

**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD**

THOMAS F. DAY,
Appellant,

DOCKET NUMBER
DC-1221-12-0528-W-1

v.

DEPARTMENT OF HOMELAND
SECURITY,
Agency.

DATE: January 16, 2013

Thomas F. Day, Sterling, Virginia, pro se.

Lorna J. Jerome, Washington, D.C., for the agency.

Jason Zuckerman, Washington, D.C., for amicus curiae
Office of Special Counsel.

ORDER

The above referenced matter is before the Board on interlocutory appeal. On January 10, 2013, the Office of Special Counsel (OSC) notified the Board that it would seek leave to file an amicus curiae brief in this appeal. OSC informed the Board that it was seeking “to offer its perspective on the important question of whether, based on the enactment of the provisions of the Whistleblower Protection Enhancement Act and its elimination of the *Willis-Huffman* disclosure criteria, [the] appellant has a right to pursue an [individual right of action] appeal.” OSC indicated that it would file a request for leave to file an amicus brief no later than January 25, 2013.

“An amicus curiae is a person or organization who, although not a party to an appeal, gives advice or suggestions by filing a brief with the judge or the Board regarding an appeal.” 5 C.F.R. § 1201.34(e)(1). A person or organization

may request permission to file an amicus brief. *Id.* Such a request “must include a statement of the person’s or organization’s interest in the appeal and how the brief will be relevant to the issues involved. 5 C.F.R. § 1201.34(e)(2).

At this time, OSC has not yet filed a request to file an amicus brief that meets the requirements set forth at 5 C.F.R. § 1201.34(e)(2). However, in light of OSC’s clear interest and expertise with respect to whistleblower reprisal, we find it appropriate to invite OSC to file an amicus brief in this matter. *See* 5 C.F.R. § 1201.34(e)(1) (the Board may solicit amicus briefs on its own motion).

Accordingly, OSC may file a brief as amicus curiae in this appeal by **February 15, 2013**. OSC should file its brief with the Office of the Clerk of the Board and the Board, in turn, will serve OSC’s brief on the parties. Either party may file a response to OSC’s brief by **March 8, 2013**, must serve the response on OSC and the opposing party, and must provide proof of service to the Board.

FOR THE BOARD:

William D. Spencer
Clerk of the Board

Washington, D.C.