

papers which have been filed in connection with the motion to the Judge for his consideration.

(2) *Decision by Administrative Law Judge.* The Judge, after due consideration, shall render a decision upon the motion stating the reasons for his action. Such decision shall be in the form of an order and shall be filed with the Hearing Clerk who shall cause a copy thereof to be served upon the petitioner and a copy thereof to be transmitted to the Administrator. Any such order shall be final unless appealed pursuant to §900.65: *Provided*, That within 20 days following the service upon the petitioner of a copy of the order of the Judge dismissing the petition, or any portion thereof, on the ground that it does not substantially comply in form and content with the act or with paragraph (b) of this section, the petitioner shall be permitted to file an amended petition.

(3) *Oral argument.* Unless a written application for oral argument is filed by a party with the hearing clerk not later than the time fixed for filing papers in opposition to the motion, it shall be considered that the party does not desire oral argument. The granting of a request to make oral argument shall rest in the discretion of the Judge.

[25 FR 5907, June 28, 1960, as amended at 38 FR 29798, Oct. 29, 1973]

**§ 900.52a Answer to petition.**

(a) *Time of filing.* Within 30 days after the filing of the petition, the Administrator shall file an answer thereto: *Provided*, That if a motion to dismiss the petition, in whole or in part, is made pursuant to §900.52(c), the answer shall be filed within 15 days after the filing of an order of the administrative law judge denying the motion or granting the motion with respect to only a portion of the petition. The answer shall be filed with the hearing clerk who shall cause a copy thereof to be served promptly upon the petitioner.

(b) *Contents.* The answer shall specify which of the material allegations of fact or of law in the petition are controverted and which are not controverted. The answer also may contain affirmative allegations of fact constituting separate defenses and statements of objections to the sufficiency of the whole or any part of the petition.

[25 FR 5907, June 28, 1960]

**§ 900.52b Amended pleadings.**

At any time before the close of the hearing the petition or answer may be amended, but the hearing shall, at the request of the adverse party, be adjourned or recessed for such reasonable time as the judge may determine to be necessary to protect the interests of the parties. Amendments subsequent to the first amendment or subsequent to the filing of an answer may be made only with

leave of the judge or with the written consent of the adverse party.

**§ 900.53 Withdrawal of petition.**

If, at any time after the petition is filed, the petitioner desires to withdraw the same, he shall file with the hearing clerk (or, if filed during the course of a hearing, with the judge) a written request for permission to withdraw. The judge may, in his discretion, thereupon dismiss the petition without further procedure: *Provided*, That, if the request to withdraw is filed after a hearing has been opened, permission to withdraw shall be granted only in exceptional circumstances.

**§ 900.54 Docket number.**

Each proceeding, immediately following its institution, shall be assigned a docket number by the hearing clerk and thereafter the proceeding may be referred to by such number.

**§ 900.55 Judges.**

(a) *Assignment.* No judge who has any pecuniary interest in the outcome of the proceeding, or who has participated in any investigation preceding the institution of the proceeding, shall serve as judge in such proceeding.

(b) *Conduct.* The judge shall conduct the proceeding in a fair and impartial manner and shall not discuss ex parte the merits of the proceeding with any person who is or who has been connected in any manner with the proceeding in an advocative or investigative capacity.

(c) *Powers of judges.* Subject to review by the Secretary, as provided elsewhere in this subpart, the judge shall have power to:

- (1) Rule upon motions and requests;
- (2) Adjourn the hearing from time to time, and change the time and place of hearing;
- (3) Administer oaths and affirmations and take affidavits;
- (4) Issue subpoenas, under the facsimile signature of the Secretary, requiring the attendance and testimony of witnesses and the production of books, records, contracts, papers, and other documentary evidence;
- (5) Examine witnesses and receive evidence;
- (6) Take or order, under the facsimile signature of the Secretary, the taking of depositions;
- (7) Admit or exclude evidence;
- (8) Hear oral argument on facts or law;
- (9) Consolidate hearings upon two or more petitions pertaining to the same order;
- (10) Do all acts and take all measures necessary for the maintenance of order at the hearing and the efficient conduct of the proceeding.

(d) *Who may act in absence of judge.* In case of the absence of the judge or his inability to act, the powers and duties to be performed