Merit Systems Protection Board

§ 1201.122 Filing complaint; serving documents on parties.

(a) Scope of filing. A Special Counsel complaint seeking disciplinary action under 5 U.S.C. 1215(a)(1) (including a complaint alleging a violation of the Hatch Political Activities Act) must be filed with the Clerk of the Board.
§ 1201.123  Contents of complaint.

(a) If the Special Counsel determines that the Board should take any of the actions listed below, he or she must file a written complaint in accordance with § 1201.122 of this part, stating with particularity any alleged violations of law or regulation, along with the supporting facts:

1. Action to discipline an employee alleged to have committed a prohibited personnel practice, 5 U.S.C. 1215(a)(1)(A);
2. Action to discipline an employee alleged to have violated any law, rule, or regulation, or to have engaged in prohibited conduct, within the jurisdiction of the Special Counsel under 5 U.S.C. 1216 (including an alleged violation by a Federal or District of Columbia government employee involving political activity prohibited under 5 U.S.C. 7324), 5 U.S.C. 1215(a)(1)(B), 1216(a), and 1216(c);
3. Action to discipline a State or local government employee for an alleged violation involving prohibited political activity, 5 U.S.C. 1505; or
4. Action to discipline an employee for an alleged knowing and willful refusal or failure to comply with an order of the Board, 5 U.S.C. 1215(a)(1)(C).

(b) Initial filing and service. The Special Counsel must file two copies of the complaint, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing each party or the party’s representative. The certificate of service must show the last known address, telephone number, and facsimile number of each party or representative. The Special Counsel must serve a copy of the complaint on each party or the party’s representative, as shown on the certificate of service. The initial filing in a complaint may not be submitted in electronic form.

(c) Subsequent filings and service. Each party must serve on every other party or the party’s representative one copy of each of its pleadings, as defined by § 1201.4(b). A certificate of service describing how and when service was made must accompany each pleading. Each party is responsible for notifying the Board and the other parties in writing of any change in name, address, telephone number, or facsimile number of the party or the party’s representative.

(d) Method of filing and service. Filing may be by mail, by facsimile, or by personal or commercial delivery to the Clerk of the Board. Service may be by mail, by facsimile, or by personal or commercial delivery to each party or the party’s representative, as shown on the certificate of service.

(e) Electronic filing. All pleadings, other than the complaint, may be filed and served in electronic form at the Board’s e-Appeal site (https://e-appeal.mspb.gov), provided the requirements of § 1201.14 are satisfied.

§ 1201.124  Rights; answer to complaint.

(a) Responsibilities of Clerk of the Board. The Clerk of the Board shall furnish a copy of the applicable Board regulations to each party that is not a Federal, State, or local government agency and shall inform such a party of the party’s rights under paragraph (b) of this section and the requirements regarding the timeliness and content of an answer to the Special Counsel’s complaint under paragraphs (c) and (d), respectively, of this section.

(b) Rights. When the Special Counsel files a complaint proposing a disciplinary action against an employee under 5 U.S.C. 1215(a)(1), the employee has the right:

1. To file an answer, supported by affidavits and documentary evidence;
2. To be represented;
3. To a hearing on the record before an administrative law judge;
4. To a written decision, issued at the earliest practicable date, in which the administrative law judge states the reasons for his or her decision; and
5. To a copy of the administrative law judge’s decision and subsequent final decision by the Board, if any.