

§ 1.424

entered onto the original transcript by the Hearing Clerk (without obscuring the original text).

(b) *Proposed findings of fact, conclusions, order, and brief.* Prior to the close of the hearing, each party may submit for consideration proposed findings of fact, conclusions, order, and brief in support thereof. A copy of each such document filed by a party shall be served upon each of the other parties.

(c) *Judge's decision.* (1) The Judge may, upon motion of any party or in his or her own discretion, issue a decision orally at the close of the hearing, or within 10 calendar days after the close of the hearing, or within 10 calendar days after submission of the record, if no hearing is requested.

(2) If the decision is announced orally, a copy thereof, excerpted from the transcript of the record, shall be furnished to the parties by the Hearing Clerk. Irrespective of the date such copy is mailed, the issuance date of the decision shall be the date the oral decision was announced.

(3) If the decision is in writing, it shall be filed with the Hearing Clerk and served upon the parties as provided in § 1.427.

(4) The Judge's decision shall become effective without further proceedings 21 calendar days after the issuance of the decision, if announced orally at the hearing, or if the decision is in writing, 21 calendar days after the date of service thereof upon the respondent, unless there is an appeal to the Judicial Officer by a party to the proceeding pursuant to § 1.426; *Provided, however*, that no decision shall be final for purposes of judicial review except a final decision of the Judicial Officer upon appeal.

(5) The Judicial Officer shall issue a decision within 10 calendar days of the receipt of the response to the appeal.

§ 1.424 Motions and requests.

(a) *General.* All motions and requests shall be filed with the Hearing Clerk, and served upon all the parties except motions and requests made on the record during the oral hearing.

(b) *Motions entertained.* No dispositive motions, including motions to dismiss on the pleadings and motions for summary judgment, shall be entertained

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unless specifically mentioned herein or allowed in the discretion of the Judge.

(c) *Contents.* All written motions and requests shall state the particular order, ruling, or action desired and the grounds therefore.

(d) *Response to motions and requests.* Within 5 days after service of any written motion or request, or within such shorter or longer period as may be fixed by the Judge, an opposing party may file a response to the motion or request. The other party shall have no right to reply to the response.

§ 1.425 Judges.

(a) *Assignment.* No Judge shall be assigned to serve in any proceeding who:

(1) Has any pecuniary interest in any matter or business involved in the proceeding;

(2) Is related within the third degree by blood or marriage to any party to the proceeding; or

(3) Has any conflict of interest which might impair the Judge's objectivity in the proceeding.

(b) *Disqualification of Judge.* (1) Any party to the proceeding may, by motion made to the Judge, request that the Judge withdraw from the proceeding because of an alleged disqualifying reason. Such motion shall set forth with particularity the grounds of alleged disqualification. The Judge may then either rule upon or certify the motion to the Secretary, but not both.

(2) A Judge shall withdraw from any proceeding for any reason deemed by the Judge to be disqualifying.

(c) *Powers.* Subject to review as provided elsewhere in this part, the Judge, in any assigned proceeding shall have power to:

(1) Rule upon motions and requests;

(2) Set the time and place of a pre-hearing conference and the hearing, adjourn the hearing from time to time, and change the time and place of hearing;

(3) Administer oaths and affirmations;

(4) Request the presence of and examine witnesses and receive relevant evidence at the hearing;

(5) Take or order the taking of depositions as authorized under these rules;

(6) Admit or exclude evidence;

(7) Hear oral argument on facts or law,

(8) Do all acts and take all measures necessary for the maintenance of order, including the exclusion of contumacious counsel or other persons;

(9) Request additional information from any party to aid in the Judge's determination; and

(10) Take all other actions authorized under these procedures.

(d) *Who may act in the absence of the Judge.* In case of the absence of the Judge or the Judge's inability to act, the powers and duties to be performed by the Judge under these rules of practice in connection with any assigned proceeding may, without abatement of the proceeding unless otherwise directed by the Chief Judge, be assigned to any other Judge.

§ 1.426 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 10 calendar days after receiving service of the Judge's decision, a party who disagrees with the decision, or any part thereof, or any ruling by the Judge or any alleged deprivation of rights, may appeal such decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.422(e)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other rulings made before the Judge may be relied upon in an appeal. Each issue set forth in the petition, and the arguments thereon, shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations of the record, statutes, regulations or authorities being relied upon in support thereof. A brief may be filed in support of the appeal simultaneously with the petition. A party filing a petition of appeal to the Judicial Officer, and any brief in support thereof, shall serve the other parties to the proceeding with a copy of the petition and supporting brief. The copies of the petition and supporting brief shall be served on the parties to the proceeding with a copy of the petition and supporting brief. The copies of the petition and supporting brief shall be served on the parties to the proceeding on the same day as the petition and sup-

porting brief are filed with the Judicial Officer.

(b) *Response to appeal petition.* Within 10 calendar days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised. A party filing a response to a petition of appeal to the Judicial Officer shall serve the other parties to the proceeding with a copy of the response. The copies of the response shall be served on the parties to the proceeding on the same day as the response is filed with the Judicial Officer.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: The pleadings; motions and requests filed and rulings thereon; the transcript of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Decision of the Judicial Officer on appeal.* The Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal within 4 months after the institution of the proceeding, pursuant to 16 U.S.C. 620b(c)(3). If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek