

**§ 68.1 Scope of rules.**

These rules of practice 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 Rules of Civil Procedure for the District Courts of the United States may be used as a general guideline in any situation not provided for or controlled by these rules, the Administrative Procedure Act, or by any other applicable statute, executive order, or regulation.

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

**§ 68.2 Definitions.**

For purposes of these rules:

(a) *Adjudicatory proceeding* means a judicial-type proceeding leading to the formulation of a final order;

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

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

(d) *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, and 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;

(e) *Commencement of Proceeding* is the filing of a complaint with the Office of the Chief Administrative Hearing Officer;

(f) *Complainant* means the Immigration and Naturalization Service in cases arising under section 274A and 274C of the INA. In cases arising under section 274B of the INA, “complainant” means the Special Counsel (as defined in § 68.2(p)), 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;

(g) *Complaint* means the formal document initiating proceedings;

(h) *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;

(i) *Entry* as used in section 274B(i)(1) of the INA and § 68.2(k) means the date the Administrative Law Judge signs the order;

(j) *Hearing* means that part of a proceeding which involves the submission of evidence, either by oral presentation or written submission;

(k) *Issued* as used in section 274A(e)(8) and section 274C(d)(5) of the INA means thirty (30) days subsequent to the entry of an order or, if the Chief Administrative Hearing Officer vacates or modifies the order, the date the Chief Administrative Hearing Officer signs such vacation or modification.

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

(m) *Order* means the whole or any part of a final procedural or substantive disposition of a matter by the Administrative Law Judge;

(n) *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 which have the effect of providing expedited service;

(o) *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 274B, resulting in the filing of a complaint, concerning an unfair immigration-related employment practice;

(p) *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;

(q) *Prohibition of indemnity bond cases* means cases under 274A(g) of the INA in which a person or entity requires, as a prerequisite to the hiring, recruiting or referring of any individual for employment in the United States, that the individual post a bond or security, pay or agree to pay an amount or otherwise provide a financial guarantee or indemnity against any potential liability arising under 274A as a result of the hiring, recruiting, or referring of the individual;

(r) *Unfair immigration-related employment practice cases* means cases involving allegations under section 274B of the INA with respect to:

(1) The hiring, or recruitment or referral for a fee, of an individual for employment, or the discharging of an individual from employment, by a person or other entity:

(i) Because of such individual's national origin, or

(ii) In the case of a protected individual, as defined in section 274B(a)(3) of the INA, because of such individual's citizenship status,

(2) The use, by a person or other entity, of intimidation, threats, coercion, or retaliation against an individual for the purposes described in section 274B(a)(5) of the INA; or

(3) A person or other entity's request, for purposes of satisfying the requirements of section 274a(b) of the INA, for more or different documents than are required under such section or refusing to honor documents tendered that on their face reasonably appear to be genuine and to relate to the individual.

(s) *Special Counsel* means the Special Counsel for Immigration-Related Unfair Employment Practices appointed by the President under section 274B of the INA, or his or her designee;

(t) *Unlawful employment cases* means cases involving knowingly hiring, recruiting or referring for a fee, or continued employment of certain aliens and cases involving failure to comply with verification requirements in violation of section 274A of the INA;

[54 FR 48596, Nov. 24, 1989, as amended by Order No. 1534-91, 56 FR 50053, Oct. 3, 1991; Order No. 1635-92, 57 FR 57671, Dec. 7, 1992; Order No. 1905-94, 59 FR 41243, Aug. 11, 1994]

**§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 of record of a party; or

(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.

(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 encounter difficulty with perfecting service the Chief Administrative Hearing Officer or the Administrative Law Judge may direct that a party execute service of process.

[54 FR 48596, Nov. 24, 1989, as amended by Order No. 1635-92, 57 FR 57672, Dec. 7, 1992]

**§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: