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Administrative Law Judge assigned to the Postal Service, conduct which, if displayed toward any court of any State, the United States, any of its Territories or the District of Columbia, would be cause for censure, suspension or disbarment; or

(6) Is otherwise guilty of misconduct or lacking in character or professional integrity.

(b) Before any person shall be censured, suspended or disbarred, he shall be afforded an opportunity to be heard by the Judicial Officer on the charges made against him. The General Counsel or his designee shall prosecute such cases.

(c) In the event the Judicial Officer is unavailable for any reason, he may assign complaints of misconduct to the Associate Judicial Officer, an Administrative Law Judge appointed pursuant to the provisions of the Administrative Procedure Act, an Administrative Judge appointed pursuant to the provisions of the Contract Disputes Act of 1978, or some other disinterested member of the headquarters staff of the Postal Service recommended by the Deputy Postmaster General, for the determinations required by § 951.5, the conduct of the hearings, and the decision to censure, suspend, or debar persons as provided herein.

[36 FR 11562, June 16, 1971, as amended at 51 FR 16517, May 5, 1986]

§ 951.7 Notice of disbarment; exclusion from practice.

Upon the disbarment of any person, notice thereof will be given to the heads of the departments of the Postal Service and to the other Executive Departments, and thereafter, until otherwise ordered, such disbarred persons will not be entitled to practice before the Postal Service or any department thereof.

§ 951.8 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.

[42 FR 5357, Jan. 28, 1977]

PART 952—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO FALSE REPRESENTATION AND LOTTERY ORDERS

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AUTHORITY: 39 U.S.C. 204, 401, 3005, 3012, 3016.

SOURCE: 36 FR 11563, June 16, 1971, unless otherwise noted.

§ 952.1 Authority for rules.

These rules of practice are issued by the Judicial Officer of the U.S. Postal Service (See § 952.26) pursuant to authority delegated by the Postmaster General.

§ 952.2 Scope of rules.

These rules of practice shall be applicable in all formal proceedings before the Postal Service, 39 U.S.C. 3005, including such cases instituted under prior rules of practice pertaining to these or predecessor statutes, unless

timely shown to be prejudicial to the respondent.

[36 FR 11563, June 16, 1971, as amended at 52 FR 36763, Oct. 1, 1987]

§ 952.3 Informal dispositions.

These rules do not preclude the disposition of any matter by agreement between the parties either before or after the filing of a complaint when time, the nature of the proceeding, and the public interest permit.

§ 952.4 Office business hours.

The offices of the officials mentioned in these rules are located at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, and are open Monday through Friday except holidays from 8:15 a.m. to 4:45 p.m.

[63 FR 66050, Dec. 1, 1998]

§ 952.5 Complaints.

When the the Chief Postal Inspector or his or her designated representative believes that a person is using the mails in a manner requiring formal administrative action under 39 U.S.C. 3005, he shall prepare and file with the Recorder a complaint which names the person involved; states the name, address and telephone number of the attorney representing Complainant; states the legal authority and jurisdiction under which the proceeding is initiated; states the facts in a manner sufficient to enable the person named therein to make answer thereto; and requests the issuance of an appropriate order or orders and/or the assessment of civil penalties. Complainant shall attach to the complaint a copy of the order or orders requested which may, at any time during the proceedings, be modified. The person named in the complaint shall be known as the ''Respondent'', and the Chief Postal Inspector or his or designee shall be known as the ''Complainant.''

The term ''person'' (1 U.S.C. 1) shall include any name, address, number or other designation under or by use of which the Respondent seeks remittances of money or property through the mail.

[48 FR 55126, Dec. 9, 1983, as amended at 65 FR 32027, May 22, 2000; 67 FR 62179, Oct. 4, 2002; 71 FR 53972, Sept. 13, 2006]

§ 952.6 Interim impounding.

In preparation for or during the pendency of a proceeding initiated under 39 U.S.C. 3005, mail addressed to a respondent may be impounded upon obtaining an appropriate order from a U.S. District Court, as provided in 39 U.S.C. 3007.

§ 952.7 Notice of answer and hearing.

