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39 CFR Ch. I (7-1-03 Edition)

include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) After an answer has been filed, the parties may mutually agree to, or the presiding officer may, upon application of either party and for good cause shown, order the taking of the testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purposes of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) The time, place, and manner of taking depositions shall be mutually agreed by the parties or, failing such agreement, governed by order of the presiding officer.

(d) No testimony taken by depositions shall be considered as part of the evidence in a hearing unless and until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted on the record, the presiding officer may, in his discretion, receive depositions as evidence in supplementation of that record.

(e) Each party shall bear its own expenses associated with the taking of any deposition.

§ 956.18 Interrogatories to parties, admission of facts, and production of documents.

(a) After an answer has been filed, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 30 days. Upon timely objection by the party, the presiding officer will determine the extent to which the interrogatories will be permitted. The scope and use of interrogatories will be controlled by § 956.17.

(b) After an answer has been filed, a party may serve upon the other party a request for the admission of specified

facts. Within 30 days after service, the party served shall answer each requested fact or file objections thereto. The factual propositions set out in the request shall be deemed admitted upon the failure of a party to respond to the request for admission.

(c) Upon motion of any party showing good cause therefore, and upon notice, the presiding officer may order the other party to produce and permit the inspection and copying or photocopying of any designated documents or objects, not privileged, specifically identified, and their relevance and materiality to the cause or causes in issue explained, which are reasonably calculated to lead to the discovery of admissible evidence. If the parties cannot themselves agree thereon, the presiding officer shall specify just terms and conditions in making the inspection and making the copies and photographs.

§ 956.19 Transcript.

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

§ 956.20 Proposed findings and conclusions.

(a) Each party to a proceeding, except one who fails to appear at the hearing may, unless the presiding officer orders otherwise, submit proposed findings of fact, conclusions of law and supporting reasons, either in oral or written form at the discretion of the presiding officer. The presiding officer may also require parties to any proceeding to submit proposed findings of fact and conclusions of law with supporting reasons. Unless ordered otherwise by the presiding officer, the date set for filing of proposed findings of fact and conclusions of law 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 shall be the same for both parties. If not submitted by such date, or

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unless an extension of time for the filing thereof is granted, they will not be included in the record or given consideration.

(b) 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.

§ 956.21 Decisions.

(a) A written initial decision by an Administrative Law Judge shall be rendered with all due speed. The initial decision shall include findings of fact and conclusions of law, with the reasons therefor, upon all the material issues of fact or law presented on the record, and an appropriate order. A tentative decision shall become the final decision of the Postal Service unless exceptions are filed in accordance with § 956.22.

(b) When the Judicial Officer presides at the hearing, he shall issue a final or a tentative decision. Such decision shall include findings of fact and conclusions of law, with the reasons therefor, upon all the material issues of fact or law presented on the record, and an appropriate order. A tentative decision shall become the final decision of the Postal Service unless exceptions are filed in accordance with § 956.22.

§ 956.22 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 written 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 written tentative decision.

(c) Upon receipt of the brief on appeal from an initial decision of an Administrative Law Judge, the Recorder shall promptly transmit the record to the Judicial Officer. The date for filing the reply to a brief on appeal 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.

(d) Briefs on appeal or in support of exceptions and replies thereto shall be filed in quadruplicate 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.

(3) Numbered exceptions to specific findings of fact or conclusions of law of the presiding officer.

(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 pertinent part of the record and the legal or other authorities relied upon.

(e) Unless permission is granted by the Judicial Officer, no brief on appeal or in support of exceptions shall exceed 50 printed or 100 typewritten pages double spaced.

(f) The Judicial Officer will extend the time to file briefs only upon motion for good cause found. The movant shall be promptly notified of the Judicial Officer's decision on the motion.

§ 956.23 Judicial Officer.

The Judicial Office is authorized:

(a) To act as presiding officer at hearings;

(b) To render tentative decisions;

(c) To render final decisions of the Postal Service;

(d) To refer the record in any proceedings to the Postmaster General or the Deputy Postmaster General who will make the final decision of the Postal Service; and

(e) To revise or amend these rules of practice. In determining appeals from initial decisions or exceptions to tentative decisions, the entire official record will be considered before a final decision of the Postal Service is rendered. Before rendering a final decision of the Postal Service, the Judicial Officer may order the hearing reopened for