

§ 180.530

manner for making the inspection and performing the related acts.

(c) Within 15 days after service of the request, the party upon whom the request is served shall serve a written response on the party submitting the request. The response shall state, with regard to each item or category, that inspection and related activities will be permitted as requested, unless there are objections, in which case the reasons for the objection shall be stated.

(d) Upon motion of any party, when the mental or physical condition (including the blood group) of a party or of a person in the custody or under the legal control of a party, is in controversy, the presiding ALJ may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made. A report of the examiner shall be made in accordance with Rule 35(b) of the Federal Rules of Civil Procedure.

§ 180.530 Requests for admissions.

(a) Any party may serve on any other party a written request for the admission of the truth of any matters relevant to the adjudication set forth in the request that relate to statements or opinions of fact or of application of law to fact, including the genuineness and authenticity of any documents described in or attached to the request.

(b) Each matter for which an admission is requested is admitted unless, within 15 days after service of the request, or within such time as the ALJ allows, the party to whom the request is directed serves on the requesting party a sworn written answer which:

(1) Specifically denies, in whole or in part, the matter for which an admission is requested;

(2) Sets forth in detail why the party cannot truthfully admit or deny the matter; or

24 CFR Subtitle B, Ch. I (4-1-04 Edition)

(3) States an objection that the matter is privileged, irrelevant or otherwise improper in whole or in part.

(c) An answering party may not give lack of information or knowledge as a reason for failure to admit or deny, unless he/she/it states that he/she/it has made a reasonable inquiry and that the information known to, or readily obtainable by, him/her/it is insufficient to enable the party to admit or deny.

(d) The party requesting admissions may move for a determination of the sufficiency of the answers or objections. Unless the ALJ determines that an objection is justified, the ALJ shall order that an answer be served. If the ALJ determines that an answer does not comply with the requirements of this section, the ALJ may order either that the matter is admitted or that an amended answer be served.

(e) Any matter admitted under this section is conclusively established unless, upon the motion of a party, the ALJ permits the withdrawal or amendment of the admission. Any admission made under this section is made for the purposes of the pending proceeding only, is not an admission by the party for any other purpose, and may not be used against the party in any other proceeding.

§ 180.535 Protective orders.

(a) Upon motion of a party or a person from whom discovery is sought or in accordance with §180.540(c), and for good cause shown, the ALJ may make appropriate orders to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense as a result of the requested discovery request. The order may direct that:

(1) The discovery may not be had;

(2) The discovery may be had only on specified terms and conditions, including at a designated time and place;

(3) The discovery may be had by a method of discovery other than that selected by the party seeking discovery;

(4) Certain matters may not be the subject of discovery, or the scope of discovery may be limited to certain matters;

(5) Discovery may be conducted with no one present other than persons designated by the ALJ;

(6) A trade secret or other confidential research, development or commercial information may not be disclosed, or may be disclosed only in a designated way; or

(7) The party or other person from whom discovery is sought may file specified documents or information under seal to be opened as directed by the ALJ.

(b) The ALJ may permit a party or other person from whom discovery is sought, who is seeking a protective order, to make all or part of the showing of good cause in camera. If such a showing is made, upon motion of the party or other person from whom discovery is sought, an in camera record of the proceedings may be made. If the ALJ enters a protective order, any in camera record of such showing shall be sealed and preserved and made available to the ALJ or, in the event of appeal, to the Secretary or a court.

§ 180.540 Motion to compel discovery.

(a) If a deponent fails to answer a question propounded, or a party upon whom a discovery request has been made fails to respond adequately, objects to a request, or fails to produce documents or other inspection as requested, the discovering party may move the ALJ for an order compelling discovery in accordance with the request. The motion shall:

(1) State the nature of the request;

(2) Set forth the response or objection of the deponent or party upon whom the request was served;

(3) Present arguments supporting the motion; and

(4) Attach copies of all relevant discovery requests and responses.

(b) For the purposes of this section, an evasive or incomplete answer or response will be treated as a failure to answer or respond.

(c) In ruling on a motion under this section, the ALJ may enter an order compelling a response in accordance with the request, may issue sanctions under paragraph (d) of this section, or may enter a protective order under § 180.535.

(d) *Sanctions.* If a party fails to provide or permit discovery, the ALJ may take such action as is just, including but not limited to the following:

(1) Inferring that the admission, testimony, document, or other evidence would have been adverse to the party;

(2) Ordering that, for purposes of the adjudication, the matters regarding which the order was made or any other designated facts shall be taken to be established in accordance with the claim of the party obtaining the order;

(3) Prohibiting the party failing to comply with the order from introducing evidence concerning, or otherwise relying upon, documents or other evidence withheld;

(4) Ordering that the party withholding discovery not introduce into evidence, or otherwise use in the hearing, information obtained in discovery;

(5) Permitting the requesting party to introduce secondary evidence concerning the information sought;

(6) Striking any appropriate part of the pleadings or other submissions of the party failing to comply with such order; or

(7) Taking such other action as may be appropriate.

§ 180.545 Subpoenas.

(a) This section governs the issuance of subpoenas in administrative proceedings under the Fair Housing Act. Except for time periods stated in the rules in this section, to the extent that this section conflicts with procedures for the issuance of subpoenas in civil actions in the United States District Court for the District in which the investigation of the discriminatory housing practice took place, the rules of the United States District Court apply.

(b) *Issuance of subpoena.* Upon the written request of a party, the Chief ALJ or the presiding ALJ may issue a subpoena requiring the attendance of a witness for the purpose of giving testimony at a deposition or hearing and requiring the production of relevant books, papers, documents or tangible things.

(c) *Time of request.* Requests for subpoenas in aid of discovery must be submitted in time to permit the conclusion of discovery 15 days before the