

To: MSPB Washington Regional Office
Fr: David W. Noble, Jr.
Re: Dkt. No. DC-0752-11-0880-I-1
Dt: October 31, 2011
By fax: 703-756-7112

Attached for filing are *Appellant's October 31, 2011 Motion to Compel Discovery as to Appellant's October 14, 2011 Notices of Deposition, October 31, 2011 Declaration of David W. Noble, Jr., Exh. V and Exh. W*, 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 31, 2011

**Appellant's October 31, 2011 Motion to Compel Discovery as to Appellant's
October 14, 2011 Notices of Deposition**

Appellant moves for an order requiring the agency to forthwith produce for deposition the deponents listed in the six notices of deposition which were served on the agency on October 14, 2011. The basis for this motion is set forth below and in the accompanying October 31, 2011 Declaration of David W. Noble, Jr., which is incorporated herein as if fully rewritten.

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The agency makes two objections to the depositions: a) That appellant indicated that he intends to record the depositions by video-tape and audio-tape, and b) that "without a specifically identified individual the Agency objects on the basis of vagueness and relevance" to producing for deposition who contributed to writing the notices of proposed removal and the decision letter. Both objections are baseless.

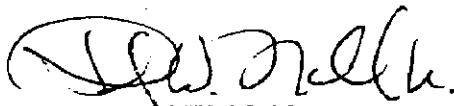
The agency points to 5 C.F.R. § 1201.75 as support for its position that it may insist that appellant use traditional commercial transcription rather than video-tape and audio-tape. That section provides, in part: "Depositions may be taken by any method agreed upon by the parties," which may be read in either of two ways: First, that the

parties are permitted latitude in making agreements as to how depositions are to be conducted. That is the interpretation taken in MSPB's *Judge's Handbook*, p. 28. The second possible interpretation – that taken by the agency – is that the parties must agree on a method of taking depositions. That would lead to the harsh, absurd, and nonsensical result that either party could prevent the other from taking depositions by setting impossible-to-meet conditions. Moreover, please note that FRCP 30(b)(3) expressly permits the audio-taping and video-taping of depositions in lieu of commercial transcription.

The agency's second objection, that appellant did not provide individuals' names for two of the depositions, is likewise without merit. FRCP 30(b)(1) provides: "The notice must state the time and place of the deposition and, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs." Appellant's description is obviously sufficient to permit the agency to identify the person or persons to be deposed. Further, those who contributed to the writing of the notice and letter plainly have testimony to give that is relevant to the actions described therein. Therefore, the judge should order the agency to produce the deponents.

The parties discussed the anticipated motion to compel discovery and made a good faith effort to resolve the discovery dispute and narrow the areas of disagreement.

Respectfully submitted,



David W. Noble, Jr.

October 31, 2011 Declaration of David W. Noble, Jr.

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

1. On October 14, 2011 I served on the agency Requests for Admissions 1-- 27, Interrogatories 13 - 17, Document Production Requests 8 - 12 and Notices of Deposition for Paris Washington, Sterling Colter, Bill French, Antonio Jones, Any Person or Persons Who Contributed to Writing the April 28, 2011 Notice of Removal, and Any Person or Persons Who Contributed to Writing the July 5, 2011 Decision Letter. A true and accurate copy of my requests is attached as Exhibit V.

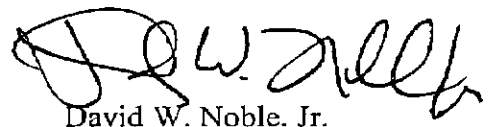
2. Washington, Colter, French, and Jones are the witnesses the agency expects to call in support of its case that I should be removed from the agency's employ. All participated to some extent in the decision to remove me. Their testimony, therefore, is plainly relevant, as is the testimony of those who contributed to writing the Notice of Removal and the Decision Letter.

3. By letter dated October 24, 2011 the agency objected to the use of video-tape and audio-tape as methods of recording the depositions, although the agency said that it would not object to use of traditional commercial transcription. The agency also objected to the two notices that did not use the names of the persons to be deposed. A true and accurate copy of the agency's October 24th letter is attached as Exh. W.

