

§ 13.219

for decision if the pleadings, depositions, answers to interrogatories, admissions, matters that the administrative law judge has officially noticed, or evidence introduced during the hearing show that there is no genuine issue of material fact and that the party making the motion is entitled to a decision as a matter of law. The party making the motion for decision has the burden of showing that there is no genuine issue of material fact disputed by the parties.

(6) *Motion for disqualification.* A party may file a motion for disqualification with the administrative law judge and shall serve a copy on each party. A party may file the motion at any time after the administrative law judge has been assigned to the proceedings but shall make the motion before the administrative law judge files an initial decision in the proceedings.

(i) *Motion and supporting affidavit.* A party shall state the grounds for disqualification, including, but not limited to, personal bias, pecuniary interest, or other factors showing disqualification, in the motion for disqualification. A party shall submit an affidavit with the motion for disqualification that sets forth, in detail, the matters alleged to constitute grounds for disqualification.

(ii) *Answer.* A party shall respond to the motion for disqualification not later than 5 days after service of the motion for disqualification.

(iii) *Decision on motion for disqualification.* The administrative law judge shall render a decision on the motion for disqualification not later than 15 days after the motion has been filed. If the administrative law judge finds that the motion for disqualification and supporting affidavit show a basis for disqualification, the administrative law judge shall withdraw from the proceedings immediately. If the administrative law judge finds that disqualification is not warranted, the administrative law judge shall deny the motion and state the grounds for the denial on the record. If the administrative law judge fails to rule on a party's motion for disqualification within 15 days after the motion has been filed, the motion is deemed granted.

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(iv) *Appeal.* A party may appeal the administrative law judge's denial of the motion for disqualification in accordance with §13.219(b) of this subpart.

[Amdt. 13-21, 55 FR 27575, July 3, 1990, as amended by 71 FR 70464, Dec. 5, 2006]

§ 13.219 Interlocutory appeals.

(a) *General.* Unless otherwise provided in this subpart, a party may not appeal a ruling or decision of the administrative law judge to the FAA decisionmaker until the initial decision has been entered on the record. A decision or order of the FAA decisionmaker on the interlocutory appeal does not constitute a final order of the Administrator for the purposes of judicial appellate review as provided in §13.235 of this subpart.

(b) *Interlocutory appeal for cause.* If a party files a written request for an interlocutory appeal for cause with the administrative law judge, or orally requests an interlocutory appeal for cause, the proceedings are stayed until the administrative law judge issues a decision on the request. If the administrative law judge grants the request, the proceedings are stayed until the FAA decisionmaker issues a decision on the interlocutory appeal. The administrative law judge shall grant an interlocutory appeal for cause if a party shows that delay of the appeal would be detrimental to the public interest or would result in undue prejudice to any party.

(c) *Interlocutory appeals of right.* If a party notifies the administrative law judge of an interlocutory appeal of right, the proceedings are stayed until the FAA decisionmaker issues a decision on the interlocutory appeal. A party may file an interlocutory appeal with the FAA decisionmaker, without the consent of the administrative law judge, before an initial decision has been entered in the case of:

(1) A ruling or order by the administrative law judge barring a person from the proceedings.

(2) Failure of the administrative law judge to dismiss the proceedings in accordance with §13.215 of this subpart.

(3) A ruling or order by the administrative law judge in violation of §13.205(b) of this subpart.

(d) *Procedure.* A party shall file a notice of interlocutory appeal, with supporting documents, with the FAA decisionmaker and the hearing docket clerk, and shall serve a copy of the notice and supporting documents on each party and the administrative law judge, not later than 10 days after the administrative law judge's decision forming the basis of an interlocutory appeal of right or not later than 10 days after the administrative law judge's decision granting an interlocutory appeal for cause, whichever is appropriate. A party shall file a reply brief, if any, with the FAA decisionmaker and serve a copy of the reply brief on each party, not later than 10 days after service of the appeal brief. The FAA decisionmaker shall render a decision on the interlocutory appeal, on the record and as a part of the decision in the proceedings, within a reasonable time after receipt of the interlocutory appeal.

(e) The FAA decisionmaker may reject frivolous, repetitive, or dilatory appeals, and may issue an order precluding one or more parties from making further interlocutory appeals in a proceeding in which there have been frivolous, repetitive, or dilatory interlocutory appeals.

[Amdt. 13-21, 55 FR 27575, July 3, 1990, as amended by Amdt. 13-23, 55 FR 45983, Oct. 31, 1990; 71 FR 70464, Dec. 5, 2006]

§ 13.220 Discovery.

(a) *Initiation of discovery.* Any party may initiate discovery described in this section, without the consent or approval of the administrative law judge, at any time after a complaint has been filed in the proceedings.

(b) *Methods of discovery.* The following methods of discovery are permitted under this section: depositions on oral examination or written questions of any person; written interrogatories directed to a party; requests for production of documents or tangible items to any person; and requests for admission by a party. A party is not required to file written interrogatories and responses, requests for production of documents or tangible items and responses, and requests for admission and response with the administrative law judge or the hearing docket clerk. In

the event of a discovery dispute, a party shall attach a copy of these documents in support of a motion made under this section.

(c) *Service on the agency.* A party shall serve each discovery request directed to the agency or any agency employee on the agency attorney of record.

(d) *Time for response to discovery requests.* Unless otherwise directed by this subpart or agreed by the parties, a party shall respond to a request for discovery, including filing objections to a request for discovery, not later than 30 days of service of the request.

(e) *Scope of discovery.* Subject to the limits on discovery set forth in paragraph (f) of this section, a party may discover any matter that is not privileged and that is relevant to the subject matter of the proceeding. A party may discover information that relates to the claim or defense of any party including the existence, description, nature, custody, condition, and location of any document or other tangible item and the identity and location of any person having knowledge of discoverable matter. A party may discover facts known, or opinions held, by an expert who any other party expects to call to testify at the hearing. A party has no ground to object to a discovery request on the basis that the information sought would not be admissible at the hearing if the information sought during discovery is reasonably calculated to lead to the discovery of admissible evidence.

(f) *Limiting discovery.* The administrative law judge shall limit the frequency and extent of discovery permitted by this section if a party shows that—

(1) The information requested is cumulative or repetitious;

(2) The information requested can be obtained from another less burdensome and more convenient source;

(3) The party requesting the information has had ample opportunity to obtain the information through other discovery methods permitted under this section; or

(4) The method or scope of discovery requested by the party is unduly burdensome or expensive.