

Merit Systems Protection Board

§1201.143

the complaint. If a respondent fails to answer, the failure may constitute waiver of the right to contest the allegations in the complaint. Unanswered allegations may be considered admitted and may form the basis of the administrative law judge's decision.

(d) *Content.* An answer must contain a specific denial, admission, or explanation of each fact alleged in the complaint. If the respondent has no knowledge of a fact, he or she must say so. The respondent may include statements of fact and appropriate documentation to support each denial or defense. Allegations that are unanswered or admitted in the answer may be considered true.

§1201.140 Judge; requirement for finding of good cause.

(a) *Judge.* (1) An administrative law judge will hear an action brought by an employing agency under this subpart against a respondent administrative law judge.

(2) The judge will issue an initial decision pursuant to 5 U.S.C. 557. The applicable provisions of §§1201.111, 1201.112, and 1201.113 of this part govern the issuance of initial decisions, the jurisdiction of the judge, and the finality of initial decisions. The initial decision will be subject to the procedures for a petition for review by the Board under subpart C of this part.

(b) *Requirement for finding of good cause.* A decision on a proposed agency action under this subpart against an administrative law judge will authorize the agency to take a disciplinary action, and will specify the penalty to be imposed, only after a finding of good cause as required by 5 U.S.C. 7521 has been made.

§1201.141 Judicial review.

An administrative law judge subject to a final Board decision authorizing a proposed agency action under 5 U.S.C. 7521 may obtain judicial review of the decision in the United States Court of Appeals for the Federal Circuit. 5 U.S.C. 7703.

§1201.142 Actions filed by administrative law judges.

An administrative law judge who alleges that an agency has interfered

with the judge's qualified decisional independence so as to constitute an unauthorized action under 5 U.S.C. 7521 may file a complaint with the Board under this subpart. The filing and service requirements of §1201.137 apply. Such complaints shall be adjudicated in the same manner as agency complaints under this subpart.

REMOVAL FROM THE SENIOR EXECUTIVE SERVICE

§1201.143 Right to hearing; filing complaint; serving documents on parties.

(a) *Right to hearing.* If an agency proposes to remove a career appointee from the Senior Executive Service under 5 U.S.C. 3592(a) (2) and 5 CFR 359.502, and to place that employee in another civil service position, the appointee may request an informal hearing before an official designated by the Board. Under 5 CFR 359.502, the agency proposing the removal must provide the appointee 30 days advance notice and must advise the appointee of the right to request a hearing. If the appointee files the request at least 15 days before the effective date of the proposed removal, the request will be granted.

(b) *Place of filing.* A request for an informal hearing under paragraph (a) of this section must be filed with the Clerk of the Board. After the request has been assigned to a judge, subsequent pleadings must be filed with the Board office where the judge is located.

(c) *Initial filing and service.* The appointee must file two copies of the request, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing the agency proposing the appointee's removal or the agency's representative. The certificate of service must show the last known address, telephone number, and facsimile number of the agency or its representative. The appointee must serve a copy of the request on the agency or its representative, as shown on the certificate of service.

(d) *Subsequent filings and service.* Each party must serve on every other party or the party's representative one copy of each of its pleadings, as defined by

§1201.4(b). A certificate of service describing how and when service was made must accompany each pleading. Each party is responsible for notifying the Board and the other parties in writing of any change in name, address, telephone number, or facsimile number of the party or the party's representative.

(e) *Method of filing and service.* Filing may be by mail, by facsimile, by commercial overnight delivery, or by personal delivery to the office determined under paragraph (b) of this section. Service may be by mail, by facsimile, by commercial overnight delivery, or by personal delivery to each party or the party's representative, as shown on the certificate of service.

§1201.144 Hearing procedures; referring the record.

(a) The official designated to hold an informal hearing requested by a career appointee whose removal from the Senior Executive Service has been proposed under 5 U.S.C. 3592(a)(2) and 5 CFR 359.502 will be a judge, as defined at §1201.4(a) of this part.

(b) The appointee, the appointee's representative, or both may appear and present arguments in an informal hearing before the judge. A verbatim record of the proceeding will be made. The appointee has no other procedural rights before the judge or the Board.

(c) The judge will refer a copy of the record to the Special Counsel, the Office of Personnel Management, and the employing agency for whatever action may be appropriate.

§1201.145 No appeal.

There is no right under 5 U.S.C. 7703 to appeal the agency's action or any action by the judge or the Board in cases arising under §1201.143(a) of this part. The removal action will not be delayed as a result of the hearing.

REQUESTS FOR PROTECTIVE ORDERS

§1201.146 Requests for protective orders by the Special Counsel.

(a) Under 5 U.S.C. 1204(e)(1)(B), the Board may issue any order that may be necessary to protect a witness or other individual from harassment during an investigation by the Special Counsel or

during the pendency of any proceeding before the Board, except that an agency, other than the Office of the Special Counsel, may not request a protective order with respect to an investigation by the Special Counsel during such investigation.

(b) Any motion by the Special Counsel requesting a protective order must include a concise statement of reasons justifying the motion, together with any relevant documentary evidence. Where the request is made in connection with a pending Special Counsel proceeding, the motion must be filed as early in the proceeding as practicable.

(c) Where there is a pending Special Counsel proceeding, a Special Counsel motion requesting a protective order must be filed with the judge conducting the proceeding, and the judge will rule on the motion. Where there is no pending Special Counsel proceeding, a Special Counsel motion requesting a protective order must be filed with the Clerk of the Board, and the Board will designate a judge, as defined at §1201.4(a) of this part, to rule on the motion.

§1201.147 Requests for protective orders by persons other than the Special Counsel.

Requests for protective orders by persons other than the Special Counsel in connection with pending original jurisdiction proceedings are governed by §1201.55(d) of this part.

§1201.148 Enforcement of protective orders.

A protective order issued by a judge or the Board under this subpart may be enforced in the same manner as provided under subpart F of this part for Board final decisions and orders.

Subpart E—Procedures for Cases Involving Allegations of Discrimination

§1201.151 Scope and policy.

(a) *Scope.* (1) The rules in this subpart implement 5 U.S.C. 7702. They apply to any case in which an employee or applicant for employment alleges that a personnel action appealable to the Board was based, in whole or in part, on prohibited discrimination.