

Comments of Julie Glass Martin-Korb, Esq.
Re: Options for Proposed Amendments to MSPB Rules of Practice and Procedure
78 Fed. Reg. 67,076 (Nov. 8, 2013)

December 9, 2013

Via Email

William D. Spencer
Clerk of the Board
Merit Systems Protection Board
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Dear Mr. Spencer:

I am an employment law attorney who has worked in federal sector employment law in a number of capacities over the last twenty years. I write now in my personal capacity as a former member of the National Employment Lawyers Association (NELA) and the Metropolitan Washington Employment Lawyers Association (MWELA), and a current member of the Maryland Employment Lawyers Association (MELA). I dissent from the views expressed by these organizations in their comments.

To put it bluntly, while NELA, MWELA, and MELA ostensibly advocate against summary judgment in Board proceedings, they are in fact voting for it. These organizations argue that the Board should maintain its current practice of requiring employees to make “non-frivolous allegations” to establish jurisdiction in Board appeals. In practice, the implementation of the “non-frivolous allegation” requirement results in *de facto* summary judgment. Indeed, the standard for determining whether non-frivolous allegations of jurisdiction exist is “analogous to that for summary judgment.” *Kahn v. Dep’t of Justice*, 528 F.3d 1336, 1341 (Fed. Cir. 2008). Moreover, the Board’s whole notion of “non-frivolous allegation” ultimately derives from summary judgment jurisprudence. See *Spiegel v. Dep’t of the Army*, 2 M.S.P.R. 140, 141-42 (1980) (citing federal summary judgment cases).

It is unfathomable to me why these organizations, which purport to represent federal employees’ interests, would advocate to perpetuate the current convoluted jurisdictional scheme which so disadvantages employees – particularly employees representing themselves *pro se* in Board proceedings. One can only hope that their comments are merely misguided, and not a cynical means to maintain a torturous system of establishing jurisdiction that can only be navigated by lawyers specializing in federal sector employment law.

Thank you for this opportunity to comment on the proposed regulations.

Respectfully submitted,

Julie Glass Martin-Korb