

Small Business Administration

§ 134.213

(c) *8(a) appeals.* In 8(a) program appeals, amendments to pleadings and supplemental pleadings will be permitted by the Judge only upon a showing of good cause.

(d) *Answer.* In an order permitting the serving and filing of an amended or supplemented petition or order to show cause, the Judge will establish the time for serving and filing an answer.

§ 134.208 Representation in cases before OHA.

(a) A party may represent itself, or be represented by a duly licensed attorney. A member of a partnership may represent the partnership, and an officer may represent a corporation, trust, or association.

(b) An attorney for a party who did not appear on behalf of that party in the party's first filing with OHA must serve and file a written notice of appearance.

(c) An attorney seeking to withdraw from a case must serve and file a motion for the withdrawal of his or her appearance.

§ 134.209 Requirement of signature.

Every written submission to OHA, other than evidence, must be signed by the party filing that submission, or by the party's attorney. By signing the submission, a party or its attorney attests that the statements and allegations in that submission are true to the best of its knowledge, and that the submission is not being filed for the purpose of delay or harassment.

§ 134.210 Intervention.

(a) *By SBA.* SBA may intervene as of right at any time in any case until final decision.

(b) *By interested persons.* Any individual, partnership, association, corporation, trust, or governmental agency may move to intervene at any time until final decision by serving and filing a motion to intervene containing a statement of the movant's interest in the case and the necessity for intervention to protect such interest. The Judge may grant leave to intervene upon such terms as he or she deems appropriate.

§ 134.211 Motions.

(a) *Contents.* All motions must state the relief being requested, as well as the grounds and any authority for that relief.

(b) *Response.* No later than 20 days after the service of a motion, all non-moving parties must serve and file a response or be deemed to have consented to the relief sought. Unless the Judge directs otherwise, the moving party will have no right to reply to a response, nor will oral argument be heard on the motion.

(c) *Service of orders.* OHA will serve upon all parties any written order issued in response to a motion.

(d) *Stay.* A motion to dismiss stays the time to answer. The Judge will establish the time for serving and filing an answer in the order determining the motion to dismiss.

[61 FR 2683, Jan. 29, 1996, as amended at 63 FR 35766, June 30, 1998]

§ 134.212 Summary decision.

(a) *Grounds.* A party may move for summary decision at any time as to all or any portion of the case, on the grounds that there is no genuine issue as to any material fact, and that the moving party is entitled to a decision in its favor as a matter of law.

(b) *Contents of motion.* The motion must include a statement of the material facts believed not to be disputed, and relevant law. Supporting affidavits may also be included.

(c) *Cross-motions.* In its response to a motion for summary decision, a party may cross-move for summary decision. The initial moving party may serve and file a response to any cross-motion for summary decision within 20 days after the service of that cross-motion.

(d) *Stay.* A motion for summary decision stays the time to answer. The Judge will establish the time for serving and filing an answer in the order determining the motion for summary decision.

§ 134.213 Discovery.

(a) *Motion.* A party may obtain discovery only upon motion, and for good cause shown.

§ 134.214

(b) *Forms.* The forms of discovery which a Judge can order under paragraph (a) of this section include requests for admissions, requests for production of documents, interrogatories, and depositions.

(c) *Limitations.* Discovery may be limited in accordance with the terms of a protective order. Further, privileged information and irrelevant issues or facts will not be subject to discovery.

(d) *Disputes.* If a dispute should arise between the parties over a particular discovery request, the party seeking discovery may serve and file a motion to compel discovery. Discovery may be opposed on the grounds of harassment, needless embarrassment, irrelevance, undue burden or expense, privilege, or confidentiality.

[61 FR 2683, Jan. 29, 1996, as amended at 63 FR 35766, June 30, 1998]

§ 134.214 Subpoenas.

(a) *Availability.* At the request of a party, or upon his or her own initiative, a Judge may issue a subpoena requiring a witness to appear and testify, or to produce particular documents, at a specified time and place.

(b) *Requests.* A request for the issuance of a subpoena must be written, served upon all parties, and filed. The request must clearly identify the witness and any documents to be subpoenaed, and must set forth the relevance of the testimony or documents sought.

(c) *Service.* A subpoena may only be served by personal delivery. The individual making service shall prepare an affidavit stating the date, time, and place of the service. The party which obtained the subpoena must serve upon all other parties, and file with OHA, a copy of the subpoena and affidavit of service within 2 days after service is made.

(d) *Motion to quash.* A motion to limit or quash a subpoena must be served and filed within 10 days after service of the subpoena, or by the return date of the subpoena, whichever date comes first. Any response to the motion must be served and filed within 10 days after service of the motion, unless a shorter time is specified by the Judge. No oral argument will be heard on the motion unless the Judge directs otherwise.

13 CFR Ch. I (1-1-01 Edition)

§ 134.215 Interlocutory appeals.

(a) *General.* A motion for leave to take an interlocutory appeal from a Judge's ruling will not be entertained in those proceedings in which OHA issues final decisions. In all other cases, an interlocutory appeal will be permitted only if, upon motion by a party, or upon the Judge's own initiative, the Judge certifies that his or her ruling raises a question which is immediately appealable. Interlocutory appeals will be decided by the AA/OHA or a designee.

(b) *Motion for certification.* A party must serve and file a motion for certification no later than 20 days after issuance of the ruling to which the motion applies. A denial of the motion does not preclude objections to the ruling in any subsequent request for review of an initial decision.

(c) *Basis for certification.* The Judge will certify a ruling for interlocutory appeal only if he or she determines that:

(1) The ruling involves an important question of law or policy about which there is substantial ground for a difference of opinion; and

(2) An interlocutory appeal will materially expedite resolution of the case, or denial of an interlocutory appeal would cause undue hardship to a party.

(d) *Stay of proceedings.* A stay while an interlocutory appeal is pending will be at the discretion of the Judge.

§ 134.216 Alternative dispute resolution procedures.

At any time during the pendency of a case, the parties may submit a joint motion requesting that the Judge permit the use of alternative dispute resolution procedures to assist in resolving the matter. If the motion is granted, the Judge will also stay the proceedings before OHA, in whole or in part, as he or she deems appropriate, pending the outcome of the alternative dispute resolution procedures.

§ 134.217 Settlement.

At any time during the pendency of a case, the parties may submit a settlement agreement, signed by all settling parties, to the Judge. Settlement negotiations, and rejected settlement