

§ 354.13

consolidation if sanctions are proposed against more than one party or if violations of more than one administrative protective order are alleged if to do so would expedite processing of the cases and not adversely affect the interests of the parties.

(c) *Hearing procedures.* Hearings will be conducted in a fair and impartial manner by the presiding official, who may limit attendance at any hearing or portion thereof if necessary or advisable in order to protect business proprietary information from improper disclosure. The rules of evidence prevailing in courts of law shall not apply, and all evidentiary material the presiding official determines to be relevant and material to the proceeding and not unduly repetitious may be received into evidence and given appropriate weight. The presiding official may make such orders and determinations regarding the admissibility of evidence, conduct of examination and cross-examination, and similar matters as are necessary or appropriate to ensure orderliness in the proceedings. The presiding official will ensure that a record of the hearing be taken by reporter or by electronic recording, and will order such part of the record to be sealed as is necessary to protect business proprietary information.

(d) *Rights of parties.* At a hearing each party shall have the right to:

- (1) Introduce and examine witnesses and submit physical evidence,
- (2) Confront and cross-examine adverse witnesses,
- (3) Present oral argument, and
- (4) Receive a transcript or recording of the proceedings, upon request, subject to the presiding official's orders regarding sealing the record.

(e) *Representation.* Each charged or affected party has a right to represent himself or herself or to retain private counsel for that purpose. The Chief Counsel will represent the Department, unless the General Counsel determines otherwise. The presiding official may disallow a representative if such representation constitutes a conflict of interest or is otherwise not in the interests of justice and may debar a representative for contumacious conduct relating to the proceedings.

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(f) *Ex parte communications.* The parties and their representatives may not make any *ex parte* communications to the presiding official concerning the merits of the allegations or any matters at issue, except as provided in §354.8 regarding emergency interim sanctions.

§ 354.13 Proceeding without a hearing.

If no party has requested a hearing, the Deputy Under Secretary, within 40 days after the date of service of a charging letter, will submit for inclusion into the record and provide each charged or affected party information supporting the allegations in the charging letter. Each charged or affected party has the right to file a written response to the information and supporting documentation within 30 days after the date of service of the information provided by the Deputy Under Secretary unless the Deputy Under Secretary alters the time period for good cause. The Deputy Under Secretary may allow the parties to submit further information and argument.

§ 354.14 Initial decision.

(a) *Initial decision.* The presiding official, if a hearing was requested, or the Deputy Under Secretary will submit an initial decision to the APO Sanctions Board, providing copies to the parties. The presiding official or Deputy Under Secretary will ordinarily issue the decision within 20 days of the conclusion of the hearing, if one was held, or within 15 days of the date of service of final written submissions. The initial decision will be based solely on evidence received into the record, and the pleadings of the parties.

(b) *Findings and conclusions.* The initial decision will state findings and conclusions as to whether a person has violated an administrative protective order; the basis for those findings and conclusions; and whether the sanctions proposed in the charging letter, or lesser included sanctions, should be imposed against the charged or affected party. The presiding official or Deputy Under Secretary may impose sanctions only upon determining that the preponderance of the evidence supports a