

MARTIN AKERMAN v. DEPARTMENT OF THE ARMY

Docket # DC-0752-23-0457-I-1

MOTION TO CERTIFY THE ORDER FOR INTERLOCUTORY APPEAL AND REBUTTAL TO
ALLEGATIONS OF FRIVOLOUS AND ME

Summary Page

Case Title : MARTIN AKERMAN v. DEPARTMENT OF THE ARMY

Docket Number : DC-0752-23-0457-I-1

Pleading Title : MOTION TO CERTIFY THE ORDER FOR INTERLOCUTORY APPEAL AND
REBUTTAL TO ALLEGATIONS OF FRIVOLOUS AND ME

Filer's Name : Martin Akerman

Filer's Pleading Role : Appellant

Details about the supporting documentation

#	Title/ Description	Mode of Delivery
1	Nevada Supreme Court Order Waiving Filing Fee	Uploaded

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Online Interview

1. Would you like to enter the text online or upload a file containing the pleading?

See attached pleading text document

2. Does your pleading assert facts that you know from your personal knowledge?

Yes

3. Do you declare, under penalty of perjury, that the facts stated in this pleading are true and correct?

Yes

**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
WASHINGTON REGIONAL OFFICE**

MARTIN AKERMAN,
Appellant,
V.
NATIONAL GUARD BUREAU,
Agency.

DOCKET NUMBER
DC-0752-23-0457-I-1

DATE: May 22, 2023

**MOTION TO CERTIFY THE ORDER FOR INTERLOCUTORY APPEAL AND
REBUTTAL TO ALLEGATIONS OF FRIVOLOUS AND MERITLESS FILINGS**

INTRODUCTION

The Pro Se Appellant, Martin Akerman, respectfully submits this motion to certify the order dated May 22, 2023, denying his motion to appoint a special panel, for interlocutory appeal to the MSPB. This submission also serves as a rebuttal to allegations of frivolous and meritless filings.¹ This filing is in connection with a Petition for Writ of Habeas Corpus.

MOTION TO CERTIFY THE ORDER FOR INTERLOCUTORY APPEAL

An ALJ may certify an interlocutory appeal only if (1) the ruling "involves an important question of law or policy about which there is substantial ground for difference of opinion," and (2) an "immediate ruling will materially advance the completion of the proceeding, or the denial of an immediate ruling will cause undue harm to a party or the public." *Id.* § 1201.92. An ALJ has substantial discretion in ruling on a motion to certify an interlocutory appeal. *See Schoenrogge v. Dep't of Justice*, 148 F. App'x 941, 945 (Fed. Cir. 2005) (unpublished); *Keefer v. Dep't of Agric.*, 92 M.S.P.R. 476, 480 (2002); *Robinson v. Dep't of the Army*, 50 M.S.P.R. 412, 418 (1991).²

¹ *Akerman v. Austin*, 2022 WL 16700382 (E.D.Va. Nov. 3, 2022) is not final / pending on appeal.

² [Squires v. MSPB, No. 4:19-CV-5-D, 2019 U.S. Dist. LEXIS 111010, at *15 \(E.D.N.C. July 3, 2019\)](#)

The Appellant respectfully submits this motion to certify the aforementioned order for interlocutory appeal to the MSPB, in accordance with 5 C.F.R. § 1201.91. This interlocutory appeal is appropriate where the ruling involves an important question of law or policy, and an immediate ruling will materially advance the completion of the proceeding or prevent undue harm.

REBUTTAL TO ALLEGATIONS OF FRIVOLOUS AND MERITLESS FILINGS

The allegations raised by the Appellant are not frivolous or meritless. The repeated shifting of blame by the Agency has denied the Appellant a fair and impartial hearing, crucial to establishing liability for the harm suffered.

The Appellant's requests are grounded in the principles of administrative law and due process. As per the holding of *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, the Appellant invokes deference to the MSPB to ensure a just and fair resolution of his case. His request for a status conference and discovery are aimed at revealing the truth behind the false arrest and imprisonment and to establish liability.

