohlen's supervisory chain in MSPB and/or its Office of General Counsel directing him NOT to recuse himself so he can cover-up MSPB's 40 years of wilful and knowing law-breaking against the President, the Congress, the federal civil service and the American people by continuing to claim it is FRIVOLOUS and continuing to misstate appellant's whistleblower disclosure in a way that, in fact, makes it frivolous. He is doing this to make it impossible for him to make a positive "reasonable belief" determination about the whistleblower disclosures in this appeal, thereby saving his job and/or proving he is worthy of promotion in MSPB.³

Crucially for demonstrating personal bias, this Administrative Judge has previously determined, "the appellant's claim that the Board has turned a blind-eye to decades of illegal activity by OSC is not supported and deemed FRIVOLOUS (emphasis added)." ⁴

Absent the personal bias of the Administrative Judge, he would realize the appellant, in this appeal, is claiming that the 40 year-long law-breaking failure or refusal of MSPB to "to report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected" is a cause of the 40 years of related law-breaking at OSC in NOT protecting, as required by law, federal agency employees from prohibited personnel practices.

² It is possible that the appellant's claims of long-standing MSPB corruption implicate B. Chad Bungard, a current nominee to the Board, and are a reason for the long delay in his final Senate confirmation vote. See TAB B, appellant's former representative, Dan Meyer, June 14, 2019 email to the Senate Committee that has oversight of MSPB and Tab C, appellant's July 24, 2019 letter to the same committee.

³ See Tab D, appellant's Freedom of Information Act request of November 8, 2019, MSPB-2020-00022. MSPB has denied the request for expedited processing.

⁴ See Order of June 21, 2019 in the prior appeal, AT-1221-19-0536-W-1, and Order of November 4, 2019 in this refiled appeal.

In appellant's public statements, this decades-long, compounded, continuing law-breaking at OSC and MSPB has caused significant, perhaps irreparable, harm to the public interest in a civil service free of prohibited personnel practices. It has also resulted in significant, ongoing, harm - and increased existential threat - to American health, safety, security and welfare. ⁵

This Judge has already determined that he cannot find appellant has "reasonable belief" in his whistleblower disclosures against OSC and MSPB in this appeal because he has already determined, in two Orders in this appeal, and with no basis in law or fact, they are "frivolous." Consistent with his personal bias against the appellant he has now also repeatedly determined in this appeal he can impartially adjudicate whether appellant's "reasonable belief" in them. ⁶

The more this judge claims he can impartially adjudicate this appeal - a determination almost unbelievably based on his years-old determination that the appellant's whistleblower disclosures against OSC and MSPB are frivolous - a determination made with NO examination of their basis in law and a determination made without any "reasonable belief" determination - the more he demonstrates his personal bias against this appellant. ⁷

⁵ See Tab E. In 2015 the Tennessee Board of Architectural and Engineering Examiners investigated whether the appellant's public statements about the decades of compounded OSC and MSPB law-breaking and the impact of this law-breaking on public health and safety were "truthful and objective." After considering the basis in law and fact of the appellant's claims, it closed the complaint, taking no exception to the truthfulness and objectivity of appellant's claims.

⁶ See Orders of June 21, October 28, and November 4, 2019.

⁷ If a "reasonable belief" determination about any of appellant's whistleblower disclosures in this appeal have been made, or if they have obtained any other objective resolution, appellant respectfully requests the judge or the agency cite them.

Consistent with his personal bias, this judge has yet to accurately state the appellant's whistleblower disclosure against MSPB. Instead, the administrative judge misstates appellant's whistleblower disclosure to make it, in fact, "frivolous."

Appellant's whistleblower disclosure against MSPB is that MSPB has unlawfully failed or refused, for 40 years, to:

*"report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected,"*⁸

in violation of a specific requirement found in 5 U.S.C. §1204(a)(3).

