

To: MSPB Washington Regional Office  
Fr: David W. Noble, Jr.  
Dt: September 19, 2011  
Re: Noble v. U.S. Postal Service, No. DC-0752-11-0880-I-1  
By fax: 703.756-7112

Attached for filing are: a) Appellant's Motion to Postpone Hearing, b) September 19, 2011 Declaration of David W. Noble, Jr., c) 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

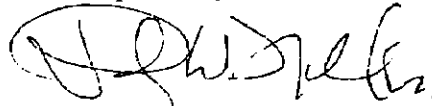
AJ: Turbitt

Date: September 19, 2011

**Appellant's Motion to Postpone Hearing.**

For the reasons stated in the accompanying declaration, appellant moves for a postponement of the hearing presently scheduled for September 28, 2011.

Respectfully submitted,



David W. Noble, Jr.

**September 19, 2011 Declaration of David W. Noble, Jr.**

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

1. I have been employed by the U.S. Postal Service as a city letter carrier since 1975. I am the appellant in *Noble v. U.S. Postal Service*, MSPB Dkt. No. DC-0752-11-0880-I-1, which challenges a removal action taken against me effective July 2011.

2. For fifteen years I took leave from the Postal Service to work on behalf of the National Association of Letter Carriers, AFL-CIO ("NALC"). NALC is the union that represents the Postal Service's 190,000 city letter carriers. In 1979 and 1980 I worked in NALC's Minneapolis, Minnesota regional office. From 1981 through August 1993 I worked at NALC's national headquarters in Washington, DC. My title while I worked at headquarters was assistant to the president for arbitration.

3. In August 1993 I filed internal union charges against NALC's entire 28-member national executive council for misappropriation of NALC funds. Two weeks after I filed the charges NALC's president suspended me from NALC employment.

4. In September 1993 I returned to active employment with the Postal Service as a city letter carrier.

5. In February 1994 I filed a suit in the United States District Court for the District of Columbia, claiming, inter alia, that the union's twelve highest ranking officers were misappropriating NALC funds by engaging in a phony "in-town expense" scheme. I brought the suit for the common benefit of NALC's membership. I cannot benefit personally from the suit, which is still pending. The most recent decision in the case was *Noble v. Sombrotto*, 525 F.3d 1230 (D.C. Cir. 2008).

6. My legal standing to pursue *Noble v. Sombrotto* depends on my membership in the union, which, in turn, may depend on my employment by the Postal Service (see LMRDA § 3(o), 29 U.S.C. § 420(o) (defining "member")). The removal action that is the subject of the instant appeal, therefore, may affect both my 36-year career as well as my almost 18-year old suit.

7. For most of the time that *Noble v. Sombrotto* has been pending I have been unrepresented by counsel. I conducted discovery by myself, including successfully bringing a motion to compel discovery. I successfully opposed

defendants' motions for summary judgment. I successfully brought two motions for reconsideration. I conducted the trial by myself. While the trial court later dismissed the case, I built a strong enough record so that the circuit court reversed the dismissal of two of my claims, finding that the trial court's dismissal had been clear error. Throughout the entire period the case has been pending before the trial court defendants have been represented by seven attorneys from three law firms.

8. In the instant action before the MSPB the Postal Service is represented by Stephen W. Furgeson. I have known Mr. Furgeson for about thirty years. During most of the time I was employed at NALC headquarters Mr. Furgeson was a headquarters-level labor relations representative for the Postal Service. He and I served on joint committees together and sometimes met to resolve particularly important contract administration issues.

9. Since 2001 Mr. Furgeson has represented the Postal Service as its attorney in numerous actions I brought against the Postal Service. These include: a) two suits in the United States District Court for the District of Columbia, and, b) at least three unfair labor practice proceedings before the National Labor Relations Board, and, c) three previous appeals to the Merit Systems Protection Board.

10. By order dated August 18, 2011 the Administrative Judge set a hearing for September 28, 2011 for Noble v. U.S. Postal Service. I will require more time to take discovery and prepare my case than would be allowed by a September 28<sup>th</sup> hearing. Therefore, I request that the Administrative Judge postpone the hearing until after discovery has been taken and any issues pertaining thereto have been resolved.

11. I served written interrogatories and requests for production of documents on the Postal Service on September 12, 2011. Those discovery requests were made within the time limits prescribed by the Acknowledgment Order and by 5 C.F.R. § 1201.73(f)(1). Under MSPB regulations the Postal Service has up to twenty days to respond, or until October 2, 2011.

12. Based on my extensive experience litigating against Mr. Furgeson, I expect that the Postal Service's response to my discovery requests will be late and incomplete. If I am correct, I will have to file a motion to compel discovery – a process that, in my experience, usually takes the better part of a month.

13. After the Postal Service makes its response I expect to propound follow-up requests for discovery within ten days, as provided by 5 C.F.R. § 1201.73(f)(2), or by about October 12, 2011. The Postal Service will have up to

twenty days to respond, or until about November 2, 2011. As with the first discovery request I expect the follow-up to result in a motion to compel discovery, which will probably take until Thanksgiving or later to resolve.

14. After I have received the discovery material I will need about a week to integrate the material into the presentation I am planning for the hearing. Based on all of the above I expect to be ready to proceed by sometime in December. I request, therefore, that the Administrative Judge postpone the hearing scheduled for September 28<sup>th</sup> and reschedule the hearing after discovery has been concluded.

I declare under penalty of perjury that the foregoing is true and correct.  
Executed on September 19, 2011.



David W. Noble, Jr.

**Certificate of Service**

I certify that I sent Appellant's Motion to Postpone Hearing and September 19, 2011 Declaration of David W. Noble, Jr. by facsimile transmission on September 19, 2011 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.

A handwritten signature in black ink, appearing to read "J. W. Furgeson". The signature is written in a cursive style with a large initial "J" and "F".