

of limitations or any other matter constituting an affirmative defense shall be asserted in the answer. Any allegation not denied shall be deemed admitted.

(d) *Motion for More Definite Statement.* A party may file with an answer a motion for a more definite statement of specified matters of fact or law to be considered or determined. Such motion shall state the respects in which, and the reasons why, each such matter of fact or law should be required to be made more definite. If the motion is granted, the order granting such motion shall set the periods for filing such a statement and any answer thereto.

(e) *Amendments.* A party may amend its answer at any time by written consent of each adverse party or with leave of the Commission or the hearing officer. Leave shall be freely granted when justice so requires.

(f) *Failure to File Answer: Default.* If a party respondent fails to file an answer required by this rule within the time provided, such person may be deemed in default pursuant to Rule 155(a). A party may make a motion to set aside a default pursuant to Rule 155(b).

Comment (b): The time allowed to file an answer, 20 days, conforms to the time for answers under Rule 12 of the Federal Rules of Civil Procedure.

Revision Comment (c): The provision relating to the filing of affirmative defenses is based on Rule 8(c) of the Federal Rules of Civil Procedure. The change is intended to improve efficiency and fairness by clarifying issues at an early stage of the proceeding that may affect the timing, duration or necessity for a hearing.

Revision Comment (e): Proposed Rule 9(b) provided for amendment of an answer only when ordered by the Commission or a hearing officer. As adopted, Rule 220(e) allows amendment of an answer by consent of all parties or by leave of the Commission or hearing officer. Amendment of an answer may increase efficiency and fairness by sharpening the issues in dispute. Moreover, the provisions for a summary disposition prior to hearing pursuant to Rule 250 increase the importance of the answer. The modification to the rule is in accordance with Rule 15 of the Federal Rules of Civil Procedure. No provision is made, however, for allowing a period for an amendment as of right, because a meaningful period for exercise of such a right, such as the 20-day period provided under the Federal Rules of Civil Procedure, is inconsistent with the prompt start of the hearing. See, e.g., Exchange Act § 21C(b), 15

U.S.C. 78u-3(b) (cease-and-desist proceedings to begin no later than 60 days after institution, other than with consent of respondent).

Rule 221. Prehearing Conferences

(a) *Purposes of Conferences.* The purposes of prehearing conferences include, but are not limited to:

- (1) expediting the disposition of the proceeding;
- (2) establishing early and continuing control of the proceeding by the hearing officer; and
- (3) improving the quality of the hearing through more thorough preparation.

(b) *Procedure.* On his or her own motion or at the request of a party, the hearing officer may, in his or her discretion, direct counsel or any party to meet for an initial, final or other prehearing conference. Such conferences may be held with or without the hearing officer present as the hearing officer deems appropriate. Where such a conference is held outside the presence of the hearing officer, the hearing officer shall be advised promptly by the parties of any agreements reached. Such conferences also may be held with one or more persons participating by telephone or other remote means.

(c) *Subjects to be Discussed.* At a prehearing conference consideration may be given and action taken with respect to any and all of the following:

- (1) simplification and clarification of the issues;
- (2) exchange of witness and exhibit lists and copies of exhibits;
- (3) stipulations, admissions of fact, and stipulations concerning the contents, authenticity, or admissibility into evidence of documents;
- (4) matters of which official notice may be taken;
- (5) the schedule for exchanging prehearing motions or briefs, if any;
- (6) the method of service for papers other than Commission orders;
- (7) summary disposition of any or all issues;
- (8) settlement of any or all issues;
- (9) determination of hearing dates;
- (10) amendments to the order instituting proceedings or answers thereto;
- (11) production of documents as set forth in Rule 230, and prehearing production of documents in response to subpoenas duces tecum as set forth in Rule 232;
- (12) specification of procedures as set forth in Rule 202; and
- (13) such other matters as may aid in the orderly and expeditious disposition of the proceeding.

(d) *Required Prehearing Conferences.* Except where the emergency nature of a proceeding would make a prehearing conference clearly inappropriate, both an initial and a final prehearing conference should be held. Unless ordered otherwise, an initial prehearing conference shall be held within 14 days of the service of an answer, or if no answer is required, within 14 days of service of the order instituting proceedings. A final conference shall be held as close to the start of the hearing as reasonable under the circumstances.

(e) *Prehearing Orders.* At or following the conclusion of any conference held pursuant to this rule, the hearing officer shall enter a ruling or order which recites the agreements reached and any procedural determinations made by the hearing officer.

(f) *Failure to Appear: Default.* Any person who is named in an order instituting proceedings as a person against whom findings may be made or sanctions imposed and who fails to appear, in person or through a representative, at a prehearing conference of which he or she has been duly notified may be deemed in default pursuant to Rule 155(a). A party may make a motion to set aside a default pursuant to Rule 155(b).

Comment (a): Rule 221 is modeled on Rule 16 of the Federal Rules of Civil Procedure. When properly managed, prehearing conferences can eliminate unnecessary delay and improve the quality of justice by sharpening the preparation of cases, facilitating the prehearing exchange of documents, and promoting settlements in appropriate cases.

Comment (d): Unless ordered otherwise, the initial prehearing conference will be held within 14 days after a respondent files an answer. Pursuant to Rule 230(d), the Division of Enforcement is required to commence making documents available to a respondent for inspection and copying in an enforcement or disciplinary proceeding no later than 14 days after the respondent files an answer. Consequently, the initial prehearing conference can be used to address any pending issues related to the availability of documents for inspection and copying, and thereafter the respondent should ordinarily have access to such documents.

Revision Comment (c): Paragraph (c)(6) was added to bring to the attention of the participants that they may agree among themselves to procedures for the service of papers by facsimile. See Rule 150(c)(4).

Revision Comment (d): Under the proposed rule, no initial prehearing