(a) When a complaint is filed against a Respondent whose mailing address is within the United States, the Recorder shall issue a notice of answer and hearing stating the date for filing an answer which shall not exceed 15 days from the service of the complaint, the time and place of the hearing and a reference to the effect of failure to file an answer or appear at the hearing. (*See* §§ 952.10 and 952.11.) Whenever practicable, the hearing date shall be within 30 days of the date of the notice.

(b) Where a complaint is filed against a Respondent whose mailing address is not within the United States, the Judicial Officer shall review the complaint and any supporting information and determine whether a prima facie showing has been made that Respondent is engaged in conduct warranting issuance of the orders authorized by 39 U.S.C. 3005(a) and/or the assessment of civil penalties authorized by 39 U.S.C. 3012. Where he concludes that a prima facie showing has not been made he shall dismiss the complaint. Where he concludes that a prima facie showing has been made, he shall issue a tentative decision and orders which: set forth findings of fact and conclusions of law; direct Respondent to cease and desist from engaging in conduct warranting the issuance of an order authorized by 39 U.S.C. 3005(a); direct that postal money orders drawn to the order of Respondent not be paid for 45 days from date of the tentative decision; direct that mail addressed to Respondent be forwarded to designated facilities and detained for 45 days from the date of the tentative decision subject to survey by Respondent and release of mail unrelated to the matter complained of; tentatively assess such civil penalties as he considers appropriate under applicable law; and provide that unless Respondent presents,

within 45 days of the date of the tentative decision, good cause for dismissing the complaint, or modifying the tentative decision and orders, the tentative decision and orders shall become final. The Judicial Officer may, upon a showing of good cause made within 45 days of the date of the tentative decision, hold a hearing to determine whether the tentative decision and orders should be revoked, modified or allowed to become final. Should a hearing be granted, the Judicial Officer may modify the tentative decision and orders to extend the time during which the payment of postal money orders payable to Respondent is suspended and mail addressed to Respondent is detained.

[44 FR 61959, Oct. 29, 1979, as amended at 48 FR 55126, Dec. 9, 1983; 65 FR 32027, May 22, 2000]

§ 952.8 Service.

(a) Where the Respondent's mailing address is within the United States, the Recorder shall cause a notice of answer and hearing and a copy of the complaint to be transmitted to the postmaster at any office of address of the Respondent or to the inspector in charge of any division in which the Respondent is doing business, which shall be delivered to the Respondent or his agent by said postmaster or a supervisory employee of his post office or a postal inspector. A receipt acknowledging delivery of the notice shall be secured from the Respondent or his agent and forwarded to the Recorder, U.S. Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, to become a part of the official record.

(b) If, after 5 days, the postmaster or his agent can find no person to accept service of the notice of answer and hearing and complaint pursuant to paragraph (a) of this section, the notice may be delivered in the usual manner as other mail addressed to the respondent. A statement, showing the time and place of delivery, signed by the postal employee who delivered the notice of answer and hearing and complaint shall be forwarded to the Recorder and such statement shall constitute evidence of service.

(c) Where the only address against which Complainant seeks relief is outside the United States, a copy of the complaint, the tentative decision, and a copy of these rules of practice shall be sent by registered air mail, return receipt requested, by the Recorder to the address cited in the complaint. A written statement by the Recorder noting the time and place of mailing shall be accepted as evidence of service in the event a signed return receipt is not returned to the Recorder.

[36 FR 11563, June 16, 1971, as amended at 37 FR 7321, Apr. 13, 1972; 44 FR 61959, Oct. 29, 1979; 44 FR 65399, Nov. 13, 1979; 63 FR 66050, Dec. 1, 1998]

§ 952.9 Filing documents for the record.

(a) Each party shall file with the Recorder pleadings, motions, proposed orders and other documents for the record. The Recorder shall cause copies to be delivered promptly to other parties to the proceeding and to the presiding officer.

(b) The parties shall submit four copies of all documents unless otherwise ordered by the presiding officer. One copy shall be signed as the original.

(c) Documents shall be dated and state the docket number and title of the proceeding. Any pleading or other document required by order of the presiding officer to be filed by a specified date shall be delivered to the Recorder on or before such date. The date of filing shall be entered thereon by the Recorder.

[36 FR 11563, June 16, 1971, as amended at 44 FR 61960, Oct. 29, 1979]

§ 952.10 Answer.