In line with *Copeland v. Walker*,³ *Gilstrap v. Godwin*,⁴ *Renfro v. Swenson*,⁵ and in keeping with the administrative state as formalized in 5 USC 551, the Appellant is exhausting all available

³ *Copeland v. Walker*, E.D.N.Y.2003, 258 F.Supp.2d 105, holds that federal courts may not grant a writ of habeas corpus to a state petitioner unless the petitioner has exhausted the remedies available in state courts or there is either an absence of available state corrective process or the existence of circumstances rendering such process ineffective to protect the rights of prisoners.

⁴ In *Gilstrap v. Godwin*, the court held that exhaustion of remedies requires the petitioner to attempt to do for himself what he asks the habeas corpus court to do for him. This means that the petitioner must first exhaust all available state remedies before seeking relief from a federal court.

⁵ Similarly, in *Renfro v. Swenson*, the court emphasized that the exhaustion of state remedy rule should ordinarily be strictly adhered to before a federal court accepts habeas corpus jurisdiction. This means that federal courts should generally require petitioners to exhaust state remedies before considering their habeas corpus petitions.

remedies within the administrative jurisdiction before seeking further recourse. This demonstrates the seriousness of his efforts and substantiates his claims.

Substantial ground for disagreement exists regarding the blame for the false imprisonment of the Appellant. A parallel case is open in the Supreme Court of Nevada (Case Attached)⁶ concerning the potential culpability or innocence of Nevada Air National Guard General Garduno. This petition aims to clarify the disagreement introduced by recent evidence of deliberate harm inflicted by Mr. Bill Poppler, deficient counsel, and related deficient protection and violation of constitutional procedural safeguards. See AF, Tabs 7, 10, 27, 29, 31, 33, 35, 37, and 38.

The allegations made by the Appellant should not be dismissed as frivolous or meritless without a fair and thorough evaluation. Instead, they deserve the same careful consideration, as implied by the granting of IFP status by the Supreme Court of Nevada. In granting IFP status, the court recognized that the Appellant's claims were neither irrational nor based on an indisputably meritless legal theory. Similarly, the Appellant's claims in the MSPB deserve due consideration and should not be dismissed as frivolous or meritless out of hand.

CONCLUSION

In light of the points presented, the Pro Se Appellant urges the Board to certify the order dated May 22, 2023, for interlocutory appeal and to consider his submissions and requests not as frivolous or meritless but as sincere efforts to ensure a fair and just resolution of his case.

Respectfully Submitted,



Martin Akerman, Pro Se

⁶ In granting the Appellant IFP status, the Supreme Court of Nevada implicitly found the Appellant's case had enough merit to proceed. This decision suggests the court did not consider the Appellant's case to be frivolous or lacking in merit, at least not at the outset.

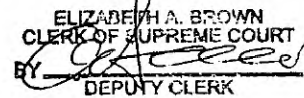
IN THE SUPREME COURT OF THE STATE OF NEVADA

MARTIN AKERMAN,
Petitioner,
vs.
NEVADA NATIONAL GUARD,
Respondent.

No. 86458

FILED

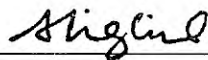
MAY 12 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER WAIVING FILING FEE

Petitioner is seeking a waiver of the filing fee for this original proceeding, asserting indigence and inability to pay it. Good cause having been demonstrated, the motion is granted. NRAP 21(g). No filing fee is due in this matter.

It is so ORDERED.


_____, C.J.
Stiglich

cc: Martin Akerman
Nevada National Guard

23-15143

Certificate Of Service

e-Appeal has handled service of the assembled pleading to MSPB and all of the Parties.

Following is the list of the Parties in the case:

Name & Address	Documents	Method of Service
MSPB: Washington Regional Office	MOTION TO CERTIFY THE ORDER FOR INTERLOCUTORY APPEAL AND REBUTTAL TO ALLEGATIONS OF FRIVOLOUS AND ME	e-Appeal / e-Mail
Jenny Lin Naylor Agency Representative	MOTION TO CERTIFY THE ORDER FOR INTERLOCUTORY APPEAL AND REBUTTAL TO ALLEGATIONS OF FRIVOLOUS AND ME	e-Appeal / e-Mail