

(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.

§ 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 cases submitted on the record, the presiding officer may, in his discretion, receive depositions as evidence in supplementation of the record.

(c) *Interrogatories to parties.* Not later than 5 days after the filing of the Answer described in § 964.3, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 10 days. Upon timely objection by the party, the presiding officer will determine the extent to which the interrogatories will be permitted.

(d) *Admission of facts.* Not later than 5 days after the filing of the Answer described in § 964.3, a party may serve upon the other party a request for the admission of specified facts. Within 10 days after receipt of the request for admissions, the party served shall admit or answer each specified fact or file objections thereto. Any factual propositions set out in the request to which a party fails to respond shall be deemed admitted.

(e) *Production and inspection of documents.* Upon motion of any party showing good cause therefor, and upon notice, the presiding officer may order the other party to produce and permit the inspection and copying or

photographing of any designated documents and or objects, provided that such documents and objects are not privileged, their relevance to the cause or causes in issue is explained, and they are reasonably calculated to lead to the discovery of admissible evidence. If the parties cannot themselves agree thereon, the presiding officer shall specify the terms and conditions for making the inspection and taking the copies and photographs.

§ 964.10 Evidence.

(a) In general, admissibility will hinge on relevancy and materiality. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(b) Testimony shall be given under oath or affirmation and witnesses shall be subject to cross-examination.

(c) Agreed statements of fact are encouraged and may be received in evidence.

§ 964.11 Transcript.

Testimony and argument at hearings shall be reported verbatim, unless the presiding officer orders otherwise. Transcripts or copies of the proceedings are supplied to the parties at such rate as may be fixed by contract between the reporter and Postal Service. Any party desiring a copy of the transcript shall order it from the contract reporter in a timely manner to avoid delay in filing briefs.

§ 964.12 Computation of time.

A designated period of time under these rules means calendar days, excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or legal holiday, in which case the period runs until the close of business on the next business day.

§ 964.13 Continuances and extensions.

Continuances and extensions will be granted by the presiding officer for good cause shown.

§ 964.14 Proposed findings of fact and conclusions of law.

(a) Each party to a proceeding, except one who fails to answer the Petition or, having answered, either fails to appear at the hearing or indicates in the answer that he does not desire to appear, may, unless at the discretion of the presiding officer such is not appropriate, submit proposed findings of fact, conclusions of law, orders and supporting reasons either in oral or written form in the discretion of the presiding officer. The presiding officer may also require parties to submit proposed findings of fact, conclusions of law, orders, and supporting reasons. Unless given orally, the date set for filing of proposed findings of fact, conclusions of law, orders and supporting reasons shall be within 15 days after the delivery of the official transcript to the Recorder who shall notify both parties of the date of its receipt. The filing date for proposed findings of fact, conclusions of law, orders and supporting reasons shall be the same for both parties. If not submitted by such date, unless extension of time for the filing thereof is granted, they will not be included in the record or given consideration.

(b) Except when presented orally before the close of the hearing, proposed findings of fact shall be set forth in serially numbered paragraphs and shall state with particularity all evidentiary facts in the record with appropriate citations to the transcript or exhibits supporting the proposed finding. Each proposed conclusion shall be separately stated.

§ 964.15 Decisions.

(a) *Initial decision by Administrative Law Judge.* A written initial decision shall be rendered by an Administrative Law Judge with all due speed. The initial decision shall include findings and conclusions with the reasons therefor upon all the material issues of fact or law presented in the record, and the appropriate orders or denial thereof. The initial decision shall become the final agency decision unless an appeal is taken in accordance with § 964.16.

(b) *Tentative or final decision by the Judicial Officer.* When the Judicial Officer presides at the hearing he shall