(a) The answer shall contain a concise statement admitting, denying, or explaining each of the allegations set forth in the complaint.

(b) Any facts alleged in the complaint which are not denied or are expressly admitted in the answer may be considered as proved, and no further evidence regarding these facts need be adduced at the hearing.

(c) The answer shall be signed personally by an individual respondent, or in the case of a partnership by one of the

partners, or, in the case of a corporation or association, by an officer thereof.

(d) The answer shall set forth the Respondent's address and telephone number or the name, address and telephone number of its attorney.

(e) The answer shall affirmatively state whether the respondent will appear in person or by counsel at the hearing.

(f) If the respondent does not desire to appear at the hearing in person or by counsel he may request that the matter be submitted for determination pursuant to paragraph (b) of § 952.11.

[36 FR 11563, June 16, 1971, as amended at 44 FR 61960, Oct. 29, 1979]

§ 952.11 Default.

(a) If the Respondent fails to file an answer within the time specified in the notice of answer and hearing, he shall be deemed in default, and to have waived hearing and further procedural steps. The Judicial Officer shall thereafter issue orders and/or assess civil penalties without further notice to the Respondent.

(b) If the Respondent files an answer but fails to appear at the hearing, the Respondent may, unless timely indications to the contrary are received, be deemed to have abandoned the intention to present a defense to the charges of the complaint, and the Judicial Officer, without further notice to Respondent, may issue the orders and/or assess civil penalties sought in the complaint.

[48 FR 55126, Dec. 9, 1983, as amended at 65 FR 32027, May 22, 2000]

§ 952.12 Amendment of pleadings.

(a) Amendments proposed prior to the hearing shall be filed with the Recorder. Amendments proposed thereafter shall be filed with the presiding officer.

(b) By consent of the parties a pleading may be amended at any time. Also, a party may move to amend a pleading at any time prior to the close of the hearing and, provided that the amendment is reasonably within the scope of the proceeding initiated by the complaint, the presiding officer shall make such ruling on the motion as he deems to be fair and equitable to the parties.

(c) When issues not raised by the pleadings but reasonably within the scope of the proceedings initiated by the complaint are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendments as may be necessary to make the pleadings conform to the evidence and to raise such issues shall be allowed at any time upon the motion of any party.

(d) If a party objects to the introduction of evidence at the hearing on the ground that it is not within the issues made by the pleadings, but fails to satisfy the presiding officer that an amendment of the pleadings would prejudice him on the merits, the presiding officer may allow the pleadings to be amended and may grant a continuance to enable the objecting party to rebut the evidence presented.

(e) The presiding officer may, upon reasonable notice and upon such terms as are just, permit service of a supplemental pleading setting forth transactions, occurrences, or events which have happened since the date of the pleading sought to be supplemented and which are relevant to any of the issues involved.

[36 FR 11563, June 16, 1971, as amended at 44 FR 61960, Oct. 29, 1979]

§ 952.13 Continuances and extensions.

Continuances and extensions will not be granted by the presiding officer except for good cause shown.

§ 952.14 Hearings.

Hearings are held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, or other locations designated by the presiding officer.

[63 FR 66050, Dec. 1, 1998]

§ 952.15 Change of place of hearings.

Not later than the date fixed for the filing of the answer, a party may file a request that a hearing be held to receive evidence in his behalf at a place other than that designated for hearing in the notice. He shall support his request with a statement outlining:

(a) The evidence to be offered in such place;

(b) The names and addresses of the witnesses who will testify;

(c) The reasons why such evidence cannot be produced at Arlington, VA. The presiding officer shall give consideration to the convenience and necessity of the parties and the relevancy of the evidence to be offered.

[36 FR 11563, June 16, 1971, as amended at 63 FR 66050, Dec. 1, 1998]

§ 952.16 Appearances.

(a) A respondent may appear and be heard in person or by attorney.

(b) An attorney may practice before the Postal Service in accordance with applicable rules issued by the Judicial Officer. See part 951 of this chapter.

(c) When a respondent is represented by an attorney, all pleadings and other papers subsequent to the complaint shall be mailed to the attorney.

(d) A respondent must promptly file a notice of change of attorney.

§ 952.17 Presiding officers.

