§ 98.8 Decision by examiner.

(a) In a hearing under §98.7 of this part, the Departmental counsel must establish a violation by a preponderance of the evidence.

(b) The examiner shall make a decision exclusively on matters of record in the proceeding and shall set forth in the decision:
   (1) All findings of fact relevant to the matters at issue;
   (2) All conclusions of law relevant to the matters at issue; and
   (3) The sanction to be imposed, if any.

§ 98.7 Hearing.

(a) The examiner shall, within 30 working days of a request for a hearing under §98.5(b), schedule the hearing for a reasonable time, date, and place. The examiner shall grant any delays or continuances that the examiner determines to be necessary and appropriate for fair resolution of the case, with due regard to the former employee’s need for adequate time to prepare a defense and for expeditious resolution of allegations that may be damaging to that former employee’s reputation.

(b) The following rights shall be granted to a former employee who requests a hearing under §98.5(b):
   (1) To represent oneself or to be represented by counsel.
   (2) To introduce and examine witnesses and to submit physical evidence.
   (3) To confront and cross-examine adverse witnesses.
   (4) To present oral argument.
   (5) To obtain a transcript or recording of the hearing on request from the official reporter upon payment of the fees fixed therefor.

(c) In a hearing under this part, the Federal Rules of Civil Procedure and Evidence do not apply. However, the examiner may make such orders and determinations regarding discovery, admissibility of evidence, conduct of examination and cross-examination, and similar matters the examiner deems necessary or appropriate to ensure orderliness in the proceedings and fundamental fairness to the parties.