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§ 964.20 Modification or revocation of orders.

A party against whom an order or orders have been issued may file an application for modification or revocation thereof. The Recorder shall transmit a copy of the application to the General Counsel, who shall file a written reply within 10 days after receipt or such other period as the Judicial Officer may fix. A copy of the reply shall be sent to the applicant by the Recorder. Thereafter an order granting or denying such application will be issued by the Judicial Officer.

§ 964.21 Official record.

The transcript of testimony together with all pleadings, orders, exhibits, briefs, and other documents filed in the proceeding constitute the official record of the proceeding.

§ 964.22 Public information.

The Librarian of the Postal Service maintains for public inspection in the Library copies of all initial, tentative, and final agency decisions and orders. The Recorder maintains the complete official record of every proceeding.

[52 FR 36763, Oct. 1, 1987, as amended at 63 FR 66053, Dec. 1, 1998]

§ 964.23 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d), and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

PART 965—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO MAIL DISPUTES

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39 CFR Ch. I (7–1–05 Edition)

AUTHORITY: 39 U.S.C. 204, 401.

SOURCE: 52 FR 29012, Aug. 5, 1987, unless otherwise noted.

§ 965.1 Authority for rules.

These rules of practice are issued by the Judicial Officer of the U.S. Postal Service pursuant to authority delegated by the Postmaster General. (39 CFR 224.1(c)(4)).

§ 965.2 Scope of rules.

The rules in this part shall be applicable to mail dispute cases forwarded to the Judicial Officer Department by the chief field counsel pursuant to Postal Operations Manual section 616.21.

[52 FR 29012, Aug. 5, 1987, as amended at 63 FR 66053, Dec. 1, 1998]

§ 965.3 Notice to parties.

Upon receipt of a mail dispute case from the chief field counsel, the Recorder, Judicial Officer Department, United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington VA 22201-3078, will send a notice of docketing and submittal due date to the parties together with a copy of these rules.

[52 FR 29012, Aug. 5, 1987, as amended at 63 FR 66053, Dec. 1, 1998; 67 FR 62179, Oct. 4, 2002]

§ 965.4 Presiding officers.

(a) The presiding officer shall be an Administrative Law Judge or an Administrative Judge qualified in accordance with law. The Judicial Officer assigns cases under this part. Judicial Officer includes Associate Judicial Officer upon delegation thereto. The Judicial Officer may, on his own initiative or for good cause found, preside at the reception of evidence.

(b) The presiding officer has authority to:

(1) Take such action as may be necessary to preside properly over the proceeding and render decision therein;

(2) Render an initial decision, if the presiding officer is not the Judicial Officer, which becomes the final agency decision unless a timely appeal is taken; the Judicial Officer may issue a tentative or a final decision.

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§ 965.5 Submittals by parties.

Within 15 days after receipt of the Recorder's notice, each party shall file with the Recorder a sworn statement of the facts supporting its claim to receipt of the mail together with a copy of each document on which it relies in making such claim. All such submittals shall be in duplicate. Upon receipt of such evidence, the Recorder shall send a copy of each submittal to the opposing party.

§ 965.6 Comments by parties.

Within 10 days of receipt of the other party's evidence, each party may file with the Recorder a statement setting forth in detail its disagreements, if any, with its opponent's statement and documents. The Recorder will send to each party a copy of the other party's comments.

§ 965.7 Default.

A party who fails to file the submittal required by § 965.5 may be held in default and the presiding officer may issue an initial decision that mail be delivered to the other party.

§ 965.8 Hearings.

(a) In the discretion of the presiding officer an oral hearing may be granted at the request of either, or both, parties or on the presiding officer's own initiative if there is a dispute as to a material issue of fact which can only be resolved by examination of witnesses.

(b) Hearings are held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201-3078, or such other place as may be designated by the presiding officer.

[52 FR 29012, Aug. 5, 1987, as amended at 63 FR 66053, Dec. 1, 1998]

§ 965.9 Evidence.

(a) In general, admissibility will hinge on relevancy and materiality. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(b) Testimony shall be given under oath or affirmation and witnesses are subject to cross-examination.

