

§ 202.117 Rule 17: Petition to reopen a hearing; to rehear or reargue a proceeding; to reconsider an order; or to set aside a default order.

(a) *Filing of petition*—(1) *To reopen a hearing.* Any party may file a petition to reopen a hearing to take further evidence, at any time prior to the issuance of the final order, or prior to a tentative order becoming final. Such a petition must state the nature and purpose of the evidence to be offered, show that it is not merely cumulative, and state a good reason why it was not offered at the hearing if oral, or filed in the hearing if written.

(2) *To rehear or reargue a proceeding or reconsider an order.* Any party may file a petition to rehear or reargue a proceeding or reconsider an order of the judicial officer, at any time within 20 days after service on such party of such order. Such a petition must specify the matters claimed to have been erroneously decided, and the basis for the petitioner's claim that such matters were erroneously decided.

(3) *To set aside a default order.* Any respondent against whom an order is issued by the judicial officer, upon failure to file an answer as required, may file a petition to set aside such order, at any time within 20 days after service on such respondent of such order. Such a petition must state a good reason why an answer was not filed as required.

(b) *Brief or memorandum of law.* If such a petitioner wishes to file a brief or memorandum of law in support of such a petition, it must be filed with such petition.

(c) *Procedure.* A presiding officer shall be assigned upon the filing of any such petition, or upon notice to the hearing clerk (which may be written or oral, or by telephone) that any party intends to file any such petition. The party filing any such petition shall be referred to as the complainant or respondent, depending on the original designation of such party in the proceeding; such party shall have the burden of establishing that such petition should be granted. If a petition to reopen is timely filed, the order shall not be issued pending decision whether to grant or deny the petition. If a petition to rehear or reargue or reconsider, or

to set aside a default order, is timely filed, operation of the order shall be stayed automatically pending decision whether to grant or deny it; if such a petition is not timely filed, operation of the order shall not be stayed unless the Judicial Officer shall determine otherwise.

(d) *Service; answer.* No such petition shall be granted unless it, with the brief or memorandum of law in support of it, if any, is first served on each party to the proceeding other than the one filing it. Each such other party, within 20 days after such service on such party, may file an answer to such petition. If any such party wishes to file a brief or memorandum of law in support of such an answer, it must be filed with such answer. Any such answer, with the brief or memorandum of law in support of it, if any, shall be served on each party to the proceeding other than the one filing it. Any such petition may be denied without such service.

(e) *Submission for decision; service of order.* The presiding officer shall prepare a recommendation with respect to the petition, and submit it to the judicial officer for decision. Such a recommendation shall be prepared in the form of a final order for signature by the judicial officer. It shall not be served on the parties unless and until it is signed by the judicial officer. The order of the judicial officer shall be served on the parties.

(f) *Practice upon decision.* If the judicial officer decides to reopen a hearing, or to rehear or permit reargument of a proceeding, or to set aside a default order, a presiding officer shall be assigned and the rules of practice shall be followed thereafter as applicable.

§ 202.118 Rule 18: Presiding officer.

(a) *Powers.* Subject to review as provided elsewhere in these rules, the presiding officer assigned to any proceeding shall have power to:

(1) Set the time, place, and manner of a prehearing conference and an oral hearing, adjourn the oral hearing from time to time, and change the time, place, and manner of oral hearing;

(2) Administer oaths and affirmations;

(3) Issue subpoenas requiring the attendance and testimony of witnesses and the production of documentary evidence at an oral hearing;

(4) Summon and examine witnesses and receive evidence at an oral hearing;

(5) Take or order the taking of depositions;

(6) Admit or exclude evidence;

(7) Hear oral argument on facts or law;

(8) Require each party to provide all other parties and the presiding officer with a copy of any exhibit that the party intends to introduce into evidence prior to any oral hearing to be conducted by telephone or audio-visual telecommunication;

(9) Require each party to provide all other parties with a copy of any document that the party intends to use to examine a deponent prior to any deposition to be conducted by telephone or audio-visual telecommunication;

(10) Require that any hearing to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties and the presiding officer are able to transmit and receive documents during the hearing;

(11) Require that any deposition to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties are able to transmit and receive documents during the deposition; and

(12) Do all acts and take all measures necessary for the maintenance of order and the efficient conduct of the proceeding, including the exclusion of contumacious counsel or other persons.

(b) *Motions and requests.* The presiding officer is authorized to rule on all motions and requests filed in the proceeding prior to submission of the presiding officer's report to the judicial officer, *Provided*, That a presiding officer is not authorized to dismiss a complaint. Submission or certification of any question to the judicial officer, prior to submission of the report, shall be in the discretion of the presiding officer.

(c) *Reassignment.* For any good reason, including absence, illness, resignation, death, or inability to act, of the attorney assigned to act as a presiding

officer in any proceeding under these rules, the powers and duties of such attorney in the proceeding may be assigned to any other attorney who is employed in the Office of the General Counsel of the Department, without abatement of the proceeding.

(d) *Disqualification.* No person shall be assigned to act as a presiding officer in any proceeding who (1) has any material pecuniary interest in any matter or business involved in the proceeding; (2) is related within the third degree by blood or marriage to any party to the proceeding; or (3) has any conflict of interest which might impair such person's objectivity in the proceeding. A person assigned to act as a presiding officer shall ask to be replaced, in any proceeding in which such person believes that reason exists for disqualification of such person.

(e) *Procedure on petition for disqualification.* Any party may file a petition for disqualification of the presiding officer, which shall set forth with particularity the grounds of alleged disqualification. Any such petition shall be filed with the hearing clerk, who shall immediately transmit it to the judicial officer and inform the presiding officer. The record of the proceeding also shall immediately be transmitted to the judicial officer. After such investigation or hearing as the judicial officer deems necessary, the judicial officer shall either deny the petition or direct that another presiding officer be assigned to the proceeding. The petition, and notice of the order of the judicial officer, shall be made a part of the record and served on the parties; if any record is made on such a petition, it shall be a part of the record of the proceeding.

[43 FR 30510, July 14, 1978, as amended at 60 FR 8467, Feb. 14, 1995]

§ 202.119 Rule 19: Fees of witnesses.

Witnesses subpoenaed before the presiding officer, and witnesses whose depositions are taken, shall be entitled to the same fees and mileage as are paid for like services in the courts of the United States. Fees and mileage shall be paid by the party at whose instance the witness appears or the deposition is taken.