(a) The presiding officer at any hearing shall be an Administrative Law Judge qualified in accordance with law or the Judicial Officer (39 U.S.C. 204). The Chief Administrative Law Judge shall assign cases to Administrative Law Judges upon rotation so far as practicable. The Judicial Officer may, for good cause shown, preside at the reception of evidence in proceedings where expedited hearings are requested by either party.

(b) The presiding officer shall have authority to:

(1) Administer oaths and affirmations;

(2) Examine witnesses;

(3) Rule upon offers of proof, admissibility of evidence and matters of procedure;

(4) Order any pleading amended upon motion of a party at any time prior to the close of the hearing;

(5) Maintain discipline and decorum and exclude from the hearing any person acting in an indecorous manner;

(6) Require the filing of briefs or memoranda of law on any matter upon which he is required to rule;

(7) Order prehearing conferences for the purpose of the settlement or simplification of issues by the parties;

(8) Order the proceeding reopened at any time prior to his decision for the receipt of additional evidence;

(9) Render an initial decision, which becomes the final Agency decision unless a timely appeal is taken: The Judicial Officer may issue a tentative or a final decision;

(10) Rule upon applications and requests filed under § 952.19 and § 952.21.

[36 FR 11563, June 16, 1971, as amended at 38 FR 17216, June 29, 1973; 38 FR 20263, July 30, 1973; 44 FR 61960, Oct. 29, 1979; 65 FR 32027, May 22, 2000]

§ 952.18 Evidence.

(a) Except as otherwise provided in these rules, the Federal Rules of Evidence shall govern. However, such rules may be relaxed to the extent that the presiding officer deems proper to insure a fair hearing. The presiding officer shall exclude irrelevant, immaterial or repetitious evidence.

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

(c) Agreed statements of fact may be received in evidence.

(d) Official notice or knowledge may be taken of the types of matters of which judicial notice or knowledge may be taken.

(e) Authoritative writings of the medical or other sciences, may be admitted in evidence but only through the testimony of expert witnesses or by stipulation.

(f) Lay testimonials will not be received in evidence as proof of the efficacy or quality of any product or thing sold through the mails.

(g) The written statement of a competent witness may be received in evidence provided that such statement is relevant to the issues, that the witness shall testify under oath at the hearing that the statement is in all respects true, and, in the case of expert witnesses, that the statement correctly states his opinion or knowledge concerning the matters in question.

(h) A party who objects to the admission of evidence shall make a brief statement of the grounds for the objection. Formal exceptions to the rulings

of the presiding officer are unnecessary.

[36 FR 11563, June 16, 1971, as amended at 44 FR 61960, Oct. 29, 1979]

§ 952.19 Subpoenas.

(a) *General.* Upon written request of either party filed with the Recorder or on his own initiative, the presiding officer may issue a subpoena requiring:

(1) *Testimony at a deposition.* The deposing of a witness in the city or county where the witness resides or is employed or transacts business in person, or at another location convenient for the witness that is specifically determined by the presiding officer;

(2) *Testimony at a hearing.* The attendance of a witness for the purpose of taking testimony at a hearing; and

(3) *Production of records.* In addition to paragraphs (a)(1) and (a)(2) of this section, the production by the witness at the deposition or hearing of records designated in the subpoena.

(b) *Voluntary cooperation.* Each party is expected:

(1) To cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and

(2) To secure voluntary production of desired third-party records whenever possible.

(c) *Requests for subpoenas.* (1) A request for a subpoena shall to the extent practical be filed:

(i) At the same time a request for deposition is filed; or

(ii) 15 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any records sought.

(3) The presiding officer, in his discretion, may honor requests for subpoenas not made within the time limitations specified in this paragraph.

(d) *Requests to quash or modify.* Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the presiding officer may:

(1) Quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or

(2) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed records. Where circumstances require, the presiding officer may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; issuance.* (1) Every subpoena shall state the title of the proceeding, shall cite 39 U.S.C. 3016(a)(2) as the authority under which it is issued, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified records at a time and place therein specified. In issuing a subpoena to a requesting party, the presiding officer shall sign the subpoena and may, in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the presiding officer as sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

(f) *Service*—(1) *In general.* The party requesting issuance of a subpoena shall arrange for service.

