

## § 28.19

(6) Name and address of the representative, if any, who will act for the petitioner in any further stages of the matter; and

(7) Signature of the petitioner or petitioner's representative.

(e) Failure to raise a claim or defense in the petition for review shall not bar its submission later unless to do so would prejudice the rights of the other parties or unduly delay the proceedings.

(f) *Non-EEO class actions.* One or more persons may file a petition for review as representatives of a class in any matter within the Board's jurisdiction. For the purpose of determining whether it is appropriate to treat an appeal as a class action, the administrative judge will be guided, but not controlled, by the applicable provisions of the Federal Rules of Civil Procedure. See § 28.97 for EEO class actions.

[58 FR 61992, Nov. 23, 1993, as amended at 59 FR 59106, Nov. 16, 1994; 61 FR 9090, Mar. 7, 1996; 61 FR 36810, July 15, 1996; 65 FR 80280, Dec. 21, 2000]

### § 28.19 Content of response by charged party.

(a) Within 20 days after service of a copy of a petition for review, the GAO or other charged party shall file a response containing at least the following:

(1) A statement of the position of the charged party on each of the issues raised by the petitioner, including admissions, denials or explanations of each allegation made in the petition and any other defenses to the petition.

(2) Designation of, and signature by, the representative authorized to act for the charged party in the matter.

(b) Failure to raise a claim or defense in the response shall not bar its submission later unless to do so would prejudice the rights of the other parties or unduly delay the proceedings.

### § 28.20 Number of Pleadings, service and response.

(a) *Number.* One original and seven copies of all pleadings (see definition in § 28.3) must be filed with the Board. However, when before a single administrative judge, one original and three copies will be adequate unless informed otherwise.

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(b) *Service.* (1) *Service by the Board.* The Board will serve copies of a petition for review upon the parties to the proceeding by mail. The Board will attach a service list indicating the names and addresses of the parties to the proceeding or their designated representatives. The Board will not serve copies of any pleadings, motions, or other submissions by the parties after the initial petition for review.

(2) *Service by the parties.* The parties shall serve on each other one copy of all pleadings other than the initial petition for review. Service shall be made by mailing or by delivering personally a copy of the pleading to each party on the service list previously provided by the Board. Each pleading must be accompanied by a certificate of service specifying how and when service was made. It shall be the duty of all parties to notify the Board and one another in writing of any changes in the names or addresses on the service list.

(c) *Time limitations for response to pleadings.* Unless otherwise specified by the administrative judge or this subpart, a party shall file a response to a pleading within 20 days of the service of that pleading upon the party.

(d) Size limitations are set forth at § 28.9(b).

### § 28.21 Prehearing procedures and motions practice.

(a) *Amendments to petitions.* The Board, at its discretion, may allow amendments to a petition for review as long as all persons who are parties to the proceeding have adequate notice to prepare for the new allegations and if to do so would not prejudice the rights of the other parties or unduly delay the proceedings.

(b) *Motions practice.* When an action is before an administrative judge, motions of the parties shall be filed with the administrative judge and shall be in writing except for oral motions made during the hearing. An original and 3 copies of written motions shall be filed with the administrative judge. When an action is before the full Board, an original and 7 copies of any motion shall be filed with the Board. Copies shall be served simultaneously

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upon the other parties to the proceeding. An original and 3 copies of responses in opposition to written motions must be filed with the administrative judge, or if the action is before the full Board an original and 7 copies must be filed with the Board, and served simultaneously upon the other parties to the proceeding. Responses shall be filed within 20 days of service of the motion, unless the administrative judge requires a shorter response time. All written motions and responses thereto shall include a proposed order, where applicable. A certificate of service will be filed with all motions and responses thereto showing service by mail or personal delivery of the motion to the other parties. Additional responses to the motion or to the response to the motion by either party may be filed only with the approval of the administrative judge. Motions for extension of time will be granted only for good cause shown.

(c) *Oral argument.* The administrative judge may allow oral argument on the motion at his or her discretion.

(d) *General Counsel Settlement.* Where the General Counsel under § 28.12(a) transmits a settlement which has been agreed to by the parties, the settlement agreement shall be the final disposition of the case.

### § 28.22 Administrative judges.

(a) *Exercise of authority.* Administrative judges may exercise authority as provided in paragraph (b) of this section upon their own initiative or upon the motion of a party, as appropriate.

(b) *Authority.* Administrative judges shall conduct fair and impartial hearings and take all necessary action to avoid delay in the disposition of all proceedings. They shall have all powers necessary to that end unless otherwise limited by law, including, but not limited to, the authority to:

- (1) Administer oaths and affirmations;
- (2) Issue subpoenas in accordance with § 28.46;
- (3) Rule upon offers of proof and receive relevant evidence;
- (4) Rule upon discovery issues as appropriate under §§ 28.42 through 28.45;
- (5) Convene a hearing as appropriate, regulate the course of the hearing,

maintain decorum and exclude from the hearing any disruptive persons;

(6) Exclude from the hearing any witness, except the petitioner(s), whose later testimony might be colored by testimony of other witnesses, or any persons whose presence might have a chilling effect on a testifying witness;

(7) Rule on all motions, witness and exhibit lists and proposed findings;

(8) Require the filing of memoranda of law and the presentation of oral argument with respect to any question of law;

(9) Order the production of evidence and the appearance of witnesses whose testimony would be relevant, material and not repetitious;

(10) Impose sanctions as provided under § 28.24 of this part;

(11) Hold prehearing conferences for the settlement and simplification of issues; and

(12) File recommended or initial decisions, as appropriate.

### § 28.23 Disqualification of administrative judges.

(a) In the event that an administrative judge considers himself or herself disqualified, he or she shall withdraw from the case, stating on the record the reasons therefor, and shall immediately notify the Board of the withdrawal.

(b) Any party may file a motion requesting the administrative judge to withdraw on the basis of personal bias or other disqualification and specifically setting forth the reasons for the request. This motion shall be filed as soon as the party has reason to believe there is a basis for disqualification.

(c) The administrative judge shall rule on the withdrawal motion. If the motion is denied, the party requesting withdrawal may take an appeal to the full Board. The notice of appeal, together with a supporting brief, shall be filed within 15 days of service of the denial of the motion. Upon receipt of the appeal, the Board will determine whether a response from the other party or parties is required, and if so, will fix by order the time for the filing of the response.