

Appendix D: Rules of Practice in Proceedings Relative to Debarment and Suspension from Contracting

(REPRINT OF 39 CFR 957)

These rules of practice have been issued by the Judicial Officer as 39 CFR 957, under the authority of 39 U.S.C. 204, 401. They are reprinted here for the convenience of users of the *Procurement Manual*. References to the *Postal Contracting Manual* have been changed to refer to chapter 3, section 3, of the *Procurement Manual*.

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957.1 Authority for rules.

The rules in this part are issued by the Judicial Officer of the Postal Service pursuant to authority delegated by the Postmaster General (39 U.S.C. 204, 401; chapter 3, section 3, of the USPS *Procurement Manual*).

957.2 Scope of rules.

The rules in this part shall be applicable in all formal proceedings before the Postal Service pertaining to hearings initiated under chapter 3, section 3, of the USPS *Procurement Manual*.

957.3 Definitions.

- (a) The term "Vice President" means a Vice President with purchasing authority in the Postal Service or the Vice President's representative for the purpose of carrying out the provisions of chapter 3, section 3, of the USPS *Procurement Manual*.
- (b) The term "General Counsel" includes the General Counsel's authorized representative.
- (c) The term "Judicial Officer" includes the acting Judicial Officer.
- (d) "Debarment" means, in general, an exclusion from Government contracting and subcontracting for a reasonable, specified period of time commensurate with the seriousness of the offense or failure, or the inadequacy of performance.
- (e) "Suspension" means a disqualification from Government contracting and subcontracting for a temporary period of time because a concern or individual is suspected, upon adequate evidence, of engaging in criminal, fraudulent, or seriously improper conduct.
- (f) "Respondent" means any individual, firm, or other entity, which has been served a written notice of proposed debarment pursuant to chapter 3, section 3, of the USPS *Procurement Manual*.
- (g) "The Recorder" means the
RECORDER OF THE UNITED STATES POSTAL SERVICE
475 LENFANT PLAZA SW
WASHINGTON DC 20260-6100

957.4 Initiation of debarment proceedings.

- (a) A Vice President initiates a debarment proceeding by serving upon the proposed respondent a written notice of proposed debarment in the manner hereinafter (see 957.8(d)) provided for the service of all other papers.
- (b) The notice shall state:
 - (i) That debarment is being considered;
 - (ii) The reasons for the proposed debarment;
 - (iii) The period of debarment and the proposed effective date thereof;

- (iv) That the debarment will not become effective until after a hearing, if such hearing is requested within 20 days following the receipt of the notice; and
 - (v) That the request for a hearing is to be submitted in the manner prescribed by the rules in this part, a copy of which shall be enclosed with the notice.
- (c) If no hearing is requested within 20 days following the receipt of the notice, the action of the Vice President set forth in the notice shall become the final Postal Service determination without further notice to the respondent.
- (d) The party against which a final Postal Service determination has been entered pursuant to paragraph (c) of this section shall, however, at any time have the privilege of reopening a case for the limited purpose of contesting the issue of service. Such party's contentions on that issue shall be addressed to the Judicial Officer in the same manner as a request for a hearing (see 957.5). The Judicial Officer may require such additional showings or proof as the Judicial Officer may deem necessary on the issue of service and shall reopen any debarment proceeding previously closed pursuant to paragraph (c) of this section if the Judicial Officer shall find that service was incomplete or otherwise failed to adequately advise of the pendency of the proposed debarment.

957.5 The request for a hearing.

A respondent may, within 20 days following the receipt of a written notice of proposed debarment, file a request for a hearing before the Judicial Officer. The request shall be addressed to the Judicial Officer through the Vice President who initiated the debarment proceeding and shall be accompanied by a concise statement admitting, denying, or explaining each of the allegations set forth in the notice of proposed debarment and stating the relief desired.

957.6 Order relative to hearing.

- (a) The Judicial Officer shall issue an order granting the respondent's request for a hearing, establishing the time and place thereof, and advising the respondent of the consequences of a failure to appear at the hearing (see 957.9). Whenever practicable, the hearing date shall be within 30 days of the date of the Judicial Officer's order relative to hearing.
- (b) The notice of proposed debarment and the request for a hearing together with the reply, if any, shall become the pleadings in any proceeding in which the Judicial Officer orders a hearing to be held.

957.7 Reply.

Not more than 15 days from the service of the request for a hearing, the General Counsel may submit a reply on behalf of the Vice President who initiated the debarment proceeding.

957.8 Service and filing documents for the record.

- (a) Each party shall file with the Recorder pleadings, motions, orders, and other documents for the record. The Recorder shall cause copies to be served promptly on other parties to the proceeding and on the Judicial Officer.
- (b) The parties shall submit four copies of all documents unless otherwise ordered by the Judicial Officer. One copy shall be signed as the original.
- (c) Documents shall be dated and shall state the docket number and title of the proceeding. Any pleading or other document required by order of the Judicial Officer to be filed by a specified date shall be served upon the Recorder on or before such date. The date of such service shall be the filing date and shall be entered thereon by the Recorder.
- (d) Service of all papers shall be effected by mailing the same, postage prepaid, registered or certified mail, return receipt requested or by causing said notice to be personally served on the proposed respondent by an authorized representative of the department. In the case of personal service, the person making service shall secure from the proposed respondent, or respondent's agent, a written acknowledgment of receipt of said notice, showing the date and time of such receipt. Said acknowledgment (or the return receipt, where service is effected by mail) shall be made a part of the record by the Vice President initiating the debarment proceeding. The date of delivery, as shown by the acknowledgment of personal service or the return receipt, shall be the date of service.

957.9 Respondent's failure to appear at the hearing.

If the respondent shall fail to appear at the hearing, the Judicial Officer shall receive the Vice President's evidence and render a Postal Service decision without requirement of further notice to the respondent.

957.10 Respondent already debarred by another government agency.

- (a) When a Vice President proposes to debar a firm or individual already debarred by another Government agency for a term concurrent with such debarment, the debarment proceedings before the Postal Service may be based entirely upon the record of facts obtained from such other agency, or upon such facts and additional other facts. In such cases, the facts obtained from the other agency shall be considered as established, but the party to be debarred shall have the opportunity to present information to the Judicial Officer and to explain why debarment by the Postal Service should not be imposed.
- (b) Where the Vice President initiating the debarment proceeding relies:
 - (i) Upon the provisions of paragraph (a) of this section, or
 - (ii) Upon all or part of the record of the proposed respondent's previous debarment by another Government agency, in initiating such proceeding, the notice of proposed debarment shall contain a statement so stating in sufficient detail to apprise the respondent of the extent of such reliance.

- (c) The Vice President's reliance upon provisions of paragraph (a) of this section, stated in conformity with the directions set forth in paragraph (b) of this section, does not deprive the respondent of the right to request the Judicial Officer to grant a hearing pursuant to these rules, nor the Judicial Officer the full discretion to grant or deny such request.

957.11 Amendment of pleadings.

- (a) By consent of the parties, a pleading may be amended at any time. Also, a party may move to amend a pleading at any time before the close of the hearing, provided that the proposed amendment is reasonably within the scope of the proceeding.
- (b) When issues not raised by the pleadings but reasonably within the scope of the proceedings initiated by the notice of proposed debarment are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendments as may be necessary to make the pleadings conform to the evidence and to raise such issues shall be allowed at any time upon the motion of any party.
- (c) If a party objects to the introduction of evidence at the hearing on the ground that it is not within the issues framed by the pleadings, but fails to satisfy the Judicial Officer that an amendment of the pleadings would prejudice the objecting party on the merits, the Judicial Officer may allow the pleadings to be amended and may grant a continuance to enable the objecting party to rebut the evidence presented.
- (d) The Judicial Officer may, upon reasonable notice and upon such terms as are just, permit service of a supplemental pleading setting forth transactions, occurrences, or events which have transpired since the date of the pleading sought to be supplemented and which are relevant to any of the issues involved.

957.12 Continuances and extensions.

Continuances and extensions will not be granted by the Judicial Officer except for good cause shown.

957.13 Hearings.

- (a) Hearings are held at:
 - US POSTAL SERVICE HEADQUARTERS
 - 475 LENFANT PLAZA SW
 - WASHINGTON DC 20260-6100or other locations designated by the Judicial Officer.
- (b) A party may, not later than 7 days before the scheduled date of hearing, file a request that such hearing be held at a place other than that designated in the Judicial Officer's order relative to hearing. The party shall support the request with a statement outlining:
 - (i) The evidence to be offered in such place;
 - (ii) The names and addresses of the witnesses who will testify;

- (iii) The reasons such evidence cannot be produced at Washington, D.C. The Judicial Officer shall give consideration to the convenience and necessity of the parties and the relevancy of the evidence to be offered.

957.14 Appearances.

- (a) A respondent may appear and be heard in person or by attorney.
- (b) An attorney may practice before the Postal Service in accordance with applicable rules issued by the Judicial Officer.
- (c) When a respondent is represented by an attorney, all pleadings and other papers subsequent to the notice of proposed department shall be mailed to the attorney.
- (d) All counsel shall promptly file notices of appearance. Changes of respondent's counsel shall be recorded by notices from retiring and succeeding counsel and from the respondent.
- (e) After a request for a hearing has been filed pursuant to the rules in this part, the General Counsel shall represent the vice president in further proceedings relative to the hearing and shall in its notice of appearance identify the individual member of such office who has been assigned to handle the case on its behalf.

