

CORY D. VOORHIS v. DEPARTMENT OF HOMELAND SECURITY
Docket # DE-0752-09-0199-I-2
Response to Agency's Motion to Withdraw R dated 1/11/2010
Summary Page

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

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

Pleading Title : Response to Agency's Motion to Withdraw R dated 1/11/2010

Filer's Name : Minahan and Muther, P.C.

Filer's Pleading Role : Private Attorney

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

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

Yes

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

Yes

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

CORY D. VOORHIS,)	
)	
Appellant,)	
)	
v.)	Docket No. DE-0752-09-0199-I-2
)	
DEPARTMENT OF HOMELAND SECURITY,)	January 11, 2010
)	
Agency.)	
)	

**OPPOSITION TO AGENCY’S MOTION TO STRIKE
GROUP SUPERVISOR ANTHONY ROUCO FROM APPELLANT’S WITNESS LIST**

Appellant Cory D. Voorhis hereby opposes the Agency’s motion to strike Group Supervisor Anthony Rouco from Appellant’s witness list. While Appellant does not oppose the Agency’s request to withdraw GS Rouco as its own witness, for which a written motion is not normally submitted, Appellant does oppose the Agency’s motion to strike GS Rouco from Appellant’s witness list. The following reasons exist for denying the Agency’s Motion.

First, a prehearing conference was held in this matter on September 29, 2009, at which time the Administrative Judge ruled in favor of both parties by approving Group Supervisor (GS) Tony Rouco as a joint witness. Since then, no additional evidence has been submitted in the above captioned appeal nor has there been any substantive change to the charging document giving rise to any basis to disturb the Administrative Judge’s initial ruling regarding the relevance and necessity of GS Rouco as a witness. Rather, the only meaningful actions the

Agency has taken since September 29, 2009, is to attempt to limit the public's access to the hearing, only to subsequently change its mind and request a public, in-person hearing days later. One can only conclude that the Agency's present reversal of position on the relevance of GS Rouco's testimony is motivated by similar dubious concerns, i.e. to shield GS Rouco's egregious misconduct from public scrutiny.¹ While the Agency's decision to allow GS Rouco to remain in his position despite its own OPR findings of misconduct has undoubtedly created considerable embarrassment and liability to the Agency, these disreputable reasons do not form a good cause basis to rescind the Administrative Judge's initial order allowing the testimony of GS Rouco for both parties.

Secondly, the Agency, in giving its basis for dismissing GS Rouco as a witness, has failed to identify the primary reason for which GS Rouco's testimony will be relevant. Specifically, GS Rouco's testimony is directly relevant to rebut the Agency's baseless allegations against Mr. Voorhis as contained in its Lack of Candor (Charge 4, Specifications 2, 3, 4 and 6) charge. Curiously, the Agency makes no mention of this charge in its Motion, despite the fact that this very issue (i.e. whether or not the Agency's withdrawal of all/part of the Lack of Candor charge would preclude the necessity for GS Rouco's testimony) was raised by the Administrative Judge during a telephonic status conference several months prior to the Agency's Motion. In short, the Agency's charge of Lack of Candor clearly raises factual disputes which necessitate the testimony of GS Rouco and the subsequent credibility findings of the Administrative Judge.

¹ The details of this misconduct are the subject of an MSPB protective order preventing the release of any such information pertaining to an Agency OPR finding of misconduct directly affecting GS Rouco's credibility. For this reason, the details of the OPR's findings are not referenced herein.

Finally, the Agency, by citing to summarized pre-hearing statements of facts, mischaracterizes much of the evidence of record, making broad based and contextually inaccurate references in an attempt to over-simplify and obfuscate the operative facts of the case. One need only look to Agency Response File, tab 4G, p. 189 et seq. and to the complete record of Mr. Voorhis' investigative testimony to recognize that the Agency's proffer of undisputed facts (which were not submitted to Appellant for review prior to submission to the Administrative Judge) clearly conflict with the evidence of record.

In short, given GS Rouco's lack of credibility, it is understandable why the Agency wishes to withdraw its original request to have him testify as an Agency witness. The Agency can most certainly do so without the need of the Administrative Judge granting its Motion by simply not calling GS Rouco as a witness. However, in that serious issues of credibility remain at issue in this case, especially as it relates to the credibility of GS Rouco, the Appellant strongly opposes the Agency's Motion both to strike GS Rouco as Appellant's witness and, in the alternative, to allow GS Rouco to testify as a rebuttal witness.

Respectfully submitted,

_____/s/_____
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing OPPOSITION TO AGENCY'S MOTION TO STRIKE GROUP SUPERVISOR ANTHONY ROUCO FROM APPELLANT'S WITNESS LIST was electronically filed this 11th day of January, 2010, with electronic copies addressed to the following:

Administrative Judge Jeremiah Cassidy
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_____/s/_____
Adrienne M. Tranel

MINAHAN & MUTHER, P.C.

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	Response to Agency's Motion to Withdraw R dated 1/11/2010	e-Appeal / e-Mail
Robert P. Erbe, Esq. Agency Representative	Response to Agency's Motion to Withdraw R dated 1/11/2010	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	Response to Agency's Motion to Withdraw R	Personal Delivery/Courier

12038 West Quincy Place Morrison, CO 80465	dated 1/11/2010	
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