Judge disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the Administrative Law Judge responsible for the adjudication may, where authorized by statute or law, apply through appropriate counsel to the Federal District Court having jurisdiction in the place in which he/she is sitting to request appropriate remedies.


§ 68.29  Unavailability of Administrative Law Judge.

In the event the Administrative Law Judge designated to conduct the hearing becomes unavailable, the Chief Administrative Hearing Officer may designate another Administrative Law Judge for the purpose of further hearing or other appropriate action.


§ 68.30  Disqualification.

(a) When an Administrative Law Judge deems himself or herself disqualified to preside in a particular proceeding, such judge shall withdraw therefrom by notice on the record directed to the Chief Administrative Hearing Officer.

(b) Whenever any party shall deem the Administrative Law Judge for any reason to be disqualified to preside, or to continue to preside, in a particular proceeding, that party shall file with the Administrative Law Judge a motion to recuse. The motion shall be supported by an affidavit setting forth the alleged grounds for disqualification. The Administrative Law Judge shall rule upon the motion.

(c) In the event of disqualification or recusal of an Administrative Law Judge as provided in paragraph (a) or (b) of this section, the Chief Administr-
Administrative Law Judges. An attorney’s own representation that the attorney is in good standing before any of such courts shall be sufficient proof thereof, unless otherwise ordered by the Administrative Law Judge.

(2) A law student, enrolled in an accredited law school, may practice before an Administrative Law Judge. The law student must seek advance approval by filing a statement with the Administrative Law Judge proving current participation in a legal assistance program or clinic conducted by the law school. Practice before the Administrative Law Judge shall be under direct supervision of a faculty member or an attorney. An appearance by a law student shall be without direct or indirect remuneration. The Administrative Law Judge may determine the amount of supervision required of the supervising faculty member or attorney.

(3) An individual who is neither an attorney nor a law student may be allowed to provide representation to a party upon a written order from the Administrative Law Judge assigned to the case granting approval of the representation. The individual must file a written application with the Administrative Law Judge demonstrating that the individual possesses the knowledge of administrative procedures, technical expertise, or other qualifications necessary to render valuable service in the proceedings and is otherwise competent to advise and assist in the presentation of matters in the proceedings.

(i) Application. A written application by an individual who is neither an attorney nor a law student for admission to represent a party in proceedings before the Administrative Law Judge shall be submitted to the case granting approval of the representation. The individual must file a written application with the Administrative Law Judge demonstrating that the individual possesses the knowledge of administrative procedures, technical expertise, or other qualifications necessary to render valuable service in the proceedings and is otherwise competent to advise and assist in the presentation of matters in the proceedings.

(ii) Inquiry on qualifications or ability. The Administrative Law Judge may, at any time, inquire as to the qualifications or ability of any non-attorney to render assistance in proceedings before the Administrative Law Judge.

(iii) Denial of authority to appear. Except as provided in paragraph (c)(3)(iv) of this section, the Administrative Law Judge may enter an order denying the privilege of appearing to any individual who the Judge finds does not possess the requisite qualifications to represent others; is lacking in character or integrity; has engaged in unethical or improper professional conduct; or has engaged in an act involving moral turpitude.

(iv) Exception. Any individual may represent him or herself or any corporation, partnership or unincorporated association of which that individual is a partner or general officer in proceedings before the Administrative Law Judge without prior approval of the Administrative Law Judge and without filing the written application required by this paragraph. Such individuals must, however, file a notice of appearance in the manner set forth in paragraph (e) of this section.

(d) Representation for the Department of Justice. The Department of Justice may be represented by the appropriate counsel in these proceedings.

(e) Proof of authority. Any individual acting in a representative capacity in any adjudicative proceeding may be required by the Administrative Law Judge to show his or her authority to act in such capacity. Representation of a respondent shall be at no expense to the Government.

(f) Notice of appearance. Except for a government attorney filing a complaint pursuant to section 274A, 274B, or 274C of the INA, each attorney shall file a notice of appearance. Such notice shall indicate the name of the case or controversy, the case number if assigned, and the party on whose behalf the appearance is made. The notice of appearance shall be signed by the attorney, and shall be accompanied by a certification indicating that such notice was served on all parties of record.

A request for a hearing signed by an attorney and filed with the Immigration and Naturalization Service pursuant to section 274A(e)(3)(A) or 274C(d)(2)(A) of the INA, and containing the same information as required by this section,
shall be considered a notice of appearance on behalf of the respondent for whom the request was made.

(g) Withdrawal or substitution of a representative. Withdrawal or substitution of an attorney or representative may be permitted by the Administrative Law Judge upon written motion. The Administrative Law Judge shall enter an order granting or denying such motion for withdrawal or substitution.


§ 68.34 Legal assistance.

The Office of the Chief Administrative Hearing Officer does not have authority to appoint counsel.


§ 68.35 Standards of conduct.

(a) All persons appearing in proceedings before an Administrative Law Judge are expected to act with integrity, and in an ethical manner.

(b) The Administrative Law Judge may exclude from proceedings parties, witnesses, and their representatives for refusal to comply with directions, continued use of dilatory tactics, refusal to adhere to reasonable standards of orderly and ethical conduct, failure to act in good faith, or violation of the prohibition against ex parte communications. The Administrative Law Judge shall state in the record the cause for barring an attorney or other individual from participation in a particular proceeding. The Administrative Law Judge may suspend the proceeding for a reasonable time for the purpose of enabling a party to obtain another attorney or representative.


§ 68.36 Ex parte communications.

(a) General. Except for other employees of the Executive Office for Immigration Review, the Administrative Law Judge shall not consult any person, or party, on any fact in issue unless upon notice and opportunity for all parties to participate. Communications by the Office of the Chief Administrative Hearing Officer, the assigned judge, or any party for the sole purpose of scheduling hearings, or requesting extensions of time are not considered ex parte communications, except that all other parties shall be notified of such request by the requesting party and be given an opportunity to respond thereto.

(b) Sanctions. A party or participant who makes a prohibited ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions, including but not limited to, exclusion from the proceedings and adverse ruling on the issue which is the subject of the prohibited communication.


§ 68.37 Waiver of right to appear and failure to participate or to appear.

(a) Waiver of right to appear. If all parties waive in writing their right to appear before the Administrative Law Judge or to present evidence or argument personally or by representative, it shall not be necessary to give notice of and conduct an oral hearing. A waiver of the right to appear and present evidence and allegations as to facts and law shall be made in writing and filed with the Chief Administrative Hearing Officer or the Administrative Law Judge. Where such a waiver has been filed by all parties and they do not appear before the Administrative Law Judge personally or by representative, the Administrative Law Judge shall make a record of the relevant written evidence submitted by the parties, together with any pleadings they may submit with respect to the issues in the case. Such documents shall be considered as all of the evidence in the case and decision shall be based on them.

(b) Dismissal—Abandonment by party. A complaint or a request for hearing may be dismissed upon its abandonment by the party or parties who filed it. A party shall be deemed to have abandoned a complaint or a request for hearing if:

(1) A party or his or her representative fails to respond to orders issued by the Administrative Law Judge; or