§ 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 Administrative Hearing Officer shall refer the matter to another Administrative Law Judge for further proceedings.


§ 68.31 Separation of functions.

No officer, employee, or agent of the Federal Government engaged in the performance of investigative or prosecutorial functions in connection with any proceeding shall, in that proceeding or a factually related proceeding, participate or advise in the decision of the Administrative Law Judge, except as a witness or counsel in the proceedings.


§ 68.32 Expedition.

Hearings shall proceed with all reasonable speed, insofar as practicable and with due regard to the convenience of the parties.


§ 68.33 Participation of parties and representation.

(a) Participation of parties. Any party shall have the right to appear in a proceeding and may examine and cross-examine witnesses and introduce into the record documentary or other relevant evidence, except that the participation of any intervenor shall be limited to the extent prescribed by the Administrative Law Judge.
(b) Person compelled to testify. Any person compelled to testify in a proceeding in response to a subpoena may be accompanied, represented, and advised by an individual meeting the requirements of paragraph (c) of this section.

(c) Representation for parties other than the Department of Justice. Persons who may appear before the Administrative Law Judges on behalf of parties other than the Department of Justice include:

(1) An attorney at law who is admitted to practice before the federal courts or before the highest court of any state, the District of Columbia, or any territory or commonwealth of the United States, may practice before the 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 shall be submitted to the Administrative Law Judge within ten (10) days from the receipt of the Notice of Hearing and complaint by the party on whose behalf the individual wishes to file the application. This period of time for filing the application may be extended upon approval of the Administrative Law Judge. The application shall set forth in detail the requesting individual’s qualifications to represent the party.

(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.
§ 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,