

## § 28.28

full parties to the hearing and will have the same rights and duties as a party with two exceptions:

(1) Intervenors will not have an independent right to a hearing.

(2) Intervenors may participate in Board proceedings only on the issues affecting them, as determined by the administrative judge or Board.

[58 FR 61992, Nov. 23, 1993, as amended at 68 FR 69301, Dec. 12, 2003]

### § 28.28 Substitution.

(a) If a petitioner dies or is otherwise unable to pursue the petition, the action may be completed upon substitution of a proper party.

(b) A motion for substitution shall be filed by the proper party within 90 days after the death of the petitioner or other disabling event.

[58 FR 61992, Nov. 23, 1993, as amended at 68 FR 69301, Dec. 12, 2003]

### § 28.29 Consolidation or joinder.

(a) *Explanation.* (1) Consolidation may occur where two or more parties have cases which should be united because they contain identical or similar issues or in such other circumstances as justice requires.

(2) Joinder may occur where one person has two or more petitions pending and they are united for consideration. For example, a single petitioner who has one petition pending challenging a 30-day suspension and another petition pending challenging a subsequent dismissal might have the cases joined.

(b) *Action by administrative judge.* An administrative judge may consolidate or join cases on his or her own initiative or on the motion of a party if to do so would expedite processing of the cases and not adversely affect the interests of the parties.

[58 FR 61992, Nov. 23, 1993, as amended at 68 FR 69301, Dec. 12, 2003]

## DISCOVERY

### § 28.40 Statement of purpose.

Proceedings before the Board shall be conducted as expeditiously as possible with due regard to the rights of the parties. Discovery is designed to enable a party to obtain relevant information needed for presentation of the party's

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case. These regulations are intended to provide a simple method of discovery. They will be interpreted and applied so as to avoid delay and to facilitate adjudication of the case. The parties are expected to initiate and complete needed discovery with a minimum of Board intervention.

### § 28.41 Explanation, scope and methods.

(a) *Explanation.* Discovery is the process apart from the hearing whereby a party may obtain relevant information from another person, including a party, which has not otherwise been provided. Relevant information includes information which appears reasonably calculated to lead to the discovery of admissible evidence. This information is obtained for the purpose of assisting the parties in developing, preparing, and presenting their cases. The Federal Rules of Civil Procedure may be used as a general guide for discovery practices in proceedings before the Board, except as to matters specifically covered by these regulations. The Federal Rules of Civil Procedure shall be interpreted as instructive rather than controlling.

(b) *Scope.* Any person may be examined pursuant to paragraph (c) of this section regarding any nonprivileged matter which is relevant to the issue under review, including the existence, description, nature, custody, condition and location of documents or other tangible things, and the identity and location of persons having knowledge of relevant facts. The information sought must appear reasonably calculated to lead to the discovery of admissible evidence.

(c) *Methods.* Discovery may be obtained by one or more of the methods provided under the Federal Rules of Civil Procedure, including written interrogatories, depositions, production of documents or things for inspection or copying, and requests for admission addressed to parties.

[58 FR 61992, Nov. 23, 1993, as amended at 68 FR 69301, Dec. 12, 2003]

### § 28.42 Discovery procedures and protective orders.

(a) *Discovery from a party.* A party seeking discovery from another party