

warranted, which corrections shall be entered onto the original transcript or recording by the Hearing Clerk (without obscuring the original text).

(g) *Use of deposition.* A deposition ordered and taken in accordance with the provisions of this section may be used in a proceeding under these rules if the Judge finds that the evidence is otherwise admissible and (1) that the witness is dead; (2) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; (3) that the party offering the deposition has endeavored to procure the attendance of the witness by subpoena, but has been unable to do so; or (4) that such exceptional circumstances exist as to make it desirable, in the interests of justice, to allow the deposition to be used. If the party upon whose motion the deposition was taken refuses to offer it in evidence, any other party may offer the deposition or any part thereof in evidence. If only part of a deposition is offered in evidence by a party, an adverse party may require the introduction of any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

[42 FR 743, Jan. 4, 1977, as amended at 55 FR 30674, July 27, 1990; 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

#### § 1.149 Subpoenas.<sup>3</sup>

(a) *Issuance of subpoenas.* The attendance and testimony of witnesses and the production of documentary evidence from any place in the United States on behalf of any party to the proceeding may be required by subpoena at any designated place of hearing if authorized by the statute under which the proceeding is conducted. Subpoenas shall be issued by the Judge upon a reasonable showing by the applicant of the grounds and necessity thereof; and with respect to subpoenas for the production of documents, the request shall also show their competency, relevancy, and materiality. All requests for subpoenas shall be in writing, unless waived by the Judge for good cause shown. Except for good

<sup>3</sup>This section relates only to subpoenas for the stated purpose and has no relevance with respect to investigatory subpoenas.

cause shown, requests for subpoenas shall be received by the Judge at least 10 days prior to the date set for the hearing.

(b) *Service of subpoenas.* Subpoenas may be served by any person not less than 18 years of age. The party at whose instance a subpoena is issued shall be responsible for service thereof. Subpoenas shall be served as provided in § 1.147.

[42 FR 743, Jan. 4, 1977, as amended at 55 FR 30674, July 27, 1990; 60 FR 8457, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

#### § 1.150 Fees of witnesses.

Witnesses summoned under these rules of practice shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken, and the officer taking the same, shall be entitled to the same fees as are paid for like services in the courts of the United States. Fees shall be paid by the party at whose instance the witness appears or the deposition is taken.

#### § 1.151 Ex parte communications.

(a) At no stage of the proceeding between its institution and the issuance of the final decision shall the Judge or Judicial Officer discuss ex parte the merits of the proceeding with any person who is connected with the proceeding in an advocative or in an investigative capacity, or with any representative of such person: *Provided*, That procedural matters shall not be included within this limitation; and *Provided further*, That the Judge or Judicial Officer may discuss the merits of the case with such a person if all parties to the proceeding, or their attorneys have been given notice and an opportunity to participate. A memorandum of any such discussion shall be included in the record.

(b) No interested person shall make or knowingly cause to be made to the Judge or Judicial Officer an ex parte communication relevant to the merits of the proceeding.

(c) If the Judge or the Judicial Officer receives an ex parte communication in violation of this section, the one who receives the communication