

Department of Justice

§ 4.8

(b) The Commission may require of the applicant such additional information as it deems appropriate for the proper consideration and disposition of his application.

§ 4.5 Character endorsements.

Each application filed with the Commission must be accompanied by letters or other forms of statement (in three copies) from six persons addressed to the Chairman, U.S. Parole Commission, attesting to the character and reputation of the applicant. The statement as to character shall indicate the length of time the writer has known applicant, and shall describe applicant's character traits as they relate to the position for which the exemption is sought and the duties and responsibilities thereof. The statement as to reputation shall attest to applicant's reputation in his community or in his circle of business or social acquaintances. Each letter or other form of statement shall indicate that it has been submitted in compliance with procedures under the respective Act and that applicant has informed the writer of the factual basis of his application. The persons submitting letters or other forms of statement shall not include relatives by blood or marriage, prospective employers, or persons serving in any official capacity with an employee benefit plan, labor organization, group or association of employers dealing with labor organizations or industrial labor relations group.

§ 4.6 Institution of proceedings.

All applications and supporting documents received by the Commission shall be reviewed for completeness by the Office of General Counsel of the Parole Commission and if complete and fully in compliance with the regulations of this part the Office of General Counsel shall accept them for filing. Applicant and/or his representative will be notified by the Office of General Counsel of any deficiency in the application and supporting documents. The amount of time allowed for deficiencies to be remedied will be specified in said notice. In the event such deficiencies are not remedied within the specified period or any extension thereof, granted after application to the Commission

in writing within the specified period, the application shall be deemed to have been withdrawn and notice thereof shall be given to applicant.

§ 4.7 Notice of hearing; postponements.

Upon the filing of an application, the Commission shall:

(a) Set the application for a hearing on a date within a reasonable time after its filing and notify the applicant of such date by certified mail;

(b) Give notice, as required by the respective Act, to the appropriate State, County, or Federal prosecuting officials in the jurisdiction or jurisdictions in which the applicant was convicted that an application for a Certificate of Exemption has been filed and the date for hearing thereon; and

(c) Notify the Secretary that an application has been filed and the date for hearing thereon and furnish him copies of the application and all supporting documents.

Any party may request a postponement of a hearing date in writing from the Office of General Counsel at any time prior to ten (10) days before the scheduled hearing. No request for postponement other than the first for any party will be considered unless a showing is made of cause entirely beyond the control of the requester. The granting of such requests will be within the discretion of the Commission. In the event of a failure to appear on the hearing date as originally scheduled or extended, the absent party will be deemed to have waived his right to a hearing. The hearing will be conducted with the parties present participating and documentation, if any, of the absent party entered into the record.

§ 4.8 Hearing.

The hearing on the application shall be held at the offices of the Commission in Washington, DC, or elsewhere as the Commission may direct. The hearing shall be held before the Commission, before one or more Commissioners, or before one or more administrative law judges appointed as provided by section 11 of the Administrative Procedure Act (5 U.S.C. 3105) as the Commission by order shall determine. Hearings shall

§4.9

be conducted in accordance with sections 7 and 8 of the Administrative Procedure Act (5 U.S.C. 556, 557).

§4.9 Representation.

The applicant may be represented before the Commission by any person who is a member in good standing of the bar of the Supreme Court of the United States or of the highest court of any State or territory of the United States, or the District of Columbia, and who is not under any order of any court suspending, enjoining, restraining, or disbaring him from, or otherwise restricting him in, the practice of law. Whenever a person acting in a representative capacity appears in person or signs a paper in practice before the Commission, his personal appearance or signature shall constitute a representation to the Commission that under the provisions of this part and applicable law he is authorized and qualified to represent the particular person in whose behalf he acts. Further proof of a person's authority to act in a representative capacity may be required. When any applicant is represented by an attorney at law, any notice or other written communication required or permitted to be given to or by such applicant shall be given to or by such attorney. If an applicant is represented by more than one attorney, service by or upon any one of such attorneys shall be sufficient.

§4.10 Waiver of oral hearing.

The Commission upon receipt of a statement from the Secretary that he does not object, and in the absence of any request for oral hearing from the others to whom notice has been sent pursuant to §4.7 may grant an application without receiving oral testimony with respect to it.

§4.11 Appearance; testimony; cross-examination.

(a) The applicant shall appear and, except as otherwise provided in §4.10, shall testify at the hearing and may cross-examine witnesses.

(b) The Secretary and others to whom notice has been sent pursuant to §4.7 shall be afforded an opportunity to appear and present evidence and cross-examine witnesses, at any hearing.

28 CFR Ch. I (7-1-05 Edition)

(c) In the discretion of the Commission or presiding officer, other witnesses may testify at the hearing.

§4.12 Evidence which may be excluded.

The Commission or officer presiding at the hearing may exclude irrelevant, untimely, immaterial, or unduly repetitious evidence.

§4.13 Record for decision. Receipt of documents comprising record; timing and extension.

(a) The application and all supporting documents, the transcript of the testimony and oral argument at the hearing, together with any exhibits received and other documents filed pursuant to these procedures and/or the Administrative Procedures Act shall be made parts of the record for decision.

(b) At the conclusion of the hearing the presiding officer shall specify the time for submission of proposed findings of fact and conclusions of law (unless waived by the parties); transcript of the hearing, and supplemental exhibits, if any. He shall set a tentative date for the recommended decision based upon the timing of these preliminary steps. Extensions of time may be requested by any party, in writing, from the Parole Commission. Failure of any party to comply with the time frame as established or extended will be deemed to be a waiver on his part of his right to submit the document in question. The adjudication will proceed and the absence of said document and reasons therefor will be noted in the record.

§4.14 Administrative law judge's recommended decision; exceptions thereto; oral argument before Commission.

Whenever the hearing is conducted by an administrative law judge, at the conclusion of the hearing he shall submit a recommended decision to the Commission, which shall include a statement of findings and conclusions, as well as the reasons therefor. The applicant, the Secretary and others to whom notice has been sent pursuant to §4.7 may file with the Commission, within 10 days after having been furnished a copy of the recommended decision, exceptions thereto and reasons