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29 CFR Ch. I (7-1-05 Edition)

the administrative law judge. In proceedings before the Board, answering briefs may be filed within 14 days, or such further period as the Board may allow, from the last date on which an initial brief may be filed. No further briefs shall be filed except by special leave of the Board. At the conclusion of the briefing schedule, the judge (or the Board) will decide the case or make other disposition of it.

(10) To make and file decisions, including bench decisions delivered within 72 hours after conclusion of oral argument, in conformity with Public Law 89-554, 5 U.S.C. 557;

(11) To call, examine, and cross-examine witnesses and to introduce into the record documentary or other evidence;

(12) To request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(13) To take any other action necessary under the foregoing and authorized by the published Rules and Regulations of the Board.

(b) Upon the request of any party or the judge assigned to hear a case, or on his or her own motion, the chief administrative law judge in Washington, D.C., the associate chief judge in San Francisco, California, the associate chief judge in Atlanta, Georgia, or the associate chief judge in New York, New York may assign a judge who shall be other than the trial judge to conduct settlement negotiations. In exercising his or her discretion, the chief or associate chief judge making the assignment will consider, among other factors, whether there is reason to believe that resolution of the dispute is likely, the request for assignment of a settlement judge is made in good faith, and the assignment is otherwise feasible. Provided, however, that no such assignment shall be made absent the agreement of all parties to the use of this procedure.

(1) The settlement judge shall convene and preside over conferences and settlement negotiations between the parties, assess the practicalities of a potential settlement, and report to the chief or associate the status of settlement negotiations, recommending con-

tinuation or termination of the settlement negotiations. Where feasible settlement conferences shall be held in person.

(2) The settlement judge may require that the attorney or other representative for each party be present at settlement conferences and that the parties or agents with full settlement authority also be present or available by telephone.

(3) Participation of the settlement judge shall terminate upon the order of the chief or associates issued after consultation with the settlement judge. The conduct of settlement negotiations shall not unduly delay the hearing.

(4) All discussions between the parties and the settlement judge shall be confidential. The settlement judge shall not discuss any aspect of the case with the trial judge, and no evidence regarding statements, conduct, offers of settlement, and concessions of the parties made in proceedings before the settlement judge shall be admissible in any proceeding before the Board, except by stipulation of the parties. Documents disclosed in the settlement process may not be used in litigation unless voluntarily produced or obtained pursuant to subpoena.

(5) No decision of a chief or associate concerning the assignment of a settlement judge or the termination of a settlement judge's assignment shall be appealable to the Board.

(6) Any settlement reached under the auspices of a settlement judge shall be subject to approval in accordance with the provisions of §101.9 of the Board's Statements of Procedure.

[61 FR 6941, Feb. 23, 1996, as amended at 62 FR 1668, Jan. 13, 1997; 67 FR 656, Jan. 7, 2002; 69 FR 1677, Jan. 12, 2004]

§ 102.36 Unavailability of administrative law judge.

In the event the administrative law judge designated to conduct the hearing becomes unavailable to the Board after the hearing has been opened, the chief administrative law judge, in Washington, DC, the associate chief judge, in San Francisco, California, the associate chief judge in New York, New York, or the associate chief judge in Atlanta, Georgia, as the case may be, may designate another administrative

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law judge for the purpose of further hearing or other appropriate action.

(49 Stat. 449; 29 U.S.C. 151-166, as amended by (61 Stat. 136; 29 U.S.C. Sup. 151-167), (65 Stat. 601; 29 U.S.C. 158, 159, 168), (73 Stat. 519; 29 U.S.C. 141-168), (88 Stat. 395-397; 29 U.S.C. 152, 158, 169, 183))

[45 FR 51193, Aug. 1, 1980, as amended at 62 FR 1668, Jan. 13, 1997]

§ 102.37 Disqualification of administrative law judge.

An administrative law judge may withdraw from a proceeding whenever he deems himself disqualified. Any party may request the administrative law judge, at any time following his designation and before filing of his decision, to withdraw on ground of personal bias or disqualification, by filing with him promptly upon the discovery of the alleged facts a timely affidavit setting forth in detail the matters alleged to constitute grounds for disqualification. If, in the opinion of the administrative law judge, such affidavit is filed with due diligence and is sufficient on its face, he shall forthwith disqualify himself and withdraw from the proceeding. If the administrative law judge does not disqualify himself and withdraw from the proceeding, he shall so rule upon the record, stating the grounds for his ruling and proceed with the hearing, or, if the hearing has closed, he shall proceed with issuance of his decision, and the provisions of § 102.26, with respect to review of rulings of administrative law judges, shall thereupon apply.

(49 Stat. 449; 29 U.S.C. 151-166, as amended by (61 Stat. 136; 29 U.S.C. Sup. 151-167), (65 Stat. 601; 29 U.S.C. 158, 159, 168), (73 Stat. 519; 29 U.S.C. 141-168), (88 Stat. 395-397; 29 U.S.C. 152, 158, 169, 183))

[45 FR 51193, Aug. 1, 1980]

§ 102.38 Rights of parties.

Any party shall have the right to appear at such hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record documentary or other evidence, except that the participation of any party shall be limited to the extent permitted by the administrative law judge: *And provided further*, That docu-

mentary evidence shall be submitted in duplicate.

§ 102.39 Rules of evidence controlling so far as practicable.

Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to the Act of June 19, 1934, (title 28 U.S.C., secs. 723-B, 723-C).

§ 102.40 Stipulations of fact admissible.

In any such proceeding stipulations of fact may be introduced in evidence with respect to any issue.

§ 102.41 Objection to conduct of hearing; how made; objections not waived by further participation.

Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing, accompanied by a short statement of the grounds of such objection, and included in the record. No such objection shall be deemed waived by further participation in the hearing.

§ 102.42 Filings of briefs and proposed findings with the administrative law judge and oral argument at the hearing.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which may include presentation of proposed findings and conclusions, and shall be included in the stenographic report of the hearing. In the discretion of the administrative law judge, any party may, upon request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge, who may fix a reasonable time for such filing, but not in excess of 35 days from the close of the hearing. Requests for further extensions of time shall be made to the chief administrative law judge in Washington, D.C., to the associate chief judge in San Francisco, California, to the associate chief judge in New York, New York, or to the