

**U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-hearing Questionnaire
For the Nomination of Dennis Dean Kirk to be
Member and Chairman, Merit Systems Protection Board**

I. Nomination Process and Conflicts of Interest

1. Did the President give you specific reasons why he nominated you to be the Chairman of the Merit Systems Protection Board (MSPB)?

I have not met with the President, nor has he given me reasons (specific or otherwise) for my selection.

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

None. No conditions, expressed or implied, were attached to my nomination.

3. Have you made any commitments with respect to the policies and principles you will attempt to implement as Chairman of the MSPB? If so, what are they, and to whom the commitments made?

No.

4. Are you aware of any business relationship, dealing, or financial transaction that could result in a possible conflict of interest for you or the appearance of a conflict of interest? If so, please explain what procedures you will use to recuse yourself or otherwise address the conflict. And if you will recuse yourself, explain how you will ensure your responsibilities are not affected by your recusal.

No. I have closed my law firm of Dennis Dean Kirk, Esq. I have terminated all contract partner business relationships with Schmitz and Soccares, LLP. For your information, I will resign from being Commissioner of the Fairfax County (VA) Consumer Protection Commission. I will avoid all conflicts of interest and appearance of conflicts, pursuant to applicable laws, rules, and regulations. The recusal of one MSPB member on any single matter does not prevent that matter being adjudicated.

II. Background of the Nominee

5. What specific background and experience affirmatively qualify you to be Chairman of MSPB?

I have 40-plus years' experience as an attorney representing employees before administrative agencies, courts, and companies; litigating matters relating to such issues on their behalf. I created a U.S. Department of the Army Office of General Counsel (OGC) Alternative Dispute Resolution group. While in the Army OGC, I managed about

200 military and civilian attorneys involving Army employee modernizations, updates of processes, and strategic policy improvements.

6. What experience, if any, do you have in deciding cases, resolving disputes, or performing the other duties required in serving as Chairman of the MSPB?

Created an Alternate Dispute Resolution Office for the Army OGC. I have more than 40 years' experience representing matters in court, civil, criminal, mediation, arbitration, and administrative procedure actions serving employees. I also have 35 years as a Commissioner on the Fairfax County (VA) Consumer Protection Commission.

7. Please describe:
a. Your leadership and management style.

Collaborative; listening to all points of view; researching Constitution, laws, and regulations; and engaging in discussions with colleagues before decisions.

- b. Your experience managing personnel.

Managed more than 200 military and civilian attorneys in the Army OGC for modernization into the 21st Century. Created, organized, and ran *Lean Six Sigma* business improvement teams for attorneys.

- c. What is the largest number of people that have worked under you?

More than 200 Army attorneys (military and civilian) that I personally managed in 15 team units over a 2-year period.

III. Role of Chairman, MSPB

8. The Civil Service Reform Act requires that individuals appointed to the MSPB "demonstrate[] [the] ability, background, training, or experience" necessary to "carry out functions of the Board."¹ Please describe how your abilities, background, training, and experience qualify you for the position of Chairman of the MSPB.

My civilian and government-related practice for the last 40+ years as a Federal civilian employee, political appointee, and Highly Qualified Expert in employment law, has served to hone my skills and enable my service to offer employees a fair hearing of their grievances, guide studies to improve processes, and develop agency-to-agency relationships.

¹ 5 U.S.C. § 1201.

9. In your opinion, what is the role of the MSPB? What is the role of Chairman in carrying out the statutory objectives of the MSPB?

For both questions, I would follow the enabling statute. 5 U.S.C. §1204 sets forth MSPB's main responsibilities to (1) adjudicate matters within its jurisdiction and enforce compliance; (2) conduct special studies relating to the civil service and to other merit systems in the executive branch; and (3) review significant rules and regulations of the Office of Personnel Management (OPM). Pursuant to 5 U.S.C. § 1203(a), the Board Chairman is the chief executive and administrative officer of the agency.

10. MSPB's mission is to "protect the Merit System Principles and promote an effective Federal workforce free of Prohibited Personnel Practices." How do you envision fulfilling MSPB's mission both day-to-day, and long-term?

To serve and protect the merit system principles, fairly adjudicate whistleblower claims, and maintain the integrity of the Federal civil service. Study the workforce for continuous and steady improvements and report to Congress and the American people about its governance.