(c) Agreed statements to fact are encouraged and may be received in evidence.

§ 965.10 Transcript.

Testimony and argument at hearings shall be reported verbatim, unless the presiding officer otherwise orders. Transcripts or copies of the proceedings are supplied to the parties at such rate as may be fixed by contract between the reporter and Postal Service.

§ 965.11 Initial decision.

The presiding officer shall render an initial decision in writing, based on the record, as expeditiously as possible, but to the extent practicable within 10 working days of closing of the record. The decision will be brief, containing summary findings of fact, conclusions of law, and reasons therefor. If there has been a hearing the presiding officer may in his discretion render an oral decision. A typed copy of such oral decision will subsequently be furnished to the parties to establish the date for commencement of time for requesting review of the initial decision.

§ 965.12 Appeal.

The initial or tentative decision will become final 10 days after its issuance and receipt by the parties unless the Judicial Officer, or by delegation the Associate Judicial Officer, in his sole discretion, grants review upon appeal of either party filed within that period, or on his own motion within that period. If an appeal is denied, the initial or tentative decision becomes the final agency decision on the issuance of such denial. The judicial Officer's decision on appeal is the final agency decision with no further agency review or appeal rights.

§ 965.13 Compromise and informal disposition.

Nothing in these rules precludes the compromise, settlement, and informal disposition of proceedings initiated under these rules at any time prior to the issuance of the final agency decision.

§ 965.14 Public Information.

The Librarian of the Postal Service maintains for public inspection in the Library copies of all initial, tentative, and final agency decisions and orders. The Recorder maintains the complete official record of every proceeding.

[52 FR 29012, Aug. 5, 1987, as amended at 63 FR 66053, Dec. 1, 1998]

PART 966—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO ADMINISTRATIVE OFFSETS INITIATED AGAINST FORMER EMPLOYEES OF THE POSTAL SERVICE

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AUTHORITY: 39 U.S.C. 204, 401, 2601.

SOURCE: 62 FR 63279, Nov. 28, 1997, unless otherwise noted.

§ 966.1 Authority for rules.

These rules of practice are issued by the Judicial Officer pursuant to authority delegated by the Postmaster General.

§ 966.2 Scope of rules.

The rules in this part apply to any petition filed by a former postal employee:

- (a) To challenge the Postal Service's determination that he or she is liable to the Postal Service for a debt incurred in connection with his or her Postal Service employment; and/or
- (b) To challenge the administrative offset schedule proposed by the Postal Service for collecting any such debt.

§ 966.3 Definitions.

(a) *Administrative offset* refers to the withholding of money payable by the Postal Service or the United States to, or held by the Postal Service or the United States for, a former employee in order to satisfy a debt determined to be owed by the former employee to the Postal Service.

(b) *Debt* refers to any amount determined by the Postal Service to be owed to the Postal Service by a former employee.

(c) *Former employee* refers to an individual whose employment with the Postal Service has ceased. An employee is considered formally separated from the Postal Service rolls as of close of business on the effective date of his or her separation. Postal Service Form 50.

(d) *General Counsel* refers to the General Counsel of the Postal Service, and includes a designated representative.

(e) *Hearing Official* refers to an Administrative Law Judge qualified to hear cases under the Administrative Procedure Act, an Administrative Judge appointed under the Contract Disputes Act of 1978, or any other qualified person licensed to practice law designated by the Judicial Officer to preside over a hearing conducted pursuant to this part.

(f) *Judicial Officer* refers to the Judicial Officer, Associate Judicial Officer, or Acting Judicial Officer of the Postal Service.

(g) *Postmaster/Installation Head* refers to the top management official at a particular post office or installation when an alleged debt owed by a former employee was incurred, or to that official's successor, or to the department head who had general supervisory responsibility for a former employee at Area Offices or National Headquarters when an alleged debt owed by that former employee was incurred, or to that official's successor. Where the former employee was a Postmaster/Installation Head, the term refers to the official to whom the Postmaster/Installation Head reported when an alleged debt owed by that former employee was incurred, or to that official's successor. Where the former employee was in the Inspection Service, the term refers to