

Department of Justice

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§ 18.6 Conduct of hearings.

(a) A hearing officer appointed by the responsible agency official shall preside over the hearing. The hearing officer may be an administrative law judge, or an employee of the Department of Justice who was not involved in the administration, investigation or prosecution of the matter at issue. In hearings held under the nondiscrimination provisions of the Crime Control Act, the Juvenile Justice Act or the Victims of Crime Act, the hearing officer shall be an administrative law judge.

(b) If the hearing officer appointed is unacceptable to the appellant, it shall promptly inform the responsible agency official of the reasons for its position. The responsible agency official may select another hearing officer, or affirm the initial selection. In either case, the official shall inform the appellant of the reasons for the decision.

(c) The hearing officer shall have the following powers and duties:

(1) The power to hold hearings and regulate the course of the hearings and the conduct of the parties and their counsel;

(2) The power to sign and issue subpoenas and other orders requiring access to records;

(3) The power to administer oaths and affirmations;

(4) The power to examine witnesses;

(5) The power to rule on offers of proof and to receive evidence;

(6) The power to take depositions or to cause depositions to be taken;

(7) The power to hold conferences under §18.6(d) for the settlement or simplification of the issues or for any other proper purpose;

(8) The power to consider and rule upon procedural requests and other motions, including motions for default;

(9) The duty to conduct fair and impartial hearings;

(10) The duty to maintain order;

(11) The duty to avoid unnecessary delay; and

(12) All powers and duties reasonably necessary to perform the functions enumerated in subsections (1)–(11).

(d) The hearing officer may call upon the parties to consider:

(1) Simplification or clarification of the issues;

(2) Stipulations, admissions, agreements on documents, or other understandings which will expedite conduct of the hearing;

(3) Limitation of the number of witnesses and of cumulative evidence;

(4) Settlement of all or part of the issues in dispute;

(5) Such other matters as may aid in the disposition of the case.

(e) All hearings under this part shall be public unless otherwise ordered by the responsible agency official.

(f) The hearing shall be conducted in conformity with sections 5–8 of the Administrative Procedure Act, 5 U.S.C. 554–557.

(g) The responsible agency shall have the burden of going forward with the evidence and shall generally present its evidence first.

(h) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules designed to assure production of the most credible evidence available and to subject testimony to cross-examination shall be applied where reasonably necessary by the hearing officer. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties, and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record.

(i) During the time a proceeding is before a hearing officer, all motions shall be addressed to the hearing officer and, if within his or her delegated authority, shall be ruled upon. Any motion upon which the hearing officer has no authority to rule shall be certified to the responsible agency official with a recommendation. The opposing party may answer within such time as may be designated by the hearing officer. The hearing officer may permit further replies by both parties.

§ 18.7 Discovery.

(a)(1) At any time after the initiation of the proceeding, the hearing officer may order, by subpoena if necessary,

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the taking of a deposition and the production of relevant documents by the deponent. Such order may be entered upon a showing that the deposition is necessary for discovery purposes, and that such discovery could not be accomplished by voluntary methods. Such an order may also be entered in extraordinary circumstances to preserve relevant evidence upon a showing that there is substantial reason to believe that such evidence could not be presented through a witness at the hearing. The decisive factors for a determination under this subsection, however, shall be fairness to all parties and the requirements of due process. Depositions may be taken orally or upon written questions before any person who has the power to administer oaths.

(2) Each deponent shall be duly sworn, and any adverse party shall have the right to cross-examine. Objections to questions or documents shall be in short form, stating the grounds upon which objections are made. The questions propounded and the answers thereto, together with all objections made (but not including argument or debate), shall be reduced to writing and certified by the officer before whom the deposition was taken. Thereafter, the officer shall forward the deposition and one (1) copy thereof to the party at whose instance the deposition was taken and shall forward one (1) copy to the representative of the other party.

(3) A deposition may be admitted into evidence as against any party who was present or represented at the taking of the deposition, or who had due notice thereof, if the hearing officer finds that there are sufficient reasons for admission and that the admission of the evidence would be fair to all parties and comport with the requirements of due process.

(b)(1) At any time after the initiation of the appeal, any party may serve upon any other party written interrogatories to be answered by the party served, or by an authorized representative of the party if the party served is a corporate or governmental entity. The party served shall furnish all information which is available to it.

(2) Each interrogatory shall be answered separately and fully in writing

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under oath by the party addressed or by an authorized representative. The time and manner of returning the interrogatory shall be prescribed by the hearing officer.

§ 18.8 Recommended decision.

Within a reasonable time after the close of the record of the hearings conducted under §18.6, the hearing officer shall submit findings of fact, conclusions of law, and a recommended order to the responsible agency official, in writing. The hearing officer shall promptly make copies of these documents available to the parties.

§ 18.9 Final agency decision.

(a) In hearings conducted under §18.6, the responsible agency official shall make the final agency decision, on the basis of the record, findings, conclusions, and recommendations presented by the hearing examiner.

(b) Prior to making a final decision, the responsible agency official shall give the parties an opportunity to submit the following, within thirty (30) days after the submission of the hearing officer's recommendations:

(1) Proposed findings and determinations;

(2) Exceptions to the recommendations of the hearing officer; and

(3) Supporting reasons for the exceptions or proposed findings or determinations; and

(4) Final briefs summarizing the arguments presented at the hearing.

(c) All determinations, findings and conclusions made by the responsible agency official shall be final and conclusive upon the responsible agency and all appellants.

§ 18.10 Rehearing.

(a) Any appellant dissatisfied with a final agency decision under §18.9 may, within 30 days after the notice of the final agency decision is sent, request the responsible agency official to re-review the record, and present additional evidence which is appropriate and pertinent to support a different decision.

(b) If the responsible agency official finds that the appellant has: