

## § 622.8

## 12 CFR Ch. VI (1-1-08 Edition)

determined by the presiding officer, of exhibits to be prepared.

(h) *Call for further evidence, oral arguments, briefs, reopening of hearing.* The presiding officer may call for the production of further evidence upon any issue, may permit oral argument and submission of briefs at the hearing and, upon appropriate notice, may reopen any hearing at any time prior to the filing of his or her recommended decision. The Board may reopen the record at anytime permitted by law.

(i) *Order of procedure.* The FCA shall open and close.

(j) *Ex parte communications.* (1) No person shall make or knowingly cause to be made an ex parte communication relevant to the merits of the proceeding to the presiding officer or anyone who is or may reasonably be expected to be involved in the decisional process.

(2) No person who is or may reasonably be expected to be involved in the decisional process shall make or knowingly cause to be made an ex parte communication relevant to the merits of the proceeding to any person.

(3) Except as authorized by law, the presiding officer shall not consult anyone on any fact in issue, unless upon notice and opportunity for all parties to participate. The presiding officer shall not be responsible to, or subject to the supervision or direction of, any officer, employee, or agent of the FCA engaged in the performance of investigative or prosecuting functions. An officer, employee or agent engaged in the performance of such functions in any case shall not, in that case or a factually related case, participate or advise in the decision of the presiding officer, except as a witness or counsel in the proceedings, or as otherwise authorized by law.

(4) If an ex parte communication is made or knowingly caused to be made, all such communications, and any responses, shall be placed in the record.

(5) Upon receipt of a communication knowingly made or caused to be made in violation of paragraph (j) of this section, the responsible party may be required to show cause why such party's claim or interest should not be dismissed, denied, or otherwise adversely affected. To the extent consistent with

the interests of justice, a knowing violation of paragraph (j) of this section may be grounds for a decision adverse to a party in violation.

(6) The prohibitions against ex parte communications apply from the time a proceeding is noticed for hearing. However, when the person responsible for the communication has knowledge that the proceeding will be noticed, the prohibitions apply from the time such knowledge is acquired.

### § 622.8 Rules of evidence.

(a) *Evidence.* Every party shall have the right to present a case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

(b) *Objections.* Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objection relied upon but no argument thereon shall be permitted, except as ordered, allowed, or requested by the presiding officer. Rulings on such objections and all other matters shall be part of the transcript. Failure to object timely to the admission or exclusion of evidence or to any ruling constitutes a waiver of such objection.

(c) *Stipulations.* Independently of the orders or rulings issued as provided by § 622.7(b), the parties may stipulate as to any relevant matters of fact or the authenticity of any relevant documents. Such stipulations may be received in evidence at the hearing, and when so received shall be binding on the parties with respect to the matters therein stipulated.

(d) *Official notice.* All matters officially noticed by the presiding officer shall appear on the record.

### § 622.9 Subpoenas.

(a) *Issuance.* The presiding officer or, in the event he or she is unavailable, the Board may issue subpoenas and subpoena duces tecum at the request of any party requiring the attendance of witnesses or the production of documents at a designated place. The person seeking the subpoena may be required, as a condition precedent to the

issuance of the subpoena, to show the general relevance and reasonable scope of the testimony or other evidence sought. Where it appears to the presiding officer that a subpoena may be unreasonable, oppressive, excessive in scope, unduly burdensome, or delay the proceeding, the presiding officer has discretion to refuse to issue a subpoena or to issue it only upon such conditions as fairness requires.

(b) *Motions to quash.* Any person to whom a subpoena is directed may, prior to the time specified therein for compliance but in no event more than 10 days after the date the subpoena was served, with notice to the party requesting the subpoena, apply to the presiding officer, or in the event he or she is unavailable to the Board, to quash or modify the subpoena, accompanying such application with a brief statement of the reasons therefor. The presiding officer may deny the application or, upon notice to the party on whose behalf the subpoena was issued and after affording that party an opportunity to reply, may quash or modify the subpoena or impose reasonable conditions including, in the case of a subpoena duces tecum, a requirement that the party on whose behalf the subpoena was issued pay in advance the reasonable cost of copying and transporting the documentary evidence to the designated place.

(c) *Service of subpoena.* A subpoena may be served upon the person named therein by personal service or certified mail with a return receipt to the last known address of the person. The fees for one day's attendance and mileage as specified in paragraph (d) of this section must be tendered at the time of service unless the subpoena is issued on behalf of the FCA. If personal service is made by a U.S. marshal, a deputy U.S. marshal, or an employee of the FCA, such service shall be evidenced by the return thereon. If personal service is made by any other person, such person shall sign an affidavit describing the manner in which service is made, and return such affidavit with a copy of the subpoena. In case of failure to make service, reasons for the failure shall be stated on the original subpoena. The original or a copy of the subpoena, bearing or accompanied by the required

return, affidavit, statement or return receipt, shall be returned without delay to the presiding officer.

(d) *Attendance of witnesses.* The attendance of witnesses at a designated place may be required from any place in any State or territory subject to the jurisdiction of the United States. Witnesses who are subpoenaed shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Fees required by this paragraph shall be paid by the party upon whose application the subpoena is issued.

(e) *Production of documents.* The production of documents at a designated place may be required from any place in any State or territory subject to the jurisdiction of the United States. In lieu of an original document, a certified or authenticated copy may be produced. However, any party has the right to inspect the original document.

#### § 622.10 Depositions.

(a) *Application to take deposition.* Any party desiring to take the deposition of any person shall make written application to the presiding officer setting forth the name and address of the witness, the subject matter concerning which the witness is expected to testify, its relevance, the time and place of the deposition, and the reasons why such deposition should be taken. The application may include a request that specified documents be produced at the deposition. A copy of the application shall be served on the other parties at the same time the application is filed with the presiding officer.

(b) *Subpoena; notice to other parties.* Upon a showing that the testimony or other evidence sought will be material, and the taking of the deposition will not result in any undue burden to the witness or any party or undue delay of the proceedings, the presiding officer may issue a subpoena or subpoena duces tecum. Notice of the issuance of such subpoena shall be served upon all parties at least 10 days in advance of the date set for deposition.

(c) *Deposition by notice.* The requirements of paragraphs (a) and (b) of this section may be waived by agreement of the parties and the witness whose testimony or documentary evidence is