

§ 142.24

§ 142.24 Can witnesses be subpoenaed?

A party seeking the appearance and testimony of any individual or the production of documents or records at a hearing may request in writing that the ALJ issue a subpoena. Any such request must be filed with the ALJ not less than 15 days before the scheduled hearing date unless otherwise allowed by the ALJ for good cause. A subpoena shall be issued by the ALJ in the manner specified by § 134.214 of this chapter.

§ 142.25 Can a party or witness object to discovery?

Any party or prospective witness may file a motion to quash a subpoena or to limit discovery or the disclosure of evidence. Motions to limit discovery or to object to the disclosure of evidence are governed by § 134.213 of this chapter. Motions to limit or quash subpoenas are governed by § 134.214(d) of this chapter.

§ 142.26 Can a party informally discuss the case with the ALJ?

No. Such discussions are forbidden as ex parte communications with the ALJ as set forth in § 134.220 of this chapter. This does not prohibit a party from communicating with other employees of OHA to inquire about the status of a case or to ask routine questions concerning administrative functions and procedures.

§ 142.27 Are there sanctions for misconduct?

The ALJ may sanction a party or representative, as set forth in § 134.219 of this chapter.

§ 142.28 Where is the hearing held?

The ALJ will hold the hearing in any judicial district of the United States:

- (a) In which the defendant resides or transacts business; or
- (b) In which the claim or statement on which liability is based was made, presented or submitted to SBA; or
- (c) As agreed upon by the defendant and the ALJ.

§ 142.29 Are witness lists exchanged before the hearing?

(a) At least 15 days before the hearing or at such other time as ordered by the ALJ, the parties must exchange

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witness lists and copies of proposed hearing exhibits, including copies of any written statements or transcripts of deposition testimony that the party intends to offer in lieu of live testimony.

(b) If a party objects, the ALJ will not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to an opposing party unless the ALJ finds good cause for the omission or concludes that there is no prejudice to the objecting party.

(c) Unless a party objects within the time set by the ALJ, documents exchanged in accordance with this section are deemed to be authentic for the purpose of admissibility at the hearing.

DECISIONS AND APPEALS

§ 142.30 How is the case decided?

(a) The ALJ will issue an initial decision based only on the record. It will contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The ALJ will serve the initial decision on all parties within 90 days after close of the hearing or expiration of any allowed time for submission of post-hearing briefs. If the ALJ fails to meet this deadline, he or she shall promptly notify the parties of the reason for the delay and set a new deadline.

(c) The findings of fact must include a finding on each of the following issues:

- (1) Whether any one or more of the claims or statements identified in the complaint violate this part; and
- (2) If the defendant is liable for penalties or assessments, the appropriate amount of any such penalties or assessments, considering any mitigating or aggravating factors.

(d) The initial decision will include a description of the right of a defendant found liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the Administrator.