957.15 Conduct of the hearing.

The Judicial Officer shall have authority to:

- (a) Administer oaths and affirmations;
- (b) Examine witnesses;
- (c) Rule upon offers of proof, admissibility of evidence, and matters of procedure;
- (d) Order any pleading amended upon motion of a party at any time before the close of the hearing;
- (e) Maintain discipline and decorum and exclude from the hearing any person acting in an indecorous manner;
- (f) Require the filing of briefs or memoranda of law on any matter upon which the Judicial Officer is required to rule;
- (g) Order prehearing conferences for the purpose of the settlement or simplification of issues by the parties;
- (h) Order the proceeding reopened at any time before the Judicial Officer's decision for the receipt of additional evidence;
- (i) Render a final Postal Service decision;
- (j) Take such other further action as may be necessary to properly preside over the debarment proceeding and render decision therein.

957.16 Evidence.

- (a) Except as otherwise provided in the rules in this part, the rules of evidence governing civil proceedings in matters not involving trial by jury in the courts of the United States shall govern. However, such rules may

be relaxed to the extent that the Judicial Officer deems proper to ensure a fair hearing.

- (b) Testimony shall be under oath or affirmation and witnesses shall be subject to cross-examination.
- (c) Agreed statements of fact may be received in evidence.
- (d) Official notice or knowledge may be taken of the types of matter of which judicial notice or knowledge may be taken.
- (e) The written statement of a competent witness may be received in evidence, provided that such statement is relevant to the issues; that the witness shall testify under oath at the hearing that the statement is in all respects true; and in the case of expert witnesses, that the statement correctly states the witness' opinion or knowledge concerning the matters in question.

957.17 Witness fees.

The Postal Service does not pay fees and expenses for respondent's witnesses or for depositions requested by respondent.

957.18 Depositions.

- (a) Not later than 7 days before the scheduled date of the hearing, any party may file application with the Recorder for the taking of testimony by deposition. In support of such application, the applicant shall submit under oath or affirmation a statement setting out the reasons such testimony should be taken by deposition, the time and the place, and the name and address of the witness whose deposition is desired, the subject matter of the testimony of each witness, its relevancy, and the name and address of the person before whom the deposition is to be taken.
- (b) If the application be granted, the order for the taking of the deposition will specify the time and place thereof, the name of the witness, the person before whom the deposition is to be taken, and any other necessary information.
- (c) Each witness testifying upon deposition shall be duly sworn, and the adverse party shall have the right to cross-examine. The questions and answers, together with all objections, shall be reduced to writing, and (unless waived by stipulation of the parties) shall be read to and subscribed by the witness in the presence of the deposition officer, who shall certify it in the usual form. The deposition officer shall file the testimony taken by deposition as directed in the order. The deposition officer shall put the witness on oath. All objections made at the time of examination shall be noted by the deposition officer and the evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, a party may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim. Objections to relevancy or materiality of testimony, or to errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of the parties and errors of any kind which might be obviated, cured or

removed if promptly presented, are waived unless timely objection is made at the taking of the deposition.

- (d) At the hearing, any part or all of the deposition may be offered in evidence by any party who was present or represented at the taking of the deposition or who had notice thereof. If the deposition is not offered and received in evidence, it shall not be considered as a part of the record in the proceeding. The admissibility of depositions or parts thereof shall be governed by the rules of evidence.
- (e) The party requesting the deposition shall pay all fees required to be paid to witnesses and the deposition officer; shall provide an original and one copy of the deposition for the official record; and shall serve one copy upon the opposing party.
- (f) Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions may be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held; within a foreign country, depositions may be taken before a secretary of an embassy or legation, consul general, vice consul, or consular agent of the United States, or any other person designated in the order for the taking of a deposition.
- (g) Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examination. When a deposition is taken upon written interrogatories and cross-interrogatories, none of the parties shall be present or represented, and no person other than the witness, a stenographic reporter, and the officer shall be present at the examination of the witness, which fact shall be certified by the officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness' own words.