(2) *Service within the United States.* A subpoena issued under this section may be served by a person designated under 18 U.S.C. 3061 or by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age at any place within the territorial jurisdiction of any court of the United States.

(3) *Foreign Service.* Any such subpoena may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States may assert jurisdiction over

such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such court would have if such person were personally within the jurisdiction of such court.

(4) *Service on Business Persons.* Service of any such subpoena may be made upon a partnership, corporation, association, or other legal entity by:

(i) Delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(ii) Delivering a duly executed copy thereof to the principal office or place of business of the partnership, corporation, association, or entity; or

(iii) Depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(5) *Service on Natural Persons.* Service of any subpoena may be made upon any natural person by:

(i) delivering a duly executed copy to the person to be served; or

(ii) depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such person at his residence or principal office or place of business.

(6) *Verified Return.* A verified return by the individual serving any such subpoena setting forth the manner of such service shall be proof of service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such subpoena.

(g) *Contumacy or refusal to obey a subpoena.* In the case of contumacy or refusal to obey a subpoena, the Judicial Officer may request the Attorney General to petition the district court for any district in which the person receiving the subpoena resides, is found, or conducts business (or in the case of a person outside the territorial jurisdiction of any district court, the district court for the District of Columbia) to issue an appropriate order for the enforcement of such subpoena. Any failure to obey such order of the court may be punishable as contempt.

[65 FR 32027, May 22, 2000]

§ 952.20 Witness fees.

The Postal Service does not pay fees and expenses for respondent's witnesses or for depositions requested by respondent.

§ 952.21 Depositions, interrogatories, requests for admission of fact and production of documents.

(a) Not later than 5 days after the filing of Respondent's answer, any party may file application with the Recorder for the taking of testimony by deposition. In support of such application the applicant shall submit under oath or affirmation a statement setting out the reasons why such testimony should be taken by deposition, the time and the place, and the name and address of the witness whose deposition is desired, the subject matter of the testimony of each witness and its relevancy.

(b) If the application is granted, the order for the taking of the deposition will specify the time and place thereof, the name of the witness, and require that the deposition be taken before a person authorized to administer oaths as required by paragraph (f) of this section.

(c) Each witness testifying upon deposition shall be duly sworn, and the adverse party shall have the right to cross-examine. The questions and answers together with all objections, shall be reduced to writing and, unless waived by stipulation of the parties, shall be read to and subscribed by the witness in the presence of the deposition officer who shall certify it in the usual form. The deposition officer shall file the testimony taken by deposition as directed in the order. The deposition officer shall put the witness on oath. All objections made at the time of examination shall be noted by the deposition officer and the evidence objected to shall be taken subject to the objections. In lieu of participating in the

oral examination, a party may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim. Objections to relevancy or materiality of testimony, or to errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of the parties and errors of any kind which might be obviated, cured or removed if promptly presented, are waived unless timely objection is made at the taking of the deposition.

(d) At the hearing any part or all of the deposition may be offered in evidence by any party who was present or represented at the taking of the deposition or who had notice thereof. If the deposition is not offered and received in evidence, it shall not be considered as a part of the record in the proceeding. The admissibility of depositions or parts thereof shall be governed by the rules of evidence.

(e) The party requesting the deposition shall pay all fees required to be paid to witnesses and the deposition officer, and shall provide an original and one copy of the deposition for the official record, and shall serve one copy upon the opposing party.

(f) Within the United States or within a territory or insular possession, subject to the dominion of the United States, depositions or interrogatories may be taken or certified before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held; within a foreign country, depositions or interrogatories may be taken or certified before a secretary of an embassy or legation, consul general, vice consul or consular agent of the United States, or any other person designated in the order for the taking of a deposition.

(g) Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examination. When a deposition is taken upon written interrogatories and cross-interrogatories, none of the parties except a witness who is a party shall be present or represented, and no person, other than the witness, a stenographic reporter, and the officer shall be present at the examination of the witness, which fact shall be certified by the officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness' own words. For good cause shown or by stipulation of the parties, written interrogatories and cross-interrogatories propounding questions of fact may be answered by the witness in writing, without the presence of an officer and without being recorded by a stenographic reporter, provided the answers are sworn to by the witness before a person authorized to administer an oath prescribed by paragraph (f).

