

Subpart B—Hearings**§ 1603.201 Referral and scheduling for hearing.**

(a) Upon request by the complainant under paragraph (b) of this section or if the complaint is not dismissed or resolved under subpart A of this part, on behalf of the Commission, the Office of Federal Operations shall transmit the complaint file to an administrative law judge, appointed under 5 U.S.C. 3105, for a hearing.

(b) If the complaint has not been referred to an administrative law judge within 180 days after filing, the complainant may request that the complaint be immediately transmitted to an administrative law judge for a hearing.

(c) The administrative law judge shall fix the time, place, and date for the hearing with due regard for the convenience of the parties, their representatives or witnesses and shall notify the parties of the same.

§ 1603.202 Administrative law judge.

The administrative law judge shall have all the powers necessary to conduct fair, expeditious, and impartial hearings as provided in 5 U.S.C. 556(c). In addition, the administrative law judge shall have the power to:

(a) Change the time, place or date of the hearing;

(b) Enter a default decision against a party failing to appear at a hearing unless the party shows good cause by contacting the administrative law judge and presenting arguments as to why the party or the party's representative could not appear either prior to the hearing or within two days after the scheduled hearing; and

(c) Take any appropriate action authorized by the Federal Rules of Civil Procedure (28 U.S.C. appendix).

§ 1603.203 Unavailability or withdrawal of administrative law judges.

(a) In the event the administrative law judge designated to conduct the hearing becomes unavailable or withdraws from the adjudication, another administrative law judge may be designated for the purpose of further hear-

ing or issuing a decision on the record as made, or both.

(b) The administrative law judge may withdraw from the adjudication at any time the administrative law judge deems himself or herself disqualified. Prior to issuance of the decision, any party may move that the administrative law judge withdraw on the ground of personal bias or other disqualification, by filing with the administrative law judge promptly upon discovery of the alleged facts an affidavit setting forth in detail the matters alleged to constitute grounds for withdrawal.

(c) The administrative law judge shall rule upon the motion for withdrawal. If the administrative law judge concludes that the motion is timely and has merit, the administrative law judge shall immediately withdraw from the adjudication. If the administrative law judge does not withdraw, the adjudication shall proceed.

§ 1603.204 Ex parte communications.

(a) Oral or written communications concerning the merits of an adjudication between the administrative law judge or decision-making personnel of the Commission and an interested party to the adjudication without providing the other party a chance to participate are prohibited from the time the matter is assigned to an administrative law judge until the Commission has rendered a final decision. Communications concerning the status of the case, the date of a hearing, the method of transmitting evidence to the Commission and other purely procedural questions are permitted.

(b) Decision-making personnel of the Commission include members of the Commission and their staffs and personnel in the Office of Federal Operations, but do not include investigators and intake staff.

(c) Any communication made in violation of this section shall be made part of the record and an opportunity for rebuttal by the other party allowed. If the communication was oral, a memorandum stating the substance of the discussion shall be placed in the record.

(d) Where it appears that a party has engaged in prohibited ex parte communications, that party may be required