

Bur. of Consumer Financial Protection

§ 1081.301

(b) *Transcript.* The hearing officer, in his or her discretion, may require that a prehearing conference be recorded by a court reporter. A transcript of the conference and any materials filed, including orders, becomes part of the record of the proceeding. A party may obtain a copy of the transcript at his or her expense.

(c) *Public access.* Any prehearing conferences shall be public unless the hearing officer determines, based on the standard set forth in §1081.119(b) of this part, that the conference (or any part thereof) shall be closed to the public.

§ 1081.215 Prehearing submissions.

(a) Within the time set by the hearing officer, but in no case later than 10 days before the start of the hearing, each party shall serve on every other party:

(1) A prehearing statement, which shall include an outline or narrative summary of its case or defense, and the legal theories upon which it will rely;

(2) A final list of witnesses to be called to testify at the hearing, including name and address of each witness and a short summary of the expected testimony of each witness;

(3) Any prior sworn statements that a party intends to admit into evidence pursuant to §1081.303(h);

(4) A list of the exhibits to be introduced at the hearing along with a copy of each exhibit; and

(5) Any stipulations of fact or liability.

(b) *Expert witnesses.* Each party who intends to call an expert witness shall also serve, in addition to the information required by paragraph (a)(2) of this section, a statement of the expert's qualifications, a listing of other proceedings in which the expert has given or sought to give expert testimony at trial or by deposition within the preceding four years, and a list of publications authored or co-authored by the expert within the preceding 10 years, to the extent such information has not already been provided pursuant to §1081.210.

(c) *Effect of failure to comply.* No witness may testify and no exhibits may be introduced at the hearing if such witness or exhibit is not listed in the

prehearing submissions pursuant to paragraph (a) of this section, except for good cause shown.

§ 1081.216 Amicus participation.

(a) *Availability.* An amicus brief may be filed only if:

(1) A motion for leave to file the brief has been granted;

(2) The brief is accompanied by written consent of all parties;

(3) The brief is filed at the request of the Director or the hearing officer, as appropriate; or

(4) The brief is presented by the United States or an officer or agency thereof, or by a state or a political subdivision thereof.

(b) *Procedure.* An amicus brief may be filed conditionally with the motion for leave. The motion for leave shall identify the interest of the movant and shall state the reasons why a brief of an amicus curiae is desirable. Except as all parties otherwise consent, any amicus curiae shall file its brief within the time allowed the party whose position the amicus will support, unless the Director or hearing officer, as appropriate, for good cause shown, grants leave for a later filing. In the event that a later filing is allowed, the order granting leave to file shall specify when an opposing party may reply to the brief.

(c) *Motions.* A motion for leave to file an amicus brief shall be subject to §1081.205.

(d) *Oral argument.* An amicus curiae may move to present oral argument at any hearing before the hearing officer, but such motions will be granted only for extraordinary reasons.

Subpart C—Hearings

§ 1081.300 Public hearings.

All hearings in adjudication proceedings shall be public unless a confidentiality order is entered by the hearing officer pursuant to §1081.119 or unless otherwise ordered by the Director on the grounds that holding an open hearing would be contrary to the public interest.

§ 1081.301 Failure to appear.

Failure of a respondent to appear in person or by a duly authorized counsel

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at the hearing constitutes a waiver of respondent's right to a hearing and may be deemed an admission of the facts as alleged and consent to the relief sought in the notice of charges. Without further proceedings or notice to the respondent, the hearing officer shall file a recommended decision containing findings of fact and addressing the relief sought in the notice of charges.

§ 1081.302 Conduct of hearings.

All hearings shall be conducted in a fair, impartial, expeditious, and orderly manner. Enforcement Counsel shall present its case-in-chief first, unless otherwise ordered by the hearing officer, or unless otherwise expressly specified by law or regulation. Enforcement Counsel shall be the first party to present an opening statement and a closing statement, and may make a rebuttal statement after the respondent's closing statement. If there are multiple respondents, respondents may agree among themselves as to their order of presentation of their cases, but if they do not agree, the hearing officer shall fix the order.

§ 1081.303 Evidence.

(a) *Burden of proof.* Enforcement Counsel shall have the burden of proof of the ultimate issue(s) of the Bureau's claims at the hearing.

(b) *Admissibility.* (1) Except as is otherwise set forth in this section, relevant, material, and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the Administrative Procedure Act and other applicable law. Irrelevant, immaterial, and unreliable evidence shall be excluded.

(2) Evidence, even if relevant, may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice or confusion of the issues; if the evidence would be misleading; or based on considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(3) Evidence that constitutes hearsay may be admitted if it is relevant, material, and bears satisfactory indicia of reliability so that its use is fair. Hearsay is a statement, other than one made by the declarant while testifying

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at the hearing, offered in evidence to prove the truth of the matter asserted. If otherwise meeting the standards for admissibility described in this section, transcripts of depositions, investigational hearings, prior testimony in Bureau or other proceedings, and any other form of hearsay shall be admissible and shall not be excluded solely on the ground that they are or contain hearsay.

(4) Evidence that would be admissible under the Federal Rules of Evidence is admissible in a proceeding conducted pursuant to this part. Evidence that would be inadmissible under the Federal Rules of Evidence may not be deemed or ruled to be inadmissible in a proceeding conducted pursuant to this part solely on that basis.

(c) *Official notice.* Official notice may be taken of any material fact that is not subject to reasonable dispute in that it is either generally known or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. If official notice is requested or is taken of a material fact not appearing in the evidence in the record, the parties, upon timely request, shall be afforded an opportunity to disprove such noticed fact.

(d) *Documents.* (1) A duplicate copy of a document is admissible to the same extent as the original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(2) Subject to the requirements of paragraph (b) of this section, any document, including a report of examination, supervisory activity, inspection or visitation, prepared by a prudential regulator, as that term is defined in section 1002(24) of the Act, or by a state regulatory agency, is presumptively admissible either with or without a sponsoring witness.

(3) Witnesses may use existing or newly created charts, exhibits, calendars, calculations, outlines or other graphic material to summarize, illustrate, or simplify the presentation of testimony. Such materials may, subject to the hearing officer's discretion, be used with or without being admitted into evidence.