

§2414.8 Reporting of prohibited communications; penalties.

(a) Any Authority member, Administrative Law Judge, or other Authority employee who is or may reasonably be expected to be involved in the decisional process of the proceeding relevant to the merits of the proceeding to whom a prohibited oral ex parte communication is attempted to be made, shall refuse to listen to the communication, inform the communicator of this rule, and advise such person that if the person has anything to say it should be said in writing with copies to all parties. Any such Authority member, Administrative Law Judge, or other Authority employee who is or may reasonably be expected to be involved in the decisional process of the proceeding relevant to the merits of the proceeding who receives, or who makes or knowingly causes to be made, an unauthorized ex parte communication, shall place or cause to be placed on the public record of the proceeding: (1) The communication, if it was written; (2) a memorandum stating the substance of the communication, if it was oral; (3) all written responses to the prohibited communication; and (4) memoranda stating the substance of all oral responses to the prohibited communication. The Executive Director, if the proceeding is then pending before the Authority, the Administrative Law Judge, if the proceeding is then pending before any such judge, or the Regional Director, if the proceeding is then pending before a Hearing Officer or the Regional Director, shall serve copies of all such materials placed on the public record of the proceeding on all other parties to the proceeding and on the attorneys of record for the parties. Within ten (10) days after the mailing of such copies, any party may file with the Executive Director, Administrative Law Judge, or Regional Director serving the communication, as appropriate, and serve on all other parties, a statement setting forth facts or contentions to rebut those contained in the prohibited communication. All such responses shall be placed in the public record of the proceeding, and provision may be made for any further action, including reopening of the record, which may be required under

the circumstances. No action taken pursuant to this provision shall constitute a waiver of the power of the Authority to impose an appropriate penalty under §2414.9.

§2414.9 Penalties and enforcement.

(a) Where the nature and circumstances of a prohibited communication made by or caused to be made by a party to the proceeding are such that the interests of justice and statutory policy may require remedial action, the Authority, Administrative Law Judge, or Regional Director, as appropriate, may issue to the party making the communication a notice to show cause, returnable before the Authority, Administrative Law Judge, or Regional Director, within a stated period not less than seven (7) days from the date thereof, why the Authority, Administrative Law Judge, or Regional Director should not determine that the interests of justice and statutory policy require that the claim or interest in the proceeding of a party who knowingly makes a prohibited communication or knowingly causes a prohibited communication to be made, should be dismissed, denied, disregarded or otherwise adversely affected on account of such violation.

(b) Upon notice and hearing, the Authority may censure, suspend, or revoke the privilege of practice before the agency of any person who knowingly and willfully makes or solicits the making of a prohibited ex parte communication. However, before the Authority institutes formal proceedings under this subsection, it shall first advise the person or persons concerned in writing that it proposes to take such action and that they may show cause, within a period to be stated in such written advice, but not less than seven (7) days from the date thereof, why it should not take such action.

(c) The Authority may censure, or, to the extent permitted by law, suspend, dismiss, or institute proceedings for the dismissal of, any Authority agent who knowingly and willfully violates the prohibitions and requirements of this rule.