(h) Not later than 5 days after the filing of Respondent's answer, any party may serve on the other party a request for the admission of specified facts. In the event the party served refuses timely to respond to the request for admissions, the presiding officer for good cause shown may require the party served to admit or deny each requested fact. The factual propositions set out in the request shall be deemed admitted upon the failure of a party to respond to the presiding officer's order for admission or denial.

(i) Not later than 5 days after the filing of Respondent's answer, either party may file an application for the production of documents or objects. The application shall state the cause therefor and specifically identify the documents or objects and their relevance and materiality to the cause or causes in issue. The presiding officer may order the other party to produce and permit the inspection and photographing of any designated documents or objects not privileged which are reasonably calculated to lead to the discovery of admissible evidence. If the parties cannot themselves agree thereon, the presiding officer shall specify such terms and conditions in making the inspection and taking the copies and photographs.

(j) Failure of a party to comply with an order pursuant to this rule may result in the presiding officer's ruling that the disobedient party may not support or oppose designated charges

or defenses or may not introduce designated matters in evidence. The presiding officer may also infer from the disobedient party's failure to comply with the order that the facts to which the order related would, if produced or admitted, be adverse to such party's interests. The admissibility of matter adduced by operation of § 952.21 shall be governed by § 952.18.

[36 FR 11563, June 16, 1971, as amended at 44 FR 61960, Oct. 29, 1979; 44 FR 65399, Nov. 13, 1979]

§ 952.22 Transcript.

(a) Hearings shall be stenographically reported by a contract reporter of the Postal Service under the supervision of the assigned presiding officer. Argument upon any matter may be excluded from the transcript by order of the presiding officer. A copy of the transcript shall be a part of the record and the sole official transcript of the proceeding. Copies of the transcript shall be supplied to the parties to the proceeding by the reporter at rates not to exceed the maximum rates fixed by contract between the Postal Service and the reporter. Copies of parts of the official record including exhibits admitted into evidence, other than the transcript, may be obtained by the Respondent from the Recorder upon the payment of reasonable copying charges. Items that cannot reasonably be photocopied may be photographed and furnished in that form to Respondent.

(b) Changes in the official transcript may be made only when they involve errors affecting substance and then only in the manner herein provided. No physical changes shall be made in or upon the official transcript, or copies thereof, which have been filed with the record. Within 10 days after the receipt by any party of a copy of the official transcript, or any part thereof, he may file a motion requesting correction of the transcript. Opposing counsel shall, within such time as may be specified by the presiding officer, notify the presiding officer in writing of his concurrence or disagreement with the requested corrections. Failure to interpose timely objection to a proposed correction shall be considered to be concurrence. Thereafter, the presiding officer shall by order specify the corrections to be made in the transcript. The presiding officer on his own initiative may order corrections to be made in the transcript with prompt notice to the parties of the proceeding. Any changes ordered by the presiding officer other than by agreement of the parties shall be subject to objection and exception.

[36 FR 11563, June 16, 1971, as amended at 44 FR 61961, Oct. 29, 1979]

§ 952.23 Proposed findings and conclusions.

(a) Each party to a proceeding, except one who fails to answer the complaint or, having answered, either fails to appear at the hearing or indicates in the answer that he does not desire to appear, may, unless at the discretion of the presiding officer such is not appropriate, submit proposed findings of fact, conclusions of law, orders and supporting reasons either in oral or written form in the discretion of the presiding officer. The presiding officer may also require parties to any proceeding to submit proposed findings of fact, conclusions of law, orders, and supporting reasons. Unless given orally, the date set for filing of proposed findings of fact, conclusions of law, orders and supporting reasons shall be within 15 days after the delivery of the official transcript to the Recorder who shall notify both parties of the date of its receipt. The filing date for proposed findings of fact, conclusions of law, orders and supporting reasons shall be the same for both parties. If not submitted by such date, or unless extension of time for the filing thereof is granted, they will not be included in the record or given consideration.

(b) Except when presented orally before the close of the hearing, proposed findings of fact shall be set forth in serially numbered paragraphs and shall state with particularity all evidentiary facts in the record with appropriate citations to the transcript or exhibits supporting the proposed findings. Each proposed conclusion shall be separately stated.

