§ 509.9 Ex parte communications.

(a) Definition.—(1) Ex parte communication means any material oral or written communication relevant to the merits of an adjudicatory proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between:

(i) An interested person outside the Office (including such person’s counsel); and

(ii) The administrative law judge handling that proceeding, the Director, or a decisional employee.

(2) Exception. A request for status of the proceeding does not constitute an ex parte communication.

(b) Prohibition of ex parte communications. From the time the notice is issued by the Director until the date that the Director issues the final decision pursuant to § 509.40(c) of this subpart:

(1) No interested person outside the Office shall make or knowingly cause to be made an ex parte communication to the Director, the administrative law judge, or a decisional employee; and

(2) The Director, administrative law judge, or decisional employee shall not make or knowingly cause to be made to any interested person outside the Office any ex parte communication.

(c) Procedure upon occurrence of ex parte communication. If an ex parte communication is revealed, the administrative law judge shall take such measures as he or she deems appropriate to prevent repetition of the practice and to avoid its substantial effect on the fairness of the proceeding. The administrative law judge may take such other measures as are consistent with the purposes of the ex parte communications provision.

§ 509.8 Conflicts of interest.

(a) Conflict of interest in representation. No person shall appear as counsel for another person in an adjudicatory proceeding if it reasonably appears that such representation may be materially limited by that counsel’s responsibilities to a third person or by the counsel’s own interests. The administrative law judge may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order limiting the scope of representation or disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

(b) Certification and waiver. If any person appearing as counsel represents two or more parties to an adjudicatory proceeding or also represents a non-party on a matter relevant to an issue in the proceeding, counsel must certify in writing at the time of filing the notice of appearance required by § 509.6(a):

(1) That the counsel has personally and fully discussed the possibility of conflicts of interest with each such party and non-party; and

(2) That each such party and non-party waives any right it might otherwise have had to assert any known conflicts of interest or to assert any non-material conflicts of interest during the course of the proceeding.

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