

Department of Justice

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68.57 Judicial review of the final agency order of an Administrative Law Judge in cases arising under section 274B.

68.58 Filing of the official record.

AUTHORITY: 5 U.S.C. 301, 554; 8 U.S.C. 1103, 1324a, 1324b, and 1324c; Pub. L. 101-410, 104 Stat. 890, as amended by Pub. L. 104-134, 110 Stat. 1321.

§ 68.1 Scope of rules.

The rules of practice in this part are applicable to adjudicatory proceedings before Administrative Law Judges of the Executive Office for Immigration Review, United States Department of Justice, with regard to unlawful employment cases under section 274A of the INA, unfair immigration-related employment practice cases under section 274B of the INA, and document fraud cases under section 274C of the INA. Such proceedings shall be conducted expeditiously, and the parties shall make every effort at each stage of a proceeding to avoid delay. To the extent that these rules may be inconsistent with a rule of special application as provided by statute, executive order, or regulation, the latter is controlling. The Federal Rules of Civil Procedure may be used as a general guideline in any situation not provided for or controlled by these rules, by the Administrative Procedure Act, or by any other applicable statute, executive order, or regulation.

[Order No. 2203-99, 64 FR 7073, Feb. 12, 1999]

§ 68.2 Definitions.

For purposes of this part:

Adjudicatory proceeding means an administrative judicial-type proceeding, before the Office of the Chief Administrative Hearing Officer, commencing with the filing of a complaint and leading to the formulation of a final agency order;

Administrative Law Judge means an Administrative Law Judge appointed pursuant to the provisions of 5 U.S.C. 3105;

Administrative Procedure Act means those provisions of the Administrative Procedure Act, as codified, which are contained in 5 U.S.C. 551 through 559;

Certification means a formal assertion in writing of the specified fact(s), signed by the person(s) making the certification and thereby attesting to the

truth of the content of the writing, except as follows:

(1) *Certified court reporter* means a person who has been deemed by an appropriate body to be qualified to transcribe or record testimony during formal legal proceedings,

(2) *Certified mail* means a form of mail similar to registered mail by which sender may require return receipt from addressee, and

(3) *Certified copy* means a copy of a document or record, signed by the officer to whose custody the original is entrusted, thereby attesting that the copy is a true copy;

Certify means the act of executing a certification;

Chief Administrative Hearing Officer or an official who has been designated to act as the Chief Administrative Hearing Officer, is the official who, under the Director, Executive Office for Immigration Review, generally administers the Administrative Law Judge program, exercises administrative supervision over Administrative Law Judges and others assigned to the Office of the Chief Administrative Hearing Officer, and who, in accordance with sections 274A(e)(7) and 274C(d)(4) of the INA, exercises discretionary authority to review the decisions and orders of Administrative Law Judges adjudicated under sections 274A and 274C of the INA;

Complainant means the Immigration and Naturalization Service in cases arising under sections 274A and 274C of the INA. In cases arising under section 274B of the INA, “complainant” means the Special Counsel (as defined in this section), and also includes the person or entity who has filed a charge with the Special Counsel, or, in private actions, an individual or private organization;

Complaint means the formal document initiating an adjudicatory proceeding;

Consent order means any written document containing a specified remedy or other relief agreed to by all parties and entered as an order by the Administrative Law Judge;

Debt Collection Improvement Act means the Debt Collection Improvement Act of 1996, Pub. L. 104-134, Title III, 110 Stat. 1321 (1996);

Decision means any findings of fact or conclusions of law by an Administrative Law Judge or the Chief Administrative Hearing Officer;

Document fraud cases means cases involving allegations under section 274C of the INA.

Entry means the date the Administrative Law Judge, Chief Administrative Hearing Officer, or the Attorney General signs the order; *Entry* as used in section 274B(i)(1) of the INA means the date the Administrative Law Judge signs the order;

Final agency order is an Administrative Law Judge's final order, in cases arising under sections 274A and 274C of the INA, that has not been modified, vacated, or remanded by the Chief Administrative Hearing Officer pursuant to § 68.54, referred to the Attorney General for review pursuant to § 68.55(a), or accepted by the Attorney General for review pursuant to § 68.55(b)(3). Alternatively, if the Chief Administrative Hearing Officer modifies or vacates the final order pursuant to § 68.54, the modification or vacation becomes the final agency order if it has not been referred to the Attorney General for review pursuant to § 68.55(a) or accepted by the Attorney General for review pursuant to § 68.55(b)(3). If the Attorney General enters an order that modifies or vacates either the Chief Administrative Hearing Officer's or the Administrative Law Judge's order, the Attorney General's order is the final agency order. In cases arising under section 274B of the INA, an Administrative Law Judge's final order is also the final agency order;

Final order is an order by an Administrative Law Judge that disposes of a particular proceeding or a distinct portion of a proceeding, thereby concluding the jurisdiction of the Administrative Law Judge over that proceeding or portion thereof;

Hearing means that part of a proceeding that involves the submission of evidence, either by oral presentation or written submission;

