

## Government Accountability Office

## § 28.47

consideration of the particular situation including the dates set for hearing and closing of the case record.

[58 FR 61992, Nov. 23, 1993, as amended at 68 FR 69301, Dec. 12, 2003]

### § 28.43 Compelling discovery.

(a) *Motion for an order compelling discovery.* Motions for orders compelling discovery shall be submitted to the administrative judge as set forth at § 28.42(c)(2) and (d)(4) above.

(b) *Content of order.* Any order issued may include, where appropriate:

(1) Provision for notice to the person to be deposed as to the time and place of such deposition.

(2) Such conditions or limitations concerning the conduct or scope of the proceedings or the subject matter as may be necessary to prevent undue delay or to protect any party or deponent from undue expense, embarrassment or oppression.

(3) Limitations upon the time for conducting depositions, answering written interrogatories, or producing documentary evidence.

(4) Other restrictions upon the discovery process as determined by the administrative judge.

(c) Failure to comply with an order compelling discovery may subject the noncomplying party to sanctions under § 28.24.

### § 28.44 Taking of depositions.

Depositions may be taken before any person not interested in the outcome of the proceedings who is authorized by law to administer oaths.

### § 28.45 Admission of facts and genuineness of documents.

(a) Any party may be served with requests for the admission of the genuineness of any relevant documents identified within the request or the truth of any relevant matters of fact or application of law to the facts as set forth in the request.

(b) Within the time period prescribed by § 28.42(d)(2), the party on whom the request is served must submit to the requesting party:

(1) A sworn statement specifically denying, admitting, or expressing a lack of knowledge after making reasonable inquiry regarding the specific matters

on which an admission is requested; and/or

(2) An objection to the request for an admission, in whole or in part, on the grounds that the matters contained therein are privileged, irrelevant, or otherwise improper.

(c) Upon a failure or refusal of a party to respond to a request for admissions within the prescribed time period, the request shall be deemed admitted.

## SUBPOENAS

### § 28.46 Motion for subpoena.

(a) *Authority to issue subpoenas.* Any member of the Board may issue subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States or any territory or possession thereof, the Commonwealth of Puerto Rico, or the District of Columbia. Any member of the Board may order the taking of depositions or order responses to written interrogatories.

(b) *Motion.* (1) A motion for the issuance of a subpoena requiring the attendance and testimony of witnesses or the production of documents or other evidence under § 28.46(a) shall be submitted to the administrative judge at least 15 days in advance of the date scheduled for the commencement of the hearing.

(2) If the subpoena is sought as part of the discovery process, the motion shall be submitted to the administrative judge at least 15 days in advance of the date set for the attendance of the witness at a deposition or the production of documents.

(c) *Forms and showing.* Motions for subpoenas shall be submitted in writing to the administrative judge and shall specify with particularity the books, papers, or testimony desired and shall be supported by a showing of general relevance and reasonable scope and a statement of the facts expected to be proven thereby.

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### § 28.47 Motion to quash.

Any person against whom a subpoena is directed may file a motion to quash

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or limit the subpoena setting forth the reasons why the subpoena should not be complied with or why it should be limited in scope. This motion shall be filed with the administrative judge within 20 days after service of the subpoena.

#### § 28.48 Service.

Service of a subpoena may be made by a United States Marshal or Deputy Marshal or by any person who is over 18 years of age and not a party to the proceeding.

#### § 28.49 Return of service.

When service of a subpoena is effected by a person other than a United States Marshal or Deputy Marshal, that person shall certify on the return of service that service was made either:

- (a) In person,
- (b) By registered or certified mail, or
- (c) By delivery to a responsible person (named) at the residence or place of business (as appropriate) of the person to be served.

#### § 28.50 Enforcement.

If a person has been served with a Board subpoena but fails or refuses to comply with its terms, the party seeking compliance may file a written motion for enforcement with the administrative judge or make an oral motion for enforcement while on record at a hearing. The party shall present the return of service and, except where the witness was required to appear before the administrative judge, shall submit affidavit evidence of the failure or refusal to obey the subpoena. The Board may then request the appropriate United States district court to enforce the subpoena.

#### HEARINGS

#### § 28.55 Scheduling the hearing.

The notice of initial hearing shall fix the date, time and place of hearing. GAO, upon request of the administrative judge, shall provide appropriate hearing space. Motions for postponement by either party shall be made in writing, shall set forth the reasons for the request and shall be granted only upon a showing of good cause. When the parties agree on postponement, mo-

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tions may be made orally and shall be granted only upon a showing of good cause.

#### § 28.56 Hearing procedures, conduct and copies of exhibits.

(a) The Board may designate one or more administrative judges to conduct hearings on appropriate matters.

(b) The hearing will be conducted as an administrative proceeding and, ordinarily, the rules of evidence will not be strictly followed.

(c) Parties will be expected to present their cases in a concise manner limiting the testimony of witnesses and submission of documents to relevant matters.

(d) Any party to a hearing offering exhibits into the record shall submit the original of each such exhibit to the court reporter, two copies to the administrative judge, plus one copy for each opposing party that is separately represented.

(e) Each party to a proceeding shall be responsible for bringing the proper number of copies of an exhibit to the hearing.

(f) Multipage exhibits shall be paginated in the lower right hand corner and the first page shall indicate the total number of pages in the exhibit. Multiple exhibits shall be indexed and tabbed.

(g) No later than the commencement of the hearing, each party shall submit to the administrative judge, to the court reporter, and to the opposing party: (1) A typed list of the witnesses expected to be called to testify; and (2) a typed list of the acronyms (with definitions) expected to be used by the witnesses.

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#### § 28.57 Public hearings.

(a) Hearings shall be open to the public. However, the administrative judge at his or her discretion, may order a hearing or any part thereof closed, where to do so would be in the best interests of the petitioner, a witness, the public, or other affected persons. Any order closing the hearing shall set forth the reasons for the administrative judge's decision. Any objections