

§ 19.41

assist the Comptroller in the consideration and disposition of the case. The final decision of the Comptroller will be based upon review of the entire record of the proceeding, except that the Comptroller may limit the issues to be reviewed to those findings and conclusions to which opposing arguments or exceptions have been filed by the parties.

(2) The Comptroller shall render a final decision within 90 days after notification of the parties that the case has been submitted for final decision, or 90 days after oral argument, whichever is later, unless the Comptroller orders that the action or any aspect thereof be remanded to the administrative law judge for further proceedings. Copies of the final decision and order of the Comptroller shall be served upon each party to the proceeding, upon other persons required by statute, and, if directed by the Comptroller or required by statute, upon any appropriate state or Federal supervisory authority.

§ 19.41 Stays pending judicial review.

The commencement of proceedings for judicial review of a final decision and order of the Comptroller may not, unless specifically ordered by the Comptroller or a reviewing court, operate as a stay of any order issued by the Comptroller. The Comptroller may, in his or her discretion, and on such terms as he or she finds just, stay the effectiveness of all or any part of an order pending a final decision on a petition for review of that order.

Subpart B—Procedural Rules for OCC Adjudications

§ 19.100 Filing documents.

All materials required to be filed with or referred to the Comptroller or the administrative law judge in any proceeding under this part must be filed with the Hearing Clerk, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. Filings to be made with the Hearing Clerk include the notice and answer; motions and responses to motions; briefs; the record filed by the administrative law judge after the issuance of a recommended decision; the recommended decision filed by the administrative

12 CFR Ch. I (1–1–01 Edition)

law judge following a motion for summary disposition (except that in removal and prohibition cases the administrative law judge will file the record and the recommended decision with the Board of Governors of the Federal Reserve System); referrals by the administrative law judge of motions for interlocutory review; exceptions and requests for oral argument; and any other papers required to be filed with the Comptroller or the administrative law judge under this part.

[61 FR 20337, May 6, 1996]

§ 19.101 Delegation to OFIA.

Unless otherwise ordered by the Comptroller, administrative adjudications subject to subpart A of this part shall be conducted by an administrative law judge assigned to OFIA.

Subpart C—Removals, Suspensions, and Prohibitions When a Crime Is Charged or a Conviction Is Obtained

§ 19.110 Scope.

This subpart applies to informal hearings afforded to any institution-affiliated party who has been suspended or removed from office or prohibited from further participation in bank affairs by a notice or order issued by the Comptroller.

§ 19.111 Suspension or removal.

The Comptroller may serve a notice of suspension or order of removal or prohibition on an institution-affiliated party. A copy of such notice or order will be served on the bank, whereupon the institution-affiliated party involved must immediately cease service to the bank or participation in the affairs of the bank. The notice or order will indicate the basis for suspension, removal or prohibition and will inform the institution-affiliated party of the right to request in writing, to be received by the OCC within 30 days from the date that the institution-affiliated party was served with such notice or order, an opportunity to show at an informal hearing that continued service to or participation in the conduct of the affairs of the bank does not, or is

not likely to, pose a threat to the interest of the bank's depositors or threaten to impair public confidence in the bank. The written request must be sent by certified mail to, or served personally with a signed receipt on, the District Administrator in the OCC district in which the bank in question is located, or to the Deputy Comptroller for Multinational Banking, Office of the Comptroller of the Currency, Washington, DC 20219, if the bank is supervised by the Multinational Banking Department. The request must state specifically the relief desired and the grounds on which that relief is based.

§ 19.112 Informal hearing.

(a) *Issuance of hearing order.* After receipt of a request for hearing, the District Deputy Comptroller or Administrator, the Deputy Comptroller for Multinational Banking, or the Deputy Comptroller or Director for Special Supervision, as appropriate, must notify the petitioner requesting the hearing, the OCC's Enforcement and Compliance Division, and the appropriate OCC District Counsel of the date, time, and place fixed for the hearing. The hearing must be scheduled to be held not later than 30 days from the date when a request for hearing is received unless the time is extended in response to a written request of the petitioner. The District Deputy Comptroller or Administrator, the Deputy Comptroller for Multinational Banking, or the Deputy Comptroller or Director for Special Supervision, as appropriate, may extend the hearing date only for a specific period of time and must take appropriate action to ensure that the hearing is not unduly delayed.

(b) *Appointment of presiding officer.* The District Deputy Comptroller or Administrator, the Deputy Comptroller for Multinational Banking, or the Deputy Comptroller or Director for Special Supervision, as appropriate, must appoint one or more OCC employees as the presiding officer to conduct the hearing. The presiding officer(s) may not have been involved in the proceeding, a factually related proceeding, or the underlying enforcement action in a prosecutorial or investigative role.

(c) *Waiver of oral hearing—(1) Petitioner.* When the petitioner requests a

hearing, the petitioner may elect to have the matter determined by the presiding officer solely on the basis of written submissions by serving on the District Deputy Comptroller or Administrator, the Deputy Comptroller for Multinational Banking, or the Deputy Comptroller or Director for Special Supervision, as appropriate, and all parties, a signed document waiving the statutory right to appear and make oral argument. The petitioner must present the written submissions to the presiding officer, and serve the other parties, not later than ten days prior to the date fixed for the hearing, or within such shorter time period as the presiding officer may permit.

(2) *OCC.* The OCC may respond to the petitioner's submissions by presenting the presiding officer with a written response, and by serving the other parties, not later than the date fixed for the hearing, or within such other time period as the presiding officer may require.

(d) *Hearing procedures—(1) Conduct of hearing.* Hearings under this subpart are not subject to the provisions of subpart A of this part or the adjudicative provisions of the Administrative Procedure Act (5 U.S.C. 554–557).

(2) *Powers of the presiding officer.* The presiding officer shall determine all procedural issues that are governed by this subpart. The presiding officer may also permit or limit the number of witnesses and impose time limitations as he or she deems reasonable. The informal hearing will not be governed by the formal rules of evidence. All oral presentations, when permitted, and documents deemed by the presiding officer to be relevant and material to the proceeding and not unduly repetitious will be considered. The presiding officer may ask questions of any person participating in the hearing and may make any rulings reasonably necessary to facilitate the effective and efficient operation of the hearing.

(3) *Presentation.* (i) The OCC may appear and the petitioner may appear personally or through counsel at the hearing to present relevant written materials and oral argument. Except as permitted in paragraph (c) of this section, each party, including the OCC, must file a copy of any affidavit,