

**§511.42**

**§511.42 Powers and duties of Presiding Officer.**

(a) *General.* A Presiding Officer shall have the duty to conduct full, fair, and impartial hearings, to take appropriate action to avoid unnecessary delay in the disposition of proceedings, and to maintain order. He or she shall have all powers necessary to that end, including the following powers:

- (1) To administer oaths and affirmations;
- (2) To compel discovery and to impose appropriate sanctions for failure to make discovery;
- (3) To issue subpoenas;
- (4) To rule upon offers of proof and receive relevant and probative evidence;
- (5) To regulate the course of the hearings and the conduct of the parties and their representatives therein;
- (6) To hold conferences for simplification of the issues, settlement of the proceedings, or any other proper purposes;
- (7) To consider and rule, orally or in writing, upon all procedural and other motions appropriate in an adjudicative proceeding;
- (8) To issue initial decisions, rulings, and orders, as appropriate;
- (9) To certify questions to the Administrator for determination; and
- (10) To take any action authorized in this part or in conformance with the provisions of title 5, U.S.C., sections 551 through 559.

(b) *Exclusion of parties by Presiding Officer.* A Presiding Officer shall have the authority, for good cause stated on the record, to exclude from participation in a proceeding any party, participant, and/or representative who shall violate requirements of §511.76. Any party, participant and/or representative so excluded may appeal to the Administrator in accordance with the provisions of §511.23. If the representative of a party or participant is excluded, the hearing shall be suspended for a reasonable time so that the party or participant may obtain another representative.

(c) *Substitution of Presiding Officer.* In the event of the substitution of a new Presiding Officer for the one originally designated, any motion predicated

upon such substitution shall be made within five (5) days of the substitution.

(d) *Interference.* In the performance of adjudicative functions, a Presiding Officer shall not be responsible to or subject to the supervision or direction of the Administrator or of any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for NHTSA. All directions by the Administrator to a Presiding Officer concerning any adjudicative proceeding shall appear on and be made a part of the record.

(e) *Disqualification of Presiding Officer.*  
(1) When a Presiding Officer deems himself or herself disqualified to preside in a particular proceeding, he or she shall withdraw by notice on the record and shall notify the Chief Administrative Law Judge of the withdrawal.

(2) Whenever, for any reason, any party shall deem the Presiding Officer to be disqualified to preside, or to continue to preside, in a particular proceeding, that party may file with the Chief Administrative Law Judge a motion to disqualify and remove, supported by affidavit(s) setting forth the alleged grounds for disqualification. A copy of the motion and supporting affidavit(s) shall be served by the Chief Administrative Law Judge on the Presiding Officer whose removal is sought. The Presiding Officer shall have ten (10) days from service to reply in writing. Such motion shall not stay the proceeding unless otherwise ordered by the Presiding Officer or the Administrator. If the Presiding Officer does not disqualify himself or herself, the Administrator will determine the validity of the grounds alleged, either directly or on the report of another Presiding Officer appointed to conduct a hearing for that purpose, and shall in the event of disqualification take appropriate action, by assigning another Presiding Officer or requesting assignment of another Administrative Law Judge through the Office of Hearings.

[45 FR 81578, Dec. 11, 1980, as amended at 53 FR 15783, May 3, 1988]

**§511.43 Evidence.**

(a) *Applicability of Federal Rules of Evidence.* The Federal Rules of Evidence shall apply to proceedings held