

To: MSPB Washington Regional Office
Fr: David W. Noble, Jr.
Re: Dkt. No. DC-0752-11-0880-I-1
Dt: October 6, 2011
By fax: 703-756-7112

Attached for filing are *Appellant's Motion to Disqualify Judge, and October 6, 2011 Declaration of David W. Noble, Jr.* and a certificate of service.

cc: Stephen W. Furgeson

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**MERIT SYSTEMS PROTECTION BOARD
Washington D.C. Field Office**

David W. Noble Jr.,
Appellant

v.

United States Postal Service,
Agency.

Docket No. DC-0752-11-0880-I-1

AJ: Turbitt

Date: October 6, 2011

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Appellant's Motion to Disqualify Judge

Appellant hereby moves Administrative Judge Daniel Madden Turbitt to recuse himself for the reasons stated below and in the attached October 6, 2011 Declaration of David W. Noble, Jr., which is incorporated herein as if completely rewritten.

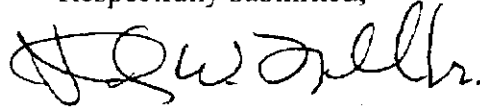
An administrative judge's conduct during the course of a Board proceeding warrants recusal where the judge's comments or actions evidence "a deep-seated favoritism or antagonism that would make fair judgment impossible." *Bieber v. Department of the Army*. 287 F.3d 1358, 1362-63 (Fed. Cir. 2002).

In his September 27, 2011 *Order and Summary of Prehearing Conference*, Judge Turbitt made false statements about appellant's conduct during the September 26th prehearing conference. Making false statements about a party is evidence of a deep-seated antagonism that would make fair judgment impossible. Therefore, the judge should recuse himself.

Before bringing the instant motion, appellant contacted the agency to try to determine

whether the agency would object to or oppose the motion. The agency, however, did not respond to appellant's inquiry

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. W. Noble, Jr.", written in a cursive style.

David W. Noble, Jr.

October 6, 2011 Declaration of David W. Noble, Jr.

I, David W. Noble, Jr., make this declaration based on personal knowledge:

1. I am the appellant in Dkt. No. DC-0752-11-0880-I-1. On September 26, 2011 Administrative Judge Daniel Madden Turbitt conducted a prehearing conference by telephone with me, and with agency representative Stephen W. Furgeson.

2. On September 27, 2011 Judge Turbitt issued an 11-page *Order and Summary of Prehearing Conference*.

3. In the *Order and Summary of Prehearing Conference* Judge Turbitt stated: "During the prehearing conference, the appellant continually questioned my authority to narrow the list of his 19 proposed witnesses to only those I deem appropriate. The appellant is mistaken in his belief that I lack the authority to do this."

4. The statement quoted in Paragraph 3, above, is false. During the prehearing conference I did not even once question the judge's authority to do anything. I do not believe that the judge lacks authority to decide which witnesses will be permitted to testify.

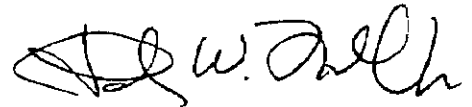
5. In the *Order and Summary of Prehearing Conference* Judge Turbitt also stated: "Actually, much of the prehearing conference was spent on the appellant's extensive discussion of his witnesses and why I should approve them. At times I did interrupt him when he repeatedly claimed that I lack the authority to deny any of his witnesses * * * *"

6. The statement quoted in Paragraph 5, above, is false. During the prehearing conference I did not even once claim that the judge lacked authority to deny any of my witnesses. The judge interrupted me at least eight times during the conference, but none of the interrupted statements concerned any aspect of the judge's authority.

7. The statement quoted in Paragraph 5, above, is also false because I did not have the opportunity during the prehearing conference to "extensively" discuss my witnesses and why the judge should approve them. I was not given any opportunity at all to discuss Chuck Clark, Singh Sidhu, Justin Batista, Brandon Toatley, Randy Williams, Terence Seawright, Leon Tucker, Louis Minor, Bright Ofuso, or Brian Fletcher, almost all of whom were disapproved. I was given short opportunities to discuss Alton Branson, Chester Maddox, and

Barbara Myers. My discussion of Branson, Maddox, and Myers took less than 5% of the 58-minute conference.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on October 6, 2011.

A handwritten signature in black ink, appearing to read "D. W. Noble, Jr.", with a stylized initial "D" and "N".

David W. Noble, Jr.

Certificate of Service

I certify that I sent on October 6, 2011 I sent *Appellant's Motion to Disqualify Judge, and October 6, 2011 Declaration of David W. Noble, Jr.* by facsimile transmission to Stephen W. Furgeson at 301.955-0701 and to the Honorable Daniel Madden Turbitt at the MSPB Washington Regional Office at 703.756-7112.

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David W. Noble, Jr.