

Merit Systems Protection Board

§ 1216.208

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 that the transcript of the testimony will be kept under seal;

(3) Requiring that the transcript will be used or made available only in the particular legal proceeding for which testimony was requested. The General Counsel may also require a copy of the transcript of testimony at the requester's expense.

(b) The MSPB may offer the employee's written declaration in lieu of testimony.

(c) If authorized to testify pursuant to this part, an employee may testify as to facts within his or her personal knowledge, but, unless specifically authorized to do so by the General Counsel, the employee shall not:

(1) Disclose confidential or privileged information; or

(2) For a current MSPB employee, testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or the functions of the MSPB unless testimony is being given on behalf of the United States (see also 5 CFR 2635.805).

(d) The scheduling of an employee's testimony, including the amount of time that the employee will be made available for testimony, will be subject to the MSPB's approval.

§ 1216.208 Restrictions that apply to released records.

(a) The General Counsel may impose conditions or restrictions on the release of official records and information, including the requirement that parties to the proceeding obtain a protective order or execute a confidentiality agreement to limit access and any further disclosure. The terms of the protective order or of a confidentiality agreement must be acceptable