By following the Constitution, laws, rules, and regulations, in all matters; including, but not limited to, deciding matters fairly and without bias. Protecting the merit system principles to produce an equitable process for all employees to enforce their rights and privileges while meeting their duties and responsibilities to the public.

11. What do you anticipate being the greatest challenge you would face as Chairman of the MSPB, and how would you seek to prepare for and address those challenges?

A backlog reported to be over 1,300 cases. While not presuming confirmation, under the authority of 5 U.S.C. § 1204 (n), I will seek shared services with other agencies for temporarily assigned or detailed staffing to work through this backlog. I will seek to streamline and remove any obstructions or delays to fair adjudication.

12. What do you believe to be the top challenges facing the federal workforce today? What steps do you plan to take to address these challenges, if confirmed as Chairman? Please explain.

Communications, fair treatment, and solid knowledge of employee-employer expectations. Justice delayed is justice denied; so MSPB must provide employees with reliable and rapid service to hear and decide their cases as is possible and realistic.

13. Do you believe you will review and adjudicate cases that come before you with good judgment and impartiality? Please explain, citing examples of prior work or experience that could bear on your abilities, if applicable.

Yes. I have served for 35 years as a Commissioner of Consumer Protection for Fairfax County, VA, and heard hundreds of issues and dealt with each using an even, steady hand by understanding and following laws, rules, and regulations. When at the Department of the Army, all involved received impartial and unbiased results and equal justice.

IV. Policy Questions

14. What role do you think alternative dispute resolution options, including the Mediation Appeals Program, should play in the MSPB adjudication and enforcement process?

Alternate dispute resolution generally, and MSPB's Mediation Appeals Program (MAP) in particular, can move matters to conclusions and speedily help employees and agencies reach fair and equitable outcomes. MAP in-house mediators are trained and certified and operate confidentially. MAP is an excellent option when both parties agree to seek swift and just resolution of their cases, separate from their work with an adjudicating A.J.

15. MSPB is statutorily responsible for conducting oversight of the Office of Personnel Management's significant actions. How will you coordinate with OPM to ensure that significant actions conform to the merit systems principles outlined in 5 U.S.C. § 2301?

MSPB leadership and staff have a duty to examine OPM's significant actions under its statutory obligations (Title 5 of the U.S. Code). There will be regular lines of communication activated between the Chairman and the leadership of OPM to promote, foster, and encourage the merit system principles.

16. MSPB previously highlighted the need to examine the prevalence and forms of reprisal for protected activity, particularly for whistleblowing.² Do you view reprisal for whistleblowing as a significant challenge facing the federal workforce? Why or why not?

Yes. While I haven't seen recent data, I believe whistleblowers are a valuable, proven, critical enhancement of the Federal workforce system. They often provide a valued service by bringing to light violations of laws and waste, fraud, and abuse. Prohibited Personnel Practices are guarded against by whistleblowers. Reprisals are appropriately prohibited; and will be investigated by agencies and OSC, and adjudicated by MSPB.

² Merit Systems Protection Board, MSPB Research Agenda 2015-2018 (Feb. 2015), available at <https://www.mspb.gov/mspbsearch/viewdocs.aspx?docnumbe r=1140540&version=1145045&application=ACROBAT>.

17. In your opinion, is the underutilization of probationary periods a critical issue? If confirmed as Chairman of MSPB, what steps would you take to ensure that managers better utilize probationary periods?

Yes. Employee problems often show up in probationary periods and managers should address them at that time in a swift manner.

If confirmed, I would ask MSPB to continue to study this issue to find the facts. By using the best practices we identify, federal managers can create a modern and respected Federal workforce.

18. How do you view the role of information technology at MSPB as it relates to both day-to-day business and the overall mission objectives to uphold merit systems principles?

Effective information security and data management demands the best available technological improvements to protect the Federal worker, prevent undue privacy losses, and maintain future data safety. A robust information technology (IT) program enhances MSPB's ability to safeguard the merit system principles, thus benefitting both the government and employees.

The MSPB IT staff is assiduously working to bring the agency into the next decade. As Chairman, I will work with the IT staff to set priorities and goals. Technology is changing rapidly; and what seems appropriate now is likely to be obsolete in a few years.

