

Foundation of Los Angeles) in the Los Angeles Basin Region.

(1) An Overview of the Demographics of Poverty and Diversity in the Los Angeles Basin, including a presentation on the diversity of legal services to non-English speaking clients. Presented by program executive directors, staff, and community partners.

(2) An in-depth presentation of programs' substantive advocacy, with a specific focus on the problems of affordable housing and health care. Presented by programs' advocacy staff.

4. Consider and act on other business.
5. Public comment.

**FOR MORE INFORMATION CONTACT:** Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary of the Corporation, at (202) 336-8800.

**SPECIAL NEEDS:** Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336-8800.

Dated: November 1, 2002.

**Victor M. Fortuno,**

*Vice President for Legal Affairs, General Counsel & Corporate Secretary.*

[FR Doc. 02-28301 Filed 11-4-02; 10:12 am]

**BILLING CODE 7050-01-P**

## LEGAL SERVICES CORPORATION

### Sunshine Act Meeting of the Board of Directors Ad Hoc Committee on Performance Reviews of the President and Inspector General

**TIME AND DATE:** The Ad Hoc Committee on Performance Reviews of the President and Inspector General of the Legal Services Corporation's Board of Directors will meet on November 9, 2002. The meeting will begin at 1 p.m. and continue until conclusion of the committee's agenda.

**LOCATION:** The W Los Angeles Hotel, 930 Hilgard Avenue, Los Angeles, CA

**STATUS OF MEETING:** Except for approval of the committee's agenda and any miscellaneous business that may come before the committee, the meeting will be closed to the public. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(2) & (6)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR 1622.5(a) & (e)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

### MATTERS TO BE CONSIDERED:

*Open Session:*

1. Approval of agenda.

*Closed Session:*

2. Conduct a performance appraisal of the President of the Corporation.
3. Conduct a performance appraisal of the Acting Inspector General of the Corporation.

*Open Session:*

4. Consider and act on other business.

**FOR MORE INFORMATION CONTACT:** Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336-8800.

**SPECIAL NEEDS:** Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth Cushing at (202) 336-8800.

Dated: November 1, 2002.

**Victor M. Fortuno,**

*Vice President for Legal Affairs, General Counsel, and Corporate Secretary.*

[FR Doc. 02-28302 Filed 11-4-02; 10:12 am]

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## MERIT SYSTEMS PROTECTION BOARD

**[MSPB Docket No. SF-844E-01-0309-B-1]**

### Opportunity To File Amicus Briefs in *Visitacion Ancheta v. Office of Personnel Management*

**AGENCY:** Merit Systems Protection Board.

**ACTION:** The Merit Systems Protection Board has issued an opinion and order in the above-captioned case, in which it notes that it is seeking amicus briefs from interested parties. The issues that the Board would like any amicus brief to address are set forth in the Summary below. The Board's decision can also be accessed on the Board's Web site, [www.mspb.gov](http://www.mspb.gov).

**SUMMARY:** The appellant petitioned for review of an initial decision that affirmed a denial by the Office of Personnel Management (OPM) of her application for disability retirement. In April, 1994, the appellant was appointed to a City Carrier position in the U.S. Postal Service. About a year later, in July, 1995, she sustained a work-related injury, subsequently stopped working, and began receiving compensation for wage-loss from the Office of Workers' Compensation Programs (OWCP). In August, 1997, she accepted the Postal Service's "(r)ehab job offer" of a Modified Letter Carrier (MLC) position, and returned to work.

Effective February 10, 1998, she was removed from her City Carrier position for misconduct.

The appellant then filed an application for disability retirement under the Federal Employees' Retirement System (FERS). OPM denied the application in initial and reconsideration decisions, finding that she failed to establish she was disabled from performing the duties of the MLC position prior to her removal for misconduct. On appeal to the Board, the administrative judge (AJ) held a hearing and then issued the initial decision affirming OPM's final decision on the same grounds set forth by OPM. He found that: (1) The agency had, in effect, been able to accommodate the appellant's medical restrictions in the MLC position; and (2) the appellant did not show that she was unable to work in that position because of a disabling medical condition. The appellant timely filed a petition for review, arguing that the AJ erred by finding her capable of performing the MLC duties. OPM timely filed a response opposing the appellant's petition.

A claim for disability retirement under FERS may be allowed only if an application is filed with OPM before separation from the service or within one year thereafter, unless waiver of this time limit is warranted for mental incompetence. 5 U.S.C. 8453; 5 CFR 844.201(a). Upon filing a timely application, the applicant must establish that: (1) She completed at least eighteen months of creditable civilian service; (2) she was unable, because of disease or injury, to render useful and efficient service in her position; (3) her disabling medical condition is expected to continue for at least one year from the date the application is filed; (4) she was not afforded reasonable accommodation of her disabling condition in her position; and (5) she has not declined a reasonable offer of reassignment to a vacant position in the employing agency for which she is qualified, at the same or greater grade (or pay level), in her commuting area, and in which she is able to render useful and efficient service. 5 U.S.C. 8451(a); 5 CFR 844.103(a).

The record shows, and it is undisputed, that the appellant timely filed her application for disability retirement and that she had completed at least eighteen months of creditable civilian service. Both the AJ and OPM found that the appellant did not show she was disabled from performing the duties of the MLC position. However,

neither considered whether the court's decision in *Bracey v. Office of Personnel Management*, 236 F.3d 1356 (Fed. Cir. 2001), applied to this case. The Board thus found that further proceedings to address this are necessary.