(c) Except when presented orally before the close of the hearing, proposed orders shall state the statutory basis of the order and, with respect to orders

proposed to be issued pursuant to 39 U.S.C. 3005(a)(3), shall be set forth in serially numbered paragraphs stating with particularity the representations Respondent and its representatives shall cease and desist from using for the purpose of obtaining money or property through the mail.

[48 FR 55126, Dec. 9, 1983]

§ 952.24 Decisions.

(a) *Initial decision by Administrative Law Judge*. A written initial decision shall be rendered by an Administrative Law Judge with all due speed. The initial decision shall include findings and conclusions with the reasons therefor upon all the material issues of fact or law presented on the record, and the appropriate orders or denial thereof. The initial decision shall become the final Agency decision unless an appeal is taken in accordance with § 952.25.

(b) *Tentative or final decision by the Judicial Officer*. When the Judicial Officer presides at the hearing he shall issue a final or a tentative decision. Such decision shall include findings and conclusions with the reasons therefor upon all the material issues of fact or law presented on the record, and the appropriate orders or denial thereof. The tentative decision shall become the final Agency decision unless exceptions are filed in accordance with § 952.25.

(c) *Oral decisions*. The presiding Officer may render an oral decision (an initial decision by an Administrative Law Judge, or a tentative or final decision by the Judicial Officer) at the close of the hearing when the nature of the case and the public interest warrant. A party who desires an oral decision shall notify the presiding officer and the opposing party at least 5 days prior to the date set for the hearing. Either party may submit proposed findings, conclusions, and proposed orders either orally or in writing at the conclusion of the hearing.

[48 FR 55126, Dec. 9, 1983]

§ 952.25 Exceptions to initial decision or tentative decision.

(a) A party in a proceeding presided over by an Administrative Law Judge, except a party who failed to file an answer, may appeal to the Judicial Officer by filing exceptions in a brief on appeal within 15 days from the receipt of the Administrative Law Judge's initial decision.

(b) A party in a proceeding presided over by the Judicial Officer, except one who has failed to file an answer, may file exceptions within 15 days from the receipt of the Judicial Officer's tentative decision.

(c) If an initial or tentative decision is rendered orally by the presiding officer at the close of the hearing, he may then orally give notice to the parties participating in the hearing of the time limit within which an appeal must be filed.

(d) The date for filing the reply to an appeal brief or to a brief in support of exceptions to a tentative decision by the Judicial Officer is 10 days after the receipt thereof. No additional briefs shall be received unless requested by the Judicial Officer.

(e) Briefs upon appeal or in support of exceptions to a tentative decision by the Judicial Officer and replies thereto shall be filed in triplicate with the Recorder and contain the following matter in the order indicated:

(1) A subject index of the matters presented, with page references; a table of cases alphabetically arranged; a list of statutes and texts cited with page references.

(2) A concise abstract or statement of the case in briefs on appeal or in support of exceptions.

(3) Numbered exceptions to specific findings and conclusions of fact, conclusions of law, or recommended orders of the presiding officer in briefs on appeal or in support of exceptions.

(4) A concise argument clearly setting forth points of fact and of law relied upon in support of or in opposition to each exception taken, together with specific references to the parts of the record and the legal or other authorities relied upon.

(f) Unless permission is granted by the Judicial Officer no brief shall exceed 50 printed or 100 typewritten pages double spaced.

(g) The Judicial Officer will extend the time to file briefs only upon written application for good cause shown. The Recorder shall promptly notify the

applicant of the decision of the Judicial Officer on the application. If the appeal brief or brief in support of exceptions is not filed within the time prescribed, the defaulting party will be deemed to have abandoned the appeal or waived the exceptions, and the initial or tentative decision shall become the final Agency decision.

[36 FR 11563, June 16, 1971, as amended at 38 FR 17216, June 29, 1973; 44 FR 61961, Oct. 29, 1979; 48 FR 55127, Dec. 9, 1983]

§ 952.26 Judicial Officer.

The Judicial Officer is authorized: (a) To act as presiding officer at hearings, (b) to render tentative decisions, (c) to render final Agency decisions, (d) to issue Postal Service orders for the Postmaster General, (e) to refer the record in any proceeding to the Postmaster General or the Deputy Postmaster General for final Agency decision, (f) to remand a case to the presiding officer for consideration, (g) to revise or amend these rules of practice. In determining appeals from initial decisions or exceptions to tentative decisions (*see* § 952.24 (a) and (b) *supra*), the entire official record will be considered before a final Agency decision is rendered. Before rendering a final Agency decision, the Judicial Officer may order the hearing reopened for the presentation of additional evidence by the parties.

