

## §2.216

Commission as a basis for the issuance of the warrant or summons.

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

(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 imposition of a new term of imprisonment.

(2) An institutional revocation hearing may also be conducted in the District of Columbia jail or prison facility in which the releasee 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 §2.216(b).

(e) Unless the Commission orders release notwithstanding a probable cause finding under §2.214(g), a releasee who is retaken on a warrant issued by the Commission shall remain in custody until a decision is made on the revocation of the term of supervised release. A releasee 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 ordered otherwise.

(f) A local revocation hearing shall be held not later than 65 days from the retaking of the releasee on a supervised release violation warrant. An institutional revocation hearing shall be held within 90 days of the retaking of the releasee on a supervised release violation warrant. If the releasee 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.

(g) A local revocation hearing may be conducted by a hearing examiner or by any federal, state, or local official who is designated by a Commissioner to be the presiding hearing officer. An insti-

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tutional revocation hearing may be conducted by a hearing examiner.

### §2.216 Revocation hearing procedure.

(a) The purpose of the revocation hearing shall be to determine whether the releasee has violated the conditions of the term of supervised release, and, if so, whether the term should be revoked or the releasee restored to supervised release.

(b) At a local revocation hearing, the alleged violator may present voluntary witnesses and documentary evidence. The alleged violator may also request the Commission to compel the attendance of any adverse witnesses for cross-examination, and any other relevant witnesses who have not volunteered to attend. At an institutional revocation hearing, the alleged violator may present voluntary witnesses and documentary evidence, but may not request the Commission to secure the attendance of any adverse or favorable witness. At any hearing, the presiding hearing officer may limit or exclude any irrelevant or repetitious statement or documentary evidence, and may prohibit the releasee 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, subject to a finding of good cause as described in paragraph (d) of this section. 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.

(d) The Commission may excuse any requested adverse witness from appearing at the hearing (or from appearing in the presence of the alleged violator) if the Commission 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, or the witness not being reasonably available when the Commission has documentary evidence that

is an adequate substitute for live testimony.

(e) 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 releasee's adjustment to supervision and requesting the warrant, all other documents describing the charged violation or violations, 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 supervised release. If the releasee is represented by an attorney, the attorney shall be provided, prior to the revocation hearing, with a copy of the releasee'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 releasee prior to the revocation hearing.

(f) 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 supervised releasees, except in the case of law students appearing before the Commission as part of a court-approved clinical practice program. Such law students must be under the personal direction of a lawyer or law professor who is physically present at the hearing, and the examiner shall ascertain that the releasee consents to the procedure.

(g) At a local revocation hearing, the Commission shall secure the presence of the releasee's community supervision officer, or a substitute community supervision officer who shall bring

the releasee's supervision file if the releasee's community supervision officer is not available. At the request of the hearing examiner, such officer shall provide testimony at the hearing concerning the releasee's adjustment to supervision.

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

**§2.217 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 or local revocation hearing, a Commissioner may issue a subpoena for the appearance of such witness.

(2) In addition, a Commissioner may, upon a showing by the releasee that a witness whose testimony is necessary to the proper disposition of his case will not appear voluntarily at a local revocation hearing or provide an adequate written statement of his testimony, issue a subpoena for the appearance of such witness at the revocation hearing.

(3) A subpoena may also be issued at the discretion of a Commissioner if an adverse witness is judged unlikely to appear as requested, or if the subpoena is deemed necessary for the orderly processing of the case.

(b) A subpoena may require the production of documents as well as, or in