The administrative judge's repeated misstatement of appellant's whistleblower disclosure is:

*MSPB has failed to conduct special studies and publish their results.*⁹

The only connection between appellant's whistleblower disclosure and the administrative judge's misstatement of it is 5 U.S.C. §1204(a)(3). This law requires two separate things: 1) MSPB conduct special studies and publish the results; and 2) MSPB "report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected."¹⁰

It is undisputed MSPB has conducted special studies and published the results.¹¹ It is also undisputed that MSPB has, for 40 years, refused or failed, to "report to the President and to the

⁸ Appellant's refiled appeal of September 29, 2019, page 2

⁹ See Order of October 28, 2019 page 1 and Order of November 4, 2019 page 2.

¹⁰ While the required report could be made as part of published a special study, it could also be made independently of such a special study, based on whatever sources of information the Board deems appropriate.

¹¹ Dozens of its published special studies are available at MSPB's website.

Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected.”¹²

The failure or refusal of the administrative judge to accurately state the appellant’s undisputed whistleblower disclosure - and his repeatedly replacing it with an obviously frivolous one of his own making, demonstrates his personal bias against appellant, quite possibly driven by well-founded fear of workplace reprisal if he were to determine appellant has “reasonable belief” in his stated whistleblower disclosure.¹³

2. The Administrative Judge Should Withdraw based on other disqualification

By the American Bar Association (ABA) Model Rules of Judicial Conduct contains a chapter “Application.” By its Section I(B), “Applicability of this Code,” Administrative Judge (AJ) Bohlen, as other MSPB AJ's, is a "judge."¹⁴ This is so even though MSPB administrative judges have no statutory judicial independence, unlike that afforded to Administrative Law Judges (ALJs). In fact, his official job title is not “administrative judge,” it is "attorney-examiner.” “Administrative Judge” is a “working title,” bestowed by previous Board Chair.

¹² See https://whsknox.blogs.com/mspb_watch/.

¹³ This is not just appellant’s baseless conjecture. MSPB has a shameful, particularly given its statutory mission, history of reprisal against its employees. OSC negotiated a settlement of a meritorious whistleblower reprisal complaint of the Chief Administrative Judge of the Atlanta Regional Office about 15-20 years ago; more recently (within past 5 years) MSPB was determined, by an Administrative Law Judge, to have engaged in reprisal against a headquarters MSPB employee.

¹⁴ “A judge, within the meaning of this Code, is anyone who is authorized to perform judicial functions, including an officer such as a justice of the peace, magistrate, court commissioner, special master, referee, or member of the administrative law judiciary.” See https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2011_mcjc_application.pdf

Regardless, Board policy, as reflected in 5 CFR section 1201.13 and 41, is that it expects its administrative judges to comply with relevant sections of the ABA Model Rules of Judicial Conduct, specifically regarding impartiality.

Also, the appellant's understanding is that AJ Bohlen is, as a condition of his employment in MSPB, a currently licensed attorney. Therefore, he has, by the ABA Model Rules of Professional Conduct, Rule 1.13, "Organization as Client, Comment 9," an "attorney-client" relationship with MSPB, his employing agency.¹⁵

By Rule 2.11(A), "Disqualification," of the ABA Model Rules of Judicial Conduct,¹⁶

"A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned...."

When the judge is also an employee of the agency subject to a whistleblower disclosure in the whistleblower reprisal appeal being adjudicated, has no statutory judicial independence, and apparently has attorney-client relationship with his employing agency, then his impartiality in adjudicating the "reasonable belief" of the whistleblower disclosure against his agency can most certainly be reasonably questioned.

MSPB regulations at 5 CFR §1201.13 is fully consistent with this reasoning. It states that Board policy for impartiality - which follows from the ABA Model Rules of Judicial Conduct - requires it to insulate itself from the adjudications of its employees' appeals as much as possible.

