

## § 10.84

the request of the Administrative Law Judge.

### § 10.84 Proof, variance, amendment of pleadings.

In the case of a variance between the allegations in a pleading and the evidence adduced in support of the pleading, the Administrative Law Judge may order or authorize amendment of the pleading to conform to the evidence; provided, that the party who would otherwise be prejudiced by the amendment is given reasonable opportunity to meet the allegations of the pleading as amended, and the Administrative Law Judge shall make findings on any issue presented by the pleadings as so amended.

### § 10.85 Motions and requests.

Motions and requests may be filed with the Director of Practice or with the Administrative Law Judge.

### § 10.86 Representation.

A respondent may appear in person or may be represented by counsel or other representative. The Director of Practice may be represented by an attorney or other employee of the Department of the Treasury.

### § 10.87 Administrative Law Judge.

(a) *Appointment.* An Administrative Law Judge appointed as provided by 5 U.S.C. 3105, shall conduct proceedings upon complaints for the disqualification of appraisers.

(b) *Powers of Administrative Law Judge.* Among other powers, the Administrative Law Judge shall have authority, in connection with any disqualification proceeding assigned or referred to him/her, to do the following:

- (1) Administer oaths and affirmations;
- (2) Make rulings upon motions and requests, which rulings may not be appealed from prior to the close of a hearing except at the discretion of the Administrative Law Judge, in extraordinary circumstances;
- (3) Determine the time and place of hearing and regulate its course and conduct;
- (4) Adopt rules of procedure and modify the same from time to time as occa-

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sion requires for the orderly disposition of proceedings;

(5) Rule upon offers of proof, receive relevant evidence, and examine witnesses;

(6) Take or authorize the taking of depositions;

(7) Receive and consider oral or written argument on facts or law;

(8) Hold or provide for the holding of conferences for the settlement or simplification of the issues by consent of the parties;

(9) Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding; and

(10) Make initial decisions.

### § 10.88 Hearings.

(a) *In general.* The Administrative Law Judge shall preside at the hearing on a complaint for the disqualification of an appraiser. Hearings shall be stenographically recorded and transcribed and the testimony of witnesses shall be taken under oath or affirmation. Hearings will be conducted pursuant to 5 U.S.C. 556.

(b) *Failure to appear.* If either party to the proceeding fails to appear at the hearing after due notice thereof has been sent to him/her, the right to a hearing shall be deemed to have been waived and the Administrative Law Judge may make a decision by default against the absent party.

### § 10.89 Evidence.

(a) *In general.* The rules of evidence prevailing in courts of law and equity are not controlling in hearings on complaints for the disqualification of appraisers. However, the Administrative Law Judge shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(b) *Depositions.* The deposition of any witness taken pursuant to §10.90 may be admitted.

(c) *Proof of documents.* Official documents, records, and papers of the Internal Revenue Service or the Department of the Treasury shall be admissible in evidence without the production of an officer or employee to authenticate them. Any such documents, records, and papers may be evidenced by a copy attested or identified by an officer or