957.19 Transcript.

- (a) Hearings shall be stenographically reported by a contract reporter of the Postal Service under the supervision of the Judicial Officer. Argument upon any matter may be excluded from the transcript by order of the Judicial Officer. A copy of the transcript shall be a part of the record and the sole official transcript of the proceeding. Copies of the transcript may be obtained by the respondent from the reporter upon the payment to the reporter of a reasonable price therefor. Copies of parts of the official record other than the transcript may be obtained from the librarian of the Postal Service or the Recorder.
- (b) Changes in the official transcript may be made only when they involve errors affecting substance and then only in the manner herein provided. No physical changes shall be made in or upon the official transcript, or copies thereof, which have been filed with the record. Within 10 days after the receipt by any party of a copy of the official transcript or any part thereof, the party may file a motion requesting correction of the transcript. Opposing counsel shall, within such time as may be specified by the Judicial Officer, notify the Judicial Officer in writing of opposing counsel's concurrence or disagreement with the requested corrections. Failure to interpose timely objection to a proposed correction shall be considered to be concurrence. Thereafter, the Judicial Officer shall, by

order, specify the corrections to be made in the transcript. The Judicial Officer, on the Judicial Officer's own initiative, may order corrections to be made in the transcript with prompt notice to the parties of the proceeding. Any changes ordered by the Judicial Officer other than by the agreement of the parties shall be subject to objection and exception.

957.20 Proposed findings and conclusions.

- (a) Each party to a proceeding, except one who fails to appear at the hearing may (unless, at the discretion of the Judicial Officer, such is not appropriate) submit proposed findings of fact, conclusions of law, and supporting reasons either in oral or written form at the discretion of the Judicial Officer. The Judicial Officer may also require parties to any proceeding to submit proposed findings of fact and conclusions of law with supporting reasons. Unless given orally, the date set for filing of proposed findings of fact and conclusions of law shall be within 15 days after the delivery of the official transcript to the Recorder, who shall notify both parties of the date of its receipt. The filing date for proposed findings shall be the same for both parties. If not submitted by such date, or unless extension of time for the filing thereof is granted, they will not be included in the record or given consideration.
- (b) Except when presented orally before the close of the hearing, proposed findings of fact shall be set forth in serially numbered paragraphs and shall state with particularity all evidentiary facts in the record, with appropriate citations to the transcript or exhibits supporting the proposed findings. Each proposed conclusion shall be separately stated.

957.21 Decision.

The Judicial Officer shall issue a final Postal Service decision. Such decision shall include findings and conclusions, with the reason therefor, upon all the material issues of fact or law presented on the record, and the appropriate order.

957.22 Motion for reconsideration.

Within 10 days from the date thereof, or such longer period as may be fixed by the Judicial Officer, either party may file a motion for reconsideration of the final Postal Service decision. Each motion for reconsideration shall be accompanied by a brief clearly setting forth the points of fact and of law relied upon in support of said motion.

957.23 Modification or revocation of orders.

A party against whom an order of debarment has been issued may file an application for modification or revocation thereof. The Recorder shall transmit a copy of the application to the General Counsel, who shall file a written reply. A copy of the reply shall be sent to the applicant by the Recorder. Thereafter an order granting or denying such application will be issued by the Judicial Officer.

957.24 Computation of time.

A designated period of time under the rules in this part excludes the day the period begins and includes the last day of the period, unless the last day is a Saturday, a Sunday, or legal holiday, in which event the period runs until the close of business on the next business day.

957.25 Official record.

The transcript of testimony, together with all pleadings, orders, exhibits, briefs, and other documents filed in the proceeding, shall constitute the official record of the proceeding.

957.26 Public information.

The Law Librarian of the Postal Service shall maintain for public inspection in the Law Library copies of all final decisions. The Recorder maintains the complete official record of every proceeding.

957.27 Suspension.

- (a) Any firm or individual suspended under chapter 3, section 3, of the USPS *Procurement Manual*, who believes that the suspension has not been in accordance with the provisions thereof or with applicable laws or regulations, may appeal to the Judicial Officer for a review of the suspension.
- (b) Any such appeal shall be addressed to the Judicial Officer through the vice president who ordered the suspension within 20 days of the date upon which the respondent has been notified of the suspensions. Such appeal shall concisely and in the manner of the pleading set forth the grounds upon which the suspension is contested and may be supported by a brief and such evidence as the respondent may desire to submit.
- (c) Should the respondent desire oral argument or a hearing before the Judicial Officer in connection with the respondent's appeal, application therefor shall be included in the appeal. In the event that the Judicial Officer grants the respondent's application for a hearing, the notice of suspension and the appeal shall constitute the pleadings defining the issues therein and the hearing shall be regulated in accordance with the rules in this part concerning debarment proceedings.
- (d) The decision of the Judicial Officer in any appeal shall constitute the final Postal Service determination of the issues presented thereby. Either party thereto may, however, file a motion for reconsideration thereof, in accordance with the provisions of 957.22.

957.28 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d), and 557(d) prohibiting ex parte communications are made applicable to the proceedings under these rules of practice.