

§ 180.655

§ 180.655 Witnesses.

(a) Witnesses shall testify under oath or affirmation.

(b) If a witness fails or refuses to testify, the failure or refusal to answer any question found by the ALJ to be proper may be grounds for striking all or part of the testimony that may have been given by the witness, or for any other action deemed appropriate by the ALJ.

§ 180.660 Closing of record.

(a) *Oral hearings.* Where there is an oral hearing, the hearing ends on the day of the adjournment of the oral hearing or, where written briefs are permitted, on the date that the written briefs are due.

(b) *Hearing on written record.* Where the parties have waived an oral hearing, the hearing ends on the date set by the ALJ as the final date for the receipt of submissions by the parties.

(c) *Receipt of evidence following hearing.* Following the end of the hearing, no additional evidence may be accepted into the record, except with the permission of the ALJ. The ALJ may receive additional evidence upon a determination that new and material evidence was not readily available before the end of the hearing, the evidence has been timely submitted, and its acceptance will not unduly prejudice the rights of the parties.

§ 180.665 Arguments and briefs.

(a) Following the submission of evidence at an oral hearing, the parties may file a brief, proposed findings of fact and conclusions of law, or both, or, in the ALJ's discretion, make oral arguments.

(b) Unless otherwise ordered by the ALJ, briefs and proposed findings of fact and conclusions of law shall be filed simultaneously by all parties. In Fair Housing Act cases, such filings shall be due not later than 45 days after the adjournment of the oral hearing. In other cases, they shall be due as the ALJ orders.

§ 180.670 Initial decision of ALJ.

(a) The ALJ shall issue an initial decision including findings of fact and conclusions of law upon each material

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issue of fact or law presented on the record. The initial decision of the ALJ shall be based on the whole record of the proceeding. A copy of the initial decision shall be served upon all parties, aggrieved persons, the Assistant Secretary, the Secretary, and amici, if any.

(b) *Initial decision in Fair Housing Act cases.* (1) The ALJ shall issue an initial decision within 60 days after the end of the hearing, unless it is impracticable to do so. If the ALJ is unable to issue the initial decision within this time period (or within any succeeding 60-day period following the initial 60-day period), the ALJ shall notify in writing all parties, the aggrieved person on whose behalf the charge was filed, and the Assistant Secretary, of the reasons for the delay.

(2) The initial decision shall state that it will become the final agency decision 30 days after the date of issuance of the initial decision.

(3) *Findings against respondents.* If the ALJ finds that a respondent has engaged, or is about to engage, in a discriminatory housing practice, the ALJ shall issue an initial decision against the respondent and order such relief as may be appropriate. Relief may include, but is not limited to:

(i) Ordering the respondent to pay damages to the aggrieved person (including damages caused by humiliation and embarrassment).

(ii) Ordering injunctive or such other equitable relief as may be appropriate. No such order may affect any contract, sale, encumbrance or lease consummated before the issuance of the initial decision that involved a bona fide purchaser, encumbrancer or tenant without actual knowledge of the charge.

(iii) Assessing a civil penalty against any respondent to vindicate the public interest in accordance with § 180.671.

(A) The amount of the civil penalty may not exceed:

(1) \$11,000, if the respondent has not been adjudged to have committed any prior discriminatory housing practice in any administrative hearing or civil