

times and exercise control over a disciplinary proceeding such that an initial decision under §10.154 is normally issued within six months of the date a complaint is filed. The administrative law judge may, however, issue an initial decision more than six months after a complaint is filed if in his or her opinion there exist unusual circumstances which preclude issuance of an initial decision within six months of the filing of the complaint.

(d) *Review of interlocutory orders.* An interlocutory order of an administrative law judge will not be reviewed by the Commissioner except:

(1) When the administrative law judge shall be of the opinion (i) that the interlocutory order involves a controlling question of procedure or law as to which there is a substantial ground for a difference of opinion and (ii) that an immediate decision by the Commissioner may materially advance the ultimate termination of the disciplinary proceeding or

(2) In an extraordinary situation where justice requires review

(e) *Stays pending review of interlocutory order.* If the Director or a respondent seeks review of an interlocutory order of an administrative law judge under paragraph (b)(2) of this section, any time period set for taking action by the administrative law judge shall not be stayed unless ordered by the Commissioner or the administrative law judge.

[50 FR 5172, Feb. 6, 1985; 50 FR 25073, June 17, 1985]

§ 10.140 Representative for Director or respondent.

(a) A respondent may be represented before the Office in connection with an investigation or disciplinary proceeding by an attorney. The attorney shall file a written declaration that he or she is an attorney within the meaning of §10.1(c) and shall state:

(1) The address to which the attorney wants correspondence related to the investigation or disciplinary proceeding sent and

(2) A telephone number where the attorney may be reached during normal business hours.

(b) The Commissioner shall designate at least two associate solicitors in the

Office of the Solicitor to act as representatives for the Director in disciplinary proceedings. In prosecuting disciplinary proceedings, the designated associate solicitors shall not involve the Solicitor or the Deputy Solicitor. The Solicitor and the Deputy Solicitor shall remain insulated from the investigation and prosecution of all disciplinary proceedings in order that they shall be available as counsel to the Commissioner in deciding disciplinary proceedings.

§ 10.141 Filing of papers.

(a) The provisions of §1.8 of this subchapter do not apply to disciplinary proceedings.

(b) All papers filed after the complaint and prior to entry of an initial decision by the administrative law judge shall be filed with the administrative law judge at an address or place designated by the administrative law judge. All papers filed after entry of an initial decision by the administrative law judge shall be filed with the Director. The Director shall promptly forward to the Commissioner any paper which requires action under this part by the Commissioner.

(c) The administrative law judge or the Director may provide for filing papers and other matters by hand or by "Express Mail."

§ 10.142 Service of papers.

(a) All papers other than a complaint shall be served on a respondent represented by an attorney by:

(1) Delivering a copy of the paper to the office of the attorney; or

(2) Mailing a copy of the paper by first-class mail or "Express Mail" to the attorney at the address provided by the attorney under §10.140(a)(1); or

(3) Any other method mutually agreeable to the attorney and a representative for the Director.

(b) All papers other than a complaint shall be served on a respondent who is not represented by an attorney by:

(1) Delivering a copy of the paper to the respondent; or

(2) Mailing a copy of the paper by first-class mail or "Express Mail" to the respondent at the address to which a complaint may be served or such

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other address as may be designated in writing by the respondent; or

(3) Any other method mutually agreeable to the respondent and a representative of the Director.

(c) A respondent shall serve on the representative for the Director one copy of each paper filed with the administrative law judge or the Director. A paper may be served on the representative for the Director by:

(1) Delivering a copy of the paper to the representative; or

(2) Mailing a copy of the paper by first-class mail or "Express Mail" to an address designated in writing by the representative; or

(3) Any other method mutually agreeable to the respondent and the representative.

(d) Each paper filed in a disciplinary proceeding shall contain therein a certificate of service indicating:

(1) The date on which service was made and

(2) The method by which service was made.

(e) The administrative law judge or the Commissioner may require that a paper be served by hand or by "Express Mail."

(f) Service by mail is completed when the paper mailed in the United States is placed into the custody of the U.S. Postal Service.

§ 10.143 Motions.

Motions may be filed with the administrative law judge. The administrative law judge will determine on a case-by-case basis the time period for response to a motion and whether replies to responses will be authorized. No motion shall be filed with the administrative law judge unless such motion is supported by a written statement by the moving party that the moving party or attorney for the moving party has conferred with the opposing party or attorney for the opposing party in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach agreement. If issues raised by a motion are resolved by the parties prior to a decision on the motion by the administrative law judge, the parties shall promptly notify the administrative law judge.

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§ 10.144 Hearings.

(a) The administrative law judge shall preside at hearings in disciplinary proceedings. Hearings will be stenographically recorded and transcribed and the testimony of witnesses will be received under oath or affirmation. The administrative law judge shall conduct hearings in accordance with 5 U.S.C. 556. A copy of the transcript of the hearing shall become part of the record. A copy of the transcript shall be provided to the Director and the respondent at the expense of the Office.

(b) If the respondent to a disciplinary proceeding fails to appear at the hearing after a notice of hearing has been given by the administrative law judge, the administrative law judge may deem the respondent to have waived the right to a hearing and may proceed with the hearing in the absence of the respondent.

(c) A hearing under this section will not be open to the public except that the Director may grant a request by a respondent to open his or her hearing to the public and make the record of the disciplinary proceeding available for public inspection, *provided*, Agreement is reached in advance to exclude from public disclosure information which is privileged or confidential under applicable laws or regulations. If a disciplinary proceeding results in disciplinary action against a practitioner, and subject to § 10.159(c), the record of the entire disciplinary proceeding, including any settlement agreement, will be available for public inspection.

§ 10.145 Proof; variance; amendment of pleadings.

In case of a variance between the evidence and the allegations in a complaint, answer, or reply, if any, the administrative law judge may order or authorize amendment of the complaint, answer, or reply to conform to the evidence. Any party who would otherwise be prejudiced by the amendment will be given reasonable opportunity to meet the allegations in the complaint, answer, or reply, as amended, and the administrative law judge shall make findings on any issue presented by the complaint, answer, or reply as amended.