

## United States Postal Service

## § 956.17

The presiding officer shall give consideration to the convenience and necessity of the parties and the relevance of the evidence to be offered.

[49 FR 40771, Oct. 17, 1984, as amended at 63 FR 66051, Dec. 1, 1998]

### § 956.14 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 notice of proposed disciplinary action shall be mailed to the attorney.

(d) All counsel shall promptly file notices of appearance. Changes of the respondent's counsel shall be recorded by notices from retiring and succeeding counsel and from the respondent.

(e) After an answer has been filed pursuant to the rules in this part, the Law Department shall represent the Ethical Conduct Officer in further proceedings relative to the hearing and shall in its notice of appearance identify the individual member of such department who has been assigned to handle the case on its behalf.

### § 956.15 Presiding officer.

(a) The presiding officer shall be an Administrative Law Judge qualified in accordance with law. The Chief Administrative Law Judge shall assign cases under this part upon rotation so far as practicable. The Judicial Officer may, for good cause found, preside at the reception of evidence upon request of 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 purposes of the settlement or simplification of issues by the parties;

(8) Permit oral argument by any party;

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

(10) 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;

(11) Take such other and further action as may be necessary properly to preside over the proceeding and render decision therein.

### § 956.16 Burden of proof and evidence.

(a) Each party may introduce and examine witnesses and submit physical evidence. The Ethical Conduct Officer has the burden of proof in any proceeding under this part and must establish a violation by a preponderance of the evidence.

(b) Except as otherwise provided in these rules, the Federal Rules of Evidence shall be applicable to the hearings conducted under this part. Such rules may be relaxed, however, to the extent that the presiding officer deems proper to insure a fair hearing.

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

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

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

(f) Each party may present oral argument.

### § 956.17 Discovery—depositions.

(a) The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the presiding officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense; and those orders may