Interlocutory order means an order that decides some point or matter, but is not a final order or a final decision of the whole controversy; it decides some intervening matter pertaining to the cause of action and requires further

steps to be taken in order for the Administrative Law Judge to adjudicate the cause on the full merits;

INA means the Immigration and Nationality Act of 1952, ch. 477, Pub. L. 82-414, 66 Stat. 163, as amended;

Issued as used in section 274A(e)(8) and section 274C(d)(5) of the INA means the date on which an Administrative Law Judge's final order, the Chief Administrative Hearing Officer's order, or an adoption, modification, or vacation by the Attorney General becomes a final agency order;

Motion means an oral or written request, made by a person or a party, for some action by an Administrative Law Judge;

Order means a determination or mandate by an Administrative Law Judge, the Chief Administrative Hearing Officer, or the Attorney General that resolves some point or directs some action in the proceeding;

Ordinary mail refers to the mail service provided by the United States Postal Service using only standard postage fees, exclusive of special systems, electronic transfers, and other means that have the effect of providing expedited service;

Party includes all persons or entities named or admitted as a complainant, respondent, or intervenor in a proceeding; or any person filing a charge with the Special Counsel under section 274B of the INA, resulting in the filing of a complaint, concerning an unfair immigration-related employment practice;

Pleading means the complaint, motions, the answer thereto, any supplement or amendment thereto, and reply that may be permitted to any answer, supplement, or amendment submitted to the Administrative Law Judge or, when no judge is assigned, the Chief Administrative Hearing Officer;

Prohibition of indemnity bond cases means cases involving allegations under section 274A(g) of the INA;

Respondent means a party to an adjudicatory proceeding, other than a complainant, against whom findings may be made or who may be required to provide relief or take remedial action;

Special Counsel means the Special Counsel for Unfair Immigration-Related Employment Practices appointed

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by the President under section 274B of the INA, or his or her designee or in the case of a vacancy in the Office of Special Counsel, the officer or employee designated by the President who shall act as Special Counsel during such vacancy;

Unfair immigration-related employment practice cases means cases involving allegations under section 274B of the INA;

Unlawful employment cases means cases involving allegations under section 274A of the INA, other than prohibition of indemnity bond cases.

[Order No. 2203-99, 64 FR 7073, Feb. 12, 1999, as amended by Order No. 2255-99, 64 FR 49660, Sept. 14, 1999]

§ 68.3 Service of complaint, notice of hearing, written orders, and decisions.

(a) Service of complaint, notice of hearing, written orders, and decisions shall be made by the Office of the Chief Administrative Hearing Officer or the Administrative Law Judge to whom the case is assigned either:

(1) By delivering a copy to the individual party, partner of a party, officer of a corporate party, registered agent for service of process of a corporate party, or attorney or representative of record of a party;

(2) By leaving a copy at the principal office, place of business, or residence of a party; or

(3) By mailing to the last known address of such individual, partner, officer, or attorney or representative of record.

(b) Service of complaint and notice of hearing is complete upon receipt by addressee.

(c) In circumstances where the Office of the Chief Administrative Hearing Officer or the Administrative Law Judge encounters difficulty with perfecting service, the Chief Administrative Hearing Officer or the Administrative Law Judge may direct that a party execute service of process.

[Order No. 2203-99, 64 FR 7074, Feb. 12, 1999]

§ 68.4 Complaints regarding unfair immigration-related employment practices.

(a) *Generally.* An individual must file a charge with the Special Counsel

within one hundred and eighty (180) days of the date of the alleged unfair immigration-related employment practice.

(b) The Special Counsel shall, within one hundred and twenty (120) days of the date of receipt of the charge:

(1) Determine whether there is a reasonable cause to believe the charge is true and whether to bring a complaint respecting the charge with the Chief Administrative Hearing Officer within the 120-day period; or,

(2) Notify the party within the 120-day period that the Special Counsel will not file a complaint with the Chief Administrative Hearing Officer within the 120-day period.

(c) The charging individual may file a complaint directly with the Chief Administrative Hearing Officer within ninety (90) days after the date of receipt of notice that the Special Counsel will not be filing a complaint within the 120-day period. However, the Special Counsel's failure to file a complaint within the 120-day period will not affect the right of the Special Counsel to investigate the charge or bring a complaint within the 90-day period.

[Order No. 1534-91, 56 FR 50053, Oct. 3, 1991]

§ 68.5 Notice of date, time, and place of hearing.

(a) *Generally.* The Administrative Law Judge to whom the case is assigned shall notify the parties of a date, time, and place set for hearing thereon or for a prehearing conference, or both within thirty (30) days of receipt of respondent's answer to the complaint.

(b) *Place of hearing.* In section 274B cases, pursuant to section 554 of title 5, United States Code, due regard shall be given to the convenience of the parties and the witnesses in selecting a place for a hearing. Sections 274A(e)(3)(B) and 274C(d)(2)(B) of the INA require that hearings be held at the nearest practicable place to the place where the person or entity resides or to the place where the alleged violation occurred.

[54 FR 48596, Nov. 24, 1989. Redesignated and amended by Order No. 1534-91, 56 FR 50053, 50054, Oct. 3, 1991; Order No. 1635-92, 57 FR 57672, Dec. 7, 1992]