

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

Administrative Proceedings Rulings  
Release No. 6830 / September 10, 2021

Administrative Proceeding  
File No. 3-20454

In the Matter of

**Kimberly D. Butler,  
Prosperity Economics Partners,  
LLC, and  
Partners for Prosperity, LLC**

**Scheduling Order and  
Hearing Guidelines**

At my request the parties submitted a joint prehearing statement with a proposed schedule. After discussing the proposal with the parties at the prehearing conference held on September 8, 2021, I ORDER the following schedule:

November 30, 2021: Fact discovery closes.

December 7, 2021: Exchange and file expert reports and disclosures.

December 14, 2021: File motions for summary disposition.

January 4, 2022: File oppositions to motions for summary disposition.

January 11, 2022: File replies to motions for summary disposition.

Exchange and file witness and exhibit lists.

February 1, 2022: File prehearing briefs.

File motions in limine, including any objections to witness and exhibit lists.

File stipulations, admissions of fact, and requests for official notice.

- February 1, 2022: Deadline for requests under Rule 232 for subpoenas requiring the attendance and testimony of a witness at the hearing.
- February 8, 2022: Final telephonic prehearing conference.
- February 15, 2022: Hearing begins, either virtually or in person at a location to be determined in Texas.

### **Hearing Guidelines**

I will follow the general guidelines described below during these proceedings. The parties should review what follows *and promptly raise any objections they may have to the application of these guidelines in this matter*.

1. *Subpoenas*. A party's motion to quash a subpoena will be due within five business days of the submission of the subpoena for signing. Any opposition to the motion to quash will be due within five business days thereafter.
2. *Exhibits*. The parties should confer and attempt to stipulate to the admissibility of exhibits. To avoid duplication of exhibits, the parties should identify joint exhibits. Exhibits are not filed with the Office of the Secretary until the close of the hearing at my instruction.
3. *Exhibit lists*. A comprehensive exhibit list prevents other parties from being surprised in the middle of the hearing. Given this fact, exhibit lists shall be exchanged among the parties and should include all documents that a party expects to use in the hearing for any purpose. This includes documents that are relevant only for impeachment purposes or which are presumptively inadmissible. The parties should serve their opponents with any amendments to their individual exhibit list. Because I rely on the parties' exhibit lists, the parties should submit electronic copies of their final exhibit lists to my office and provide me with a paper copy of their final exhibit lists at the beginning of an in-person hearing. There is no need in the interim to submit amendments to my office. Following the hearing, I will issue a separate order directing the parties to file a list of all exhibits, admitted and offered but not admitted, together with citations to the record indicating when each exhibit was admitted.
4. *Expert reports and testimony*. Expert witness disclosures must comply with Rule of Practice 222(b)(1). Because this Rule is modeled on Federal Rule of Civil Procedure 26(a)(2)(B), the parties should look to Rule 26(a)(2)(B) and cases interpreting it for guidance. Failure to comply with the requirements

of Rule 222(b) may result in the striking of an expert's report.<sup>1</sup> The filing of the expert's report according to the prehearing schedule essentially constitutes the filing of the expert's direct testimony. During the hearing, the expert will not be subject to direct examination, and will simply be sworn in and proffered for cross-examination. On request, however, a party may conduct a brief direct examination of the party's expert.

5. *Hearing schedule.* The first day of the proceeding will begin at 9:30 a.m. Unless circumstances require a different schedule, we will begin each subsequent day at 9:00 a.m. Each day of the proceeding should last until at least 5:15 p.m. I generally take one break in the morning, lasting about fifteen minutes, and at least one break in the afternoon. I generally break for lunch between noon and 12:30 p.m., for about one hour.
6. *Hearing issues—Examination.*
  - a. In general, the Division of Enforcement presents its case first because it has the burden of proof. Respondents then present their case. If necessary, the parties may agree to proceed in some other order and may take witnesses out of order.
  - b. If the Division calls a non-party witness that Respondents also wish to call as a witness, Respondents should cross-examine the witness as if they were calling the witness in their own case. This means that Respondents' cross-examination of the witness in this circumstance may exceed the scope of what was covered by Division's direct examination of that same witness. This will avoid the need to recall a witness just so the witness can testify for Respondents' case.
  - c. I am flexible regarding the manner of presenting the testimony of Respondent Butler, so long as the parties agree on it. By way of example, if the Division calls Butler as its last witness, the parties may agree that Respondents will conduct the direct examination, followed by the Division's cross-examination, which may exceed the scope of Respondents' direct examination of Butler. In the absence of any agreement, Butler's testimony will proceed in the usual manner, *i.e.*, she will be called as a witness and examined potentially multiple times. If the Division calls Butler as a witness and she later testifies as part of her own case, the Division's cross-examination during Respondents' case will be limited to the scope of Respondents' direct examination.

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<sup>1</sup> Cf. Fed. R. Civ. P. 37(c).

- d. In general, cross-examination may be conducted by leading questions, even as to Division witnesses that Respondents wish to call in their own case. Counsel may not lead his or her client, however. As a result, if Butler is called as a witness in the Division's case, her counsel may not ask leading questions on cross-examination. Similarly, if a Commission employee is called as a witness for Respondents, the Division may not ask leading questions on cross-examination.
  - e. Avoid leading questions on direct examination. Leading questions during direct examination of a non-hostile witness are objectionable. Repeatedly having to rephrase leading questions slows down the hearing.
7. *Pleadings*. Prehearing and post-hearing briefs are limited to 14,000 words.<sup>2</sup> Although parties may seek leave to exceed this limit through a motion filed seven days in advance of the relevant briefing deadline, such motions will not be viewed favorably. To enhance the readability of pleadings, I urge counsel to limit the use of acronyms to those that are widely known.<sup>3</sup> For the same reason, I ask that counsel use the same font size in footnotes as that used in the body of a pleading.

/s/ James E. Grimes  
Administrative Law Judge

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<sup>2</sup> Cf. 17 C.F.R. § 201.450(c) (imposing a word-limit for briefs filed before the Commission).

<sup>3</sup> See Antonin Scalia & Bryan A. Garner, *Making Your Case: The Art of Persuading Judges* 120–22 (2008); see also *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1320–21 (D.C. Cir. 2014) (Silberman, J., concurring).