

## § 26.4

the hearing officer may enter any appropriate order necessary to the disposition of the hearing including a determination against the noncomplying party.

### § 26.4 Ex parte communications.

(a) *Definition.* An ex parte communication is any communication with a hearing officer, direct or indirect, oral or written, concerning the merits of procedures of any pending proceeding which is made by a party in the absence of any other party.

(b) *Prohibition of ex parte communications.* Ex parte communications are prohibited except where:

(1) The purpose and content of the communication have been disclosed in advance or simultaneously to all parties; or

(2) The communication is a request for information concerning the status of the case.

(c) *Procedure after receipt of ex parte communication.* Any hearing officer who receives an ex parte communication which the hearing officer knows or has reason to believe is unauthorized shall promptly place the communication, or its substance, in all files and shall furnish copies to all parties. Unauthorized ex parte communications shall not be taken into consideration in deciding any matter in issue.

[48 FR 43304, Sept. 23, 1983; 48 FR 46980, Oct. 17, 1983]

### § 26.5 Disqualification of hearing officer.

When a hearing officer believes there is a basis for disqualification in a particular proceeding, the hearing officer shall withdraw by notice on the record and shall notify the Secretary and the official initiating the action under appeal. Whenever any party believes that the hearing officer should be disqualified from presiding in a particular proceeding, the party may file a motion with the hearing officer requesting the hearing officer to withdraw from presiding over the proceedings. This motion shall be supported by affidavits setting forth the alleged grounds for disqualification. If the hearing officer does not withdraw, a written statement of his or her reasons shall be in-

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corporated in the record and the hearing shall proceed.

### REPRESENTATION OF THE PARTIES

#### § 26.6 Department representative.

In each case heard before a hearing officer under this part, the Department shall be represented by the General Counsel or designee.

#### § 26.7 Respondent's representative.

The party against whom the administrative action is taken may be represented at hearing as follows:

(a) Individuals may appear on their own behalf;

(b) A member of a partnership or joint venture may appear on behalf of the partnership or joint venture;

(c) A bona fide officer may appear on behalf of a corporation or association upon a showing of adequate authorization;

(d) An attorney who files a notice of appearance with the hearing officer may represent any party. For purposes of this paragraph, an attorney is defined as a member of the bar of a Federal court or of the highest court of any State; or

(e) An individual not included within paragraphs (a) through (d) of this section may represent the respondent upon an adequate showing, as determined by the hearing officer, that the individual possesses the legal, technical or other qualifications necessary to advise and assist in the presentation of the case.

#### § 26.8 Standards of practice.

Attorneys shall conform to the standards of professional and ethical conduct required of practitioners in the courts of the United States and by the bars of which the attorneys are members. Any attorney may be prohibited by the Hearing Officer from representing a party if the attorney is not qualified under § 26.7 or if such action is necessary to maintain order in or the integrity of the pending proceeding.

### PLEADINGS AND MOTIONS

#### § 26.9 Notice of administrative action.

In every case, there shall be a notice of administrative action. The notice