

which the proceeding or investigation is or has been pending;

(4) Whether the former officer or employee worked directly or in close association with the Office of Interstate Land Sales Registration personnel assigned to the proceeding or investigation;

(5) Whether during service with the Department of Housing and Urban Development the former officer or employee was engaged in any matter concerning the individual, company or industry in the proceeding or investigation.

(c) The requested authorization will not be given in any case:

(1) Where it appears that the former officer or employee during service with the Department of Housing and Urban Development participated personally and substantially in the proceeding or investigation, or

(2) Where the application is filed within one (1) year after termination of the former officer's or employee's service with the Department of Housing and Urban Development and it appears that within a period of one (1) year prior to the termination of service the proceeding or investigation was within the official responsibility of the former officer or employee.

In other cases, authorization will be given where the Secretary is satisfied that the appearance or participation will not involve any actual conflict of interest or impropriety thereof.

(d) In any case in which a former officer or employee of the Department of Housing and Urban Development is prohibited under this section from appearing or participating in a proceeding or investigation, any partner or legal or business associate of such former officer or employee shall likewise be so prohibited unless:

(1) Such partner or legal or business associate files with the Secretary an affidavit that in connection with the matter the services of the disqualified former officer or employee will not be utilized in any respect and the matter will not be discussed with the former officer or employee in any manner, and that the disqualified former officer or employee shall not share, directly or indirectly, in any fees or retainers received for services rendered in connec-

tion with such proceeding or investigation;

(2) The disqualified former officer or employee files an affidavit agreeing not to participate in the matter in any manner, and not to discuss it with any person involved in the matter; and

(3) Upon the basis of such affidavits, the Secretary determines that the appearance or participation by the partner or associate would not involve any actual conflict of interest or impropriety thereof.

§ 1720.135 Standards of practice.

(a) Attorneys shall conform to the standards of professional and ethical conduct required by practitioners in the courts of the United States and by the bars of which the attorneys are members.

(b) The privilege of appearing or practicing may be denied, temporarily or permanently, to any person who is found after notice and opportunity for hearing which at the person's request or in the discretion of the Secretary may be private, and for presentation of oral argument in the matter:

(1) Not to possess the requisite qualifications to represent others, or

(2) To be lacking in character or integrity, or

(3) To have engaged in unethical or improper professional conduct.

(c) Contemptuous conduct at any hearing shall be grounds for summary exclusion from said hearing for the duration of the hearing.

§ 1720.140 Administrative law judge, powers and duties.

(a) Hearings in adjudicative proceedings shall be presided over by a duly qualified administrative law judge who shall be designated by the Secretary in a notice to the parties in the proceeding.

(b) Administrative law judges shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the disposition of proceedings and to maintain order. They shall have all powers necessary to those ends including all powers granted under 5 U.S.C. 556(c), and also power including but not limited to the following:

§ 1720.145

- (1) To administer oaths and affirmations.
- (2) To issue subpoenas and orders requiring access.
- (3) To take or to cause depositions to be taken.
- (4) To rule upon offers of proof and receive evidence.
- (5) To regulate the course of the hearings and the conduct of the parties and their counsel.
- (6) To hold conferences for simplification and clarification of the issues or any other purpose.
- (7) To consider and rule upon as justice may require, all procedural and other motions appropriate in an adjudicative proceeding, including motions to open defaults.
- (8) To make and file decisions.
- (9) To certify question to a Departmental appeals officer.
- (10) To take any action authorized by the rules in this part or other appropriate action.

§ 1720.145 Disqualification of administrative law judge.

(a) When an administrative law judge feels disqualified from presiding in a particular proceeding, the administrative law judge shall withdraw therefrom by notice on the record and shall notify the Secretary of such withdrawal.

(b) Whenever any party believes that the administrative law judge should be disqualified from presiding, or continuing to preside in a particular proceeding, such party may file with the administrative law judge a motion that the administrative law judge be disqualified and removed. Such motion shall be supported by affidavits setting forth the alleged grounds for disqualification. If the administrative law judge does not agree to disqualification, the hearing shall proceed, and the question of fair hearing and due process may be raised on appeal.

§ 1720.150 Failure to comply with administrative law judge's directions.

Any party who refuses or fails to comply with a lawfully issued order or direction of an administrative law judge may be considered to be in contempt of the Secretary. The circumstances of any such neglect, refusal

24 CFR Ch. X (4-1-99 Edition)

or failure, together with a recommendation for appropriate action, shall be promptly certified by the administrative law judge to the Secretary who may make such orders in regard thereto as the circumstances may warrant.

§ 1720.155 Ex parte communications.

(a) No person shall communicate with an administrative law judge or an appeals officer either directly or indirectly concerning any pending proceeding unless prior to or simultaneously with such communication its contents are disclosed in detail to all persons interested in the proceeding; nor shall an administrative law judge or appeals officer request or consider any such unauthorized ex parte communication. This prohibition shall not apply to a simple request for information respecting the status of the proceeding, nor to any ex parte communication expressly authorized by these rules.

(b) Any administrative law judge or appeals officer, who receives an ex parte communication which the judge knows or has reason to believe is unauthorized, shall promptly place the communication, or its substance, in the public file and shall inform all persons interested in the proceeding of its existence and general contents. Facts or arguments so communicated shall not be taken into account in deciding any matter in issue unless such facts or arguments shall be brought properly before the administrative law judge.

(c) Opportunity to answer allegations or contentions contained in an unauthorized ex parte communication may be afforded any interested person upon motion for leave to do so, wherever such leave will operate to assure a fair hearing or decision.

§ 1720.160 Form and filing requirements.

(a) *Filing.* Except as otherwise permitted, an original and three copies of all documents shall be filed with the Docket Clerk for Administrative Proceedings, Room 10278, Department of Housing and Urban Development, Washington, DC 20410, on official work days between the hours of 8:45 a.m. and 5:15 p.m.