

affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

§ 501.718 Conduct and order of hearings.

All hearings shall be conducted in a fair, impartial, expeditious and orderly manner. Each party has the right to present its case or defense by oral and documentary evidence and to conduct such cross examination as may be required for full disclosure of the relevant facts. The Director shall present his or her case-in-chief first. The Director shall be the first party to present an opening statement and a closing statement and may make a rebuttal statement after the respondent's closing statement.

§ 501.719 Ex parte communications.

(a) Prohibition.

(1) From the time the Director issues an Order Instituting Proceedings until the date of final decision, no party, interested person, or representative thereof shall knowingly make or cause to be made an ex parte communication.

(2) Except to the extent required for the disposition of ex parte communication matters as authorized by law, the Secretary's designee and the Administrative Law Judge presiding over any proceeding may not:

(i) consult a person or party on an issue, unless on notice and opportunity for all parties to participate; or

(ii) be responsible to or subject to the supervision, direction of, or evaluation by, an employee engaged in the performance of investigative or prosecutorial functions for the Department.

(b) Procedure upon occurrence of ex parte communication. If an ex parte communication is received by the Administrative Law Judge or the Secretary's designee, the Administrative Law Judge or the Secretary's designee, as appropriate, shall cause all of such written communication (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. A party may, not later than 10 days after the date of service, file a response thereto and may recommend that the person making the prohibited communication be sanctioned pursuant to paragraph (c) of this section.

(c) *Sanctions.* Any party to the proceeding, a party's representative, or any other interested individual, who makes a prohibited ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions

imposed by the Administrative Law Judge or the Secretary's designee, as appropriate, for good cause shown, including, but not limited to, exclusion from the hearing and an adverse ruling on the issue that is the subject of the prohibited communication.

§ 501.720 Separation of functions.

Any officer or employee engaged in the performance of investigative or prosecutorial functions for the Department in a proceeding as defined in § 501.702 may not, in that proceeding or one that is factually related, participate or advise in the decision pursuant to Section 557 of the Administrative Procedure Act, 5 U.S.C. 557, except as a witness or counsel in the proceeding.

§ 501.721 Hearings to be public.

All hearings, except hearings on applications for confidential treatment filed pursuant to § 501.725(b), shall be public unless otherwise ordered by the Administrative Law Judge or the Secretary's designee, as appropriate, on his or her own motion or the motion of a party.

§ 501.722 Prehearing conferences.

(a) *Purposes of conferences.* The purposes of prehearing conferences include, but are not limited to:

(1) Expediting the disposition of the proceeding;

(2) Establishing early and continuing control of the proceeding by the Administrative Law Judge; and

(3) Improving the quality of the hearing through more thorough preparation.

(b) *Procedure.* On his or her own motion or at the request of a party, the Administrative Law Judge may direct a representative or any party to attend one or more prehearing conferences. Such conferences may be held with or without the Administrative Law Judge present as the Administrative Law Judge deems appropriate. Where such a conference is held outside the presence of the Administrative Law Judge, the Administrative Law Judge shall be advised promptly by the parties of any agreements reached. Such conferences also may be held with one or more persons participating by telephone or other remote means.

(c) *Subjects to be discussed.* At a prehearing conference consideration may be given and action taken with respect to the following:

(1) Simplification and clarification of the issues;

(2) Exchange of witness and exhibit lists and copies of exhibits;

(3) Admissions of fact and stipulations concerning the contents,

authenticity, or admissibility into evidence of documents;

(4) Matters of which official notice may be taken;

(5) The schedule for exchanging prehearing motions or briefs, if any;

(6) The method of service for papers;

(7) Summary disposition of any or all issues;

(8) Settlement of any or all issues;

(9) Determination of hearing dates (when the Administrative Law Judge is present);

(10) Amendments to the Order Instituting Proceedings or answers thereto;

(11) Production of documents as set forth in § 501.723, and prehearing production of documents in response to subpoenas duces tecum as set forth in § 501.728; and

(12) Such other matters as may aid in the orderly and expeditious disposition of the proceeding.

(d) *Timing of conferences.* Unless the Administrative Law Judge orders otherwise, an initial prehearing conference shall be held not later than 14 days after service of an answer. A final conference, if any, should be held as close to the start of the hearing as reasonable under the circumstances.

(e) *Prehearing orders.* At or following the conclusion of any conference held pursuant to this rule, the Administrative Law Judge shall enter written rulings or orders that recite the agreement(s) reached and any procedural determinations made by the Administrative Law Judge.

(f) *Failure to appear: default.* A respondent who fails to appear, in person or through a representative, at a prehearing conference of which he or she has been duly notified may be deemed in default pursuant to § 501.716(a). A respondent may make a motion to set aside a default pursuant to § 501.726(e).

§ 501.723 Prehearing disclosures; methods to discover additional matter.

(a) *Initial disclosures.* (1) Except to the extent otherwise stipulated or directed by order of the Administrative Law Judge, a party shall, without awaiting a discovery request, provide to the opposing party:

(i) The name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment of a witness appearing in person or by deposition, identifying the subjects of the information; and

(ii) A copy, or a description by category and location, of all documents,