

Merit Systems Protection Board

§ 1216.207

showing that no document could be provided and used in lieu of testimony;

(7) A description of all prior decisions, orders, or pending motions in the case that bear upon the relevance of the requested records or testimony;

(8) The name, address, and telephone number of counsel to each party in the case; and

(9) An estimate of the amount of time that the requester and other parties will require for each MSPB employee for time spent by the employee to prepare for testimony, in travel, and for attendance in the legal proceeding.

(c) The MSPB reserves the right to require additional information to complete the request where appropriate.

(d) The request should be submitted at least 30 days before the date that records or testimony is required. Requests submitted in less than 30 days before records or testimony is required must be accompanied by a written explanation stating the reasons for the late request and the reasons for expedited processing.

(e) Failure to cooperate in good faith to enable the General Counsel to make an informed decision may serve as the basis for a determination not to comply with the request.

(f) The request should state that the requester will provide a copy of the MSPB employee's statement free of charge and that the requester will permit the MSPB to have a representative present during the employee's testimony.

§ 1216.204 Service of requests or demands.

Requests or demands for official records or information or testimony under this subpart must be served on the Clerk of the Board, U.S. Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419-0002 by mail, fax, or e-mail and clearly marked "Part 1216 Request for Testimony or Official Records in Legal Proceedings." The request or demand will be immediately forwarded to the General Counsel for processing.

§ 1216.205 Processing requests or demands.

(a) After receiving service of a request or demand for testimony, the

General Counsel will review the request and, in accordance with the provisions of this subpart, determine whether, or under what conditions, to authorize the employee to testify on matters relating to official information and/or produce official records and information.

(b) Absent exigent circumstances, the MSPB will issue a determination within 30 days from the date the request is received.

(c) The General Counsel may grant a waiver of any procedure described by this subpart where a waiver is considered necessary to promote a significant interest of the MSPB or the United States, or for other good cause.

(d) *Certification (authentication) of copies of records.* The MSPB may certify that records are true copies in order to facilitate their use as evidence. If a requester seeks certification, the requester must request certified copies from the MSPB at least 30 days before the date they will be needed. The request should be sent to the Clerk of the Board.

§ 1216.206 Final determination.

The General Counsel makes the final determination on demands to requests to employees for production of official records and information or testimony in litigation in which the MSPB is not a party. All final determinations are within the sole discretion of the General Counsel. The General Counsel will notify the requester and, when appropriate, the court of other competent authority of the final determination, the reasons for the grant or denial of the request, and any conditions that the General Counsel may impose on the release of records or information, or on the testimony of an MSPB employee. The General Counsel's decision exhausts administrative remedies for discovery of the information.

§ 1216.207 Restrictions that apply to testimony.

(a) The General Counsel may impose conditions or restrictions on the testimony of MSPB employees including, for example:

- (1) Limiting the areas of testimony;
- (2) Requiring the requester and other parties to the legal proceeding to agree