

Federal Deposit Insurance Corporation

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(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ will not be responsible to, or subject to the supervision or direction of, the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the FDIC will be an attorney employed in the FDIC's Legal Division; however, the representative of the FDIC may not participate or advise in the review of the initial decision by the Board.

§ 308.514 Ex parte contacts.

No party or person (except employees of the ALJ's office) will communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 308.515 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. An affidavit alleging conflict of interest or other reason for disqualification must accompany the motion.

(c) Such motion and affidavit must be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections will be deemed waived.

(d) Such affidavit must state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. The representative of record must certify that the affidavit is made in good faith and this certification must accompany the affidavit.

(e) Upon the filing of such a motion and affidavit, the ALJ will proceed no further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ will dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case will be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the Board may determine the matter only as part of the Board's review of the initial decision upon appeal, if any.

§ 308.516 Rights of parties.

Except as otherwise limited by this subpart, all parties may:

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law which will be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law.

§ 308.517 Authority of the ALJ.

(a) The ALJ will conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to:

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(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;

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(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, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(12) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(13) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this subpart.

(c) The ALJ does not have the authority to make any determinations regarding the validity of federal statutes or regulations or of directives, rules, resolutions, policies, orders or other such general pronouncements issued by the Corporation.

§ 308.518 Prehearing conferences.

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

(b) Upon the motion of any party, the ALJ will 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 pleading, including the need for a more definite statement;

(3) Stipulations and admissions of fact 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 (subject to the objection of other parties) to waive appearance at an oral hearing and to submit only documentary evidence 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;

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(9) The time, date, 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.

§ 308.519 Disclosure of 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 § 308.503(b) of this subpart 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 § 308.504 of this subpart 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 with the ALJ following the filing of an answer pursuant to § 308.508 of this subpart.

§ 308.520 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admission of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and