

Federal Deposit Insurance Corporation

§ 308.108

parties after the record has been certified to the Board of Directors; exceptions and requests for oral argument; and any other papers required to be filed with the Board of Directors under this part 308.

§ 308.105 Custodian of the record.

The Executive Secretary is the official custodian of the record when no administrative law judge has jurisdiction over the proceeding. As the official custodian, the Executive Secretary shall maintain the official record of all papers filed in each proceeding.

§ 308.106 Written testimony in lieu of oral hearing.

(a) *General rule.* (1) At any time more than fifteen days before the hearing is to commence, on the motion of any party or on his or her own motion, the administrative law judge may order that the parties present part or all of their case-in-chief and, if ordered, their rebuttal, in the form of exhibits and written statements sworn to by the witness offering such statements as evidence, provided that if any party objects, the administrative law judge shall not require such a format if that format would violate the objecting party's right under the Administrative Procedure Act, or other applicable law, or would otherwise unfairly prejudice that party.

(2) Any such order shall provide that each party shall, upon request, have the same right of oral cross-examination (or redirect examination) as would exist had the witness testified orally rather than through a written statement. Such order shall also provide that any party has a right to call any hostile witness or adverse party to testify orally.

(b) *Scheduling of submission of written testimony.* (1) If written direct testimony and exhibits are ordered under paragraph (a) of this section, the administrative law judge shall require that it be filed within the time period for commencement of the hearing, and the hearing shall be deemed to have commenced on the day such testimony is due.

(2) Absent good cause shown, written rebuttal, if any, shall be submitted and the oral portion of the hearing begun

within 30 days of the date set for filing written direct testimony.

(3) The administrative law judge shall direct, unless good cause requires otherwise, that—

(i) All parties shall simultaneously file any exhibits and written direct testimony required under paragraph (b)(1) of this section; and

(ii) All parties shall simultaneously file any exhibits and written rebuttal required under paragraph (b)(2) of this section.

(c) *Failure to comply with order to file written testimony.* (1) The failure of any party to comply with an order to file written testimony or exhibits at the time and in the manner required under this section shall be deemed a waiver of that party's right to present any evidence, except testimony of a previously identified adverse party or hostile witness. Failure to file written testimony or exhibits is, however, not a waiver of that party's right of cross-examination or a waiver of the right to present rebuttal evidence that was not required to be submitted in written form.

(2) Late filings of papers under this section may be allowed and accepted only upon good cause shown.

§ 308.107 Document discovery.

(a) Parties to proceedings set forth at § 308.01 of the Uniform Rules and as provided in the Local Rules may obtain discovery only through the production of documents. No other form of discovery shall be allowed.

(b) Any questioning at a deposition of a person producing documents pursuant to a document subpoena shall be strictly limited to the identification of documents produced by that person and a reasonable examination to determine whether the subpoenaed person made an adequate search for, and has produced, all subpoenaed documents.

Subpart C—Rules of Practice Before the FDIC and Standards of Conduct

§ 308.108 Sanctions.

(a) *General rule.* Appropriate sanctions may be imposed when any counsel or party has acted, or failed to act, in a manner required by applicable