

terms that are mutually agreeable. Any settlement reached shall be in writing and signed by both parties and shall identify the allegations resolved. A copy of any settlement shall be served on the Commission.

(b) With the agreement of the parties, the Commission may refer a complaint to a neutral mediator or to any other alternative dispute resolution process authorized by the Administrative Dispute Resolution Act, 5 U.S.C. 571 to 583, or other statute.

(c) The Commission may use the services of the Federal Mediation and Conciliation Service, other federal agencies, appropriate professional organizations, employees of the Commission and other appropriate sources in selecting neutrals for alternative dispute resolution processes.

(d) The alternative dispute resolution process shall be strictly confidential, and no party to a complaint or neutral shall disclose any dispute resolution communication or any information provided in confidence to the neutral except as provided in 5 U.S.C. 584.

#### § 1603.109 Investigations.

(a) Before referring a complaint to an administrative law judge under section 201 of this part, the Commission may conduct investigation using an exchange of letters, interrogatories, fact-finding conferences, interviews, on-site visits or other fact-finding methods that address the matters at issue.

(b) During an investigation of a complaint under this part, the Commission shall have the authority to sign and issue a subpoena requiring the attendance and testimony of witnesses, the production of evidence and access to evidence for the purposes of examination and the right to copy. The subpoena procedures contained in 29 CFR 1601.16 shall apply to subpoenas issued pursuant to this section.

### Subpart B—Hearings

#### § 1603.201 Referral and scheduling for hearing.

(a) Upon request by the complainant under paragraph (b) of this section or if the complaint is not dismissed or resolved under subpart A of this part, on behalf of the Commission, the Office of

Federal Operations shall transmit the complaint file to an administrative law judge, appointed under 5 U.S.C. 3105, for a hearing.

(b) If the complaint has not been referred to an administrative law judge within 180 days after filing, the complainant may request that the complaint be immediately transmitted to an administrative law judge for a hearing.

(c) The administrative law judge shall fix the time, place, and date for the hearing with due regard for the convenience of the parties, their representatives or witnesses and shall notify the parties of the same.

#### § 1603.202 Administrative law judge.

The administrative law judge shall have all the powers necessary to conduct fair, expeditious, and impartial hearings as provided in 5 U.S.C. 556(c). In addition, the administrative law judge shall have the power to:

(a) Change the time, place or date of the hearing;

(b) Enter a default decision against a party failing to appear at a hearing unless the party shows good cause by contacting the administrative law judge and presenting arguments as to why the party or the party's representative could not appear either prior to the hearing or within two days after the scheduled hearing; and

(c) Take any appropriate action authorized by the Federal Rules of Civil Procedure (28 U.S.C. appendix).

#### § 1603.203 Unavailability or withdrawal of administrative law judges.

(a) In the event the administrative law judge designated to conduct the hearing becomes unavailable or withdraws from the adjudication, another administrative law judge may be designated for the purpose of further hearing or issuing a decision on the record as made, or both.

(b) The administrative law judge may withdraw from the adjudication at any time the administrative law judge deems himself or herself disqualified. Prior to issuance of the decision, any party may move that the administrative law judge withdraw on the ground

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of personal bias or other disqualification, by filing with the administrative law judge promptly upon discovery of the alleged facts an affidavit setting forth in detail the matters alleged to constitute grounds for withdrawal.

(c) The administrative law judge shall rule upon the motion for withdrawal. If the administrative law judge concludes that the motion is timely and has merit, the administrative law judge shall immediately withdraw from the adjudication. If the administrative law judge does not withdraw, the adjudication shall proceed.

### § 1603.204 Ex parte communications.

(a) Oral or written communications concerning the merits of an adjudication between the administrative law judge or decision-making personnel of the Commission and an interested party to the adjudication without providing the other party a chance to participate are prohibited from the time the matter is assigned to an administrative law judge until the Commission has rendered a final decision. Communications concerning the status of the case, the date of a hearing, the method of transmitting evidence to the Commission and other purely procedural questions are permitted.

(b) Decision-making personnel of the Commission include members of the Commission and their staffs and personnel in the Office of Federal Operations, but do not include investigators and intake staff.

(c) Any communication made in violation of this section shall be made part of the record and an opportunity for rebuttal by the other party allowed. If the communication was oral, a memorandum stating the substance of the discussion shall be placed in the record.

(d) Where it appears that a party has engaged in prohibited ex parte communications, that party may be required to show cause why, in the interest of justice, his or her claim or defense should not be dismissed, denied or otherwise adversely affected.

### § 1603.205 Separation of functions.

(a) The administrative law judge may not be responsible to or subject to the supervision or direction of a Commis-

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sion employee engaged in investigating complaints under this part.

(b) No Commission employee engaged in investigating complaints under this part shall participate or advise in the decision of the administrative law judge, except as a witness or counsel in the adjudication, or its appellate review.

### § 1603.206 Consolidation and severance of hearings.

(a) The administrative law judge may, upon motion by a party or upon his or her own motion, after providing reasonable notice and opportunity to object to all parties affected, consolidate any or all matters at issue in two or more adjudications docketed under this part where common parties, or factual or legal questions exist; where such consolidation would expedite or simplify consideration of the issues; or where the interests of justice would be served. For purposes of this section, no distinction is made between joinder and consolidation of adjudications.

(b) The administrative law judge may, upon motion of a party or upon his or her own motion, for good cause shown, order any adjudication severed with respect to some or all parties, claims or issues.

### § 1603.207 Intervention.

(a) Any person or entity that wishes to intervene in any proceeding under this subpart shall file a motion to intervene in accordance with § 1603.208.

(b) A motion to intervene shall indicate the question of law or fact common to the movant's claim or defense and the complaint at issue and state all other facts or reasons the movant should be permitted to intervene.

(c) Any party may file a response to a motion to intervene within 15 days after the filing of the motion to intervene.

### § 1603.208 Motions.

(a) All motions shall state the specific relief requested. All motions shall be in writing, except that a motion may be made orally during a conference or during the hearing. After providing an opportunity for response, the administrative law judge may rule