

**CORY D. VOORHIS v. DEPARTMENT OF HOMELAND SECURITY**  
**Docket # DE-0752-09-0199-I-2**  
**Motion to Withdraw Witness & Strike Same Witness from Appellant's**  
**Witness List**  
**Summary Page**

**Case Title :** CORY D. VOORHIS v. DEPARTMENT OF HOMELAND SECURITY

**Docket Number :** DE-0752-09-0199-I-2

**Pleading Title :** Motion to Withdraw Witness & Strike Same Witness from Appellant's  
Witness List

**Filer's Name :** Robert P. Erbe, Esq.

**Filer's Pleading Role :** Agency Representative

**Details about the supporting documentation**

N/A

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**Online Interview**

**1. Would you like to enter the text online or upload a file containing the pleading?**

See attached pleading text document

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**2. Does your pleading assert facts that you know from your personal knowledge?**

Yes

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**3. Do you declare, under penalty of perjury, that the facts stated in this pleading are true and correct?**

Yes

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**UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD  
WASHINGTON REGIONAL OFFICE**

CORY D. VOORHIS,	)	
	)	
Appellant,	)	
	)	
v.	)	
	)	Docket Number:
	)	<i>DE-0752-09-0199-I-2</i>
DEPARTMENT OF HOMELAND SECURITY,	)	
	)	
Agency.	)	
	)	

**AGENCY’S MOTION TO WITHDRAW GROUP SUPERVISOR ANTHONY ROUCO  
AS A WITNESS AND TO STRIKE GROUP SUPERVISOR ANTHONY ROUCO FROM  
APPELLANT’S WITNESS LIST**

The Department of Homeland Security (Agency), through its designated representative, files this motion to withdraw Group Supervisor (GS) Anthony Rouco as a witness for the Agency. In addition, since GS Rouco is listed on the Appellant’s witness list, the Agency respectfully request the Administrative Judge issue a ruling finding GS Rouco’s testimony irrelevant to the instant appeal and therefore strike GS Rouco from Appellant’s witness list.

As already recognized by the Administrative Judge, the testimony of Group Supervisor Anthony Rouco is irrelevant to the charges and specifications set forth in the notice of proposed removal, dated October 17, 2008. *Agency File Volume II, TAB 4h*. It is undisputed that the Appellant did not seek or obtain GS Anthony Rouco’s authorization to conduct the queries on the law enforcement database or to disclose the information to John Marshall **prior** to conducting the queries or disclosing the information. As the Administrative Judge acknowledged in the Summary of the Prehearing Conference held on September 29, 2009,

Appellant claims that he made the inquiries on the government law enforcement database as part of his normal duties as an ICE Special Agent. *Summary of Prehearing Conference, p. 10.* Further, Appellant claims he told GS Rouco of his actions **after** conducting the queries and disclosing the information to Mr. Marshall. As alluded to in the Summary of the Prehearing Conference, any conversation Appellant had with GS Rouco occurred between September 29, 2006 and October 3, 2006.<sup>1</sup> It is undisputed that Appellant conducted the queries on September 26, 2006, and disclosed the information to Mr. Marshall on September 27, 2006. As a result, GS Rouco's testimony would be irrelevant to the charges of "Unauthorized Queries of Individuals on an Official Government Computer Database," "Unauthorized Disclosure," or "Misuse of Position" as this is not a case where the Appellant is claiming prior supervisory authorization. *See Davis v. Department of Army, 33 M.S.P.R. 223, 227 (1987)*(technical violation of misuse of government property found where evidence showed appellant had express authorization from his superiors to use government property).

Moreover, GS Rouco's testimony (as well as his OPR Investigation) is totally irrelevant for the purposes of adjudicating this appeal for the following reasons:

- Appellant does not claim nor does the evidence show that Appellant told GS Rouco about his August 23, 2006, meeting with John Marshall and Richard Beeson;

<sup>1</sup> In the Summary of the Prehearing Conference, the Administrative Judge stated that Appellant made the inquiries as part of his normal duties as an ICE Special Agent and told his supervisor "no later than October 3, 2006," that he investigated the names on Mr. Marshall's list. *Summary of Prehearing Conference, p. 10.* Apparently, the Administrative Judge derived this information from Appellant's response to the notice of proposed removal. In response to the notice of proposed removal, Appellant stated that "it should be noted that SA Voorhis reported to his supervisor, Group Supervisor (GS) Anthony Rouco, no later than October 3, 2006, that he had received [the] list from Mr. Marshall and that he investigated the names on the list . . ." *AF Vol. I, TAB 4e, p. 8.*