19. What role do you think merit systems studies, published by MSPB, play in ensuring a competent and efficient federal workforce?

MSPB has the statutory authority under 5 U.S.C. § 1204 to conduct special studies of any aspect of the civil service or other merit systems to ensure that they are free of Prohibited Personnel Practices.

These studies provide cutting-edge operating data; allowing and prompting improvements in real time and giving agencies the chance to make relevant changes to improve results. The studies assist in the development of a competent and efficient Federal workforce.

- a. What steps would you take to ensure that MSPB's external reports address critical federal workforce issues?

MSPB must constantly be cognizant of the changing language, skills, and needs of the Federal workforce to provide next-generation information through research. The Board will offer guidance and direction to those research efforts through a 5-year agenda. The current research agenda covers 2013-2018, so a new agenda will be established by the new Board.

- b. What, if any, coordination do you believe should occur between MSPB and OPM to address federal workforce issues raised by MSPB studies?

MSPB oversees and promotes merit principles and adjudicates PPPs; while OPM handles personnel rules and serves as the President's HR operation. While we will continue to share useful information with OPM, it is important that MSPB operate within its statutory responsibilities.

20. According to MSPB's Fiscal Year 2017 annual report, 22 percent of MSPB employees, including 25 percent of administrative judges, are eligible to retire in the next two years. What steps will you take to ensure that MSPB conducts its own succession planning, so that you are able to execute your statutory duties?

While not presuming confirmation, in light of these statistics I will address this matter by studying the continuity of operations plan (COOP) that MSPB is currently utilizing. As appropriate, I anticipate launching staff recruiters to bring in talented entrants to the MSPB in time for orderly transitions, development, and training.

21. In March 2018, MSPB published an updated survey on sexual harassment in the federal workforce.³ In this survey, 20.9 percent of women in the federal workforce and 8.7 percent of men experienced a type of sexual harassment in the two years preceding the survey.⁴ Only eight percent of these employees believed corrective action was taken against the individual who committed the harassment, possibly resulting in employees not using agency procedures to report the harassment.⁵ What do you believe is the role of MSPB in ensuring accountability against harassers in the federal workplace and in ensuring employees can report harassment without reprisal?

Sexual harassment by managers and/or co-workers, is reprehensible and a Prohibited Personnel Practice. MSPB will take seriously claims of sexual harassment that are brought to us and adjudicate them appropriately. Promotion of workplace preventative education will increase freedom from Prohibited Personnel Practices.

22. What steps can MSPB take to improve federal supervisors' knowledge and intra-agency support regarding disciplinary and removal processes?

The OPM Learning Connection website has a training unit called "FY18 Addressing and Resolving Poor Performance" that gives intensive supervisor and management training within the laws and regulations. MSPB should continue such educational efforts, as this document is easy to follow and teaches how to manage employees properly in such circumstances.

³ Merit Systems Protection Board, Update on Sexual Harassment in the Federal Workforce (Mar. 2018), available at <https://www.mspb.gov/MSPBSE/ARCH/viewdocs.aspx?docnumber=1500639&version=1506232&application=ACROBAT>.

⁴ *Id.* at 4.

⁵ *Id.* at 8.

23. Protecting whistleblower confidentiality is of the utmost importance to this Committee.

a. During your career how have you addressed whistleblower complaints?

I have vigorously done so in both civilian legal practice and Federal career attorney service. In all of such cases, I have advocated for whistleblower protections.

b. How do you plan to implement policies within the MSPB to encourage employees to bring constructive suggestions forward without the fear of reprisal?

Not presuming confirmation, I will continue MSPB's educational efforts on recognizing the right of whistleblowers to report waste, fraud, abuse, and similar offenses. MSPB has a website that covers these matters in detail. Its work under the NoFEAR Act is extensive and ongoing.

c. Do you commit without reservation to work to ensure that any whistleblower within MSPB does not face retaliation?

Yes.

d. Do you commit without reservation to take all appropriate action if notified about potential whistleblower retaliation?

Yes.

V. Relations with Congress

24. Do you agree without reservation to comply with any request or summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Yes, pursuant to following the laws and regulations allowing such disclosures or actions.