[44 FR 61961, Oct. 29, 1979]

§ 952.27 Motion for reconsideration.

A party may file a motion for reconsideration of a final agency decision within 10 days after receiving it or within such longer period as the Judicial Officer may fix. Each motion for reconsideration shall be accompanied by a brief clearly setting forth the points of fact and of law relied upon in support of said motion.

[36 FR 11563, June 16, 1971, as amended at 38 FR 17216, June 29, 1973]

§ 952.28 Orders.

(a) If an order is issued which prohibits delivery of mail to a respondent it shall be incorporated in the record of the proceeding. The Recorder shall cause notice of the order to be published in the *Postal Bulletin* and cause the order to be transmitted to such postmasters and other officers and employees of the Postal Service as may be required to place the order into effect.

(b) If an order is issued which requires the Respondent to cease and desist from using certain representations for the purpose of obtaining money or property through the mail, it shall be incorporated in the record of the proceeding and a copy thereof shall be served upon the Respondent or his agent by certified mail or by personal service, or if no person can be found to accept service, service shall be accomplished by ordinary mail to the last known address of Respondent or his agent. If service is not accomplished by certified mail, a statement, showing the time and place of delivery, signed by the postal employee who delivered the order, shall be forwarded to the Recorder.

[36 FR 11563, June 16, 1971, as amended at 38 FR 17216, June 29, 1973; 44 FR 61961, Oct. 29, 1979; 48 FR 55127, Dec. 9, 1983]

§ 952.29 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 Chief Postal Inspector or his or her designee, who shall file a written reply within 10 days after filing 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.

[48 FR 55127, Dec. 9, 1983, as amended at 71 FR 53972, Sept. 13, 2006]

§ 952.30 Supplemental orders.

When the Chief Postal Inspector or his or her designee or his designated representative shall have reason to believe that a person is evading or attempting to evade the provisions of any such orders by conducting the same or a similar enterprise under a different name or at a different address he may file a petition with accompanying evidence setting forth the alleged evasion or attempted evasion and requesting the issuance of a supplemental order or orders against the

name or names allegedly used. Notice shall then be given by the Recorder to the person that the order has been requested and that an answer may be filed within 10 days of the notice. The Judicial Officer, for good cause shown, may hold a hearing to consider the issues in controversy, and shall, in any event, render a final decision granting or denying the supplemental order or orders.

[48 FR 55127, Dec. 9, 1983, as amended at 71 FR 53972, Sept. 13, 2006]

§ 952.31 Computation of time.

A designated period of time under these rules excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or legal holiday, in which event the period runs until the close of business on the next business day.

§ 952.32 Official record.

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

§ 952.33 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.

[48 FR 55127, Dec. 9, 1983, as amended at 67 FR 62179, Oct. 4, 2002]

§ 952.34 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.

[42 FR 5357, Jan. 28, 1977]

PART 953—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO MAILABILITY

Sec.

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

SOURCE: 59 FR 31538, June 20, 1994, unless otherwise noted.

§ 953.1 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.

§ 953.2 Initiation.

Mailability proceedings are initiated upon the filing of a written appeal with the Recorder, Judicial Officer Department, U.S. Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

[63 FR 66050, Dec. 1, 1998]

§ 953.3 Appeal.

The appeal shall:

(a) Identify the appellant;

(b) Describe or be accompanied by a copy of the determination or ruling being appealed;

(c) Describe the character or content of the matter the appellant wishes to have carried and delivered by the U.S. Postal Service;

(d) Request review of the determination or ruling, specifying each and every reason why the appellant believes the determination or ruling should be reversed;

(e) Indicate whether the appellant desires to have an oral hearing or, instead, to have the case decided solely on the basis of the written record (i.e., the appeal, the General Counsel's or Chief Postal Inspector's or his or her designee's reply reply, and any documents submitted by the parties pursuant to an order of the presiding officer); and

(f) Bear the signature, typed or printed name, title, business address, and