

§ 9409.9

necessary to promote a significant interest of the Commission or the United States or for other good cause.

§ 9409.9 Final determination.

The General Counsel will make the final determination on demands and requests to employees for production of official records and information or testimony. All final determinations are within the sole discretion of the General Counsel. The General Counsel will notify the requester and the court or other authority of the final determination, the reasons for the grant or denial of the demand or request, and any conditions that the General Counsel may impose on the release of records or information, or on the testimony of a Commission employee.

§ 9409.10 Restrictions that apply to testimony.

(a) The General Counsel may impose conditions or restrictions on the testimony of Commission employees including, for example, limiting the areas of testimony or requiring the requester and other parties to the legal proceeding to agree that the transcript of the testimony will be kept under seal or will only be used or made available in the particular legal proceeding for which testimony was requested. The General Counsel may also require a copy of the transcript of testimony at the requester's expense.

(b) The Commission may offer the employee's written declaration in lieu of testimony.

(c) If authorized to testify under this part, an employee may testify as to facts within his or her personal knowledge, but, unless specifically authorized to do so by the General Counsel, the employee shall not:

(1) Disclose confidential or privileged information; or

(2) For a current Commission employee, testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or the functions of the Commission unless testimony is being given on behalf of the United States.

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§ 9409.11 Restrictions that apply to released records.

(a) The General Counsel may impose conditions or restrictions on the release of official records and information, including the requirement that parties to the proceeding obtain a protective order or execute a confidentiality agreement to limit access and any further disclosure. The terms of the protective order or confidentiality agreement must be acceptable to the General Counsel. In cases where protective orders or confidentiality agreements have already been executed, the Commission may condition the release of official records and information on an amendment to the existing protective order or confidentiality agreement.

(b) If the General Counsel so determines, original Commission records may be presented for examination in response to a demand or request, but they are not to be presented as evidence or otherwise used in a manner by which they could lose their identity as official Commission records, nor are they to be marked or altered. In lieu of the original records, certified copies will be presented for evidentiary purposes (see 28 U.S.C. 1733).

§ 9409.12 Procedure when a decision is not made prior to the time a response is required.

If a response to a demand or request is required before the General Counsel's decision is received, a U.S. attorney or a Commission attorney designated for the purpose shall appear with the employee or former employee of the Commission upon whom the demand has been made and shall furnish the court or other authority with a copy of the regulations contained in this part and inform the court or other authority that the demand has been, or is being, as the case may be, referred for the prompt consideration of the appropriate Commission official and shall respectfully request the court or authority to stay the demand pending receipt of the requested instructions.