

§ 180.200

prejudiced and that the ends of justice will be served.

(e) All pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in any proceeding may be inspected in the Docket Clerk's office during regular business hours.

[61 FR 52218, Oct. 4, 1996, as amended at 64 FR 3801, Jan. 25, 1999; 74 FR 4636, Jan. 26, 2009]

Subpart B—Administrative Law Judge

§ 180.200 Designation.

Proceedings under this part shall be presided over by an ALJ appointed under 5 U.S.C. 3105.

[61 FR 52218, Oct. 4, 1996, as amended at 73 FR 13723, Mar. 13, 2008]

§ 180.205 Authority.

The ALJ shall have all powers necessary to conduct fair, expeditious and impartial hearings, including the power to:

- (a) Administer oaths and affirmations and examine witnesses;
- (b) Rule on offers of proof and receive evidence;
- (c) Take depositions or have depositions taken when the ends of justice would be served;
- (d) Regulate the course of the hearing and the conduct of persons at the hearing;
- (e) Hold conferences for the settlement or simplification of the issues by consent of the parties;
- (f) Rule on motions, procedural requests, and similar matters;
- (g) Make and issue initial decisions;
- (h) Impose appropriate sanctions against any person failing to obey an order, refusing to adhere to reasonable standards of orderly and ethical conduct, or refusing to act in good faith;
- (i) Issue subpoenas if authorized by law; and
- (j) Exercise any other powers necessary and appropriate for the purpose and conduct of the proceeding as authorized by the rules in this part or in conformance with statute, including 5 U.S.C. 551–59.

24 CFR Subtitle B, Ch. I (4–1–10 Edition)

§ 180.210 Withdrawal or disqualification of ALJ.

(a) *Disqualification.* If an ALJ finds that there is a basis for his/her disqualification in a proceeding, the ALJ shall withdraw from the proceeding. Withdrawal is accomplished by entering a notice in the record and providing a copy of the notice to the Director of the Office of Hearings and Appeals.

(b) *Motion for recusal.* If a party believes that the presiding ALJ should be disqualified for any reason, the party may file a motion to recuse with the ALJ. The motion shall be supported by an affidavit setting forth the alleged grounds for disqualification. The ALJ shall rule on the motion, stating the grounds therefor.

(c) *Redesignation of ALJ.* If an ALJ is disqualified, another ALJ shall be designated to preside over further proceedings.

[61 FR 52218, Oct. 4, 1996, as amended at 73 FR 13723, Mar. 13, 2008]

§ 180.215 Ex parte communications.

(a) An ex parte communication is any direct or indirect communication concerning the merits of a pending proceeding, made by a party in the absence of any other party, to the presiding ALJ, and which was neither on the record nor on reasonable prior notice to all parties. Ex parte communications do not include communications made for the sole purpose of scheduling hearings, requesting extensions of time, or requesting information on the status of cases.

(b) Ex parte communications are prohibited.

(c) If the ALJ receives an ex parte communication that the ALJ knows or has reason to believe is prohibited, the ALJ shall promptly place the communication, or a written statement of the substance of the communication, in the record and shall furnish copies to all parties. Unauthorized communications shall not be taken into consideration in deciding any matter in issue. Any party making a prohibited ex parte communication may be subject to sanctions including, but not limited to, exclusion from the proceeding and an adverse ruling on the issue that is the

subject of the prohibited communication.

§ 180.220 Separation of functions.

No officer, employee, or agent of the Federal Government engaged in the performance of investigative, conciliatory, or prosecutorial functions in connection with the proceeding shall, in that proceeding or any factually related proceeding under this part, participate or advise in the decision of the ALJ, except as a witness or counsel during the proceedings or in its appellate review.

Subpart C—Parties

§ 180.300 Rights of parties.

Each party may appear in person, be represented by counsel, examine or cross-examine witnesses, introduce documentary or other relevant evidence into the record and, in Fair Housing Act matters, request the issuance of subpoenas.

§ 180.305 Representation.

(a) HUD is represented by the General Counsel.

(b) Any party may appear on his/her/its own behalf or by an attorney. Each party or attorney shall file a notice of appearance. The notice must identify the matter before the ALJ, the party on whose behalf the appearance is made, and the mailing address and telephone number of the person appearing. Similar notice shall also be given for any withdrawal of appearance.

(c) An attorney must be admitted to practice before a Federal Court or the highest court in any State. The attorney's representation that he/she is in good standing before any of these courts is sufficient evidence of the attorney's qualifications under this section, unless otherwise ordered by the ALJ.

§ 180.310 Parties.

(a) Parties to proceedings under this part are HUD, the respondent(s), and any intervenors. Respondents include persons named as such in a charge issued under 24 CFR part 103 and Recipients/applicants named as respondents in hearing notices issued under 24 CFR parts 1, 6, 8 or 146 and notices of

proposed adverse action under this part.

(b) An aggrieved person is not a party but may file a motion to intervene. Requests for intervention shall be filed within 50 days after the filing of the charge; however, the ALJ may allow intervention beyond that time. An intervenor's right to participate as a party may be restricted by order of the ALJ pursuant to statute, the rules in this part or other applicable law. Intervention shall be permitted if the person requesting intervention is

(1) The aggrieved person on whose behalf the charge is issued; or

(2) An aggrieved person who claims an interest in the property or transaction that is the subject of the charge and the disposition of the charge may, as a practical matter, impair or impede this person's ability to protect that interest, unless the aggrieved person is adequately represented by the existing parties.

(c) A complainant in a non-Fair Housing Act matter is not a party but may file a motion to become an amicus curiae.

(d) Any person may file a petition to participate in a proceeding under this part as an amicus curiae. An amicus curiae is not a party to the proceeding and may not introduce evidence at the hearing.

(1) A petition to participate as amicus curiae shall be filed before the commencement of the hearing, unless the petitioner shows good cause for filing the petition later. The petition may be granted if the ALJ finds that the petitioner has a legitimate interest in the proceedings, and that such participation will not unduly delay the outcome and may contribute materially to the proper disposition thereof.

(2) The amicus curiae may submit briefs within time limits set by the ALJ or by the Secretary in the event of an appeal to the Secretary.

(3) When all parties have completed their initial examination of a witness, the amicus curiae may request the ALJ to propound specific questions to the witness. Any such request may be granted if the ALJ believes the proposed additional testimony may assist