

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**WAYNE F. WIGGINS,**  
*Petitioner,*

v.

**MERIT SYSTEMS PROTECTION BOARD,**  
*Respondent.*

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2011-3114

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Petition for review of the Merit Systems Protection Board in case no. CH0752100618-I-1.

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**ON MOTION**

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Before LINN, *Circuit Judge.*

**ORDER**

The Merit Systems Protection Board (MSPB) moves to strike portions of the joint appendix and Wayne F. Wiggins' (Wiggins) opening brief. Wiggins opposes.

Rule 16 of the Rules Federal Rules of Appellate Procedure provides that the record on appeal is generally limited to the original papers and exhibits filed at the

agency, in this case the Merit Systems Protection Board. Although the Rules of Evidence authorize judicial notice of certain facts outside of the record, the court is not persuaded that such action is warranted here.

Upon consideration thereof,

IT IS ORDERED THAT:

The motion is granted. Wiggins must file a corrected brief and a corrected appendix that does not contain or refer to the stricken material within 21 days of the date of filing of this order.

FOR THE COURT

JAN 03 2012

Date

/s/ Jan Horbaly

Jan Horbaly  
Clerk

cc: R. Mark Nasteff, Jr., Esq.  
Michael Carney, Esq.

s24

**FILED**  
U.S. COURT OF APPEALS FOR  
THE FEDERAL CIRCUIT

JAN 03 2012

JAN HORBALY  
CLERK