



U.S. OFFICE OF SPECIAL COUNSEL

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DESIGNATED AGENCY LIAISONS

The Office of Special Counsel (OSC) is an independent federal agency charged with receiving and investigating allegations of prohibited personnel practices, and when appropriate, seeking corrective and disciplinary action. See 5 U.S.C. §§ 1211-1219 and 2301-2302. (See selected excerpts on reverse side) Agencies are required to cooperate with OSC investigations by providing information and copies of relevant records and documents, and by making employees available to testify on matters under investigation. See 5 C.F.R § 5.4. To facilitate OSC investigations some agencies have, either formally or informally, designated an agency employee to serve as a liaison with OSC.

The use of agency liaisons has been of mutual benefit for agencies and OSC. From the agency's perspective, a liaison can reduce disruption in the workplace, and ensure that witnesses and subjects understand their rights and responsibilities in connection with the investigation. From OSC's perspective, a liaison can facilitate timely responses to requests for documents, timely access to witnesses, and a secure site for interviews. A liaison can also ensure that witnesses are aware of their responsibility to give truthful testimony, that subjects are aware that OSC permits them to be represented by counsel during their interviews, and that subjects and witnesses are aware that the agency may not require the presence of agency counsel at an interview. Agency liaisons can also have an important role in facilitating amicable resolution of the issues under investigation.

It has been OSC's experience that the interests of OSC and the agency are best served when the roles of the designated agency liaison and the OSC investigator are fully understood.

An agency liaison can expect that the OSC investigator will:

- Explain in general terms the allegations under investigation;
- Explain OSC's procedures and timetable for the investigation;
- Submit requests to the agency for documents and other records through the liaison;
- Schedule interviews of all subjects through the liaison;
- Schedule interviews of most witnesses through the liaison (OSC reserves the right to contact witnesses directly when appropriate); and
- Contact the liaison about informal requests for corrective or disciplinary action.

OSC expects the agency liaison to:

- Receive and provide a timely response to all requests to the agency for documents;
- Provide a private location for scheduled interviews;
- Schedule subject and witness interviews when requested to do so;
- Ensure that subjects understand that they may have personal counsel present during the fact-finding interviews;
- Ensure that witnesses understand that they are required to give full and truthful responses to the investigator's questions; and
- Represent the agency in discussions concerning corrective or disciplinary action.

Pertinent Provisions of Sections 1212, 1214, 1216 and 1303 of Title 5, United States Code

Sec. 1212 (b)(1): "The Special Counsel and any employee of the Office of Special Counsel designated by the Special Counsel may administer oaths, examine witnesses, take depositions, and receive evidence."

Sec. 1214 (a)(1)(A): "The Special Counsel shall receive any allegation of a prohibited personnel practice and shall investigate the allegation to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken."

Sec. 1214 (a)(5): "In addition to any authority granted under paragraph (1) of this subsection, the Special Counsel may, in the absence of an allegation, conduct an investigation for the purpose of determining whether there are reasonable grounds to believe that a prohibited personnel practice (or a pattern of prohibited personnel practices) has occurred, exists, or is to be taken."

Sec. 1216 (a): This subsection provides further that the Special Counsel shall investigate any allegation of certain prohibited political activities (Hatch Act), arbitrary or capricious withholding of information requested under the Freedom of Information Act (5 U.S.C. § 552), any activity prohibited by civil service law, rule or regulation, or involvement of of any employee in discrimination found by any court or appropriate administrative authority.

Sec. 1303 : "The Office of Personnel Management, Merit Systems Protection Board, and the Special Counsel may investigate and report on matters concerning --

(1) the enforcement and effect of the rules prescribed by the President under this title for the administration of the competitive service and the regulations prescribed by the Office of Personnel Management under section 1302 (a) of this title; and

(2) the action of an examiner, a board of examiners, and other employees concerning the execution of the provisions of this title that relate to the administration of the competitive service."

Civil Service Rule 5.4 (5 C.F.R. § 5.4) provides as follows:

"When required by the Office [of Personnel Management], the Merit Systems Protection Board, or the Special Counsel of the Merit Systems Protection Board or by authorized representative of these bodies, agencies shall make available to them, or their authorized representatives, employees to testify in regard to matters inquired of under the civil service laws, rules, and regulations, and records pertinent to these matters. All such employees, and all applicants and eligibles for positions covered by these rules shall give to the Office, the Merit Systems Protection Board, the Special Counsel, or to their authorized representatives, all information, testimony, documents, and material in regard to the above matters, the disclosure of which is not otherwise prohibited by law or regulation. These employees, applicants, and eligibles shall sign testimony given under oath or affirmation before an officer authorized by law to administer oaths. Employees are performing official duty when testifying or providing evidence pursuant to this section."