

[REDACTED]

November 30, 2009



Federal Bureau of Investigation
Human Resources Division
Attn: Assistant Director John G. Raucci
935 Pennsylvania Ave. NW
Washington, D.C. 20535

Re: Special Agent Applicant File #67B-HQ-[REDACTED]
[REDACTED]

Subject: Request for Notice of Appellate Procedure



Dear Assistant Director Raucci,

Applicant references his conditional appointment to the office of Special Agent, which appointment was made by the Assistant Director on 5/6/2009. Applicant's conditional appointment was terminated by Acting Unit Chief Montchell Brice of SACU on 7/1/2009.

Applicant references his pending FOIPA requests of 7/23/2009, 8/20/2009, 9/7/2009, 9/20/2009, and 10/21/2009, pending FOIPA appeals of 9/9/2009 and 9/20/2009, letters to Acting Unit Chief Brice dated 9/16/2009 and 9/23/2009, letters to the Unit Chief of SACU dated 10/20/2009 and 11/21/2009, and letter to the Division Chief of the Security Division dated 11/24/2009.

Applicant advises being repeatedly denied information on how to appeal the negative suitability determination made by SACU on 6/30/2009. Not a single FOIPA request or letter from Applicant has been responded to except for a 7/6/2009 FOIPA request for the applicant file. The suitability determination and supporting FD-302 were then suppressed from the applicant file by way of artful FOIPA deletions, until Applicant filed an action with the Merit Systems Protection Board on 9/25/2009 and the documents were produced on 10/26/2009. The MSPB action is about to be dismissed for lack of jurisdiction, but it did yield the FD-302, a partially redacted suitability determination, and other interesting records.

Applicant requests notice and an opportunity to be heard regarding a false and misleading FD-302 that caused Applicant's disqualification from government service. Applicant contends in the MSPB appeal that a new Special Agent fabricated information, concealed other information from the FBI, attributed false statements to Applicant, and was willfully blind to excusing and mitigating information he requested and which Applicant provided.

According to the Special Agent's internet blog where he and his wife talk about how wonderful they are and what an inspiration they are to other people (including family members), the Special Agent in question graduated the Academy in approximately early May 2009. By applicant's calculation, the Special Agent was just two months into his probation when he represented to Applicant that he was, incredibly, in charge of Applicant's background investigation. The Special Agent then simply made up information to put in the backdated FD-302 rather than recording what was actually said during two telephone interviews with Applicant, the second of which is partially included in the backdated FD-302. The Special Agent also omitted the verifiers he asked for rather than actually pursuing those leads to their logical conclusion--contacting Applicant's two friends, who were in the best position to confirm that Applicant was not remotely "involved" in a purchase of less than \$100 of marijuana between the friends. Applicant has prepared his own FD-302's of the phone interviews with the Special Agent, as well as FD-302's of Applicant's interviews of his friends in which the friends quite vocally criticized Applicant for ever believing he could have been involved. Applicant's materials record the actual conversations with the Special Agent and what information was actually developed, as opposed to what was made up or misstated by the Special Agent. In support, Applicant looks forward to demonstrating in the appeal how the SACU Special Agent's version of the facts contradicts the version developed by three other Special Agents, reviewed by two Supervisory Special Agents, and provided by Applicant.



In any event, Applicant is defamed by a FD-302 and suitability determination that are, in Applicant's humble opinion as a layperson, a disgrace to the FBI. This is compounded by the Analyst's statement in an email message that she wishes to prevent Applicant from appealing the decision because Applicant is an attorney. Applicant has been prevented from appealing by being denied information on where and how to appeal, so it appears the Analyst's request was granted. From the development of information in the MSPB appeal, it appears this was part of an intentional effort to disqualify Applicant prior to the full background investigation, which according to both the Analyst and the Special Agent, was about to begin. Applicant contends in his MSPB action that Prohibited Personnel Practices and other violations of the Merit System occurred, and at this point anything could happen in the MSPB appeal due to the FBI's admission of jurisdiction.

Of further note, the discontinuation letter from the Acting Unit Chief to the Applicant Coordinator and other FBI components materially contradicts the suitability determination. The determination also contains a probably unauthorized curbstone opinion of law, contradicts the polygraph examination that Applicant passed, and contradicts the conclusions of multiple Special Agents and others as described above. A harmless incident went from being harmless to being the cause of Applicant's discontinuation due to a grossly inaccurate description in the FD-302, which is the sole basis for the suitability determination. The author of the FD-302 then deceived Applicant with the attached gratuitously cruel email message pretending that the author did not know exactly why Applicant was disqualified, and creating the false impression that Applicant might ever be able to reapply to the FBI.

Applicant cannot possibly work for any agency in the Federal system, much less the FBI, after being officially determined to be a criminal and unethical attorney with poor judgment and

no redeeming value due to a recent incident. Even assuming an ethical violation occurred (Applicant disputes this because an unenforced law and Proposition 215 Medical Marijuana were both involved), the far more serious and more recent ethical dilemmas elsewhere in applicant's application, including those described in the Phase II interview, were not discussed in the determination. For example, Applicant lost his job in May 2009 because Applicant disclosed his FBI application to his employer out of an ethical duty to protect clients (SF-86). A second example is how Applicant declined a gift worth \$8,000 from a client for whom Applicant and his boss obtained over \$20 million by aggressively litigating her divorce (Phase II interview). Despite these favorable ethical choices, the most recent of which was in May 2009, the Analyst states in a "presentation" that the May 2008 incident "cannot be mitigated" because of its recency. Applicant was rejected from the CIA, his second choice, clearly due to the CIA's reasonable assumption that mitigating information was considered in the FBI determination.



Because a libel case is a possibility that Applicant would rather not pursue, Applicant hopes there is somewhere in the FBI to present an appeal of the ill-advised and defamatory decree made by SACU and its personnel. The damages in a libel case could be of significant magnitude. May the Applicant receive contact from the Assistant Director's staff or another component of the FBI to discuss these matters further?

Sincerely,

[Redacted]

[Redacted]

cc: Assistant Director Candice M. Will
Office of Professional Responsibility

cc: Donna M. Beck, GP-700
Special Agent Recruitment and Selection Unit

cc: Division Chief
Security Division

cc: Unit Chief
Special Agent Clearance Unit

cc: Acting Unit Chief Montchell Brice
Special Agent Clearance Unit

cc: Applicant Coordinator
FBI San Francisco

