

§ 19.171

12 CFR Ch. I (1-1-04 Edition)

in writing to the deponent and to every other party to the proceeding. The notice must state the time and place for taking the deposition, and the name and address of the person to be deposed.

(c) *Time limits.* A party may take depositions at any time after the commencement of the proceeding, but no later than ten days before the scheduled hearing date, except with permission of the administrative law judge for good cause shown.

(d) *Conduct of the deposition.* The witness must be duly sworn, and each party will have the right to examine the witness with respect to all non-privileged, relevant, and material matters of which the witness has factual, direct, and personal knowledge. Objections to questions or exhibits must be in short form and must state the grounds for the objection. Failure to object to questions or exhibits is not a waiver except where the grounds for the objection might have been avoided if the objection had been timely presented.

(e) *Recording the testimony—(1) Generally.* The party taking the deposition must have a certified court reporter record the witness's testimony:

- (i) By stenotype machine or electronic sound recording device;
- (ii) Upon agreement of the parties, by any other method; or
- (iii) For good cause and with leave of the administrative law judge, by any other method.

(2) *Cost.* The party taking the deposition must bear the cost of the recording and transcribing the witness's testimony.

(3) *Transcript.* Unless the parties agree that a transcription is not necessary, the court reporter must provide a transcript of the witness's testimony to the party taking the deposition and must make a copy of the transcript available to each party upon payment by that party of the cost of the copy.

(f) *Protective orders.* At any time after notice of a deposition has been given, a party may file a motion for the issuance of a protective order. Such protective order may prohibit, terminate, or limit the scope or manner of the taking of a deposition. The administrative law judge shall grant such

protective order upon a showing of sufficient grounds, including that the deposition:

- (1) Is unreasonable, oppressive, excessive in scope, or unduly burdensome;
- (2) Involves privileged, irrelevant, or immaterial matters;
- (3) Involves unwarranted attempts to pry into a party's preparation for trial; or
- (4) Is being conducted in bad faith or in such manner as to unreasonably annoy, embarrass, or oppress the witness.

(g) *Fees.* Deposition witnesses, including expert witnesses, shall be paid the same expenses in the same manner as are paid witnesses in the district courts of the United States in proceedings in which the United States is a party. Expenses in accordance with this paragraph shall be paid by the party seeking to take the deposition.

[56 FR 38028, Aug. 9, 1991, as amended at 61 FR 20338, May 6, 1996]

§ 19.171 Deposition subpoenas.

(a) *Issuance.* At the request of a party, the administrative law judge shall issue a subpoena requiring the attendance of a witness at a discovery deposition under paragraph (a) of this section. The attendance of a witness may be required from any place in any state or territory that is subject to the jurisdiction of the United States or as otherwise permitted by law.

(b) *Service—(1) Methods of service.* The party requesting the subpoena must serve it on the person named therein, or on that person's counsel, by any of the methods identified in §19.11(d).

(2) *Proof of service.* The party serving the subpoena must file proof of service with the administrative law judge.

(c) *Motion to quash.* A person named in a subpoena may file a motion to quash or modify the subpoena. A statement of the reasons for the motion must accompany it and a copy of the motion must be served on the party which requested the subpoena. The motion must be made prior to the time for compliance specified in the subpoena and not more than ten days after the date of service of the subpoena, or if the subpoena is served within 15 days of the hearing, within five days after the date of service.

(d) *Enforcement of deposition subpoena.* Enforcement of a deposition subpoena shall be in accordance with the procedures of § 19.27(d).

[56 FR 38028, Aug. 9, 1991, as amended at 61 FR 20338, May 6, 1996]

### Subpart J—Formal Investigations

#### § 19.180 Scope.

This subpart and § 19.8 apply to formal investigations initiated by order of the Comptroller or the Comptroller's delegate and pertain to the exercise of powers specified in 12 U.S.C. 481, 1818(n) and 1820(c), and section 21 of the Exchange Act (15 U.S.C. 78u). This subpart does not restrict or in any way affect the authority of the Comptroller to conduct examinations into the affairs or ownership of banks and their affiliates.

#### § 19.181 Confidentiality of formal investigations.

Information or documents obtained in the course of a formal investigation are confidential and may be disclosed only in accordance with the provisions of part 4 of this chapter.

#### § 19.182 Order to conduct a formal investigation.

A formal investigation begins with the issuance of an order signed by the Comptroller or the Comptroller's delegate. The order must designate the person or persons who will conduct the investigation. Such persons are authorized, among other things, to issue subpoenas duces tecum, to administer oaths, and receive affirmations as to any matter under investigation by the Comptroller. Upon application and for good cause shown, the Comptroller may limit, modify, or withdraw the order at any stage of the proceedings.

#### § 19.183 Rights of witnesses.

(a) Any person who is compelled or requested to furnish testimony, documentary evidence, or other information with respect to any matter under formal investigation shall, on request, be shown the order initiating the investigation.

(b) Any person who, in a formal investigation, is compelled to appear and

testify, or who appears and testifies by request or permission of the Comptroller, may be accompanied, represented, and advised by counsel. The right to be accompanied, represented, and advised by counsel means the right of a person testifying to have an attorney present at all times while testifying and to have the attorney—

(1) Advise the person before, during and after the conclusion of testimony;

(2) Question the person briefly at the conclusion of testimony to clarify any of the answers given; and

(3) Make summary notes during the testimony solely for the use of the person.

(c) Any person who has given or will give testimony and counsel representing the person may be excluded from the proceedings during the taking of testimony of any other witness.

(d) Any person who is compelled to give testimony is entitled to inspect any transcript that has been made of the testimony but may not obtain a copy if the Comptroller's representatives conducting the proceedings have cause to believe that the contents should not be disclosed pending completion of the investigation.

(e) Any designated representative conducting an investigative proceeding shall report to the Comptroller any instances where a person has been guilty of dilatory, obstructionist or insubordinate conduct during the course of the proceeding or any other instance involving a violation of this part. The Comptroller may take such action as the circumstances warrant, including exclusion of the offending individual or individuals from participation in the proceedings.

#### § 19.184 Service of subpoena and payment of witness expenses.

(a) *Methods of service.* Service of a subpoena may be made by any of the methods identified in § 19.11(d).

(b) *Expenses.* A witness who is subpoenaed will be paid the same expenses in the same manner as witnesses in the district courts of the United States. The expenses need not be tendered at the time a subpoena is served.

[61 FR 20338, May 6, 1996]