In *Bracey*, the Board's reviewing court considered whether an employee's assignment to the light-duty shop, where he retained the grade and pay of his Electronics Worker position of record but performed the lower-graded duties of Material Examiner and Identifier, constituted an accommodation precluding his disability retirement under the Civil Service Retirement System. The court held that an accommodation precludes disability retirement only if it: (1) Adjusts the employee's job or work environment, enabling him to perform the critical or essential duties of his current position of record, or (2) reassigns the employee to an established, vacant position at the same grade and pay. 236 F.3d at 1358–59, 1361.

The court explained that an agency's offer of a light duty position that is not officially classified and graded and consists of unclassified, ad hoc duties devised to fit an employee's particular medical restrictions does not qualify as a "vacant position," as that term is used in 5 U.S.C. 8337(a) and 5 CFR 831.1202, and therefore does not preclude disability retirement. *Id.* at 1359–60. The court in *Bracey* acknowledged that an employing agency may offer suitable work, under the Federal Employees' Compensation Act (FECA), which the employee must accept to continue receiving FECA benefits. 236 F.3d at 1362. The court stated, however, that "the employee is free to refuse the offer of such work and to take disability retirement instead of the FECA benefits" and that "there is nothing anomalous about the fact that an employee may be eligible for one set of benefits while being ineligible for the other." *Id.* The court thus concluded that *Bracey's* assignment to the light-duty shop did not constitute an accommodation within his position of record since he did not perform the critical and essential duties of the position but performed lower-graded duties instead. *Id.* at 1360–61. The court further concluded that the assignment did not constitute a reassignment to a vacant position since the light duty position consisted of "a set of duties selected on an ad hoc basis to fit the needs of a particular disabled employee" and was not a definite, preexisting position that is classified and graded according to its duties, responsibilities, and qualification requirements. *Id.* at 1359–60. In *Marino*

*v. Office of Personnel Management*, 243 F.3d 1375, 1377 (Fed. Cir. 2001), the court held that this holding in *Bracey* applies equally to disability retirement applications under FERS, such as is involved here.

In finding that a "vacant position," as that term is used in the retirement statute and regulations, must be "an officially established position that is graded and classified," 236 F.3d at 1359, the court relied on 5 U.S.C. 5101(2), which requires that positions in agencies covered by 5 U.S.C. 5102 be "grouped and identified by classes and grades \* \* \*" *Id.* at 1359–60. In *Bracey*, the appellant's employing agency, the Department of the Navy, was an executive agency and therefore covered by 5 U.S.C. 5101. *See* 5 U.S.C. 5102. In this case, however, the appellant was employed by the Postal Service, which is not an agency covered by section 5101. *See Robinson v. U.S. Postal Service*, 63 M.S.P.R. 307, 320 (1994) (acknowledging that the Postal Service is not covered by section 5101 but concluding, that, for RIF purposes, that agency was required to follow general classification principles, such as assigning grade levels to positions rather than to employees). In her dissenting opinion in *Bracey v. Office of Personnel Management*, 83 M.S.P.R. 400, 421 n.5 (1999), then-Vice Chair Slavet questioned whether the factors pertinent to the accommodation issue in that case might be inapplicable to disability retirement appeals involving the Postal Service. She noted that the Postal Service is exempt from "[m]any aspects of the executive branch personnel system," such as Title 5 classification rules, and is governed by a collective bargaining agreement that may bind the agency in accommodating disabled employees. *Id.* She found it unnecessary to resolve this question since *Bracey* did not involve the Postal Service, nor did the court address this issue. However, this issue is squarely presented in this case, which involves a former Postal Service employee who was covered by a collective bargaining agreement. The appellant was covered by the agreement between the Postal Service and the National Association of Letter Carriers, AFL–CIO.

Therefore, because the Board has not heretofore considered whether *Bracey* applies in the context of the Postal Service, the Board requests amicus briefs from the USPS, its bargaining agents, and all other interested individuals or organizations on this issue.

**DATES:** All briefs in response to this notice shall be filed with the Board's

Western Regional Office on or before December 31, 2002.

**ADDRESSES:** All briefs should include the case name and docket number noted above (*Visitacion Ancheta v. Office of Personnel Management*, Docket No. SF–844E–01–0309–B–1) and be entitled "Amicus Brief." Briefs should be filed with the Western Regional Office, Merit Systems Protection Board, 250 Montgomery Street, Suite 400, San Francisco, CA 94104.

**FOR FURTHER INFORMATION CONTACT:** Shannon McCarthy, Deputy Clerk of the Board, or Matthew Shannon, Counsel to the Clerk, (202) 653–7200.

Dated: November 1, 2001.

**Bentley M. Roberts, Jr.,**

*Clerk of the Board.*

[FR Doc. 02–28254 Filed 11–5–02; 8:45 am]

**BILLING CODE 7400–01–P**

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## NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

### Submission for OMB Review; Comment Request

**AGENCY:** National Endowment for the Humanities, NFAH.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Humanities (NEH) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval as required by the provisions of the Paperwork Reduction Act of 1995 (Pub.L. 104–13, 44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling Ms. Susan G. Daisey, Director, Office of Grant Management, at the National Endowment for the Humanities, (202–606–8494) or may be requested by e-mail to [sdaisey@neh.gov](mailto:sdaisey@neh.gov). Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Humanities, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed above as soon as possible.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) is particularly interested in comments which: