

**§ 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]