

## § 2.102

## 28 CFR Ch. I (7–1–08 Edition)

### § 2.102 Place of revocation hearing.

(a) If the parolee requests a local revocation hearing, he shall be given a revocation hearing reasonably near the place of the alleged violation(s) or arrest, with the opportunity to contest the charges against him, if the following conditions are met:

(1) The parolee has not been convicted of a crime committed while under supervision; and

(2) The parolee denies all charges against him.

(b) The parolee shall also be given a local revocation hearing if he admits (or has been convicted of) one or more charged violations, but denies at least one unadjudicated charge that may be determinative of the Commission's decision regarding revocation and/or reparole, and requests the presence of one or more adverse witnesses regarding that contested charge. If the appearance of such witness at the hearing is precluded by the Commission for good cause, a local revocation hearing shall not be ordered.

(c) If there are two or more contested charges, a local revocation hearing may be conducted near the place of the violation chiefly relied upon by the Commission as a basis for the issuance of the warrant or summons.

(d)(1) A parolee shall be given an institutional revocation hearing upon the parolee's return or recommitment to an institution if the parolee:

(i) Voluntarily waives the right to a local revocation hearing; or

(ii) Admits (or has been convicted of) one or more charged violations without contesting any unadjudicated charge that may be determinative of the Commission's decision regarding revocation and/or reparole.

(2) An institutional revocation hearing may also be conducted in the District of Columbia jail or prison facility in which the parolee is being held. On his own motion, a Commissioner may designate any case described in paragraph (d)(1) of this section for a local revocation hearing. The difference in procedures between a "local revocation hearing" and an "institutional revocation hearing" is set forth in § 2.103(b).

(e) A parolee retaken on a warrant issued by the Commission shall be retained in custody until final action rel-

ative to revocation of his parole, unless otherwise ordered by the Commission under § 2.101(e)(3). A parolee who has been given a revocation hearing pursuant to the issuance of a summons shall remain on supervision pending the decision of the Commission, unless the Commission has provided otherwise.

(f) A local revocation hearing shall be held not later than sixty-five days from the retaking of the parolee on the parole violation warrant. An institutional revocation hearing shall be held within ninety days of the retaking of the parolee on the parole violation warrant. If the parolee requests and receives any postponement, or consents to any postponement, or by his actions otherwise precludes the prompt completion of revocation proceedings in his case, the above-stated time limits shall be correspondingly extended.

[65 FR 45888, July 26, 2000, as amended at 67 FR 2570, Jan. 18, 2002; 68 FR 41531, July 14, 2003]

### § 2.103 Revocation hearing procedure.

(a) The purpose of the revocation hearing shall be to determine whether the parolee has violated the conditions of his release and, if so, whether his parole or mandatory release should be revoked or reinstated.

(b) At a local revocation hearing, the alleged violator may present voluntary witnesses and documentary evidence in his behalf. The alleged violator may also seek the compulsory attendance of any adverse witnesses for cross-examination, and any relevant favorable witnesses who have not volunteered to attend. At an institutional revocation hearing, the alleged violator may present voluntary witnesses and documentary evidence in his behalf, but may not request the Commission to secure the attendance of any adverse or favorable witness. At any hearing, the presiding hearing officer or examiner may limit or exclude any irrelevant or repetitious statement or documentary evidence, and may prohibit the parolee from contesting matters already adjudicated against him in other forums.

(c) At a local revocation hearing, the Commission shall, on the request of the alleged violator, require the attendance of any adverse witnesses who have

given statements upon which revocation may be based. The adverse witnesses who are present shall be made available for questioning and cross-examination in the presence of the alleged violator. The Commission may also require the attendance of adverse witnesses on its own motion, and may excuse any requested adverse witness from appearing at the hearing (or from appearing in the presence of the alleged violator) if it finds good cause for so doing. A finding of good cause for the non-appearance of a requested adverse witness may be based, for example, on a significant possibility of harm to the witness, the witness not being reasonably available, and/or the availability of documentary evidence that is an adequate substitute for live testimony.

(d) All evidence upon which a finding of violation may be based shall be disclosed to the alleged violator before the revocation hearing. Such evidence shall include the Community Supervision Officer's letter summarizing the parolee's adjustment to parole and requesting the warrant, all other documents describing the charged violation or violations of parole, and any additional evidence upon which the Commission intends to rely in determining whether the charged violation or violations, if sustained, would warrant revocation of parole. If the parolee is represented by an attorney, the attorney shall be provided, prior to the revocation hearing, with a copy of the parolee's presentence investigation report, if such report is available to the Commission. If disclosure of any information would reveal the identity of a confidential informant or result in harm to any person, that information may be withheld from disclosure, in which case a summary of the withheld information shall be disclosed to the parolee prior to the revocation hearing.

(e) An alleged violator may be represented by an attorney at either a local or an institutional revocation hearing. In lieu of an attorney, an alleged violator may be represented at any revocation hearing by a person of his choice. However, the role of such non-attorney representative shall be limited to offering a statement on the alleged violator's behalf. Only licensed

attorneys shall be permitted to question witnesses, make objections, and otherwise provide legal representation for parolees, except in the case of law students appearing before the Commission as part of a court-approved clinical practice program, with the consent of the alleged violator, and under the personal direction of a lawyer or law professor who is physically present at the hearing.

(f) At a local revocation hearing, the Commission shall secure the presence of the parolee's Community Supervision Officer, or a substitute Community Supervision Officer, who shall bring the parolee's supervision file, if the parolee's Community Supervision Officer is not available. At the request of the hearing examiner, such officer shall provide testimony at the hearing concerning the parolee's adjustment to parole.

(g) After the revocation hearing, the hearing examiner shall prepare a summary of the hearing that includes a description of the evidence against the parolee and the evidence submitted by the parolee in defense or mitigation of the charges, a summary of the arguments against revocation presented by the parolee, and the examiner's recommended decision. The hearing examiner's summary, together with the parolee's file (including any documentary evidence and letters submitted on behalf of the parolee), shall be given to another examiner for review. When two hearing examiners concur in a recommended disposition, that recommendation, together with the parolee's file and the hearing examiner's summary of the hearing, shall be submitted to the Commission for decision.

[65 FR 45888, July 26, 2000, as amended at 67 FR 2570, Jan. 18, 2002]

**§2.104 Issuance of subpoena for appearance of witnesses or production of documents.**

(a)(1) If any adverse witness (*i.e.*, a person who has given information upon which revocation may be based) refuses, upon request by the Commission, to appear at a probable cause hearing