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Board may stay the proceeding *sua sponte* or on the motion of a party for a stay of the proceeding.

(5) The Board, when considering a petition for review of a judge's initial decision under subpart C of this part, will not be bound by any decision of the judge to exclude a person from the proceeding below.

[54 FR 53504, Dec. 29, 1989, as amended at 62 FR 62689, Nov. 25, 1997; 62 FR 66815, Dec. 22, 1997; 63 FR 35500, June 30, 1998; 65 FR 5409, Feb. 4, 2000]

§ 1201.32 Witnesses; right to representation.

Witnesses have the right to be represented when testifying. The representative of a nonparty witness has no right to examine the witness at the hearing or otherwise participate in the development of testimony.

§ 1201.33 Federal witnesses.

(a) Every Federal agency or corporation must make its employees or personnel available to furnish sworn statements or to appear as witnesses at the hearing when ordered by the judge to do so. When providing those statements or appearing at the hearing, Federal employee witnesses will be in official duty status (i.e., entitled to pay and benefits including travel and per diem, where appropriate).

(b) A Federal employee who is denied the official time required by paragraph (a) of this section may file a written request that the judge order the employing agency to provide such official time. The judge will act on such a request promptly and, where warranted, will order the agency to comply with the requirements of paragraph (a) of this section.

(c) An order obtained under paragraph (b) of this section may be enforced as provided under subpart F of this part.

[54 FR 53504, Dec. 29, 1989, as amended at 62 FR 48935, Sept. 18, 1997]

§ 1201.34 Intervenors and amicus curiae.

(a) *Explanation of Intervention.* Intervenors are organizations or persons who want to participate in a proceeding because they believe the proceeding, or its outcome, may affect their rights or duties. Intervenors as a ''matter of right'' are those parties who have a statutory right to participate. ''Permissive'' intervenors are those parties who may be permitted to participate if the proceeding will affect them directly and if intervention is otherwise appropriate under law. A request to intervene may be made by motion filed with the judge.

(b) *Intervenors as a matter of right.* (1) The Director of the Office of Personnel Management may intervene as a matter of right under 5 U.S.C. 7701(d)(1). The motion to intervene must be filed at the earliest practicable time.

(2)(i) Except as provided in paragraph (b)(2)(ii) of this section, the Special Counsel may intervene as a matter of right under 5 U.S.C. 1212(c). The motion to intervene must be filed at the earliest practicable time.

(ii) The Special Counsel may not intervene in an action brought by an individual under 5 U.S.C. 1221, or in an appeal brought by an individual under 5 U.S.C. 7701, without the consent of that individual. The Special Counsel must present evidence that the individual has consented to the intervention at the time the motion to intervene is filed.

(c) *Permissive intervenors.* (1) Any person, organization or agency may, by motion, ask the judge for permission to intervene. The motion must explain the reason why the person, organization or agency should be permitted to intervene.

(2) A motion for permission to intervene will be granted where the requester will be affected directly by the outcome of the proceeding. Any person alleged to have committed a prohibited personnel practice under 5 U.S.C. 2302(b) may request permission to intervene. A judge's denial of a motion for permissive intervention may be appealed to the Board under § 1201.91 of this part.

(d) *Role of intervenors.* Intervenors have the same rights and duties as parties, with the following two exceptions:

(1) Intervenors do not have an independent right to a hearing; and

(2) Permissive intervenors may participate only on the issues affecting