

Office of the Secretary, Interior

§ 4.31

is in fact an area of controversy in the proceeding. Any oral communication made in violation of this regulation shall be reduced to writing in a memorandum to the file by the person receiving the communication and shall be included in the record. Any written communication made in violation of this regulation shall be included in the record. In proceedings other than informal rulemakings copies of the memorandum or communication shall be provided to all parties, who shall be given an opportunity to respond in writing.

(2) *Sanctions.* The administrative law judge, board, or Director who has responsibility for the matter with respect to which a prohibited communication has been knowingly made may impose appropriate sanctions on the offending person or persons, which may include requiring an offending party to show cause why its claim, motion, or interest should not be dismissed, denied, or otherwise adversely affected; disciplining offending Office personnel pursuant to the Department's standards of conduct (43 CFR part 20); and invoking such sanctions against other offending persons as may be appropriate under the circumstances.

(c) *Disqualification.* (1) An Office of Hearings and Appeals deciding official must withdraw from a case if circumstances exist that would disqualify a judge in such circumstances under the recognized canons of judicial ethics.

(2) A party may file a motion seeking the disqualification of a deciding official, setting forth in detail the circumstances that the party believes require disqualification. Any supporting facts must be established by affidavit or other sufficient evidence. A copy of the motion should be sent to the Director.

(3) The head of the appropriate unit within the Office or the Director may decide whether disqualification is required if the deciding official does not withdraw under paragraph (c)(1) of this section or in response to a motion under paragraph (c)(2) of this section.

(4) For purposes of this section, "deciding official" includes an attorney decision maker or Indian probate judge as defined in § 4.201, an administrative

law judge, an administrative judge, or a member of any Board.

[36 FR 7186, Apr. 15, 1971, as amended at 50 FR 43705, Oct. 29, 1985; 53 FR 49660, Dec. 9, 1988; 70 FR 11812, Mar. 9, 2005]

§ 4.28 Interlocutory appeals.

There shall be no interlocutory appeal from a ruling of an administrative law judge unless permission is first obtained from an Appeals Board and an administrative law judge has certified the interlocutory ruling or abused his discretion in refusing a request to so certify. Permission will not be granted except upon a showing that the ruling complained of involves a controlling question of law and that an immediate appeal therefrom may materially advance the final decision. An interlocutory appeal shall not operate to suspend the hearing unless otherwise ordered by the Board.

§ 4.29 Remands from courts.

Whenever any matter is remanded from any court for further proceedings, and to the extent the court's directive and time limitations will permit, the parties shall be allowed an opportunity to submit to the appropriate Appeals Board, a report recommending procedures to be followed in order to comply with the court's order. The Board will review the reports and enter special orders governing the handling of matters remanded to it for further proceedings by any court.

§ 4.30 Information required by forms.

Whenever a regulation of the Office of Hearing and Appeals requires a form approved or prescribed by the Director, the Director may in that form require the submission of any information which he considers to be necessary for the effective administration of that regulation.

§ 4.31 Request for limiting disclosure of confidential information.

(a) If any person submitting a document in a proceeding under this part claims that some or all of the information contained in that document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552), is information referred to in section 1905 of