

**§ 1603.205**

to show cause why, in the interest of justice, his or her claim or defense should not be dismissed, denied or otherwise adversely affected.

**§ 1603.205 Separation of functions.**

(a) The administrative law judge may not be responsible to or subject to the supervision or direction of a Commission employee engaged in investigating complaints under this part.

(b) No Commission employee engaged in investigating complaints under this part shall participate or advise in the decision of the administrative law judge, except as a witness or counsel in the adjudication, or its appellate review.

**§ 1603.206 Consolidation and severance of hearings.**

(a) The administrative law judge may, upon motion by a party or upon his or her own motion, after providing reasonable notice and opportunity to object to all parties affected, consolidate any or all matters at issue in two or more adjudications docketed under this part where common parties, or factual or legal questions exist; where such consolidation would expedite or simplify consideration of the issues; or where the interests of justice would be served. For purposes of this section, no distinction is made between joinder and consolidation of adjudications.

(b) The administrative law judge may, upon motion of a party or upon his or her own motion, for good cause shown, order any adjudication severed with respect to some or all parties, claims or issues.

**§ 1603.207 Intervention.**

(a) Any person or entity that wishes to intervene in any proceeding under this subpart shall file a motion to intervene in accordance with § 1603.208.

(b) A motion to intervene shall indicate the question of law or fact common to the movant's claim or defense and the complaint at issue and state all other facts or reasons the movant should be permitted to intervene.

(c) Any party may file a response to a motion to intervene within 15 days after the filing of the motion to intervene.

**29 CFR Ch. XIV (7-1-08 Edition)**

**§ 1603.208 Motions.**

(a) All motions shall state the specific relief requested. All motions shall be in writing, except that a motion may be made orally during a conference or during the hearing. After providing an opportunity for response, the administrative law judge may rule on an oral motion immediately or may require that it be submitted in writing.

(b) Unless otherwise directed by the administrative law judge, any other party may file a response in support of or in opposition to any written motion within ten (10) business days after service of the motion. If no response is filed within the response period, the party failing to respond shall be deemed to have waived any objection to the granting of the motion. The moving party shall have no right to reply to a response, unless the administrative law judge, in his or her discretion, orders that a reply be filed.

(c) Except for procedural matters, the administrative law judge may not grant a written motion prior to the expiration of the time for filing responses. The administrative law judge may deny a written motion without awaiting a response. The administrative law judge may allow oral argument (including that made by telephone) on written motions. Any party adversely affected by the *ex parte* grant of a motion for a procedural order may request, within five (5) business days of service of the order, that the administrative law judge reconsider, vacate or modify the order.

(d) The administrative law judge may summarily deny dilatory, repetitive or frivolous motions. Unless otherwise ordered by the administrative law judge, the filing of a motion does not stay the proceeding.

(e) All motions and responses must comply with the filing and service requirements of § 1603.209.

**§ 1603.209 Filing and service.**

(a) Unless otherwise ordered by the administrative law judge, a signed original of each motion, brief or other document shall be filed with the administrative law judge, with a certificate of service indicating that a copy has been sent to all other parties, and the date and manner of service. All

documents shall be on standard size (8½ × 11) paper. Each document filed shall be clear and legible.

(b) Filing and service shall be made by first class mail or other more expeditious means of delivery, including, at the discretion of the administrative law judge, by facsimile. The administrative law judge, may in his discretion, limit the number of pages that may be filed or served by facsimile. Service shall be made on a party's representative, or, if not represented, on the party.

(c) Every document shall contain a caption, the complaint number or docket number assigned to the matter, a designation of the type of filing (e.g., motion, brief, etc.), and the filing person's signature, address, telephone number and telecopier number, if any.

#### § 1603.210 Discovery.

(a) Unless otherwise ordered by the administrative law judge, discovery may begin as soon as the complaint has been transmitted to the administrative law judge pursuant to § 1603.201. Discovery shall be completed as expeditiously as possible within such time as the administrative law judge directs.

(b) Unless otherwise ordered by the administrative law judge, parties may obtain discovery by written interrogatories (not to exceed 20 interrogatories including subparts), depositions upon oral examination or written questions, requests for production of documents or things for inspection or other purposes, requests for admission or any other method found reasonable and appropriate by the administrative law judge.

(c) Except as otherwise specified, the Federal Rules of Civil Procedure shall govern discovery in proceedings under this part.

(d) Neutral mediators who have participated in the alternative dispute resolution process in accordance with § 1603.108 shall not be called as witnesses or be subject to discovery in any adjudication under this part.

#### § 1603.211 Subpoenas.

(a) Upon written application of any party, the administrative law judge may on behalf of the Commission issue a subpoena requiring the attendance

and testimony of witnesses and the production of any evidence, including, but not limited to, books, records, correspondence, or documents, in their possession or under their control. The subpoena shall state the name and address of the party at whose request the subpoena was issued, identify the person and evidence subpoenaed, and the date and time the subpoena is returnable.

(b) Any person served with a subpoena who intends not to comply shall, within 5 days after service of the subpoena, petition the administrative law judge in writing to revoke or modify the subpoena. All petitions to revoke or modify shall be served upon the party at whose request the subpoena was issued. The requestor may file with the administrative law judge a response to the petition to revoke or modify within 5 days after service of the petition.

(c) Upon the failure of any person to comply with a subpoena issued under this section, the administrative law judge may refer the matter to the Commission for enforcement in accordance with 29 CFR 1601.16(c).

#### § 1603.212 Witness fees.

Witnesses summoned under this part shall receive the same fees and mileage as witnesses in the courts of the United States. Those fees must be paid or offered to the witness by the party requesting the subpoena at the time the subpoena is served, or, if the witness appears voluntarily, at the time of appearance. A federal agency or corporation is not required to pay or offer witness fees and mileage allowances in advance.

#### § 1603.213 Interlocutory review.

(a) Interlocutory review may not be sought except when the administrative law judge determines upon motion of a party or upon his or her own motion that:

(1) The ruling involves a controlling question of law or policy about which there is substantial ground for difference of opinion;

(2) An immediate ruling will materially advance the completion of the proceeding; or