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MSPB Report Explains Complexities of Clean Record Agreements

As discussed in the new U.S. Merit Systems Protection Board (“MSPB”) report, [*Clean Record Settlement Agreements and the Law*](#), the precise wording of a clean record agreement (CRA) and the specific facts and circumstances surrounding the implementation of a CRA can make the difference between a resolved conflict and a costly resumption of litigation.

A CRA is a contract between an agency and a past or current employee in which the agency agrees to remove potentially negative information from the employee’s record in exchange for the resolution of employment-related claims against the agency.

MSPB Chairman Susan Tsui Grundmann noted that “Clean record agreements are an invaluable tool for resolving conflicts, especially when the parties cannot agree on what occurred but can agree on how to move forward.” However, it is important for parties to understand that MSPB could read agency obligations broadly regarding both cleaning and discussing the record, unless the parties use language in the CRA to narrow the agency’s obligations.

Also, a CRA cannot bind someone who is not acting on the behalf of one of the parties to the agreement. The report explains why other agencies are not required to accept as fact the assertions made by the parties pursuant to the agreement. For example, a CRA cannot authorize an appellant to intentionally deceive another Federal agency about the existence of the agreement. The report discusses several cases in which such deception led to removal and even debarment from Federal employment.

“Parties need to recognize the importance of making their commitments clear in the CRA and then meeting those commitments.” according to Chairman Grundmann.

The U.S. Merit Systems Protection Board (MSPB) is an independent, quasi-judicial agency whose mission is to protect the Merit System Principles and promote an effective Federal workforce free of Prohibited Personnel Practices. To request a printed copy of this report, e-mail studies@mspb.gov; call (202) 254-4496, or write to: Merit Systems Protection Board, Office of Policy and Evaluation, 1615 M Street NW, Washington, DC 20419.