25. Do you agree without reservation to make any subordinate official or employee available to appear and testify before, or provide information to, any duly constituted committee of Congress if you are confirmed?

Yes, pursuant to following the laws and regulations allowing such disclosures or actions.

26. Do you agree without reservation to comply fully, completely, and promptly to any request for documents, communications, or any other agency material or information from any duly constituted committee of the Congress if you are confirmed?

Yes, pursuant to following the laws and regulations allowing such disclosures or actions.

VI. Assistance

27. Are these answers your own? Have you consulted with MSPB or any other interested parties? If so, please indicate which entities.

Yes. I have consulted with MSPB Acting Chairman Mark A. Robbins.

**Minority Supplemental Pre-hearing Questionnaire
For the Nomination of Dennis Dean Kirk to be
Member and Chairman, Merit Systems Protection Board**

I. Nomination Process and Conflicts of Interest

1. Has the President or his staff asked you to sign a confidentiality or non-disclosure agreement?

No.

2. Has the President or his staff asked you to pledge loyalty to the President or the Administration?

No.

3. Have you ever represented a party in a matter before or involving the Merit Systems Protection Board (MSPB)?
 - a. If so, please describe the matter(s) and the nature of the representation.

Yes. I represented a military and civilian Federal retiree who was denied benefits by OPM. I won the case; plus was awarded attorneys fees' for client reimbursement.

4. As owner of the *Law Offices of Dennis Dean Kirk*, have you or anyone else associated with the firm, ever represented a company headquartered outside the United States?
 - a. If so, please provide the name of the client, along with a description of the matter(s) and the nature of the representation.

Yes. In about 1984, I negotiated and represented a one-time contract where Cometto Industries (Milan, Italy) sold the Space Shuttle's land transport carrier computerized motor vehicle to NASA. This vehicle moved the Shuttle around the Space Dock Yards.

In addition, I searched myself on the computer this morning and came across an article that mentioned a case I had very limited involvement with, and had completely forgotten about: *PETA v. Sally Jewell, Secretary of the Interior, & U.S. Fish & Wildlife Service* (Case No. 1:15-CV-00600, E.D.VA, Judge Claude Hilton). Filed, May 8, 2015, dismissed for lack of jurisdiction, September 8, 2015.

I represented The Conservation Force, Dallas Safari Club, and Republic of Namibia (Ministry of Environment and Tourism), all of which were seeking to support the U.S. Government against this suit to force it to cease importation of hunting trophies. I filed a motion to intervene as co-defendants on May 8, 2015. This motion was never ruled on, as the U.S. Government was granted its motion to dismiss for lack of jurisdiction four months later and the case was dismissed.

My understanding is that The Conservation Force sought the support and approval of the tourism hunting section of the Republic of Namibia's Ministry of Environment and Tourism. As a result, Namibia agreed to participate in the intervention motion. I never had direct or indirect contact with anyone from Namibia.

My short representation was done as a favor to a friend who was past president of the Safari Club, and also head of The Conservation Force. He is an attorney with a practice in Florida. His staff prepared the motion and had all the contact with the three clients. As a member of the Virginia bar, and admitted to practice in the E.D. VA, I was happy to be of assistance.

I charged no legal fees for my representation, and only billed the filing fee of \$75. While I represented these clients in my single capacity of the Law Office of Dennis Dean Kirk, the filing fee was billed through the system of Schmitz and Socarras, LLP.

I sincerely regret this omission from my original responses.

5. As partner of either *Schmitz and Socarras, LLP* or *Joseph E. Schmitz, LLP*, have you or anyone else associated with the firm, ever represented a company headquartered outside the United States?

- a. If so, please provide the name of the client, along with a description of the matter(s) and the nature of the representation.

As an outside contracted "partner" to *Schmitz and Socarras, LLP* or *Joseph E. Schmitz, LLP*, I was not aware of any such matter. Other than as identified above, I have never any person or entity headquartered outside the United States.

6. Are you aware of any MSPB matters brought against one or more of your current partners at *Schmitz and Socarras, LLP*?

- a. If so, please provide the name of the partner, along with a description of the matter? How will you address matters brought against individuals associated with your current firm?

No.

II. Background of Nominee

7. Have you represented a whistleblower or other employee in an adversarial dispute against the federal government?

Yes. Cases before FBI, DOD, CIA and State Department as well as other government agencies. Those persons are concerned about damages to their privacy and their personal protection, so I cannot discuss or divulge their names or secrets.

