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January 15, 2019

MEMORANDUM FOR ALL APPLICANTS AND THEIR RESPECTIVE ATTORNEYS OR
PERSONAL REPRESENTATIVES, AND DEPARTMENT COUNSEL

SUBJECT: Prehearing Guidance for DOHA Industrial Security Clearance (ISCR) Hearings
and Trustworthiness (ADP) Hearings

The following guidance is provided to applicants, their respective attorneys or personal representatives, and department counsel (the parties) to assist them in preparing for ISCR and ADP hearings. This guidance is not exhaustive, and the parties should also refer to Department of Defense Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program, for guidance. In the event of any conflict between this guidance and the provisions of DoD Directive 5220.6, the provisions of the Directive control.

1. The hearing is an adversarial proceeding. The Government is represented by a department counsel. Applicants have the option of appearing by themselves without an attorney, or being represented by an attorney that they have selected and paid. They may also be represented by a non-lawyer such as a friend, family member, or union representative.

2. To facilitate the exchange of correspondence, proposed evidence, the handling of preliminary matters, and the scheduling of hearings, any person representing an applicant should send a written Notice of Appearance to both the department counsel and the DOHA Hearing Office. The facsimile number and mailing address for the Hearing Office appears at the top of this memorandum. No special form or format is required.

3. Hearings may be conducted in a federal, state, county, or local hearing room, conference room, court room, or video teleconference center. Applicants employed within the United States can expect the hearing to be held at a facility within 150 miles of their residence or place of employment at a location that provides an appropriate degree of privacy and is consistent with the seriousness of the proceeding.

4. The parties must be prepared to present all their witnesses and documents at the hearing. The administrative judge does not have the authority to issue a subpoena. Thus, the appearance of witnesses or production of documents is purely voluntary, and is the sole responsibility of the person intending to offer that evidence. The costs associated with the attendance of witnesses are also the sole responsibility of the party calling that witness. Neither party should attempt to furnish the administrative judge any information about the case without giving the same information to the other party.

5. A party requesting a postponement of a scheduled hearing must submit a request in writing to the administrative judge and provide a good reason for the postponement. Failure of an applicant to appear for the scheduled hearing or to comply with an order of the administrative judge may result in revocation of any security clearance held by the applicant or denial of the clearance eligibility being sought.

6. The hearing is conducted as follows. Department counsel may make an opening statement. Then, the applicant may make an opening statement, waive opening statement, or wait until the department counsel has presented his or her case before making or waiving an opening statement. An opening statement is not evidence. It is a brief description of the expected testimony of any witnesses and a description of documents intended to be presented. Its purpose is to help the administrative judge understand why certain evidence is being presented. The Government presents its evidence first, followed by the applicant. Each party will have the opportunity to rebut the other party's evidence. The parties have a wide degree of discretion in deciding in what order to present their evidence.

7. As a general rule, photocopies of documents may be offered in lieu of the original, provided that the copies are legible. In the case of public records or business records, it is not required that the copies be certified copies. Applicants must make sufficient photocopies of each proposed exhibit so that separate complete copies can be offered to the administrative judge and the opposing party. Photocopying must be completed before the scheduled hearing date, because there may not be any photocopying facilities available at the hearing location.

8. Witnesses will be sequestered (kept out of the hearing room) during the hearing until they testify, with the exception of the applicant and any expert witnesses. The purpose of this rule is to ensure that witnesses testify based on their own knowledge and not based on what they have heard in the hearing room.

9. The administrative judge does not swear in applicants or other witnesses who testify. Instead the administrative judge will inform all witnesses about Section 1001 of Title 18 of the United States Code, which makes it a criminal offense, punishable by a substantial fine and period of imprisonment, to knowingly and willfully make a false or misleading statement or representation to any department or agency of the United States.

10. All witnesses are subject to questioning by the other party. The administrative judge may also question any witness.

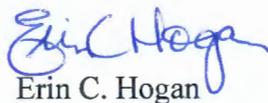
11. Each party has the right to object to any evidence being offered by the other party. Objections must be made promptly. Failure to promptly object may result in the objection being waived. An objecting party should address the objection to the administrative judge, stating the basis for the objection. An applicant who is not an attorney need only state the objection as clearly as he or she can, in plain English. "Legalese" is not necessary. The non-objecting party will be given an opportunity to respond to the objection, if he or she wishes.

12. After both parties have presented their evidence, they will have an opportunity to make closing statements. A closing statement is not evidence. It is a review and summary of the evidence and appropriate adjudicative guidelines and an opportunity for the parties to explain to the administrative judge why he or she should grant or deny the application for a security clearance. The department counsel speaks first, followed by the applicant. After the applicant argues, the department counsel has an opportunity for a rebuttal argument.

13. A court reporter will make an official transcript of the hearing. The court reporter will send the original transcript to the administrative judge, and a copy of the transcript, free of charge, to the applicant or applicant's attorney, as appropriate.

14. The administrative judge will not announce his or her decision to the parties at the end of the hearing. A copy of the administrative judge's written decision will be sent to the parties, along with a letter explaining the requirements for appeal.

15. The administrative judge has discretion to vary the provisions of this guidance upon a showing of good cause, or whenever necessary to provide for the fair and efficient administration of the proceeding under the Directive.



Erin C. Hogan

Chief Administrative Judge