¹⁵ See

https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_13_organization_as_client/

¹⁶ See

https://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/model_code_of_judicial_conduct_canon_2/rule2_11disqualification/

Given the Board policy and regulation for judicial impartiality, rooted in the ABA Model Rules of Judicial Conduct, the Board must also insulate itself from adjudications of appeals involving whistleblower disclosures against it, whenever possible - something that is clearly possible in this appeal.

It is noteworthy that the Administrative Judge has not cited this Board policy and its connection to the ABA Model Rules of Judicial Conduct in justifying why he can impartially adjudicate this appeal and its involved whistleblower disclosure against MSPB - a disclosure he has repeatedly described as "frivolous," after misstating it in a way that makes it, in fact, frivolous.

Conclusion

By appellant's understanding of the ABA Model Rules of Professional Conduct, if his concerns about Administrative Judge Bohlen are valid - that he, at this point, is knowingly violating Rule 2.11(A) of the ABA Model Rules of Judicial Conduct, as well as Board policy regarding impartiality in not disqualifying/recusing himself from this appeal, then other attorneys who have been involved in his decision - such as by directing it at the risk of his employment - knowledgeable of this concern and its validity cannot just bystand to it.

These attorneys have a positive duty, by the ABA Model Rules of Professional Conduct, "Reporting Professional Misconduct," Rule 8.3(b), to report it to the appropriate authority.¹⁷ Knowledgeable attorneys include his supervisory chain in MSPB, the MSPB General Counsel, and, in my opinion, the attorney representing the Department of Energy in the whistleblower

¹⁷ See https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_8_3_reporting_professional_misconduct/

appeal.¹⁸

Respectfully,

_____/s/_____
Joseph Carson, PE
10953 Twin Harbour Drive
Knoxville, TN 37934
Pro Se

¹⁸ If this appeal is not reassigned to an Administrative Law Judge, the appellant will retain an attorney expert in legal and judicial ethics to provide independent counsel about his filing a professional misconduct complaint against Administrative Judge Bohlen with his state licensing authority - as well as his filing professional misconduct complaints against other knowledgeable, if not involved, attorneys in MSPB and/or DOE who either direct his professional misconduct and/or bystand to it.

TAB A

MSPB are "frivolous," without citing any legal or other determination that I lack reasonable belief in them.

I suspect his supervisory chain in MSPB and/or MSPB's office of General Counsel has directed him to not comply with the ABA Model Rules of Judicial Conduct for impartiality and the MSPB policy about judicial impartiality based in the ABA Model Rules, because they - rightly in my opinion - fear Congress and the President may well abolish MSPB if my whistleblower disclosure against it ever receives an objective resolution.

There are other compelling reasons for his disqualification. He simply cannot - and, to this point, has not even attempted - to defend how he can be impartial, consistent with the relevant Rule of the ABA Model Rules of Judicial Conduct and/or the Board policy on judicial impartiality based on those ABA model rules, in making a "reasonable belief" determination of my whistleblower disclosure against MSPB.

I am signing and stamping this declaration with my PE stamp.

I respectfully challenge Judge Bohlen - or anyone else in MSPB, OSC or DOE - to file a professional misconduct complaint against me with my licencing authority if they have grounds to contend any of my claims associated with this appeal are not "truthful and objective," as required by the rules of professional conduct of my PE licensing authority in Tennessee.

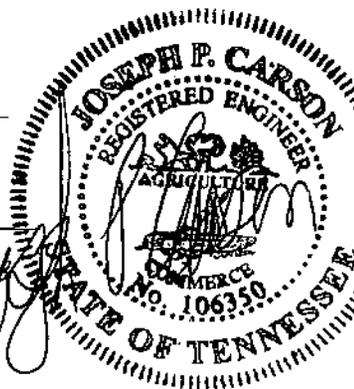
I desire any impartial opportunity to make my case about my whistleblower disclosures, regardless of risk to my PE license or federal employment. I think an objective resolution of my whistleblower disclosures is relevant to the chances America - or human civilization at any advanced level - exists in year 2119.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Respectfully,

