

(i) Examine and cross-examine witnesses and introduce into the record on the Judge's own initiative documentary or other evidence;

(j) Rule on requests for appearance of witnesses or production of documents and take appropriate action upon failure of a party to effect the appearance or production of a witness or document ruled relevant and necessary to the proceeding; as authorized by law, issue subpoenas for the appearance of witnesses or production of documents;

(k) Require a party or witness at any time during the proceeding to state his or her position concerning any issue or his or her theory in support of such position;

(l) Take official notice of any matter not appearing in evidence that is among traditional matters of judicial notice; or of a non-privileged document required by law or regulation to be filed with or published by a duly constituted government body; or of any reasonably available public document; provided that the parties will be advised of the matter noticed and given reasonable opportunity to show the contrary;

(m) Assess a civil penalty or impose a permit sanction, condition, revocation, or denial of permit application, taking into account all of the factors required by applicable law;

(n) Prepare and submit a decision or other appropriate disposition document and certify the record;

(o) Award attorney fees and expenses as provided by applicable statute or regulation;

(p) Grant preliminary or interim relief; or

(q) Impose, upon the motion of any party, or *sua sponte*, appropriate sanctions.

(1) Sanctions may be imposed when any party, or any person representing a party, in an administrative proceeding under this part has failed to comply with this part, or any order issued under this part, and such failure to comply:

(i) Materially injures or prejudices another party by causing additional expenses; prejudicial delay; or other injury or prejudice;

(ii) Is a clear and unexcused violation of this part, or any order issued under this part; or

(iii) Unduly delays the administrative proceeding.

(2) Sanctions that may be imposed include, but are not limited to, one or more of the following:

(i) Issuing an order against the party;

(ii) Rejecting or striking any testimony or documentary evidence offered, or other papers filed, by the party;

(iii) Expelling the party from the administrative proceedings;

(iv) Precluding the party from contesting specific issues or findings;

(v) Precluding the party from making a late filing or conditioning a late filing on any terms that are just;

(vi) Assessing reasonable expenses, incurred by any other party as a result of the improper action or failure to act; and

(vii) Taking any other action, or imposing any restriction or sanction, authorized by applicable statute or regulation, deemed appropriate by the Judge.

(3) No sanction authorized by this section, other than refusal to accept late filings, shall be imposed without prior notice to all parties and an opportunity for any party against whom sanctions would be imposed to be heard. Such opportunity to be heard may be on such notice, and the response may be in such form as the Judge directs and may be limited to an opportunity for a party or a party's representative to respond orally immediately after the act or inaction is noted by the Judge.

(4) The imposition of sanctions is subject to interlocutory review pursuant to §904.254 in the same manner as any other ruling.

(5) Nothing in this section shall be read as precluding the Judge from taking any other action, or imposing any restriction or sanction, authorized by applicable statute or regulation.

[71 FR 12448, Mar. 10, 2006, as amended at 75 FR 35632, June 23, 2010]

§904.205 Disqualification of Judge.

(a) The Judge may withdraw voluntarily from an administrative proceeding when the Judge deems himself/herself disqualified.

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(b) A party may in good faith request the Judge to withdraw on the grounds of personal bias or other disqualification. The party seeking the disqualification must file with the Judge a timely affidavit or statement setting forth in detail the facts alleged to constitute the grounds for disqualification, and the Judge will rule on the matter. If the Judge rules against disqualification, the Judge will place all matters relating to such claims of disqualification in the record.

§ 904.206 Pleadings, motions, and service.

(a) The original of all pleadings and documents must be filed with the Judge and a copy served upon the ALJ Docketing Center and each party. All pleadings or documents when submitted for filing must show that service has been made upon all parties. Such service must be made in accordance with § 904.3(b).

(b) Pleadings and documents to be filed may be reproduced by printing or any other process, provided the copies are clear and legible; must be dated, the original signed in ink or as otherwise verified for electronic mail; and must show the docket description and title of the proceeding, and the title, if any, address, and telephone number of the signatory. If typewritten, the impression may be on only one side of the paper and must be double spaced, if possible, except that quotations may be single spaced and indented.

(c) Motions must normally be made in writing and must state clearly and concisely the purpose of and relief sought by the motion, the statutory or principal authority relied upon, and the facts claimed to constitute the grounds requiring the relief requested.

(d) Unless otherwise provided, the answer to any written motion, pleading, or petition must be served within 20 days after service of the motion. If a motion states that opposing counsel has no objection, it may be acted upon as soon as practicable, without awaiting the expiration of the 20 day period. Answers must be in writing, unless made in response to an oral motion made at a hearing; must fully and completely advise the parties and the Judge concerning the nature of the op-

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position; must admit or deny specifically and in detail each material allegation of the pleading answered; and must state clearly and concisely the facts and matters of law relied upon. Any new matter raised in an answer will be deemed controverted.

(e) A response to an answer will be called a reply. A short reply restricted to new matters raised in the answer may be served within 15 days after service of an answer. The Judge has discretion to dispense with the reply. No further responses are permitted.

§ 904.207 Amendment of pleading or record.

(a) A party may amend its pleading as a matter of course at least 20 days prior to a hearing. Within 20 days prior to a hearing a party may amend its pleading only by leave of the Judge or by written consent of the adverse party; leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period is longer, unless the Judge otherwise orders.

(b) The Judge, upon his or her own initiative or upon application by a party, may order a party to make a more definite statement of any pleading.

(c) Harmless errors in pleadings or elsewhere in the record may be corrected (by deletion or substitution of words or figures), and broad discretion will be exercised by the Judge in permitting such corrections.

§ 904.208 Extensions of time.

If appropriate and justified, the Judge may grant any request for an extension of time. Requests for extensions of time must, except in extraordinary circumstances, be made in writing.

§ 904.209 Expedited administrative proceedings.

In the interests of justice and administrative efficiency, the Judge, on his or her own initiative or upon the application of any party, may expedite the administrative proceeding. A motion