8. Do you seek out dissenting views and how do you encourage constructive critical dialogue with subordinates?

Constructive, diverse dialogue sharpens the discussion, creating more logical legal reasoning, and gets subordinates and colleagues engaged in energetic approaches and governance.

9. What would you consider your greatest successes as a leader?

Building collaborative consensus to create and achieve the best transforming modernization outcomes in government.

10. Why do you want to serve as Chairman of MSPB?

I would like to ensure positive, energetic, and meaningful merit systems protections and strong employee (e.g., whistleblower) rights by the MSPB in its duty as adjudicator of the merit system principles.

11. Have you sought advice about the functioning of MSPB and your potential role?

I have asked the Acting Chairman about positive opportunities that may exist, when a quorum is restored, on addressing the backlog.

12. Through your experience, what practices would you consider vital to managing a federal workforce?

The merit system principles help reduce instances of Prohibited Personnel Practices, and create a wholesome well-respected modern workforce where employees are proud to serve. When an agency fails its workers, whistleblowers must be protected. Studies of regulatory methods are essential to checking means and methods used today to improve tomorrow's workplace for all federal workers.

13. How would you handle jurisdictional issues between agencies similar to MSPB, like the Equal Employment Opportunity Commission?

In accordance with Congressionally passed laws and limits, I would adhere to the established jurisdictional issues. Collaborative discussions with Congress and these agencies will smooth out conflicts when they occur.

14. Do you have experience addressing instances of prohibited personnel practices (PPPs)? If so, please generally describe those instances.

While protecting clients' legal secrets, I have prevented political influences in the workforce, and represented clients that suffered PPPs.

15. Do you have any experience adjudicating matters? If so, please provide an example.

As an example, I have served for over 35 years as a Commissioner of the Fairfax County (VA) Consumer Protection Commission. This work involved hearing and adjudicating multi-issue disputes between parties, reviewing cable TV license applications, food license revocations, regulatory discipline matters of business employees, etc.

16. If confirmed, as Chairman, you would be able to delegate certain responsibilities. Please describe how your experience will assist you in delegating authority in an efficient manner. What responsibilities would you seek to maintain for yourself?

I practiced delegation using *Lean Six Sigma* when managing Army OGC teams. Each had anywhere from 3 to 30 in a group (up to 5 groups at a time of 10-15 each). I delegated to Team Captains and/or group leaders the daily and middle management responsibilities, leading by example and by oversight of a nature to gain knowledge and results while fostering their personal achievements. I also practiced delegation by creating and using sub-committees and committees in my work with the Consumer Protection Commission.

17. How will your experience help MSPB maintain MSPB's Merit System Principles (MSPs)?

The merit system principles viewed in light of a modern Federal workforce that functions to serve the American public, must be zealously preserved, promoted, and protected. I have done so for my clients and my agencies, and will do so for MSPB if confirmed.

III. Policy Questions

18. Precedents, findings, recommendations and reviews of Office of Personnel Management (OPM) rules by the MSPB have potential to directly affect how employees are managed and how their appeals are decided. What role do you believe the MSPB should play in developing personnel policy?

None. MSPB must follow the Constitution, laws, and precedents to adjudicate high quality personnel decisions in accord with the merit system principles serving the Federal workforce; thereby preventing Prohibited Personnel Practices and retaliation against whistleblowers.

19. The MSPB has the statutory responsibility to conduct objective, non-partisan studies that assess and evaluate Federal merit systems policies, operations, and practices. These studies are typically government-wide in scope and ensure that the workforce is managed in accordance with MSPs and is free from PPPs. What role do you believe MSPB's data collection should play in supporting personnel policy?

It is essential that good, reliable, proven data be obtained to ensure integrity of conclusions and findings of MSPB proceedings. To support personnel policy, MSPB is the guardian at the gates; conducting studies to get on the ground facts to inform Federal personnel decisionmakers.

20. MSPB has been without a quorum of Board members since January 8, 2017. The lack of a quorum contributes to delays in issuing final decisions in petitions for review (PFRs) and other cases filed at headquarters (HQ) and releasing reports of merit systems studies.