Date

Joseph P. Carson, PE
Appellant



TAB B

joseph carson

From: Daniel P. Meyer <DMeyer@fedattorney.com>
Sent: Friday, June 14, 2019 11:50 AM
To: jpcarson
Subject: FW: Concern regarding the upcoming confirmation vote re: Mr. Bungard
Attachments: opposition_show_cause.pdf; Westlaw_Document_14_21_30.pdf

Daniel P. Meyer
PARTNER
DMeyer@fedattorney.com



Tully Rinckey PLLC
815 Connecticut Avenue NW Suite 720 | Washington, DC 20006
(202) 787-1900 Phone | (202) 375-2222 Direct | (202) 640-2059 Fax
www.fedattorney.com

Confidentiality / Privilege Notice: This transmission, including attachments, is intended solely for the use of the designated recipient(s). This transmission may contain information that is confidential and/or privileged or otherwise protected from disclosure. The use or disclosure of the information contained in this transmission for any purpose other than that intended by its transmittal is strictly prohibited. If you are not an intended recipient of this transmission, please immediately destroy all copies received and notify the sender.

From: Daniel P. Meyer
Sent: Friday, June 14, 2019 11:49 AM
To: Yelena_Tsilker@hsgac.senate.gov; David_Brewer@hsgac.senate.gov
Subject: Concern regarding the upcoming confirmation vote re: Mr. Bungard

Yelena and David, trust you are well:

My client, Joseph Carson, previously raised an issue regarding wrongdoing by the Merit Systems Protection Board occurring when the current MSPB nominee B. Chad Bungard served as General Counsel to the Board for three years during the George W. Bush Administration.

<https://www.govexec.com/pay-benefits/2019/06/final-merit-board-nominee-promises-protect-civil-service-agency-looks-regain-teeth/157722/>

<https://www.govexec.com/pay-benefits/2019/05/federal-employee-appeals-board-poised-finally-have-members/156685/>

When Mr. Bungard was General Counsel at MSPB, a petition for writ of mandamus was filed in federal district court regarding MSPB failure to execute title 5's provisions regarding special studies. See the Decision and Justice Department brief attached. Mr. Bungard, according to my client, passively took no exception to the Department of Justice misrepresenting, to a federal judge, that the Board has regulations for its special studies function. My client's research indicates that the Board does not, and did not, have such regulations. The statement to the judge was a false statement if, indeed, the Board never adopted such regulations.

My client FOIA'd the regulations. There are and never have been Board regulations for its special studies function. Moreover, MSPB responded to Mr. Carson's subsequent FOIA request by stating it has no "administrative interpretations" of its laws beyond what is incorporated into its regulations. Given that response, the question is whether the Department of Justice, representing MSPB (with Mr. Bungard at the Board's General Counsel) made a false or misleading argument to a federal judge in 2007 in stating:

*Finally, at no point has Congress amended subsection 5 U.S.C. § 1204(a)(3) to redirect the Board's actions under the statute, despite repeated reauthorizations. See Pub. L. 103-424, § 9, 108 Stat. 4361 (reauthorizing the Board for fiscal years 1993 through 1997); Pub. L. 104-208 § 641, 110 Stat. 3009-365 (reauthorizing the Board for fiscal years 1998 through 2002); Pub. L. 107-304, § 2(a), 116 Stat. 2364 (reauthorizing the Board for fiscal years 1993 through 2007). The Supreme Court has held that "[w]hen Congress revisits a statute giving rise to a **longstanding administrative interpretation without pertinent change**, the 'congressional failure to **revise or repeal the agency's interpretation** is persuasive evidence that the interpretation is the one intended by Congress.'" *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 846 (1986) (quoting *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 275, (1974)); see *Doris Day Animal League v. Veneman*, 315 F.3d 297, 300 (D.C. Cir. 2003).*

The argument at the time was that Congress reauthorized the OSC, and did not state it had an issue with the lack of regulations. Proving such a negative is impossible. These regulations are important, and Mr. Bungard's respect for the intent of Congress is an important character trait to assess before he placed in line for a confirmation vote.

