

§ 1.632

- (f) Regulate the course of hearings;
- (g) Call and question witnesses;
- (h) Exclude any person from a hearing or conference for misconduct or other good cause;
- (i) Issue a decision consistent with § 1.660(b) regarding any disputed issues of material fact relating to the Forest Service's or other Department's condition or prescription that has been referred to the ALJ for hearing; and
- (j) Take any other action authorized by law.

§ 1.632 What happens if the ALJ becomes unavailable?

- (a) If the ALJ becomes unavailable or otherwise unable to perform the duties described in § 1.631, the OALJ shall designate a successor.
- (b) If a hearing has commenced and the ALJ cannot proceed with it, a successor ALJ may do so. At the request of a party, the successor ALJ may recall any witness whose testimony is material and disputed, and who is available to testify again without undue burden. The successor ALJ may, within his or her discretion, recall any other witness.

§ 1.633 Under what circumstances may the ALJ be disqualified?

- (a) The ALJ may withdraw from a case at any time the ALJ deems himself or herself disqualified.
- (b) At any time before issuance of the ALJ's decision, any party may move that the ALJ disqualify himself or herself for personal bias or other valid cause.
 - (1) The party must file the motion promptly after discovering facts or other reasons allegedly constituting cause for disqualification.
 - (2) The party must file with the motion an affidavit or declaration setting forth the facts or other reasons in detail.
 - (c) The ALJ must rule upon the motion, stating the grounds for the ruling.
 - (1) If the ALJ concludes that the motion is timely and meritorious, he or she must disqualify himself or herself and withdraw from the case.
 - (2) If the ALJ does not disqualify himself or herself and withdraw from the case, the ALJ must continue with

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the hearing process and issue a decision.

§ 1.634 What is the law governing ex parte communications?

- (a) *Ex parte* communications with the ALJ or his or her staff are prohibited in accordance with 5 U.S.C. 554(d).
- (b) This section does not prohibit *ex parte* inquiries concerning case status or procedural requirements, unless the inquiry involves an area of controversy in the hearing process.

§ 1.635 What are the requirements for motions?

- (a) *General*. Any party may apply for an order or ruling on any matter related to the hearing process by presenting a motion to the ALJ. A motion may be presented any time after the Hearing Clerk issues a docketing notice under § 1.630.
 - (1) A motion made at a hearing may be stated orally on the record, unless the ALJ directs that it be reduced to writing.
 - (2) Any other motion must:
 - (i) Be in writing;
 - (ii) Comply with the requirements of §§ 1.610 through 1.613 with respect to form, content, filing, and service; and
 - (iii) Not exceed 10 pages.
 - (b) *Content*. (1) Each motion must state clearly and concisely:
 - (i) Its purpose and the relief sought;
 - (ii) The facts constituting the grounds for the relief sought; and
 - (iii) Any applicable statutory or regulatory authority.
 - (2) A proposed order must accompany the motion.
 - (c) *Response*. Except as otherwise required by this subpart or by order of the ALJ, any other party may file a response to a written motion within 10 days after service of the motion. When a party presents a motion at a hearing, any other party may present a response orally on the record.
 - (d) *Reply*. Unless the ALJ orders otherwise, no reply to a response may be filed.
 - (e) *Effect of filing*. Unless the ALJ orders otherwise, the filing of a motion does not stay the hearing process.
 - (f) *Ruling*. The ALJ will rule on the motion as soon as practicable, either orally on the record or in writing. He

or she may summarily deny any dilatory, repetitive, or frivolous motion.

PREHEARING CONFERENCES AND
DISCOVERY

§ 1.640 What are the requirements for prehearing conferences?

(a) *Initial prehearing conference.* The ALJ will conduct an initial prehearing conference with the parties at the time specified in the docketing notice under § 1.630, on or about the 20th day after issuance of the referral notice under § 1.625(c).

(1) The initial prehearing conference will be used:

(i) To identify, narrow, and clarify the disputed issues of material fact and exclude issues that do not qualify for review as factual, material, and disputed;

(ii) To consider the parties' motions for discovery under § 1.641 and to set a deadline for the completion of discovery;

(iii) To discuss the evidence on which each party intends to rely at the hearing;

(iv) To set the deadline for submission of written testimony under § 1.652; and

(v) To set the date, time, and place of the hearing.

(2) The initial prehearing conference may also be used:

(i) To discuss limiting and grouping witnesses to avoid duplication;

(ii) To discuss stipulations of fact and of the content and authenticity of documents;

(iii) To consider requests that the ALJ take official notice of public records or other matters;

(iv) To discuss the submission of written testimony, briefs, or other documents in electronic form; and

(v) To consider any other matters that may aid in the disposition of the case.

(b) *Other conferences.* The ALJ may in his or her discretion direct the parties to attend one or more other prehearing conferences, if consistent with the need to complete the hearing process within 90 days. Any party may by motion request a conference.

(c) *Notice.* The ALJ must give the parties reasonable notice of the time and place of any conference. A con-

ference will ordinarily be held by telephone, unless the ALJ orders otherwise.

(d) *Preparation.* (1) Each party's representative must be fully prepared for a discussion of all issues properly before the conference, both procedural and substantive. The representative must be authorized to commit the party that he or she represents respecting those issues.

(2) Before the date set for the initial prehearing conference, the parties' representatives must make a good faith effort:

(i) To meet in person, by telephone, or by other appropriate means; and

(ii) To reach agreement on discovery and the schedule of remaining steps in the hearing process.

(e) *Failure to attend.* Unless the ALJ orders otherwise, a party that fails to attend or participate in a conference, after being served with reasonable notice of its time and place, waives all objections to any agreements reached in the conference and to any consequent orders or rulings.

(f) *Scope.* During a conference, the ALJ may dispose of any procedural matters related to the case.

(g) *Order.* Within 2 days after the conclusion of each conference, the ALJ must issue an order that recites any agreements reached at the conference and any rulings made by the ALJ during or as a result of the conference.

§ 1.641 How may parties obtain discovery of information needed for the case?

(a) *General.* By agreement of the parties or with the permission of the ALJ, a party may obtain discovery of information to assist the party in preparing or presenting its case. Available methods of discovery are:

(1) Written interrogatories;

(2) Depositions as provided in paragraph (h) of this section; and

(3) Requests for production of designated documents or tangible things or for entry on designated land for inspection or other purposes.

(b) *Criteria.* Discovery may occur only as agreed to by the parties or as authorized by the ALJ in a written order or during a prehearing conference. The ALJ may authorize discovery only if