

## § 28.26

## 4 CFR Ch. I (1–1–08 Edition)

representatives. In the event the selected representative is disqualified, the party affected shall be given a reasonable time to obtain another representative.

(c) The administrative judge, on his or her own motion, may disqualify a party's representative on the grounds described in paragraph (b) of this section.

[58 FR 61992, Nov. 23, 1993, as amended at 68 FR 69301, Dec. 12, 2003]

### § 28.26 Witness fees.

The costs involved in the appearance of witnesses in any Board proceeding shall be allocated as follows:

(a) Persons employed by the GAO shall, upon request by the administrative judge to GAO, be made available to participate in the hearing and shall be in official duty status for this purpose and shall not receive witness fees. Payment of travel and per diem expenses shall be governed by applicable laws and regulations.

(b) Employees of other federal agencies called to testify at a Board hearing shall, at the request of the administrative judge and with the approval of the employing agency, be in official duty status during any period of absence from their normal duties caused by their testimony, and shall not receive witness fees. Payment of travel and per diem expenses shall be governed by applicable laws and regulations. A party planning to call an employee of another federal agency as a witness shall promptly notify the administrative judge of the need to submit to the federal agency a request that the employee be granted official duty status. In the event that the employing agency refuses the request to release the employee-witness in an official duty status, the employee-witness may be paid a witness fee in accordance with paragraph (c) of this section.

(c) Witnesses who are not covered by paragraphs (a) or (b) of this section are entitled to the same witness fees as those paid to subpoenaed witnesses under 28 U.S.C. 1821. The fees shall be paid, in the first instance, by the party requesting the appearance of the witness, subject to a subsequent decision otherwise in accordance with § 28.89, concerning the award of attorneys fees

and costs. Such fees shall be tendered to the witness at the time the subpoena is served, or, when the witness appears voluntarily, at the time of appearance. A federal agency or corporation is not required to tender witness fees in advance. Payment of travel and per diem expenses shall be governed by applicable law and regulation.

(d) When the General Counsel is the petitioner or is representing the petitioner, the General Counsel shall pay the witness fees and arrange for the travel and per diem expenses that are required by paragraph (c) of this section.

### § 28.27 Intervenors.

(a) Intervenors are persons who are allowed to participate in a proceeding because the proceeding, or its outcome, may affect their rights or duties.

(b) Any person may, by motion to the administrative judge, request permission to intervene. The motion shall state the reasons why the person should be permitted to intervene. A person alleged to have committed a prohibited personnel practice under 5 U.S.C. 2302(b) may request permission to intervene under this section.

(c) A motion for permission to intervene will be granted where a determination is made by the administrative judge or the Board, where the case is being heard en banc, that the requestor will be affected directly by the outcome of the proceeding. Denial of a motion for intervention may be appealed to the full Board. Such an appeal shall be filed within 10 days of service of the denial of the motion to intervene.

(d) Intervenors who are granted permission to intervene will be considered full parties to the hearing and will have the same rights and duties as a party with two exceptions:

(1) Intervenors will not have an independent right to a hearing.

(2) Intervenors may participate in Board proceedings only on the issues affecting them, as determined by the administrative judge or Board.

[58 FR 61992, Nov. 23, 1993, as amended at 68 FR 69301, Dec. 12, 2003]