My client is available for a more extensive brief, should you or other Senators desire one. My suggestion is that a hold be placed on Mr. Bungard until such time as the Attorney General can issue an Opinion Letter on the legal requirement for special studies and the Board adherence to that legal requirement.

You may reach me at the point of contact, below.

v/r

Dan

TAB C

July 24, 2019

Senator Ron Johnson, Chair, Senate Homeland Security and Governmental Affairs Committee (HSGAC)

Senator Gary Peters, Ranking Member, HSGAC

Senator Rand Paul, Chair, Subcommittee on Federal Spending Oversight and Emergency Management

Senator Margaret Wood Hassan, Ranking Member, Subcommittee on Federal Spending Oversight and Emergency Management

Via: Yelena Tsilker and David Brewer

Subject: A Long-Time Whistleblower's Suggestion for Resolving His Well-Evidenced Whistleblower Disclosure Against U.S. Merit Systems Protection Board

Dear Senators,

My "Ask":

That before the full Senate votes to confirm Mr. Bungard and the other nominees, Dennis Dean Kirk and Julia Akins Clark, to MSPB, that these nominees commit to asking the Attorney General as to the proper interpretation and application of MSPB's non-discretionary statutory duty, per 5 U.S.C. §1204(a)(3) to:

"report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected."

Background to this suggestion:

On June 14, 2019, my then-attorney, Dan Meyer, contacted Ms. Tsilker and Mr. Brewer of your staff about our well-evidenced concern that MSPB nominee B. Chad Bungard, when he served at the General Counsel of MSPB, was a party, either active or complicit, to a misrepresentation to a federal judge regarding MSPB's (now) 40 year refusal or failure to comply with its nondiscretionary statutory duty. I have attached his email to this letter.

In early 2007, while Mr. Bungard served as MSPB's General Counsel, MSPB, through its Department of Justice representative, justified its (undisputed) failure or refusal to perform this duty by claiming it had issued regulations authorizing its (inactions). It further claimed that since Congress had subsequently re-authorized it, Congress tacitly agreed with its nullifying this nondiscretionary statutory duty. The indisputable fact is that MSPB has NEVER issued any regulations regarding this statutory duty.

MSPB's now 40 year-long failure or refusal to comply with this non-discretionary statutory duty, hinders, if not precludes, the President from being able to comply with his primary statutory duty to over 2 million federal agency employees:

“take any action....necessary to ensure that personnel management is based on and embodies the merit system principles.” 5 U.S.C. §2301(c).

It also hinders, if not precludes, necessary Congressional oversight of the federal agencies. Most importantly, MSPB’s failure or refusal to comply with this duty may be a proximate cause - a “but for” factor - in much that has befallen America in past 40 years and besets America now.

MSPB has now twice argued in adjudications that, despite the explicit wording of the law, it has no such duty, therefore my whistleblower disclosure lacks a reasonable basis. In 2019, 12 years after the 2007 suit, there is still no definitive ruling - at MSPB or anywhere else - as to whether MSPB is properly interpreting and applying this law.

Why not? The involved MSPB attorneys take no exception to my claim that MSPB attorneys- up to and including its Board - have an attorney-client relationship with MSPB, their employing agency. Therefore, when someone makes a well-evidenced whistleblower disclosure against MSPB, they see their primary professional duty to be protecting their client - not ensuring MSPB is properly interpreting and applying its statutory duties. Consistent with their view of their primary professional duty to protect their client, MSPB, they have done whatever they can to prevent any objective resolution of my whistleblower disclosure - which is why it remains unresolved, fifteen years after I first brought it forward.

If nothing else, this demonstrates, beyond any reasonable doubt, why is it foolhardy for any federal agency employee to bring forward any good faith whistleblower disclosure. MSPB, itself, will do anything it can to prevent any objective resolution of any whistleblower disclosure against it - setting the clear standard for every other federal agency to do likewise.

