

§ 17.20

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delay, maintain order, and assure that a record of the proceeding is made.

(b) The presiding officer has the authority to:

(1) Set and change the date, time, and place of the hearing on reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable time;

(3) Require parties to attend conferences for settlement, to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence that relates to the matter under investigation;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery consistent with § 17.23;

(8) Regulate the course of the hearing and the conduct of the parties;

(9) Examine witnesses;

(10) Upon motion of a party for good cause shown, the presiding officer may allow a witness to be recalled for additional testimony;

(11) Receive, rule on, exclude, or limit evidence;

(12) Upon motion of a party or on the presiding officer's own motion, take official notice of facts;

(13) Upon motion of a party, decide cases, in whole or in part, by summary decision when there is no genuine issue of material fact;

(14) Conduct any conference, argument, or hearing on motions in person or by telephone;

(15) Consolidate related or similar proceedings or sever unrelated matters;

(16) Limit the length of pleadings;

(17) Waive, suspend, or modify any rule in this part if the presiding officer determines that no party will be prejudiced, the ends of justice will be served, and the action is in accordance with law;

(18) Issue protective orders pursuant to § 17.28; and

(19) Exercise such other authority as is necessary to carry out the responsibilities of the presiding officer under this part.

(c) The presiding officer does not have the authority to find Federal statutes or regulations invalid.

§ 17.20 Ex parte contacts.

No party or person (except employees of the presiding officer's office) shall communicate in any way with the presiding officer on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 17.21 Prehearing conferences.

(a) The presiding officer may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the presiding officer shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The presiding officer may use a prehearing conference to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of the other party) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery and scheduling dates for completion of discovery;

(9) The date, time, and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The presiding officer shall issue an order containing all matters agreed upon by the parties or ordered by the

presiding officer at a prehearing conference.

§ 17.23 Discovery.

(a) No later than 60 days prior to the hearing, unless otherwise ordered by the presiding officer, a party may make a request to another party for production, inspection, and copying of documents that are relevant to the issues before the presiding officer. Documents must be provided no later than 30 days after the request has been made.

(b) For the purpose of this part, the term *documents* includes information, reports, answers, records, accounts, papers and other data and documentary evidence. Nothing contained in this section may be interpreted to require the creation of a document, except that requested data stored in an electronic data storage system must be produced in a form readily accessible to the requesting party.

(c) Requests for documents, requests for admissions, written interrogatories, depositions, and any forms of discovery, other than those permitted under paragraphs (a) and (e) of this section, are not authorized.

(d)(1) Within 10 days of service of a request for production of documents, a party may file a motion for a protective order.

(2) The presiding officer may grant a motion for a protective order, in whole or in part, if he or she finds that the discovery sought:

- (i) Is unduly costly or burdensome,
- (ii) Will unduly delay the proceeding, or
- (iii) Seeks privileged information.

(3) The burden of showing that a protective order is necessary shall be on the party seeking the order.

(4) The burden of showing that documents should be produced is on the party seeking their production.

(e) The presiding officer shall order depositions upon oral questions only upon a showing that:

(1) The information sought cannot be obtained by alternative methods, and

(2) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

§ 17.25 Exchange of witness lists, witness statements, and exhibits.

(a) At least 30 days before the hearing, or by such other time as is specified by the presiding officer, the parties shall exchange witness lists, copies of prior written statements of proposed witnesses, and copies of proposed hearing exhibits, including written testimony.

(b)(1) If a party objects to the proposed admission of evidence not exchanged in accordance with paragraph (a) of this section, the presiding officer will exclude such evidence if he or she determines that the failure to comply with paragraph (a) of this section should result in its exclusion.

(2) Unless the presiding officer finds that extraordinary circumstances justified the failure to make a timely exchange of witness lists under paragraph (a) of this section, he or she must exclude from the party's hearing evidence the testimony of any witness whose name does not appear on the witness list.

(3) If the presiding officer finds that extraordinary circumstances existed, the presiding officer must then determine whether the admission of the testimony of any witness whose name does not appear on the witness lists exchanged under paragraph (a) of this section would cause substantial prejudice to the objecting party. If the presiding officer finds that there is not substantial prejudice, the evidence may be admitted. If the presiding officer finds that there is substantial prejudice, the presiding officer may exclude the evidence, or at his or her discretion, may postpone the hearing for such time as is necessary for the objecting party to prepare and respond to the evidence.

(c) Unless a party objects within 5 days prior to the hearing, documents exchanged in accordance with paragraph (a) of this section will be deemed to be authentic for the purpose of admissibility at the hearing.

§ 17.27 Hearing subpoenas.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may, when authorized by law, request that the presiding officer issue a subpoena.