

with §47.4. If the complaint is not in the proper form, the Division shall return it and inform the complainant of the deficiencies therein.

(d) *Amendments.* At any time prior to the close of the hearing, the complaint may be amended; but, in case of an amendment adding new provisions, the hearing shall, if the respondent so requests, be adjourned for a reasonable time to be determined by the examiner: *Provided,* That, if the amendment introduces a new or different cause of action, it must be filed within 9 months after the cause of action accrued. Amendments subsequent to the first amendment or subsequent to the filing of an answer by the respondent may be made only with leave of the examiner or with the written consent of the adverse party.

[10 FR 2209, Feb. 27, 1945, as amended at 56 FR 176, Jan. 3, 1991]

#### §47.7 Report of investigation.

Where the facts and circumstances are deemed by the Director to warrant such action, the Division shall serve upon each of the parties a copy of the report made by the Division in connection with its investigation of the informal or formal complaint. Whenever the Secretary, or the Director, or the examiner deems it necessary, a supplemental investigation shall be made by the Division and a copy of the report thereon shall be served upon the parties. If an answer is filed by respondent, a copy of any report or reports of investigation served upon the parties shall be filed with the hearing clerk and shall be considered as part of the evidence in the proceeding: *Provided,* That either party shall be permitted to submit evidence in rebuttal in the same manner as is provided in the regulations in this part for the submission of other evidence in the proceeding.

[24 FR 10055, Dec. 12, 1959]

#### §47.8 The answer.

(a) *Filing and service.* Within 20 days after service of the formal complaint, unless extension of time has been requested and granted, the respondent may file with the Division, an answer, in triplicate, signed by the respondent or his attorney. A copy of the answer

shall be served upon the complainant by the Division as provided in §47.4.

(b) *Contents.* Such answer shall contain (1) a precise statement of the facts which constitute the grounds of defense, including any set-off or counterclaim, and shall specifically admit, deny, or explain each of the allegations of the complaint, unless respondent is without knowledge, in which case the answer shall so state; or (2) a statement that the respondent admits all of the allegations of the complaint; or (3) a statement containing an admission of liability in an amount less than that alleged in the complaint (in which event, an order may be made, pursuant to section 7(a) of the Act, directing payment of the undisputed amount), and a denial, as in paragraph (b)(1) of this section, of liability for the remaining amount. The answer may contain a waiver of hearing.

(c) *Failure to file answer; effect of.* Failure to file an answer within the time prescribed shall constitute a waiver of hearing and an admission of the facts alleged in the complaint. If the facts deemed admitted are considered insufficient to support the amount of reparation sought, the proceeding shall continue on the question of damages only.

(d) *Procedure upon admission of facts.* Upon the admission, in the answer or by failure to file an answer, of all the material allegations of fact contained in the complaint, an order may be issued without further procedure, official notice being taken of the license status of the respondent and the date of filing of the informal complaint, as disclosed by the records of the Department.

[10 FR 2212, Feb. 27, 1945, as amended at 24 FR 10055, Dec. 12, 1959]

#### §47.9 The reply.

(a) *Filing and service.* If the answer asserts a counterclaim or a set-off, the complaining party, within 20 days after service of the answer, may file a reply with the Division. A copy of the reply shall be served upon the respondent by the Division as provided in §47.4.

(b) *Contents.* The reply shall be confined strictly to the matters alleged in the counterclaim or set-off in the answer. It shall contain a precise statement of the facts which constitute the

grounds of defense to the counterclaim or set-off, unless the complainant is without knowledge, in which case the reply shall so state.

(c) *Failure to file reply.* Failure to file a reply shall not be deemed a waiver of hearing or an admission of the allegations contained in the answer. If no reply is filed, the allegations of the answer shall be regarded as denied.

[10 FR 2209, Feb. 27, 1945, as amended at 56 FR 174, Jan. 3, 1991]

#### § 47.10 Docketing of proceeding.

Immediately following the expiration of the period of time heretofore prescribed for the filing of the answer or reply, the Division shall transmit all of the papers which have been filed in the proceeding to the hearing clerk, who shall assign a docket number to the proceeding. Thereafter the proceeding may be identified by such number.

#### § 47.11 Examiners.

(a) *Disqualification.* No person who (1) has any pecuniary interest in any matter of business involved in the proceeding, or (2) is related within the third degree by blood or marriage to any of the persons involved in the proceeding shall serve as examiner in such proceeding.

(b) *Request for disqualification of examiner.* Any party may file with the hearing clerk a timely request, in affidavit form, for the disqualification of the examiner, which request shall set forth with particularity the grounds of alleged disqualification. After such investigation or hearing as the Secretary may deem necessary, the Secretary shall either deny or grant the request. If the request is granted, another examiner shall be assigned to the proceeding. If the request is denied, the request, any record made thereon, and the finding and order of the Secretary thereon shall be made a part of the record.

(c) *Powers.* Subject to review by the Secretary, as provided in this part, the examiner, in any proceeding assigned to him or her, shall have power to:

(1) Rule upon motions and requests;

(2) Set the time, place, and manner of the hearing, adjourn the hearing, and change the time, place, and manner of the hearing;

(3) Administer oaths and affirmations and take affidavits;

(4) Issue subpoenas requiring the attendance and testimony of witnesses and the production of books, contracts, papers, and other documentary evidence;

(5) Summon and examine witnesses and receive evidence;

(6) Take, or order (over the facsimile signature of the Secretary) the taking of, depositions;

(7) Admit or exclude evidence;

(8) Hear oral argument on facts or law;

(9) Require each party to provide all other parties and the examiner with a copy of any exhibit that the party intends to introduce into evidence prior to any hearing to be conducted by telephone or audio-visual telecommunication;

(10) Require each party to provide all other parties with a copy of any document that the party intends to use to examine a deponent prior to any deposition to be conducted by telephone or audio-visual telecommunication;

(11) Require that any hearing to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties and the examiner are able to transmit and receive documents during the hearing;

(12) Require that any deposition to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties are able to transmit and receive documents during the deposition;

(13) Do all acts and take all measures necessary for the maintenance of order at the hearing and for the efficient conduct of the proceeding.

(d) *Who may act in absence of examiner.* In case of the absence, illness, resignation, or death of the examiner who has been assigned to a proceeding, or, in case the General Counsel determines that, for other good cause, such examiner should not act, the powers and duties to be performed by the examiner under these rules of practice in connection with such proceeding may, subject to the provisions of paragraph (a) of