

§ 2554.19

- (4) Administer oaths and affirmations;
 - (5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;
 - (6) Rule on motions and other procedural matters;
 - (7) Regulate the scope and timing of discovery;
 - (8) Regulate the course of the hearing and the conduct of representatives and parties;
 - (9) Examine witnesses;
 - (10) Receive, rule on, exclude, or limit evidence;
 - (11) Upon motion of a party, take official notice of facts;
 - (12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;
 - (13) Conduct any conference, argument, or hearing on motions in person or by telephone; and
 - (14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.
- (c) The ALJ does not have the authority to find Federal statutes or regulations invalid.

§ 2554.19 Can the reviewing official or ALJ be disqualified?

- (a) A reviewing official or an ALJ may disqualify himself or herself at any time.
- (b) Upon motion of any party, the reviewing official or ALJ may be disqualified as follows:
 - (1) The motion must be supported by an affidavit containing specific facts establishing that personal bias or other reason for disqualification exists, including the time and circumstances of the discovery of such facts;
 - (2) The motion must be filed promptly after discovery of the grounds for disqualification, or the objection will be deemed waived; and
 - (3) The party, or representative of record, must certify in writing that the motion is made in good faith.
- (c) Once a motion has been filed to disqualify the reviewing official, the ALJ will halt the proceedings until resolving the matter of disqualification. If the ALJ determines that the reviewing official is disqualified, the ALJ will

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dismiss the complaint without prejudice. If the ALJ disqualifies himself or herself, the case will be promptly reassigned to another ALJ.

§ 2554.20 How are issues brought to the attention of the ALJ?

- (a) All applications to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.
- (b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.
- (c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.
- (d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.
- (e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 2554.21 How are papers served?

- (a) *Form.* (1) Documents filed with the ALJ shall include an original and two copies.
- (2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (e.g., motion to quash subpoena).
- (3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.
- (4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.
- (b) *Service.* A party filing a document with the ALJ shall at the time of filing, serve a copy of such document on

every other party. Service upon any party of any document other than those required to be served as prescribed in §2554.12 shall be made by delivering a copy or by placing a copy of the document in the United States mail, postage prepaid and addressed, to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 2554.22 How is time computed?

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued by placing it in the mail, an additional five days will be added to the time permitted for any response.

§ 2554.23 What happens during a prehearing conference?

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

- (1) Simplification of the issues;
- (2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;
- (3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearances at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 2554.24 What rights are there to review documents?

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under §2554.8 are based, unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in §2554.8 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed