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Susan Tsui Grundmann
Chairman
Merit Systems Protection Board
1615 M Street, NW
Washington DC 20419

Re: Federal Register Comment
Notice April 27, 2010

Subject: MSPB Open Government Plan

Dear Chairman Grundman:

I take this opportunity to offer a few brief comments on the MSPB Open Government Plan.

Participation: Recommendation for Advisory Committee

As a quasi-judicial administrative agency, the Board has typically not involved the public or practitioners in its internal operations and planning. The high degree of isolation of the Board since its inception is contrary to the practice of many courts, which have routine interaction with members of the bar and which routinely include practitioners in advisory committees on matters that most typically include recommended revisions to court rules and practice. The Board's reviewing court, United States Court of Appeals for the Federal Circuit, is typical in that it convenes periodic bench and bar conferences, such as will occur tomorrow, and which has a standing practice committee of practitioners who advise the court as to modifications in court rules and operating procedures.

Although an e-mail comment line and occasional meetings by Board members with groups of practitioners is helpful, I suggest that the Board establish a standing advisory committee comprising practitioners from agencies and the private bar. That committee would routinely meet with Board managers to exchange views on revisions of Board policies, regulations, and areas for improvements both at headquarters and at the regional offices.

Participation: Public Announcement of Hearings

Board hearings are open to the public, but the public rarely attends. One reason for the lack of attendance by the public is because there is no ready way to determine when a hearing will be held at the regional office.

The Federal Circuit publicly posts argument calendars. The Board can post on its website

notices as to hearings that will occur, by date and time, at the various regional and field offices. The Board would not have to announce the names of the appellant, but could simply describe the nature the case, e.g., adverse action or reduction in force. The suggestion would be included in the announcements of the possibility of rescheduling or cancellation of hearings, with the suggestion that individuals interested in attending a hearing call the regional office in advance and confirm that the hearing is going forward. Judges should be instructed not to lock hearing doors, absent a closed hearing, during the process of the hearing so that the public would not be discouraged from entering the hearing room.

Transparency: Routine Questionnaires Concerning Performance of Administrative Judges

The Board has long avoided close scrutiny of the administrative judges in the various regional and field offices. As long as the judges meet their performance standards and avoid major problems involving personal conduct, they are relatively loosely supervised by regional directors and rarely scrutinized as to their deportment, thoroughness, accuracy of analysis, perceived fairness, or quality of interaction with appellants and representatives of agencies and appellants.

After the conclusion of each appeal resulting in an initial decision, the appellant and any counsel involved in the case should be sent a questionnaire, to be returned to a coordinator at Board headquarters, in which the responding appellant or representative provides narrative commentary and a graded rating of judges on key elements of the judge's performance and interaction with the parties. Some areas of concern would be clarity and tailoring to the case of routine orders, promptness in responding to telephone inquiries, the degree of courtesy shown to the participants in the process, the quality of analysis in the judge's written decisions on motions and the initial decision, hearing and conference deportment, accessibility of the judge for procedural advice, the ability to facilitate settlement discussions through personal involvement, and other factors, with a section for any comments that the individual wishes to make.

Judges who receive consistently high marks should be recognized, and those that do not should receive mentoring or direction as to their performance.

FOIA Matters: Electronic FOIA requests

In the same manner that most other agencies handle FOIA requests, the Board should establish an e-mail FOIA request system, which will result in an e-mail acknowledgment and assignment of a case number for the FOIA request.

I thank the Board for its consideration of these comments.

Yours very truly,

Peter B. Broida