

# Ten Commandments for Postmasters, Postmaster Reps and Merit Systems Protection Board Appeals

By Phil Jones

The national convention in Milwaukee marked the beginning of my 12th year representing NAPUS member Postmasters in adverse actions before the Merit Systems Protection Board. During that time, we have filed 294 MSPB appeals, written articles for the *Postmasters Gazette*, spoken at two dozen conventions and legislative meetings and lectured at even more breakout sessions. Despite all that exposure, I am constantly and consistently surprised by the repeated mistakes made by Postmasters when confronted by inspectors, finance auditors, district “fact finders,” etc.

Regrettably, every year, a few Postmasters are losing their jobs because they do not make proper use of the system. So I will make another effort at outlining the “do’s and don’ts.” I do this with open eyes, realizing there are many Postmasters who never attend the conventions and a substantial number who probably do not bother reading articles in the *Postmasters Gazette*. Some, even if they do read an article, simply do not follow the advice offered by me and the national Postmaster reps. However, if this article saves only one Postmaster’s career, then it is worth the effort.

**First Commandment**—Thou shalt ask who is the subject of the investigation. (As used in this article, “shalt” means *always*, without exception, every time.)

Whenever any investigator, auditor, fact finder or inspector of any shape, form or fashion comes into your office, ask him or her if you are the subject of the inquiry. Unless he or she tells you flat out and straight up that you are *not* the subject, immediately request representation and call a NAPUS Postmaster representative (that means right then, not a minute, an hour or the next day later). Please be aware that the national Postmaster representatives are listed in all *Postmasters Gazette* issues (usually on page 4) with office and/or home phone numbers. Thus, there is no excuse for not knowing who they are or how to contact them.

**Second Commandment**—Thou shalt ask if the inquiry concerning you is or could result in criminal charges.

Unless the inspector or other investigator can tell you unequivocally that there is *no* possibility of criminal charges, do *not* say anything (that means you answer no questions, volunteer no information and sign no documents) prior to having a NAPUS Postmaster representative with you. With your representative present, you will be well-advised to allow him or her to do the talking. All you will accomplish by talking is

nailing shut your own coffin.

**Third Commandment**—Thou shalt not be intimidated into giving a statement.

Inspectors can and do bad things to Postmasters. In general, their investigation can result in administrative action being taken that can cost you your job. Worse, their investigation can result in criminal charges that can cost you not only your job, but several years of your freedom. You are not going to talk your way out if it is at the investigative stage, so do not let them threaten and intimidate you into saying or signing anything that can be used against you.

**Fourth Commandment**—Thou shalt not rely on *Miranda* warnings.

The inspectors do *not* have “to read you your rights” before questioning you unless you have been arrested (that means detained). If the inspectors will not allow you to leave or freely move around your office, car, home, etc., you are being detained and they should read you your rights. That affects the evidence you give being admitted against you in a criminal case. It does *not* have anything to do with an adverse action to take your job.

**Fifth Commandment**—Thou shalt pay attention to the advice of your NAPUS Postmaster representative.

Your NAPUS national Postmaster representative is not a lawyer, but he or she has received training and should have experience in representing Postmasters. If he or she advises you to get a criminal attorney, the smart play is to do it. If he or she advises you to shut your mouth, the smart play is to do that, too.

**Sixth Commandment**—Subsequent to the initial investigation, thou shalt not speak to anyone from Labor, Human Resources, the MPOO’s office or the district manager’s office without representation.

You can keep quiet with the inspectors and then cook your own goose by spilling your guts to the MPOO. Remember the old Russian proverb: “It is not always your enemy who gets you in it (more often than not, you did it to yourself); it is not always your friend who gets you out (inspectors, Human Resources and MPOOs are not your friends, they want your job and a large chunk from a portion of your anatomy that you rarely see); but when you are in it up to your neck, for goodness sake, do not sing about it!” (Shut your mouth at all stages!)

**Seventh Commandment**—Make sure in all possible adverse action matters (any action where you can be fired or downgraded) that thou shalt not use anyone as a representative but a NAPUS national Postmaster representative.

Your best friend may be the Postmaster in the next town, but he or she most probably does not have either the training or the experience to help you. You may have a good friend who is a NAPUS state representative who has handled a hundred “650” appeals of letters of warning, but you now are facing removal and you need more experienced help. Think of it this way: If NAPUS national representatives were not important, why would NAPUS have them?

**Eighth Commandment**—Thou shalt get all of the factual material to me on the day you receive a decision letter.

Under MSPB practice, you only have 30 calendar days from the effective date of the adverse action to file an MSPB appeal. Believe it or not, I have had Postmasters and Postmaster representatives wait until 72 hours before the 30 days expired to contact me. That simply cannot happen—your case is not my only case. I am on the road about 100 days a year taking depositions or conducting hearings. If you wait until the last second, I may not be available. Moreover, I like to spend some time thinking about your case and analyzing the facts before filing. If you leave me no time to think, you might not receive as good advice as otherwise possible.

**Ninth Commandment**—Thou shalt tell me the truth, the whole truth and nothing but the truth.

In many cases, the Postmaster withholds information that later blows up in his or her face. I have to laugh when the Postmaster, who has sat on information, says, “Well, I would have told you if you had asked me.” I do not have a crystal ball. I cannot read your mind.

Make both our lives simpler and help yourself. Give me all the facts up front. Moreover, would you believe that a significant number of Postmasters have lied to me? That is just plain stupid. I am not here to judge you. I am here to help you. Tell me a lie and I might go off on the wrong course of defense. When the truth comes out, I will look foolish (but so what, I am a lawyer), but you will look like what you are—an unemployed, former Postmaster.

**Tenth Commandment**—Thou shalt take my advice.

I am here to help you. All I can do is give you the best advice I can, based on my training and experience. Does it make any sense not to follow that advice?

I really enjoy representing Postmasters, but I cannot do it alone. Before I can help you, you must first help yourself. Abide faithfully to the “Ten Commandments.”

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*Phil Jones is the NAPUS Legal Defense Plan attorney.*