

(ii) Be responsible to or subject to the supervision, direction of, or evaluation by, an employee engaged in the performance of investigative or prosecutorial functions for the Department.

(b) Procedure upon occurrence of ex parte communication. If an ex parte communication is received by the Administrative Law Judge or the Secretary's designee, the Administrative Law Judge or the Secretary's designee, as appropriate, shall cause all of such written communication (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. A party may, not later than 10 days after the date of service, file a response thereto and may recommend that the person making the prohibited communication be sanctioned pursuant to paragraph (c) of this section.

(c) *Sanctions.* Any party to the proceeding, a party's representative, or any other interested individual, who makes a prohibited ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions imposed by the Administrative Law Judge or the Secretary's designee, as appropriate, for good cause shown, including, but not limited to, exclusion from the hearing and an adverse ruling on the issue that is the subject of the prohibited communication.

**§ 501.720 Separation of functions.**

Any officer or employee engaged in the performance of investigative or prosecutorial functions for the Department in a proceeding as defined in § 501.702 may not, in that proceeding or one that is factually related, participate or advise in the decision pursuant to Section 557 of the Administrative Procedure Act, 5 U.S.C. 557, except as a witness or counsel in the proceeding.

**§ 501.721 Hearings to be public.**

All hearings, except hearings on applications for confidential treatment filed pursuant to § 501.725(b), shall be public unless otherwise ordered by the Administrative Law Judge or the Secretary's designee, as appropriate, on

his or her own motion or the motion of a party.

**§ 501.722 Prehearing conferences.**

(a) *Purposes of conferences.* The purposes of prehearing conferences include, but are not limited to:

(1) Expediting the disposition of the proceeding;

(2) Establishing early and continuing control of the proceeding by the Administrative Law Judge; and

(3) Improving the quality of the hearing through more thorough preparation.

(b) *Procedure.* On his or her own motion or at the request of a party, the Administrative Law Judge may direct a representative or any party to attend one or more prehearing conferences. Such conferences may be held with or without the Administrative Law Judge present as the Administrative Law Judge deems appropriate. Where such a conference is held outside the presence of the Administrative Law Judge, the Administrative Law Judge shall be advised promptly by the parties of any agreements reached. Such conferences also may be held with one or more persons participating by telephone or other remote means.

(c) *Subjects to be discussed.* At a prehearing conference consideration may be given and action taken with respect to the following:

(1) Simplification and clarification of the issues;

(2) Exchange of witness and exhibit lists and copies of exhibits;

(3) Admissions of fact and stipulations concerning the contents, authenticity, or admissibility into evidence of documents;

(4) Matters of which official notice may be taken;

(5) The schedule for exchanging prehearing motions or briefs, if any;

(6) The method of service for papers;

(7) Summary disposition of any or all issues;

(8) Settlement of any or all issues;

(9) Determination of hearing dates (when the Administrative Law Judge is present);

(10) Amendments to the Order Instituting Proceedings or answers thereto;