Thank you for whatever consideration my suggestion and its background information may merit. I will be in Washington DC, July 29 and 30 to attend the annual whistleblower summit. If anyone on your staff wish to meet with me, I would greatly appreciate the opportunity.

Respectfully,

_____/s/_____
Joseph Carson, PE
10953 Twin Harbour Drive
Knoxville, TN 37934
865-300-5831

TAB D

Expedited Freedom of Information Act Request

November 8, 2019

Clerk of the Board
1615 M Street, NW
Washington, DC 20419

Dear MSPB,

Basis of request for Expedited Processing of this FOIA request

Per MSPB regulations at 5 CFR §1204.11, I respectfully request expedited processing of this FOIA request, based on its relevancy to my efforts to obtain an impartial adjudication of my pending IRA whistleblower appeal, Carson v. Department of Energy, Docket no. AT-1221-19-0536-W-2, as required by law and MSPB regulation.

One of the underlying whistleblower disclosures in the appeal is that MSPB has unlawfully failed or refused, for 40 years, to “report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected, in violation of a specific requirement found in 5 U.S.C. §1204(a)(3).

The assigned Administrative Judge, Brian Bohlen of the Atlanta Regional Office, has determined as “frivolous” my request that the case be assigned to an Administrative Law Judge, consistent with the reasoning of 5 CFR section 1201.13, given the reasonable questions I have of his impartiality he - as other MSPB AJ’s - have in determining whether I have “reasonable belief” in my whistleblower disclosure against MSPB.

I am now preparing a motion, per 5 CFR §1201.42, that Judge Bohlen withdrawn from the case, based on personal bias against me - as evidenced by his inaccurate characterization of the underlying whistleblower disclosure and his describing my request “frivolous” - as well as the disqualifying conflict of interest - not just “appearance of conflict of interest”- any MSPB AJ would have in making an impartial determination of whether I have “reasonable belief” in my whistleblower disclosure against MSPB.

The information sought in this FOIA request is germane to my motion that he withdraw, which is why I seek expedited processing of this FOIA request.

Legal Background to this FOIA Request

By the American Bar Association (ABA) Model Rules of Judicial Conduct, Administrative Judge

(AJ) Bohlen, as other MSPB AJ's, is a "judge."¹ Additionally, my understanding is that AJ Bohlen is a MSPB employee, with no statutory judicial independence, and that his official job title is "hearing examiner." Also, my understanding is that AJ Bohlen has, by the ABA Model Rules of Professional Conduct, an "attorney-client" relationship with MSPB, his employing agency.²

By Rule 2.11(A) of the ABA Model Rules of Judicial Conduct,

"A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned...."

When the judge is an employee of the agency subject to a whistleblower disclosure in the whistleblower reprisal appeal being adjudicated, has no statutory judicial independence, and apparently has attorney-client relationship with his employing agency, then his impartiality in adjudicating the "reasonable belief" of the whistleblower disclosure against his agency can most certainly be reasonably questioned.³

MSPB regulations at 5 CFR §1201.13 is fully consistent with this reasoning - given the Board's policy of insulating itself from the adjudications of its employees' appeals as much as possible, it should also insulate itself from adjudications of appeals involving whistleblower disclosures against it as much as possible.

By my understanding of the ABA Model Rules of Professional Conduct, if my concerns that AJ Bohlen are valid - that he, at this point, is knowingly violating Rule 2.11(A) of the ABA Model Rules of Judicial Conduct, as well as the intent of Board policy expressed in 5 CFR §1201.13, in not disqualifying/recusing himself from this appeal, then other attorneys knowledgeable of my concern and its validity cannot just bystand to it. These attorneys have a positive duty, by the ABA Model Rules of Professional Conduct, "Reporting Professional Misconduct," Rule 8.3(b), to report it to the appropriate authority. Knowledgeable attorneys include his supervisory chain