- a. The MSPB currently estimates that it will take months or longer to process the inventory of cases at HQ and to publish merit systems studies reports once new Board members are nominated and confirmed. Please describe how you will effectively and promptly address MSPB's current backlog.

Not presuming confirmation, the authority of 5 U.S.C. § 1204 (n), may allow the Board to seek and expand partnerships with other agencies to accept shared services, and borrow detailees for ALJ, AJ and attorney functions. This brings to bear the increased temporary workforce needed to swiftly reduce the administrative backlog.

- b. Please describe how your previous work experience has prepared you to address the challenges in resolving MSPB's backlog.

In the Army, utilizing *Lean Six Sigma* and OGC modernization, I was able to partner with DoD entities to achieve exceptional temporary increases far beyond assigned regular staff there. I created great results by delivering products no one had achieved before then.

- c. The MSPB Vice Chairman has voted on over 800 PFR cases which also await consideration by new Board members. If confirmed, please describe how you will work with your colleagues to consider cases awaiting decisions.

Working together gets results. Each member is statutorily empowered to research, conclude, and write their own opinions. Collegial concurrences are both desirable and probable as the laws are clear in many areas.

- d. Do you have experience with resolving backlogs such as the one faced by MSPB? If so, please describe your experience.

Yes. There was a years' long delay in processing persons offering to serve as volunteer experts on the Army Science Board. This caused applications of exceptional people to stall and many withdrew. I assembled a *Lean Six Sigma* team, rewrote the flowchart, and changed the system managing the governance, and capping delays to 90 days maximum.

- e. Have you sought advice from any current or former MSPB employees about how to best address the current backlog? If so, please describe your consultations.

I have discussed the backlog in general with Mark Robbins, current Acting Chairman, and beyond the need for a 3 person board quorum nothing specific was mentioned.

21. MSPB functions as an independent, third-party adjudicatory authority for employee appeals of adverse actions (e.g., removals, suspensions for more than 14 days, and furloughs) and retirement decisions.

- a. Please describe your experience in developing adjudicatory processes and procedures, issuing subpoenas, calling witnesses and enforcing decisions.

As a trial attorney, I have dealt for 40+ years with complex multijurisdictional local, state, and Federal litigation, as well as litigated and been consulted on administrative agency law cases. I have often litigated trials in courts, and before administrative agencies in civil and criminal matters involving subpoenas, witnesses, and enforcement of judgments and court orders.

- b. Please describe how your previous work experience has prepared you to execute and supervise these actions at MSPB.

As a highly experienced litigator, I am confident in my ability to execute and supervise these actions at MSPB.

22. How should Board members seek to safeguard their independence?

Members of this independent Board must follow their duties and obligations under the Constitution, laws, regulations, and precedents; and they must stay strong in their independence to collaborate with their fellow members and observe rights and privileges of each of the members.

23. MSPB was given the authority and responsibility to review the rules, regulations, and significant actions of OPM. Do you have any concerns about OPM's current rules, regulations or recent actions? If so, please describe those concerns.

Not presuming confirmation, I cannot prejudge OPM actions at this point, as it would be prejudicial to a careful analysis to be conducted under our MSPB duties and obligations once in office.

24. Do you believe MSPB has the resources it needs to meet current challenges? Please explain.

It will need to address the more than 1,300 case backlog—when its normal process decision flow is approximately 75 cases per month (according to acting Chairman Mark Robbins), so borrowed resources of solid ALJs, AJs, and other attorneys might be needed.

25. How will you address the occurrence of PPPs with internal employees of MSPB?

Prohibited Personnel Practices are not to be tolerated, and I have no data on procedures at MSPB currently, so cannot comment on what is not known. I always would discourage PPPs.

26. In some cases, complainants who may be better served by other government agencies such as the EEO or OSC seek assistance from the MSPB.

- a. How will you work to ensure that your staff effectively guides these complaints to the appropriate resources?

By training in-house, the MSPB employee customer services can identify, properly address, and deliver options to complainants.

- b. Will you collaborate with other government agencies to minimize duplication? If so, please describe how you will work to achieve this objective.

Yes. Informational meetings, joint training sessions, and data exchanges will do a great deal to help resolve this objective. In addition, it will be continually studied for improvement in avoiding duplication.

