AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

(d) *Ruling.* Time permitting, the Administrative Law Judge shall enter a written order in advance of the scheduled proceeding date that either grants or denies the request. Otherwise, the ruling shall be made orally by telephonic communication to the party requesting the continuance, who shall be responsible for telephonically notifying all other parties. Oral orders shall be confirmed in writing by the Administrative Law Judge.

[Order No. 2203–99, 64 FR 7077, Feb. 12, 1999]

§ 68.28 Authority of Administrative Law Judge.

(a) *General powers.* In any proceeding under this part, the Administrative Law Judge shall have all appropriate powers necessary to conduct fair and impartial hearings, including, but not limited to, the following:

(1) Conduct formal hearings in accordance with the provisions of the Administrative Procedure Act and of this part;

(2) Administer oaths and examine witnesses;

(3) Compel the production of documents and appearance of witnesses in control of the parties;

(4) Compel the appearance of witnesses by the issuance of subpoenas as authorized by law;

(5) Issue decisions and orders;

(6) Take any action authorized by the Administrative Procedure Act;

(7) Exercise, for the purpose of the hearing and in regulating the conduct of the proceeding, such powers vested in the Attorney General as are necessary and appropriate therefore; and

(8) Take other appropriate measures necessary to enable him or her to discharge the duties of the office.

(b) *Enforcement.* If any person in proceedings before an Administrative Law Judge disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the Administrative Law Judge responsible for the adjudication may, where authorized by statute or law, apply through appropriate counsel to the Federal District Court having jurisdiction in the place in which he/she is sitting to request appropriate remedies.

[54 FR 48596, Nov. 24, 1989. Redesignated and amended by Order No. 1534–91, 56 FR 50053, 50055, Oct. 3, 1991; Order No. 1635–92, 57 FR 57672, Dec. 7, 1992]

§ 68.29 Unavailability of Administrative Law Judge.

In the event the Administrative Law Judge designated to conduct the hearing becomes unavailable, the Chief Administrative Hearing Officer may designate another Administrative Law Judge for the purpose of further hearing or other appropriate action.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§ 68.30 Disqualification.

(a) When an Administrative Law Judge deems himself or herself disqualified to preside in a particular proceeding, such judge shall withdraw therefrom by notice on the record directed to the Chief Administrative Hearing Officer.

(b) Whenever any party shall deem the Administrative Law Judge for any reason to be disqualified to preside, or to continue to preside, in a particular proceeding, that party shall file with the Administrative Law Judge a motion to recuse. The motion shall be supported by an affidavit setting forth the alleged grounds for disqualification. The Administrative Law Judge shall rule upon the motion.

(c) In the event of disqualification or recusal of an Administrative Law Judge as provided in paragraph (a) or (b) of this section, the Chief Administrative Hearing Officer shall refer the matter to another Administrative Law Judge for further proceedings.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§ 68.31 Separation of functions.

No officer, employee, or agent of the Federal Government engaged in the performance of investigative or prosecutorial functions in connection with

any proceeding shall, in that proceeding or a factually related proceeding, participate or advise in the decision of the Administrative Law Judge, except as a witness or counsel in the proceedings.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§ 68.32 Expedition.

Hearings shall proceed with all reasonable speed, insofar as practicable and with due regard to the convenience of the parties.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534–91, 56 FR 50053, Oct. 3, 1991]

§ 68.33 Participation of parties and representation.

(a) *Participation of parties.* Any party shall have the right to appear in a proceeding and may examine and cross-examine witnesses and introduce into the record documentary or other relevant evidence, except that the participation of any intervenor shall be limited to the extent prescribed by the Administrative Law Judge.

(b) *Person compelled to testify.* Any person compelled to testify in a proceeding in response to a subpoena may be accompanied, represented, and advised by an individual meeting the requirements of paragraph (c) of this section.

(c) *Representation for parties other than the Department of Justice.* Persons who may appear before the Administrative Law Judges on behalf of parties other than the Department of Justice include:

(1) An attorney at law who is admitted to practice before the federal courts or before the highest court of any state, the District of Columbia, or any territory or commonwealth of the United States, may practice before the Administrative Law Judges. An attorney's own representation that the attorney is in good standing before any of such courts shall be sufficient proof thereof, unless otherwise ordered by the Administrative Law Judge.

(2) A law student, enrolled in an accredited law school, may practice before an Administrative Law Judge. The law student must seek advance approval by filing a statement with the Administrative Law Judge proving current participation in a legal assistance program or clinic conducted by the law school. Practice before the Administrative Law Judge shall be under direct supervision of a faculty member or an attorney. An appearance by a law student shall be without direct or indirect remuneration. The Administrative Law Judge may determine the amount of supervision required of the supervising faculty member or attorney.

(3) An individual who is neither an attorney nor a law student may be allowed to provide representation to a party upon a written order from the Administrative Law Judge assigned to the case granting approval of the representation. The individual must file a written application with the Administrative Law Judge demonstrating that the individual possesses the knowledge of administrative procedures, technical expertise, or other qualifications necessary to render valuable service in the proceedings and is otherwise competent to advise and assist in the presentation of matters in the proceedings.

(i) *Application.* A written application by an individual who is neither an attorney nor a law student for admission to represent a party in proceedings shall be submitted to the Administrative Law Judge within ten (10) days from the receipt of the Notice of Hearing and complaint by the party on whose behalf the individual wishes to file the application. This period of time for filing the application may be extended upon approval of the Administrative Law Judge. The application shall set forth in detail the requesting individual's qualifications to represent the party.

(ii) *Inquiry on qualifications or ability.* The Administrative Law Judge may, at any time, inquire as to the qualifications or ability of any non-attorney to render assistance in proceedings before the Administrative Law Judge.

(iii) *Denial of authority to appear.* Except as provided in paragraph (c)(3)(iv) of this section, the Administrative Law Judge may enter an order denying the privilege of appearing to any individual who the Judge finds does not possess the requisite qualifications to represent others; is lacking in character or integrity; has engaged in unethical