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order has been requested and that an answer may be filed within 10 days of the notice. The Judicial Officer, for good cause shown, may hold a hearing to consider the issues in controversy, and shall, in any event, render a final decision granting or denying the supplemental order or orders.

### § 952.31 Computation of time.

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

### § 952.32 Official record.

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

### § 952.33 Public information.

The Librarian of the Postal Service maintains for public inspection in the Library copies of all initial, tentative and final agency decisions and orders. The Recorder maintains the complete official record of every proceeding.

### § 952.34 Ex parte communications.

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

## PART 953—MAILABILITY

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AUTHORITY: 39 U.S.C. 204, 401, 3001; 5 U.S.C. 554.

SOURCE: 59 FR 31538, June 20, 1994, unless otherwise noted.

### § 953.1 Authority for rules.

These rules of practice are issued by the Judicial Officer of the U.S. Postal Service pursuant to authority delegated by the Postmaster General.

### § 953.2 Initiation.

Mailability proceedings are initiated upon the filing of an appeal in the Judicial Officer electronic filing system at *https://usps-judicialoffice.journaltech.com* or with the Recorder, Judicial Officer Department, U.S. Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

[89 FR 61021, July 30, 2024]

### § 953.3 Appeal.

The appeal shall:

(a) Identify the appellant;

(b) Describe or be accompanied by a copy of the determination or ruling being appealed;

(c) Describe the character or content of the matter the appellant wishes to have carried and delivered by the U.S. Postal Service;

(d) Request review of the determination or ruling, specifying each and every reason why the appellant believes the determination or ruling should be reversed;

(e) Indicate whether the appellant desires to have an oral hearing or, instead, to have the case decided solely on the basis of the written record (*i.e.*, the appeal, the General Counsel's or Chief Postal Inspector's or his or her designee's reply reply, and any documents submitted by the parties pursuant to an order of the presiding officer); and

(f) Bear the signature, typed or printed name, title, business address, and telephone number of any attorney at law representing the appellant in bringing the appeal, and of each individual appellant or, if the appellant is a partnership, corporation, limited liability company, or unincorporated association, of the managing partner,

chief executive officer, chief operating officer, or other officer authorized to bind the organization.

[59 FR 31538, June 20, 1994, as amended at 71 FR 53972, Sept. 13, 2006]

### § 953.4 Filing, docketing and serving documents; service of notice; reply; motion for summary judgment.

(a) *Filing*. Unless the presiding officer permits otherwise, all documents must be filed using the electronic filing system. Documents submitted using the electronic filing system are considered filed as of the date/time (Eastern Time) reflected in the system. Documents mailed to the Recorder are considered filed on the date mailed as evidenced by a United States Postal Service postmark. Filings by any other means are considered filed upon receipt by the Recorder of a complete copy of the filing during normal business hours. Normal business hours are between 8:45 a.m. and 4:45 p.m. (Eastern Time), Monday through Friday except holidays. If both parties are participating in the electronic filing system, separate service upon the opposing party is not required. Otherwise, documents shall be served personally or by mail on the opposing party, noting on the document filed, or on the transmitting letter, that a copy has been so furnished.

(b) *Service of notice*. (1) Upon receiving the appeal, the Recorder shall issue a notice specifying that the Postal Service General Counsel's or Chief Postal Inspector or his or her designee's reply shall be filed within 15 days of receipt of the notice.

(2) The Recorder shall promptly serve this notice on the parties as follows:

(i) The notice, with a copy of the appeal, shall be sent to the General Counsel or the Chief Postal Inspector or his or her designee.

(ii) When the appellant's address is within the United States, the notice, with a copy of the appeal, shall be sent to the postmaster at the office that delivers mail to the appellant's address. The postmaster shall be instructed that, acting personally or through a supervisory employee or a postal inspector, he or she is to serve these documents on the appellant. If the appellant cannot be found within 3 days, the postmaster shall send these documents to the appellant by ordinary mail and forward a statement to the Recorder that is signed by the delivering employee and that specifies the time and place of delivery.

(iii) When the appellant's address is outside the United States, the notice, with a copy of the appeal, shall be sent to the appellant by registered mail, return receipt requested. A written statement by the Recorder, noting the time and place of mailing, shall be accepted as proof of service in the event a signed and dated return receipt is not received.

(c) *Reply*. The General Counsel, the Chief Postal Inspector, or that officer's designee shall file a reply within the aforementioned 15-day period or any period granted by the presiding officer for good cause shown. If the reply so filed fails to address any additional allegation in the appeal, that allegation shall be deemed admitted.

(d) *Motion for summary judgment*. Upon motion of the General Counsel, the Chief Postal Inspector, that officer's designee, or the appellant, or on the presiding officer's own initiative, the presiding officer may find that the appeal and answer present no genuine and material issues of fact requiring an evidentiary hearing, and thereupon may render an initial decision upholding or reversing the determination or ruling. The initial decision shall become the final Agency decision if a timely appeal is not taken.

[81 FR 40192, June 21, 2016]

### § 953.5 Hearings.

(a) In general, admissibility of evidence at hearings conducted under this part hinges on relevancy and materiality. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, or by considerations of undue delay, or by needless presentation of cumulative evidence. Testimony shall be given under oath or affirmation, and witnesses are subject to cross-examination. Stipulations of fact are encouraged and may be received in evidence.

(b) Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objections relied upon. The transcript shall not

include argument or debate thereon except as ordered by the presiding officer. Rulings on such objections shall be a part of the transcript.

