

However, the duration of any single temporary stay shall not exceed the amount of time reasonably necessary to acquire sufficient information to support a request for a permanent stay in the exercise of a high degree of diligence and, in no event, shall any single temporary stay exceed 60 days except as provided under paragraph (c) of this section for the purpose of allowing time to render a decision.

(e) In determining whether a permanent stay under paragraph (b)(2) of this section should be issued, the Board member, or Board en banc, shall:

(1) Assess the evidence adduced by each side as to whether the proposed personnel action arises out of an alleged prohibited personnel practice as specified by the Board's General Counsel;

(2) Assess the nature and gravity of any harm that could inure to each side if the request for permanent stay is either granted or denied; and

(3) Balance the assessments conducted under paragraphs (e)(1) and (2) of this section.

(f) Any order issued by a member of the Board granting or denying, in whole or in part, a stay request under paragraph (b) shall be subject to review by the Board en banc on the filing and service of a notice of appeal, accompanied by a supporting brief, within 10 days of the service of that order. Responsive briefs shall be filed and served within 10 days of service of the appeal.

(g) A motion to vacate a stay order may be filed at any time. A stay order issued by the Board en banc may not be vacated by a single Board member.

[58 FR 61992, Nov. 23, 1993, as amended at 68 FR 69304, Dec. 12, 2003]

Subpart H—Appeals by Members of the Senior Executive Service

§ 28.140 Personnel actions involving SES members.

Members of the GAO Senior Executive Service (SES) may appeal adverse actions relating to misconduct, malfeasance or similar action to the Board in accordance with Subpart B of this part. Members of the GAO SES who allege that they have been subjected to a personnel action that constitutes a prohibited personnel practice or prohib-

ited discrimination may appeal to the Board in accordance with subpart B or subpart D of this part respectively.

§ 28.141 Performance based actions.

A career appointee removed from SES to a GAO position outside the SES for less than fully successful executive performance shall, upon notice of such removal, be entitled, upon request, to an informal hearing before a member of the Board designated by the Chair of the Board.

(a) At the informal hearing, the career appointee and/or a representative and the agency may appear and present documentary evidence and argument.

(b) The Board member will determine which, if any, witnesses will be allowed to testify. As a general rule, no cross-examination of witnesses will be allowed. The Board member will have discretion to allow cross-examination of witnesses in exceptional circumstances.

(c) The informal hearing shall not give the career appointee the right to initiate an action with the Board under another provision of these rules, nor need the removal action be delayed as a result of the granting of such hearing.

Subpart I—Ex Parte Communications

§ 28.145 Policy.

It is the policy of the Board to regulate strictly ex parte communications between members of the Board and their decision-making personnel and any interested party to a proceeding before the Board.

§ 28.146 Explanation and definitions.

(a) Ex parte communications are oral or written communications between decision-making personnel of the Board and an interested party to a proceeding without providing the other parties to the proceeding a chance to participate. The only ex parte communications that are prohibited are those that involve the merits of the case or those that violate other rules requiring submissions to be in writing. Accordingly, interested parties may make inquiries about such matters as the status of a case, when it will be heard, and