

#### **4        *Preparing materials for hearing:***

**4.1        *Formal papers:*** The Hearing Officer is responsible for the hearing's formal papers which include, as applicable:

- a)        petition (with any attachments including service sheet);
- b)        amended petition (with any attachments including service sheet);
- c)        notice of representation hearing (with attachments described in *CHM 29.3* and a service sheet);
- d)        order consolidating cases (with any attachments including service sheet);
- e)        order rescheduling hearing (with any attachments including service sheet);
- f)        order severing cases (with any attachments including service sheet); and
- g)        any other prehearing orders, motions, responses to motions (and any motions not acted upon by the Regional Director prior to the opening of the hearing).
- h)        correspondence related to notifying parties who have been identified as affected by issues raised and responses from them if they fail to appear/participate at the hearing. If the party fails to respond at all to the notification letter, the Hearing Officer states on the record who was identified and who failed to respond or declined to participate (see *HOG Script 35*).
- i)        if issues surface during the hearing that change the status of a party(ies), the party(ies) are notified and given an opportunity to participate, or in the case of an incumbent, disclaim interest. These documents are added as Authority exhibits (not part of the formal exhibits) See e.g., *U.S. Department of the Interior, National Park Service*, 55 FLRA 466 (1999) where the Authority found that the Regional Director committed prejudicial error when during the course of the hearing he found that the employees from each of the affected units constituted a separate appropriate unit, but did not

properly notify the former incumbents of their rights with respect to the successorship issue. See *HOG 25*.

The Hearing Officer normally serves the formal papers on the parties at the prehearing conference, but not later than just prior to the start of the hearing. These papers are numbered Authority Exhibits 1a through 1... . Formal papers added during the hearing and are given consecutive numbers. The Hearing Officer is required to prepare two (2) copies of the formal papers for the court reporter and one copy for each party to the proceeding. Each set of formal papers includes an index. One additional copy is prepared for personal use during the proceeding.

The original of the formal papers is maintained in the case file at all times.

- 4.2 Case file:** The Hearing Officer takes the case file to the hearing for reference. In election cases, the file includes the showing of interest which is secured during the hearing.
- 4.3 FLRA Form 50, Appearance sheet:** The information on the top of this form is prepared prior to the hearing. An original and a copy are required for the record; the original is retained in the file and a copy is given to the court reporter.
- 4.4 FLRA Form 56, Exhibits introduced in evidence:** This form(s) is included with the materials for the hearing. The form is designed to enable the Hearing Officer to track the status of exhibits from the point of being marked for identification to disposition by being received in evidence, rejected or withdrawn. These forms are retained in the case file.
- 4.5 Publications:** The Hearing Officer takes copies of the Statute, the regulations, pertinent sections of the Representation Case Handling Manual (*REP CHM*) and the complete Hearing Officer Guide (*HOG*) to the hearing.
- 4.6 Other blank forms:** The Hearing Officer also has a supply of petitions, election agreement forms, withdrawal requests, requests to proceed, extra copies of the Statement of Standard Procedures (FLRA Doc. 1014), subpoenas ad testificandum and duces tecum, and appearance sheets.
- 4.7 Subpoenas:** If necessary, prior to the opening of the hearing, the Hearing Officer prepares subpoenas for the Regional Director's signature pursuant to § 2429.7 of the regulations (see *HOG 27*).

**4.8** **Hearing Officer's script:** The Hearing Officer carries out his/her responsibility to ensure a complete factual record by preparing carefully prior to the start of the hearing. The Hearing Officer becomes:

- a) thoroughly familiar with the case file and the issues presented by the petition,
- b) thoroughly familiar with the hearing procedures described in this guide,
- c) knowledgeable of applicable case law,
- d) understands the concepts behind the Authority's or other applicable decisions and the relevant evidence considered to be determinative of specific issues,

and shares such information with all parties.

In addition to drafting the outline discussed at *HOG 3.7e*, the Hearing Officer drafts a script that outlines the hearing's purpose and lays the foundation for the matters to develop for the record. It also enables him/her and the parties to focus on:

- a) the nature of the hearing,
- b) the issues to address, and
- c) the evidentiary process used to develop the record from which those issues are decided.

The Hearing Officer often drafts this script before the prehearing conference because it provides a starting point at the conference, helps the parties focus on the issues and can very well lead to the resolution of those issues during the conference. See *HOG 35* for a draft script (also Figure 35). Any change in the issues, either the deletion of one and the addition of others, are explained on the record.

