§ 28.23 Authority.

Administrative judges shall conduct fair and impartial hearings and take all necessary action to avoid delay in the disposition of all proceedings. They shall have all powers necessary to that end unless otherwise limited by law, including, but not limited to, the authority to:

1. Administer oaths and affirmations;
2. Issue subpoenas in accordance with §28.46;
3. Rule upon offers of proof and receive relevant evidence;
4. Rule upon discovery issues as appropriate under §§28.42 through 28.45;
5. Convene a hearing as appropriate, regulate the course of the hearing, maintain decorum and exclude from the hearing any disruptive persons;
6. Exclude from the hearing any witness, except the petitioner(s), whose later testimony might be colored by testimony of other witnesses, or any persons whose presence might have a chilling effect on a testifying witness;
7. Rule on all motions, witness and exhibit lists and proposed findings;
8. Require the filing of memoranda of law and the presentation of oral argument with respect to any question of law;
9. Order the production of evidence and the appearance of witnesses whose testimony would be relevant, material and not repetitious;
10. Impose sanctions as provided under §28.24 of this part;
11. Hold prehearing conferences for the settlement and simplification of issues; and
12. Issue initial decisions, as appropriate.


§ 28.24 Sanctions.

The administrative judge may impose sanctions upon the parties as necessary to serve the ends of justice, including but not limited to the instances set forth in this section.

(a) Failure to comply with an order or subpoena. When a party fails to comply with an order or subpoena (including an order for the taking of a deposition, for the production of evidence within the party’s control, for an admission, or for production of witnesses), the administrative judge may:

1. Draw an inference in favor of the requesting party on the issue related to the information sought.
2. Prohibit the party failing to comply with such order or subpoena from introducing, or otherwise relying upon, evidence relating to the information sought.
3. Permit the requesting party to introduce secondary evidence concerning the information sought.
4. Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(b) Failure to prosecute or defend. If a party fails to prosecute or defend a petition, the administrative judge may dismiss the action with prejudice or rule for the petitioner.

(c) Failure to make timely filing. The administrative judge may refuse to consider any motion or other action which is not filed in a timely fashion in compliance with this subpart.