4. This declaration supports a motion I am filing to compel the agency to produce the deponents I noted on October 14, 2011. The agency has not yet responded to the other discovery requests I made on October 14th. When the agency responds to those requests I may file another motion to compel discovery.

5. I cannot afford to use commercial transcription to record the depositions.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 31, 2011.



David W. Noble, Jr.

**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 14, 2011

Appellant's October 14, 2011 Discovery Requests.

A. Requests for Admissions.

Appellant David W. Noble Jr. asks the United States Postal Service to respond within 20 days to these requests by admitting the truth of each of the following statements.

1. The NALC/USPS collective bargaining agreement provides that the Agency may only issue discipline to letter carriers for "just cause."
2. NALC and the Agency agree that before discipline against a letter carrier is initiated, just cause requires that the letter carrier must be given an opportunity to "tell his side of the story" as to the subject of the possible discipline.
3. The Agency almost always discharges its duty to give a letter carrier the opportunity to tell his side of the story by conducting a predisciplinary interview.
4. During a predisciplinary interview the Agency informs the letter carrier of the subject of the possible disciplinary action and asks for the carrier's side of the story.
5. In May 2009 Supervisor Brandon Toatley sent Appellant a written predisciplinary interview concerning irregular attendance and/or AWOL.
6. Appellant answered the predisciplinary interview by letter to Toatley dated 5/14/09.
7. After receiving Appellant's 5/14/09 letter neither Toatley nor any other Agency representative issued discipline to Appellant concerning the absences that had been the subject of the May 2009 interview.

8. In February 2010 Supervisor Brandon Toatley sent Appellant a written predisciplinary interview concerning irregular attendance and/or AWOL.
9. Appellant answered the predisciplinary interview by letter to Toatley dated February 25, 2010.
10. After receiving Appellant's February 25, 2010 letter neither Toatley nor any other Agency representative issued discipline to Appellant concerning the absences that had been the subject of the February 2010 interview.
11. On August 12, 2010 supervisor Brandon Toatley conducted a predisciplinary interview with appellant concerning irregular attendance and/or AWOL.
12. After the August 12, 2010 predisciplinary interview neither Toatley nor any other Agency representative issued discipline to Appellant concerning the absences that had been the subject of the interview.
13. In or about November 2010 supervisor Bill French conducted a predisciplinary interview with Appellant concerning irregular attendance and/or AWOL.
14. During the November 2010 predisciplinary interview Appellant referred French to Appellant's letter to Toatley dated 2/25/10, a copy of which Appellant had provided to French.
15. After the predisciplinary interview in or about November 2010 neither French nor any other Agency representative issued discipline to Appellant concerning the absences that had been the subject of that interview.
16. On February 23, 2011 Agency representative Antonio Jones conducted a predisciplinary interview with Appellant concerning irregular attendance and/or AWOL.
17. The subject of the February 23, 2011 interview was either AWOL from November 2010 to February 23, 2011 (Agency File, Tab 4e) or AWOL from January 14, 2011 to February 16, 2011 (Agency File, Tab 4f).
18. After the February 23, 2011 predisciplinary interview neither Antonio Jones nor any other Agency representative issued discipline to Appellant for the absences that had been the subject of the interview.
19. On April 28, 2011 the Agency initiated disciplinary action against Appellant by sending him a Notice of Proposed Removal that charged Appellant with having been AWOL during the period February 24, 2011 through April 28, 2011 (Agency File, Tab 4b).
20. Before issuing the April 28, 2011 Notice of Proposed Removal the Agency did not conduct a predisciplinary interview with Appellant to give Appellant an opportunity to tell his side of the

story as to the absences from February 24, 2011 through April 28, 2011 that were the subject of the notice.

21. Until the Notice of Proposed Removal was issued on April 28, 2011 the Agency did not in any way inform Appellant that he was considered to be AWOL during the period February 24, 2011 through April 28, 2011.

22. Before the Notice of Proposed Removal was issued on April 28, 2011 the pay stubs the Agency sent Appellant showed his leave status during the period February 24, 2011 through April 28, 2011 was LWOP.

23. LWOP is an approved leave status.

24. The agency has on numerous occasions settled grievances by stating that it would "cease and desist" from requiring appellant to work overtime.

