

§ 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

action permitted under the Fair Housing Act or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State or local governmental agency.

(2) \$32,500, if the respondent has been adjudged to have committed one other discriminatory housing practice in any administrative hearing or civil action permitted under the Fair Housing Act, or under any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, state, or local government agency, and the adjudication was made during the five-year period preceding the date of filing of the charge.

(3) \$60,000, if the respondent has been adjudged to have committed two or more discriminatory housing practices in any administrative hearings or civil actions permitted under the Fair Housing Act, or under any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a federal, state, or local government agency, and the adjudications were made during the seven-year period preceding the date of filing of the charge.

(B) If the acts constituting the discriminatory housing practice that is the subject of the charge were committed by the same natural person who has previously been adjudged, in any administrative proceeding or civil action, to have committed acts constituting a discriminatory housing practice, the time periods set forth in paragraphs (b)(3)(iii)(A)(2) and (3) of this section do not apply.

(C) In a proceeding involving two or more respondents, the ALJ may assess a civil penalty as provided under paragraph (b) of this section against each respondent that the ALJ determines has been engaged or is about to engage in a discriminatory housing practice.

(4) *Findings in favor of respondents.* If the ALJ finds that the charging party has not established that a respondent has engaged in a discriminatory housing practice, the ALJ shall make an initial decision dismissing the charge as against that respondent.

(c) *Initial Decision in Non-Fair Housing Act matters.* The ALJ shall issue the initial decision as soon as possible after the end of the hearing.

(1) *Findings against Respondents.* If the ALJ finds that a respondent has failed to comply substantially with the statutory and regulatory requirements that gave rise to the notice of proposed adverse action, the ALJ shall issue an initial decision against the respondent.

(i) The initial decision shall provide for suspension or termination of, or refusal to grant or continue, Federal financial assistance, in whole or in part, to the involved program or activity.

(ii) The initial decision may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the applicable statute and regulations, including provisions designed to assure that no Federal financial assistance will be extended for the program or activity unless and until the respondent corrects its noncompliance and satisfies the Secretary that it will fully comply with the relevant statute and regulations.

(iii) The initial decision shall state that it will become final only upon the Secretary's approval.

(2) *Findings in favor of respondents.* If the ALJ finds that a respondent has not failed to comply substantially with the statutory and regulatory requirements that gave rise to the notice of proposed adverse action, the ALJ shall make an initial decision dismissing the notice of proposed adverse action. The initial decision shall state that it will become the final agency decision 30 days after the date of issuance.

[61 FR 52218, Oct. 4, 1996, as amended at 64 FR 6754, Feb. 10, 1999; 68 FR 12788, Mar. 17, 2003]

§ 180.671 Assessing civil penalties for Fair Housing Act cases.

(a) *Amounts.* The ALJ may assess a civil penalty against any respondent under § 180.670(b)(3) for each separate and distinct discriminatory housing practice (as defined in paragraph (b) of this section) that the respondent committed, each civil penalty in an amount not to exceed:

(1) \$11,000, if the respondent has not been adjudged in any administrative hearing or civil action permitted under the Fair Housing Act or any State or local fair housing law, or in any licensing or regulatory proceeding conducted