

§ 8.57

served upon an attorney, certified public accountant, or enrolled practitioner as provided in paragraph (a) of this section, or by mailing the paper by first-class mail to the respondent at the last address known to the Director of Practice, or by mailing the paper by first-class mail to the respondent's attorney or agent of record. This mailing will constitute complete service. Notices may be served upon the respondent or his attorney or agent by telegram.

(c) *Filing of papers.* When the filing of a paper is required or permitted in connection with a disbarment or suspension proceeding, and the place of filing is not specified by this subpart or by rule or order of the Administrative Law Judge, the papers will be filed with the Director of Practice, Treasury Department, Washington, DC 20220. All papers will be filed in duplicate.

§ 8.57 Answer.

(a) *Filing.* The respondent shall file the answer in writing within the time specified in the complaint or notice of institution of the proceeding, unless on application the time is extended by the Director of Practice or the Administrative Law Judge. The respondent shall file the answer in duplicate with the director of Practice.

(b) *Contents.* The respondent shall include in the answer a statement of facts which constitute the grounds of defense, and shall specifically admit or deny each allegation set forth in the complaint, except that the respondent shall not deny a material allegation in the complaint which he or she knows to be true, or state that he or she is without sufficient information to form a belief when in fact the respondent possesses that information. The respondent may also state affirmatively special matters of defense.

(c) *Failure to deny or answer allegations in the complaint.* Every allegation in the complaint which is not denied in the answer is deemed to be admitted and may be considered as proven, and no further evidence in respect of that allegation need be adduced at a hearing. Failure to file an answer within the time prescribed in the notice to the respondent, except as the time for answer is extended by the Director of Practice or the Administrative Law

31 CFR Subtitle A (7-1-05 Edition)

Judge, will constitute an admission of the allegations of the complaint and a waiver of hearing, and the Administrative Law Judge may make a decision by default without a hearing or further procedure.

(d) *Reply by Director of Practice.* No reply to the respondent's answer is required, and new matter in the answer will be deemed to be denied, but the Director of Practice may file a reply at his or her discretion or at the request of the Administrative Law Judge.

§ 8.58 Supplemental charges.

If it appears that the respondent in his or her answer, falsely and in bad faith, denies a material allegation of fact in the complaint or states that the respondent has no knowledge sufficient to form a belief, when he or she in fact possesses that information, or if it appears that the respondent has knowingly introduced false testimony during proceedings for his or her disbarment or suspension, the Director of Practice may file supplemental charges against the respondent. These supplemental charges may be tried with other charges in the case, provided the respondent is given due notice and is afforded an opportunity to prepare to a defense to them.

§ 8.59 Proof; variance; amendment of pleadings.

In the case of a variance between the allegations in a pleading, the Administrative Law Judge may order or authorize amendment of the pleading to conform to the evidence. The party who would otherwise be prejudiced by the amendment will be given reasonable opportunity to meet the allegation of the pleading as amended, and the Administrative Law Judge shall make findings on an issue presented by the pleadings as so amended.

§ 8.60 Motions and requests.

Motions and requests may be filed with the Director of Practice or with the Administrative Law Judge.

§ 8.61 Representation.

A respondent or proposed respondent may appear in person or be represented by counsel or other representative who need not be enrolled to practice before

Office of the Secretary of the Treasury

§ 8.65

the Bureau. The Director of Practice may be represented by an Attorney or other employee of the Treasury Department.

§ 8.62 Administrative Law Judge.

(a) *Appointment.* An Administrative Law Judge, appointed as provided by 5 U.S.C. 3105, shall conduct proceedings upon complaints for the disbarment or suspension of attorneys, certified public accountants, or enrolled practitioners.

(b) *Responsibilities.* The Administrative Law Judge in connection with any disbarment or suspension proceeding shall have authority to:

- (1) Administer oaths and affirmation;
- (2) Make rulings upon motions and requests; these rulings may not be appealed prior to the close of the hearing except at the discretion of the Administrative Law Judge in extraordinary circumstances;
- (3) Rule upon offers of proof, receive relevant evidence, and examine witnesses;
- (4) Take or authorize to the taking of depositions;
- (5) Determine the time and place of hearing and regulate its course and conduct;
- (6) Hold or provide for the holding of conferences to settle or simplify the issues by consent of the parties;
- (7) Receive and consider oral or written arguments on facts or law;
- (8) Make initial decisions;
- (9) Adopt rules of procedure and modify them from time to time as occasion requires for the orderly disposition of proceedings; and
- (10) Perform acts and take measures as necessary to promote the efficient conduct of any proceeding.

§ 8.63 Hearings.

(a) *Conduct.* The Administrative Law Judge shall preside at the hearing on a complaint for the disbarment or suspension of an attorney, certified public accountant, or enrolled practitioner. Hearings will be stenographically recorded and transcribed and the testimony of witnesses will be received under oath or affirmation. The Administrative Law Judge shall conduct hearings pursuant to 5 U.S.C. 556.

(b) *Failure to appear.* If either party to the proceedings fails to appear at the hearing, after due notice has been sent, the Administrative Law Judge may deem them to have waived the right to a hearing and may make a decision against the absent party by default.

§ 8.64 Evidence.

(a) *Rules of evidence.* The rules of evidence prevailing in courts of law and equity are not controlling in hearings. However, the Administrative Law Judge shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(b) *Depositions.* Depositions of witnesses taken pursuant to § 8.65 may be admitted as evidence.

(c) *Government documents.* Official documents, records, and papers of the Bureau of Alcohol, Tobacco and Firearms and the Office of the Director of Practice are admissible in evidence without the production of an officer or employee to authenticate them. These documents, records and papers may be evidenced by a copy attested or identified by an officer or employee of the Bureau or the Treasury Department.

(d) *Exhibits.* If any document, record, or other paper is introduced in evidence as an exhibit, the Administrative Law Judge may authorize the withdrawal of the exhibit subject to any conditions he or she deems proper.

(e) *Objections.* Objections to evidence will be in short form, stating the grounds of objection and the record may not include arguments thereon, except as ordered by the Administrative Law Judge. Rulings on objections will be a part of the record. No exception to the ruling is necessary to preserve the rights of the parties.

§ 8.65 Depositions.

Depositions for use at a hearing may, with the written approval of the Administrative Law Judge, be taken by either the Director of Practice or the respondent or their authorized representatives. Depositions may be taken upon oral or written questioning, upon not less than 10 days' written notice to the other party before any officer authorized to administer an oath for general purposes or before an officer or