25. Since May 2010 appellant has on numerous occasions provided Zone 16 supervisors with statements from appellant's physician stating that he recommended that appellant not work overtime.

26. In October and November 2010 Bill French knew about the "cease and desist" settlements and about appellant's physician's recommendation that appellant not work overtime.

27. In October and November 2010 Bill French on numerous occasions instructed appellant to work overtime.

B. Interrogatories 13 - 17.

Appellant requests that the United States Postal Service answer the following interrogatories under oath within twenty days:

13. State whether any person made any statement or statements in any form in 2011 to Bill French, Sterling Colter, or Paris Washington regarding removal of appellant from postal employment. If so, identify each person by whom the statement was made, the person to whom the statement was made, the date the statement was made, and provide a complete and accurate description of the statement.

14. State whether Bill French made any statement or statements in any form in 2011 to any person regarding removal of appellant from postal employment. If so, identify each person to whom the statement was made, the date the statement was made, and provide a complete and accurate description of the statement.

15. State whether Sterling Colter made any statement or statements in any form in 2011 to any person regarding removal of appellant from postal employment. If so, identify each person to

whom the statement was made, the date the statement was made, and provide a complete and accurate description of the statement.

16. State whether Paris Washington made any statement or statements in any form in 2011 to any person regarding removal of appellant from postal employment. If so, identify each person to whom the statement was made, the date the statement was made, and provide a complete and accurate description of the statement.

17. List the dates in 2010 on which first class or priority mail was curtailed overnight in Zone 20016.

C. Document production requests.

Appellant requests that the United States Postal Service permit him to review and copy the following documents within twenty days:

8. All grievance settlements in which the agency agreed to "cease and desist" from requiring appellant to work overtime.

9. All settlements of appellant's grievances entered into in 2010 and 2011.

10. All grievance decisions issued at any step of the grievance procedure as to appellant's grievances in 2010 and 2011.

11. Any regulation or instruction that provides that a Form SF-50 should be cut for a single day of LWOP.

12. All Forms SF-50 cut in 2011 for a single day of LWOP.

Respectfully submitted,



David W. Noble, Jr.

**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 14, 2011

Notice of Deposition of Paris Washington

Appellant notes the deposition of Paris Washington for November 1, 2011, or on a mutually agreed to date, at 8:00 a.m., or at a mutually agreed to time, before a notary public. The location at which the deposition will be taken is Capital Metro Law Office, U.S. Postal Service, 8200 Corporate Drive, Landover, MD 20785. The deposition will be recorded by videotape and audio tape.

Respectfully submitted,



David W. Noble, Jr.
One Fenceline Drive
Gaithersburg, MD 20878

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United States Postal Service,
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Docket No. DC-0752-11-0880-I-1

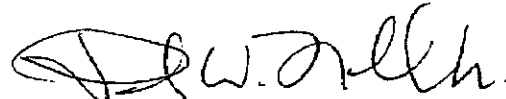
AJ: Turbitt

Date: October 14, 2011

Notice of Deposition of Sterling Colter

Appellant notes the deposition of Sterling Colter for November 1, 2011, or on a mutually agreed to date, at 11:00 a.m., or at a mutually agreed to time, before a notary public. The location at which the deposition will be taken is Capital Metro Law Office, U.S. Postal Service, 8200 Corporate Drive, Landover, MD 20785, or at a mutually agreed to place. The deposition will be recorded by videotape and audio tape.

Respectfully submitted,



David W. Noble, Jr.
One Fenceline Drive
Gaithersburg, MD 20878

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

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Appellant

v.

United States Postal Service,
Agency.

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

AJ: Turbitt

Date: October 14, 2011

Notice of Deposition of Bill French

Appellant notes the deposition of Bill French for November 1, 2011, or on a mutually agreed to date, at 1:00 p.m., or at a mutually agreed to time, before a notary public. The location at which the deposition will be taken is Capital Metro Law Office, U.S. Postal Service, 8200 Corporate Drive, Landover, MD 20785, or at a mutually agreed to place. The deposition will be recorded by videotape and audio tape.