- Appellant does not claim nor does the evidence show Appellant told GS Rouco about his August 24, 2006, meeting at the Trailhead Group where the group discussed how the information had political value;
- Appellant does not claim nor does the evidence show Appellant had provide the list of names he received from Mr. Marshall to GS Rouco;
- Appellant does not claim nor does the evidence show Appellant had GS Rouco review the alien status information he wrote on the list prior to returning the list to Mr. Marshall;
- Appellant does not assert nor does the evidence show that GS Rouco knew Appellant met with John Marshall at the Beauprez Campaign Headquarters on September 27, 2006;
- Appellant does not assert nor does the evidence show that Appellant had told GS Rouco he had a meeting with Denver Post Reporter Karen Crummy in which the information was used to publish an October 1, 2006 attack on Candidate Ritter;
- When confronted as to why he conducted the query of Carlos Estrada Medina by the Special Agent in Charge and the Assistant Special Agent in Charge, Appellant did not assert or claim that GS Rouco knew about it and approved his actions.

Appellant's Prehearing Submission also demonstrates that the testimony of GS Rouco would be a waste of time at the hearing. In Appellant's Prehearing Submission, he concedes that it was not until September 30, 2006, did he discuss with GS Rouco the fact of his interactions with a congressional office. *Appellant's Prehearing Submission, p. 8.* In fact, a reading of Appellant's Prehearing Submission makes no mention of GS Rouco's name during Appellant's initial interactions with John Marshall and the Trailhead Group. *See Appellant's Prehearing Submission, pp. 3-7.*<sup>2</sup>

For these reasons, the testimony of GS Rouco is irrelevant to the instant appeal and therefore the Agency has decided to withdraw GS Rouco as a witness in this case. Since GS Rouco is also listed on the Appellant's witness list, the Agency respectfully request that GS

Rouco be disapproved as a witness for the Appellant. If the Administrative Judge denies the Agency's request to strike GS Rouco as one of Appellant's witness, the Agency requests GS Rouco testify in the Agency's case in chief or that he be permitted to be called a rebuttal witness.

Respectfully submitted,



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Robert P. Erbe  
Agency Representative

<sup>2</sup> Although Appellant makes a vague assertion that he “contemporaneously discussed” certain actions with GS Rouco, he does not claim that he told GS Rouco of his interactions with John Marshall and the Trailhead Group. *See Appellant's Prehearing Submission, p. 7.*

**CERTIFICATE OF SERVICE**

I certify that the **AGENCY'S MOTION TO WITHDRAW GROUP SUPERVISOR ANTONY ROUCO AS A WITNESS AND TO STRIKE GROUP SUPERVISOR ANTHONY ROUCO FROM APPELLANT'S WITNESS LIST** was sent on this 11<sup>th</sup> day of January 2010, as indicated below, to the following individuals:

**Administrative Judge**

Jeremiah Cassidy  
Administrative Judge  
Merit Systems Protection Board  
Washington Regional Office  
1800 Diagonal Road, Suite 205  
Alexandria, VA 22314-2840

via MSPB E-Appeal

**Appellant's Representative**

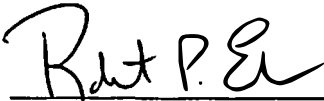
Thomas F. Muther, Jr.  
MINAHAN AND MUTHER, P.C.  
5132 w. 26<sup>TH</sup> Avenue  
Denver, CO 80212

via MSPB E-Appeal

**Appellant**

Cory D. Voorhis  
12038 West Quincy Place  
Morrison, CO 80465

via Regular Mail

  
\_\_\_\_\_  
Robert P. Erbe, Esquire  
Agency Representative

## Certificate Of Service

e-Appeal has handled service of the assembled pleading to MSPB and the following Parties.

Name & Address	Documents	Method of Service
MSPB: Washington Regional Office	Motion to Withdraw Witness & Strike Same Witness from Appellant's Witness List	e-Appeal / e-Mail
Minahan and Muther, P.C. Appellant Representative	Motion to Withdraw Witness & Strike Same Witness from Appellant's Witness List	e-Appeal / e-Mail

I agree to send a printed copy of the electronic pleading with attachments to non-efilers by the end of next business day, as follows:

Name & Address	Documents	Method of Service
Cory D. Voorhis Appellant  12038 West Quincy Place Morrison, CO 80465	Motion to Withdraw Witness & Strike Same Witness from Appellant's Witness List	US Postal Mail