

§ 22.9

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file a motion to compel a response. However, such motion must include a representation that the moving party has tried in good faith, prior to filing the motion, to resolve the matter informally. The motion to compel shall include a copy of each discovery request at issue and the response, if any.

(j) *Sanctions.* If, after being properly served with such discovery request, a party fails to appear for deposition, respond to interrogatories or requests for admissions, or respond to a request for production of documents, electronically stored information, other tangible things, or entry onto land, the party seeking discovery may move the Board to impose sanctions under § 22.10 of this part [Rule 10].

(k) *Discovery motions, timing.* All motions concerning discovery, including motions to compel discovery, shall be filed on or before the scheduled end date of discovery to the maximum extent practicable. Motions that are filed after the end date of discovery will not be considered except for good cause shown.

[73 FR 36258, June 26, 2008, as amended at 73 FR 60610, Oct. 14, 2008]

§ 22.9 Subpoenas [Rule 9].

(a) *Issuance.* Upon the written request of any party, or on the initiative of the Board, a subpoena may be issued that commands the person to whom it is directed to attend and give testimony at a deposition or hearing, and/or produce documents or electronically stored information (including writings, papers, books, accounts, photographs, drawings, graphs, charts, recordings, and other data or data compilations) or other tangible things designated in the subpoena, or to permit entry onto designated premises for inspection or other purposes. Requests for subpoenas shall identify the Board and state the name and docket number of the appeal; identify the name of the person to whom the subpoena is directed; command the person to whom the subpoena is directed to, at a specific place and time, appear and testify, or produce designated documents, electronically stored information, or other tangible things, or permit the inspection of designated premises; and state the scope and relevance of the requested testi-

mony or evidence to the appeal. All requests for subpoenas shall be filed at least 15 days before the testimony or evidence is to be provided, except that the Board may, in its discretion, honor requests for subpoenas not made within this time limitation.

(b) *Service.* The party requesting the subpoena shall cause the subpoena to be served upon the person named in the subpoena as soon as practicable after the subpoena has been issued and shall provide proof of service to the Board. Service shall be made by any person who is not a party and not less than 18 years of age by personal delivery to the person named in the subpoena, and shall include tender of the fees for one day attendance and the mileage allowed by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the government, money payments need not be tendered in advance of attendance.

(c) *Motions to quash.* Upon written motion of the person named in the subpoena or a party, the Board may quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or the Board may require the party in whose behalf the subpoena was issued to advance the reasonable costs of producing subpoenaed evidence. Motions to quash or modify a subpoena must be filed within 10 days of service of the subpoena or by the date and time specified in the subpoena for compliance, whichever is earlier.

(d) *Contumacy.* In the case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States district court, the Board may apply to the court through the Attorney General of the United States for an order requiring the person to appear before the Board to give testimony, produce evidence, or both.

§ 22.10 Sanctions [Rule 10].

(a) *Standards.* All parties and their representatives, attorneys, and any experts/consultants retained by them or their attorneys, must obey directions and orders prescribed by the Board and adhere to standards of conduct applicable to such parties and persons. As to an attorney, the standards include the

rules of professional conduct and ethics of the jurisdictions in which an attorney is licensed to practice, to the extent that those rules are relevant to conduct affecting the integrity of the Board, its process, and its proceedings. The Board will also look to professional guidelines in evaluating an individual's conduct.

(b) *Imposition of sanctions.* (1) When a party or its representative or attorney or any expert/consultant fails to comply with any direction or order issued by the Board (including an order to provide or permit discovery), or engages in misconduct affecting the Board, its process, or its proceedings, the Board may make such orders as are just, including the imposition of appropriate sanctions. The sanctions may include:

(i) Taking the facts pertaining to the matter in dispute to be established for the purpose of the appeal in accordance with the contention of the party submitting the discovery request;

(ii) Forbidding challenge of the accuracy of any evidence;

(iii) Refusing to allow the noncompliant party to support or pose designated claims or defenses;

(iv) Prohibiting the noncompliant party from introducing in evidence designated documents or items of testimony;

(v) Striking pleadings or parts thereof, or staying further proceedings until the order is obeyed;

(vi) Dismissing the appeal or any part thereof; and/or

(vii) Imposing such other sanctions as the Board deems appropriate.

(2) Prior to imposing sanctions, the Board will provide the noncompliant party with notice and an opportunity to be heard on the issue of whether sanctions should be imposed. The opportunity to be heard does not mean that the party is entitled to a hearing; the opportunity to provide written argument shall satisfy this requirement.

(c) *Disciplinary proceedings.* In addition to the above procedures, the Board may discipline individual party representatives, attorneys, and experts/consultants for a violation of any Board order or direction or standard of conduct applicable to such individual where the violation affects the integ-

rity of the Board's process or proceedings. Sanctions may be public or private and may include admonishment, disqualification from a particular matter, referral to an appropriate licensing authority, or such other action as circumstances may warrant. The Board, in its discretion, may suspend an individual from appearing before the Board as a party representative, attorney, or expert/consultant if, after affording such individual notice and an opportunity to be heard, a majority of all members of the Contact Appeals Board determines that such sanction is warranted.

§ 22.11 Depositions [Rule 11].

(a) *When depositions may be taken.* After an appeal has been docketed by the Board and a complaint has been filed, either party may take the testimony of any person by deposition upon oral examination or written questions, for the purpose of discovery or for use as evidence in the appeal proceedings, or for both purposes.

(b) *Time, place, and manner of taking.* The time, place, and manner of taking depositions shall be as mutually agreed to by the parties or, failing such agreement, be governed by order of the Board.

(c) *Limits.* The number of depositions taken shall not be limited except as the Board may require to protect a party from annoyance, burden, or harassment.

(d) *Use as evidence.* No testimony taken by deposition shall be considered as part of the evidence in the hearing of an appeal unless and until such testimony is offered and received in evidence at the hearing. Depositions ordinarily will not be received in evidence if the deponent is present and can testify personally at the hearing; however, depositions may be used to contradict or impeach the testimony of a deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require the offering party to introduce any other part which in fairness ought to be considered with the part introduced. In any case, the Board, upon the agreement of the parties, may permit the introduction of relevant portions of depositions as designated by the parties. If