Respectfully submitted,



David W. Noble, Jr.
One Fenceline Drive
Gaithersburg, MD 20878

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Agency.

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

AJ: Turbitt

Date: October 14, 2011

Notice of Deposition of Antonio Jones

Appellant notes the deposition of Antonio Jones for November 1, 2011, or on a mutually agreed to date, at 4:00 p.m., or at a mutually agreed to time, before a notary public. The location at which the deposition will be taken is Capital Metro Law Office, U.S. Postal Service, 8200 Corporate Drive, Landover, MD 20785, or at a mutually agreed to place. The deposition will be recorded by videotape and audio tape.

Respectfully submitted,



David W. Noble, Jr.
One Fenceline Drive
Gaithersburg, MD 20878

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Agency.

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

AJ: Turbitt

Date: October 14, 2011

**Notice of Deposition of Any Person or Persons Who Contributed to Writing the
April 28, 2011 Notice of Proposed Removal**

Appellant notes the deposition of Any Person or Persons Who Contributed to Writing the April 28, 2011 Notice of Proposed Removal for November 2, 2011, or on a mutually agreed to date, at 8:00 a.m., or at a mutually agreed to time, before a notary public. The location at which the deposition will be taken is Capital Metro Law Office, U.S. Postal Service, 8200 Corporate Drive, Landover, MD 20785, or at a mutually agreed to place. The deposition will be recorded by videotape and audio tape.

Respectfully submitted,



David W. Noble, Jr.
One Fenceline Drive
Gaithersburg, MD 20878

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Agency.

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

AJ: Turbitt

Date: October 14, 2011

Notice of Deposition of Any Person or Persons Who Contributed to Writing the July 5, 2011 Decision Letter

Appellant notes the deposition of Any Person or Persons Who Contributed to Writing the July 5, 2011 Decision Letter for November 2, 2011, or on a mutually agreed to date, at 10:00 a.m., or at a mutually agreed to time, before a notary public. The location at which the deposition will be taken is Capital Metro Law Office, U.S. Postal Service, 8200 Corporate Drive, Landover, MD 20785, or at a mutually agreed to place. The deposition will be recorded by videotape and audio tape.

Respectfully submitted,



David W. Noble, Jr.
One Fenceline Drive
Gaithersburg, MD 20878

Certificate of Service

I certify that on October 14, 2011 I sent by facsimile transmission *Appellant's October 14, 2011 Discovery Requests* and six notices of deposition to Stephen W. Furgeson at 301.955-0701.



David W. Noble, Jr.

CAPITAL METRO LAW OFFICE



October 24, 2011

VIA EXPRESS MAIL

David Noble
1 Fenceline Drive
Gaithersburg, MD 20785

Re: David Noble v. US Postal Service
Docket Number DC-0752-0880-I-1

Dear Mr. Noble:

Pursuant to 5 C.F.R. § 1201.75, the Agency does not agree to the methods of video-taping and audio-taping the depositions of the Agency's witnesses. Moreover, the Agency objects to the deposition of those employees who may have "contributed" to the writing of the Decision Letter or Notice of Proposed Removal. Without a specifically identified individual the Agency objects on the basis of the vagueness and relevance of those individuals you may wish to depose. Furthermore, you had ample opportunity through discovery to determine who, if anyone, may have contributed to the notice and decision letter.

To the extent, that you wish to depose the Agency's approved witnesses through traditional commercial transcription the Agency does not object. However, the undersigned Agency counsel is not available to be present for those depositions on October 25, 28 and November 1, 2011.

Sincerely,

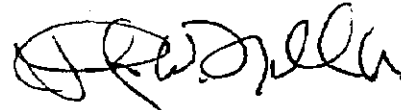
A handwritten signature in cursive script that reads "Stephen W. Furgeson".

Stephen W. Furgeson
Attorney

Exh. W

Certificate of Service

I certify that I sent on October 31, 2011 I sent *Appellant's October 31, 2011 Motion to Compel Discovery as to Appellant's October 14, 2011 Notices of Deposition, October 31, 2011 Declaration of David W. Noble, Jr., Exh. V and Exh. W* 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.



David W. Noble, Jr.