

earlier than fifteen (15) days after the date of such notice shall be set for such hearing or conference, except by agreement of the parties. Service of such notice shall be made by regular, first-class mail, unless under the circumstances it appears to the administrative law judge that certified mail, mailgram, telephone, or any combination of these methods should be used instead.

(b) *Change of date, time and place.* The Chief Administrative Law Judge or the administrative law judge assigned to the case may change the time, date and place of the hearing, or temporarily adjourn a hearing, on his or her own motion or for good cause shown by a party. The parties shall be given not less than ten (10) days notice of the new hearing date, unless they agree to such change without such notice.

(c) *Place of hearing.* Unless otherwise required by statute or regulation, due regard shall be given to the convenience of the parties and the witnesses in selecting a place for the hearing.

#### § 18.28 Continuances.

(a) *When granted.* Continuances will only be granted in cases of prior judicial commitments or undue hardship, or a showing of other good cause.

(b) *Time limit for requesting.* Except for good cause arising thereafter, requests for continuances must be filed within fourteen (14) days prior to the date set for hearing.

(c) *How filed.* Motions for continuances shall be in writing. At least 3"x3½" of blank space shall be provided on the last page of the motion to permit space for the entry of an order by the administrative law judge. Copies shall be served on all parties. Any motions for continuances made within ten (10) days of the date of the scheduled proceeding shall, in addition to the written request, be telephonically conveyed to the administrative law judge or a member of his or her staff and to all other parties. Motions for continuances, based on reasons not reasonably ascertainable prior thereto, may also be made on the record at calendar calls, prehearing conferences or hearings.

(d) *Ruling.* Time permitting, the administrative law judge shall issue a

written order in advance of the scheduled proceeding date which either allows or denies the request. Otherwise the ruling may be made orally by telephonic communication to the party requesting same who shall be responsible for telephonically notifying all other parties. Oral orders shall be confirmed in writing.

[48 FR 32538, July 15, 1983; 49 FR 2739, Jan. 20, 1984]

#### § 18.29 Authority of administrative law judge.

(a) *General powers.* In any proceeding under this part, the administrative law judge shall have all powers necessary to the conduct of fair and impartial hearings, including, but not limited to, the following:

(1) Conduct formal hearings in accordance with the provisions 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 statute or 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 Secretary of Labor as are necessary and appropriate therefor;

(8) Where applicable, take any appropriate action authorized by the Rules of Civil Procedure for the United States District Courts, issued from time to time and amended pursuant to 28 U.S.C. 2072; and

(9) Do all other things necessary to enable him or her to discharge the duties of the office.

(b) *Enforcement.* If any person in proceedings before an adjudication officer 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

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witness, or after having taken the oath refuses to be examined according to law, the administrative law judge responsible for the adjudication, where authorized by statute or law, may certify the facts to the Federal District Court having jurisdiction in the place in which he or she is sitting to request appropriate remedies.

### § 18.30 Unavailability of administrative law judge.

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

### § 18.31 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 Law Judge.

(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 Law Judge shall refer the matter to another administrative law judge for further proceedings.

### § 18.32 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.

### 29 CFR Subtitle A (7-1-11 Edition)

### § 18.33 Expedition.

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

### § 18.34 Representation.

(a) *Appearances.* Any party shall have the right to appear at a hearing in person, by counsel, or by other representative, to examine and cross-examine witnesses, and to 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) Each attorney or other representative shall file a notice of appearance. Such notice shall indicate the name of the case or controversy, the docket number if assigned, and the party on whose behalf the appearance is made.

(c) *Rights of parties.* Every party shall have the right of timely notice and all other rights essential to a fair hearing, including, but not limited to, the rights to present evidence, to conduct such cross-examination as may be necessary for a full and complete disclosure of the facts, and to be heard by objection, motion, and argument.

(d) *Rights of participants.* Every participant shall have the right to make a written or oral statement of position. At the discretion of the administrative law judge, participants may file proposed findings of fact, conclusions of law and a post hearing brief.

(e) *Rights of witnesses.* Any person compelled to testify in a proceeding in response to a subpoena may be accompanied, represented, and advised by counsel or other representative, and may purchase a transcript of his or her testimony.

(f) *Office of the Solicitor.* The Department of Labor shall be represented by the Solicitor of Labor or his or her designee and shall participate to the degree deemed appropriate by the Solicitor.

(g) *Qualifications—(1) Attorneys.* 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 Office