(c) Formal exceptions to the rulings of the presiding officer made during the course of the hearing are unnecessary. For all purposes for which an exception otherwise would be taken, it is sufficient that a party, when the ruling of the presiding officer is made or sought, makes known the action he desires the presiding officer to take or his objection to an action taken, and his grounds therefor.

### § 953.6 Compromise and informal dispositions.

Either party may request the other to consider informal disposition of any question of mailability, and the scheduled hearing date may be postponed by the presiding officer for such period of time as may be necessary to accommodate settlement discussions between the parties.

### § 953.7 Default; Appearances.

If a timely reply to the appeal is not filed, the presiding officer shall refer the appeal to the Judicial Officer, who may find that the General Counsel or the Chief Postal Inspector or his or her designee is in default. Whenever the General Counsel or the Chief Postal Inspector or his or her designee has been deemed to be in default, the Judicial Officer shall take whatever action on the appeal he deems appropriate. If an oral evidentiary hearing is to be held, the appellant may appear at the hearing in person or by counsel. If either party fails to appear at the hearing, the presiding officer shall receive the evidence of the party appearing and render a decision.

[59 FR 31538, June 20, 1994, as amended at 71 FR 53972, Sept. 13, 2006]

### § 953.8 Location of hearing.

Unless otherwise ordered by the presiding officer, the hearing shall be held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, on the date set in the notice.

[63 FR 66050, Dec. 1, 1998]

### § 953.9 Change of place of hearing.

(a) Not later than the date fixed for the filing of the reply, a party may file a motion that the scheduled hearing be held at a place other than that designated in the notice. The motion shall include a supporting statement outlining:

(1) The evidence to be offered in such place;

(2) The names and addresses of the witnesses who will testify; and

(3) The reasons why such evidence cannot be presented in Arlington, VA.

(b) In ruling on the motion, the presiding officer shall consider the convenience and necessity of the parties and the relevancy of the evidence to be offered.

[59 FR 31538, June 20, 1994, as amended at 63 FR 66050, Dec. 1, 1998]

### § 953.10 Presiding Officers.

The presiding officer at any hearing shall be an Administrative Law Judge qualified in accordance with law or the Judicial Officer (39 U.S.C. 204). The Chief Administrative Law Judge shall assign cases. The Judicial Officer may preside at the hearing if an Administrative Law Judge is unavailable.

[81 FR 40193, June 21, 2016]

### § 953.11 Proposed findings of fact and conclusions of law.

Proposed findings of fact and conclusions of law shall be submitted orally or in writing at the conclusion of the hearing, or otherwise, as ordered by the presiding officer.

### § 953.12 Initial decision.

Unless given orally at the conclusion of the hearing, the Administrative Law Judge shall render an initial decision as expeditiously as practicable after the conclusion of the hearing and the receipt of the proposed findings and conclusions, if any. The initial decision shall become the decision of the Postal Service if an appeal is not perfected. When the Judicial Officer presides at the hearing, his powers shall include those of an Administrative Law Judge, but the Judicial Officer may render either an initial or final decision. Exceptions may be filed to an initial decision

rendered by the Judicial Officer in accordance with § 953.13.

### § 953.13 Appeal from initial decision.

Either party may file exceptions in a brief on appeal to the Judicial Officer within 5 days after receipt of the initial decision unless additional time is granted. A reply brief may be filed within 5 days after the receipt of the appeal brief by the opposing party.

### § 953.14 Final Agency decision.

The Judicial Officer shall render a final Agency decision. The decision shall be served upon the parties and the postal official having custody of any mail detained pursuant to the determination or ruling.

### § 953.15 Expedition.

For the purpose of further expedition, either party may move to have the hearing held at an earlier date than that specified in the notice. Either party may also move to have the initial decision (if an Administrative Law Judge or the Judicial Officer is presiding) or the final Agency decision (if the Judicial Officer is presiding) rendered orally at the conclusion of the hearing. The presiding officer may grant or deny any such motion. The parties may, with the concurrence of the Judicial Officer, agree to waive any of the procedures established in these rules.

### § 953.16 Disposition.

Mail matter found to be nonmailable shall be held at the post office where detained for a period of 15 days from the date of the Postal Service decision, unless that period is extended by the Judicial Officer. During this holding period, the appellant may apply for the withdrawal of the matter. If any such application is made, the General Counsel or Chief Postal Inspector or his or her designee shall be given notice and the opportunity to oppose the application. Upon the expiration of the holding period with no application having been made, the Judicial Officer shall order that the matter be disposed of in accordance with 39 U.S.C. 3001(b). If a timely application is made, the Judicial Officer shall consider the application and any reasons advanced by the General Counsel or Chief Postal Inspector or his or her designee for denying the application. The Judicial Officer shall thereafter order either that the matter be returned to the applicant or that it be disposed of in accordance with 39 U.S.C. 3001(b).

[59 FR 31538, June 20, 1994, as amended at 71 FR 53972, Sept. 13, 2006]

### § 953.17 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 proceedings under these rules of practice.

## PART 954—DENIAL, SUSPENSION, OR REVOCATON OF PERIODICALS MAIL PRIVILEGES

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AUTHORITY: 39 U.S.C. 204, 401, 3685; 5 U.S.C. 554.

SOURCE: 36 FR 11567, June 16, 1971, unless otherwise noted.

### § 954.1 Authority for rules.

These rules of practice are issued by the Judicial Officer of the U.S. Postal Service pursuant to authority delegated by the Postmaster General.