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October 9, 2014

†ADMITTED IN VA ONLY  
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**VIA ELECTRONIC MAIL TO**  
**ANNIE.LEFTWOOD@COMPLIANCE.GOV**  
**AND FACSIMILE TO (202) 426-1913**

Barbara Sapin  
Executive Director  
Office of Compliance  
110 Second Street, S.E.  
LA-200  
Washington, DC 20540-1999

***Re: Notice of Proposed Rulemaking Regarding Office of Compliance Procedural Rules***

Dear Ms. Sapin:

The Office of Compliance's Notice of Proposed Rulemaking ("NPR") regarding the above was published in the Congressional Record on September 9, 2014 (H7372-H7385; S5447-S5460). In accordance with the NPR, comments are to be submitted by October 9, 2014.

The U.S. Capitol Police Labor Committee offers the following comments and observations regarding the proposed NPR. The Office of Compliance's attempts to streamline its complaint and hearing processes are admirable, but open those processes to abuse, and risk subjecting complaining employees to unreasonable delay tactics.

Specifically, the changes proposed to Section 1.05(c), permit the parties to engage in "reasonable prehearing discovery," without defining what types of discovery are reasonable, or the volume of discovery that is appropriate, given the limited time between the filing of a Complaint and any hearing. The previous language, permitting discovery only as authorized by the Hearing Officer was more equitable because the Hearing Officer had greater control over the proceedings, and better ability to prevent discovery abuses, or either party's use of delay tactics. Additionally, application of the Federal Rules of Civil Procedure to the types and volume of discovery may be helpful to the parties' understanding of the process.

Executive Director Barbara Sapin  
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Likewise, the NPR implements (at Section 7.02(b)(4)) a procedure for filing of frivolous claims. This new procedure could give an Employing Office the opportunity to file what amounts to two motions to dismiss because it is unclear from the proposed regulations what types of claims are frivolous, or what types of claims will be found to be frivolous. Instead, allegations that a claim is frivolous should be resolved through a motion to dismiss, which is referenced in Section 5.01(g).

The proposed changes to filing methods accepted by the Office are reasonable. Section 1.03(c), (d). However, the computation of time for responses to documents filed by electronic mail or FAX should include a service period, or at least the time for response should not start until the business day after the filing, to prevent parties from filing at the last minute and effectively lessening the non-filing party's response time by one day.

Finally, the proposed addition to Section 5.01(b), granting the Executive Director "discretion" to return an early-filed Complaint to the complaining employee is not sensible. A more logical approach is for the Executive Director to return all early filed Complaints to the complaining employee for filing within the prescribed period, and with an explanation of the applicable time limits.

Should you have any comments about the Labor Committee's comments and response to the NPR, please let me know. Thank you for the opportunity to submit comments regarding the proposed changes to the Office of Compliance's procedural rules.

Sincerely,

WOODLEY & MCGILLIVARY LLP



Megan K. Mechak

cc: James Konczos, Chairman, U.S. Capitol Police Labor Committee (via electronic mail)