Hatch Act

27. What would you consider to be an appropriate penalty for a violation of the Hatch Act by a senior administration official?

The Board does not adjudicate alleged Hatch Act violations by senior administration officials.

Whistleblower protections

28. Please describe any previous experience-in the public or private sector-with handling whistleblower complaints, and what steps you took to ensure those individuals did not face retaliation and that their claims were thoroughly investigated?

As private counsel to private corporate entities, contractor employees, and federal employees "blowing the whistle" on corrupt, criminal, fraud, or just waste and abuse issues, I zealously and vigorously fought as their champion defending their legal rights in every effort legally possible.

29. OSC has filed an amicus brief opposing an MSPB decision that ruled against a whistleblower alleging retaliation because the MSPB said the whistleblower's disclosure was motivated by "interpersonal squabbling." Do you believe that the motive of the whistleblower should be considered when examining retaliation claims? Please explain.

Not presuming confirmation, but I must not opine on what I do not now know and certainly do not want to prejudge any potential issues I may be addressing later.

30. OSC filed three amicus briefs in 2017 opposing the MSPB's alleged attempts to impose higher procedural burdens on whistleblowers. Do you believe that whistleblowers should be subjected to higher procedural burdens before their cases are considered by administrative judges? Please explain.

Not presuming confirmation, but I must not opine on what I do not now know and certainly do not want to prejudge any potential issues I may be addressing later.

31. OSC has also filed amicus briefs opposing the application of higher evidentiary burdens on whistleblowers. OSC has written that this burden "runs directly counter to Congress's intent in passing the WPEA's enhanced protections for federal whistleblowers." Do you believe that any whistleblowers should be subjected to higher evidentiary burdens? Please explain.

Not presuming confirmation, but I must not opine on what I do not now know and certainly do not want to prejudge any potential issues I may be addressing later.

32.If confirmed, how will you ensure that whistleblower complaints are properly investigated?

The protection of whistleblowers is a paramount function for good federal governance, and it is an essential protection of the workforce. Nothing less than an intense attention and assurance from OSC and MSPB of these employees is mandatory in my own opinion.

IV. Relations with Congress and the Public

33.If confirmed, how will you make certain that you will respond in a timely manner to Member requests for information?

Not presuming confirmation, I certainly will examine MSPB's Congressional relationship to build, foster and promote rapport to develop greater openness, transparency, and better partnerships.

34.If confirmed, do you agree without reservation to reply to any reasonable request for information from the Ranking Member of any duly constituted committee of the Congress?

Yes, pursuant to following the laws and regulations allowing such disclosures or actions.

35.If confirmed, do you agree without reservation to reply to any reasonable request for information from members of Congress?

Yes, pursuant to following the laws and regulations allowing such disclosures or actions.

36.If confirmed, do you commit to take all reasonable steps to ensure that you and your agency comply with deadlines established for requested information?

Yes.

37.If confirmed, do you commit to protect subordinate officials or employees from reprisal or retaliation for any testimony, briefings or communications with members of Congress?

Yes.

38.If confirmed, will you ensure that your staff will fully and promptly provide information and access to appropriate documents and officials in response to requests made by the Government Accountability Office (GAO) and the Congressional Research Service?

Yes.

39. If confirmed, will you agree to work with representatives from this Committee and to promptly implement recommendations for improving MSPB's operations and effectiveness?

Yes, pursuant to following the laws and regulations allowing such disclosures or actions; and presuming additional funding provided for additional personnel for such actions.

40. If confirmed, will you direct your staff to fully and promptly respond to Freedom of Information Act requests submitted by the American people?

Yes.

41. If confirmed, will you ensure that political appointees are not inappropriately involved in the review and release of Freedom of Information Act requests?

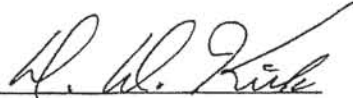
Yes.

VI. Assistance

42. Are these answers your own? Have you consulted with MSPB or any other interested parties?
If so, please indicate which entities.

Yes. I have consulted with MSPB Acting Chairman Mark A. Robbins.

I, Dennis Kirk, hereby state that I have read the foregoing Pre-Hearing Questionnaire and Supplemental Questionnaire and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.


(Signature)

This 18th day of July 2018