

United States Postal Service

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regular business address of the person for whom they are intended to enable the person to escape identification.

[52 FR 36763, Oct. 1, 1987, as amended at 67 FR 62179, Oct. 4, 2002]

§ 964.3 Customer petitions; notice of hearing; answer; summary judgment.

(a) *Petition.* Any addressee who receives notice from the Chief Postal Inspector or his delegate that his mail has been withheld pursuant to 39 U.S.C. 3003(a) or 3004 may oppose such action by filing with the Judicial Officer a written Petition stating the reasons for his or her opposition. The Petition, signed by the Petitioner or his attorney, shall be filed by sending the Petition via certified mail to the Recorder, Judicial Officer Department, U.S. Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201-3078. The Petition must be postmarked within 14 days of the date upon which the Petitioner received the notice. The failure of an addressee who has received notice of withheld mail to file a Petition opposing such action with the Judicial Officer shall constitute a waiver of hearing and further procedural steps by the addressee. The General Counsel of the Postal Service shall thereupon file the matter with the Judicial Officer for issuance of a final order pursuant to § 964.19. Such referral shall contain a statement of the basis for the detention, evidence that the notice of the detention and the addressee's right to petition for review under this part were served on the addressee in person or by mailing a copy to the address to which the detained mail is directed, the date of such service, and a copy of the proposed order sought by the General Counsel.

(b) *Notice of hearing.* On receipt of the Petition, the Recorder shall schedule a hearing on a date not later than 28 days after the date of receipt. A Notice of Hearing shall be sent to the Petitioner. A copy of the Notice of Hearing and the Petition shall be sent to the General Counsel of the U.S. Postal Service.

(c) *Answer.* The General Counsel of the Postal Service shall file an Answer to the Petition within 10 days of re-

ceipt of the Petition from the Recorder.

(d) *Summary judgment.* Upon motion of either the General Counsel or the Petitioner, or upon his own initiative, the presiding officer may find that the Petition and Answer present no material issues of fact requiring an evidentiary hearing and thereupon may render an initial decision granting or dismissing the Petition. The initial decision shall become the final agency decision if a timely appeal is not taken pursuant to § 964.16 of this part.

[52 FR 36763, Oct. 1, 1987, as amended at 53 FR 4849, Feb. 18, 1988; 63 FR 66053, Dec. 1, 1998]

§ 964.4 Hearings.

Hearings are held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201-3078, or other locations designated by the presiding officer. Not later than 10 days prior to the date fixed for the hearing, a party may file a request that a hearing be held to receive evidence in his behalf at a place other than that designated for hearing in the notice. He shall support his request with a statement outlining:

(a) The evidence to be offered in such place;

(b) The names and addresses of the witnesses who will testify; and

(c) The reasons why such evidence cannot be produced at Arlington, VA.

The presiding officer shall give consideration to the convenience and necessity of the parties and the relevance of the evidence to be offered

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§ 964.5 Election as to hearing.

If both parties elect, they may waive an oral hearing and submit the matter for decision on the basis of the Petition and Answer, subject to the authority of the presiding officer to require the parties to furnish such further evidence or such briefs as necessary. The request to waive oral hearing should be filed not later than 10 days prior to the date set for hearing.

§ 964.6 Default.

If a Petitioner fails to appear at the hearing without notice or without adequate cause the presiding officer may

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issue an order dismissing the Petition and refer the matter to the Judicial Officer for issuance of the order provided for under § 964.19. An order of dismissal issued under this section may be appealed to the Judicial Officer within 10 days from the date of the order.

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§ 964.7 Presiding officers.

(a) The presiding officer shall be an Administrative Law Judge qualified in accordance with law. The Judicial Officer shall assign cases upon rotation as far as practicable. The Judicial Officer may on his own initiative or for good cause shown, preside at the reception of evidence.

(b) The presiding officer has authority to:

(1) Administer oaths and affirmations;

(2) Examine witnesses;

(3) Rule upon offers of proof, admissibility of evidence and matters of procedure;

(4) Order any pleadings amended upon motion of a party at any time prior to the close of the hearing;

(5) Maintain discipline and decorum and exclude from the hearing any person acting in an indecorous manner;

(6) Require the filing of briefs or memoranda of law on any matter upon which he is required to rule;

(7) Order prehearing conferences for the purpose of the settlement or simplification of issues by the parties or for any other purpose he believes will facilitate the processing of the proceeding;

(8) Order the proceeding reopened at any time prior to his decision for the receipt of additional evidence;

(9) Render an initial decision, which becomes the final agency decision unless a timely appeal is taken: The Judicial Officer may issue a tentative or a final decision;

(10) Rule upon applications and requests filed under § 964.9 of this part.

§ 964.8 Subpoenas and witness fees not authorized.

The Postal Service is not authorized to issue subpoenas requiring the attendance or testimony of witnesses, nor to pay fees and expenses for a Petitioner's witnesses or for depositions requested by a Petitioner.

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tioner's witnesses or for depositions requested by a Petitioner.

§ 964.9 Discovery; interrogatories; admission of facts; production and inspection of documents.

(a) *General policy and protective orders.*

The parties are encouraged to engage in voluntary discovery procedures. In connection with any discovery procedure permitted under this part, the presiding officer may issue any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Such orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting confidential information or documents from unwarranted public disclosure. Each party shall bear its own expenses relating to discovery.

(b) *Depositions.* (1) After the issuance of a notice of hearing described in § 964.3 of this part, the parties may mutually agree to, or the presiding officer may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purposes of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence, or both.

(2) The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the presiding officer.

(3) No testimony taken by depositions shall be considered as part of the evidence in the hearing unless and until such testimony is offered and received in evidence at such hearing. Depositions will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In