¹ See ABA Model Rules of Judicial Conduct, "Applicability of this Code," Section 1(B): "A judge, within the meaning of this Code, is anyone who is authorized to perform judicial functions, including an officer such as a justice of the peace, magistrate, court commissioner, special master, referee, or member of the administrative law judiciary."
https://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/

² See ABA Model Rules of Professional Conduct, Rule 1.13, "Organization as Client," particularly comment 9,
https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/

³ See ABA Model Rules of Judicial Conduct, Rule 2.11(A), "Disqualification."

in MSPB, the MSPB General Counsel, and, in my opinion, the attorney representing the Department of Energy in the whistleblower appeal.⁴

Just How Deep the Corruption in MSPB May Be

The “worst case” in this matter is that MSPB could now be showing itself to be doubly corrupt in:

- 1) knowingly and willfully failing or refusing, for 40 years now, to make its report - essential to American health, safety, security and welfare - to both the President and the Congress, “as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected,” and, now,
- 2) AJ Bohlen’s supervisory chain in MSPB and/or its Office of General Counsel directing him NOT to recuse himself, so he can cover-up MSPB’s 40 years of wilful and knowing law-breaking against the President, the Congress, the federal civil service and the American people by continuing to misstate my whistleblower disclosure and, based on that misstatement, determining I lack reasonable belief in it, thereby saving his job and/or proving he is worthy of promotion in MSPB.

My contentions and their basis in fact and law are anything but “frivolous,” regardless of how Administrative Judge Bohlen now dismisses them.⁵

Specific Information sought in this FOIA request

Any records related to:

1. Whether MSPB has adopted, in whole or part, the ABA Model Rules of Judicial Conduct, or any other rules for Judicial Conduct, for its administrative judges.
2. Whether MSPB expects its administrative judges to use ABA Model Rule 2.11(A) as a basis to determine whether to disqualify themselves.

⁴ Rule 8.3(b) states: “A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.” In this case, the “appropriate authority” is AJ Bohlen’s supervisory chain in MSPB and MSPB’s General Counsel.

⁵ I hope - for the sake of America and chances that those born in 2019 have the opportunity to live flourishing lives concluded by natural deaths - that my concerns about MSPB being “doubly corrupt” are determined wrong, even “frivolous”; but I fear they are all too accurate.

3. Whether MSPB has established policy or precedent for its administrative judges to use in determining whether to disqualify themselves.
4. Whether MSPB has established policy or precedent for the use of an Administrative Law Judge in whistleblower appeals involving whistleblower disclosures against MSPB.
5. Whether MSPB requires its administrative judges to maintain an active law license in an American jurisdiction.
6. Where Administrative Judge Brian Bohlen is currently licensed as an attorney.
7. The names of the attorneys in Administrative Judge Bohlen's supervisory chain in MSPB and where they are currently licenced.
8. The name of MSPB's General Counsel and where he or she is currently licensed.
9. All records of communications by anyone in MSPB about why my appeal, both when initially filed in June 2019 and when refiled in September 2019, is not being assigned to an ALJ, given AJ Bohlen's - as any other MSPB AJ's - fundamental conflict of interest in determining I have "reasonable belief" in my whistleblower disclosure against MSPB.

I will pay up to \$25.00 for these records.

Respectfully,

_____/s/_____
Joseph P. Carson, PE
10953 Twin Harbour Drive
Knoxville, TN 37934
jpcarson@tds.net 865-300-5831

TAB E



August 27, 2015

Joseph P. Carson
10953 Twin Harbour Dr
Knoxville, TN 37934

Dear Mr. Carson:

The Board voted on August 12, 2015 to close the complaint against you. The issues in this matter are in litigation, and it appears that a judge is due to decide soon as to whether your employer's actions are unlawful and creating safety concerns, which is the appropriate course of action for this matter.

If you have any questions regarding this matter, please contact this office.

For the Board,

Frances P. Smith
Frances P. Smith
Administrative Assistant
Compliance Coordinator