

CHAPTER 2 CONTRACT APPEALS BOARD: HEARINGS AND DECISIONS

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200 PRE-HEARING PROCEDURES

- 200.1 The Board may, upon its own initiative, or upon application of either party, arrange for a telephone conference or direct the parties to appear before the Chairperson at a specified time and place, prior to or during the course of a hearing on the merits, to consider the following:
- (a) The simplification of the issues;
 - (b) The necessity or desirability of amending the pleadings;
 - (c) The possibility of obtaining admissions of fact and stipulations concerning the use of documents to avoid unnecessary proof;
 - (d) The limitation of the number of witnesses;
 - (e) The possibility of prior mutual exchange between or among the parties of prepared testimony and exhibits;
 - (f) A schedule for the completion of discovery, if discovery is deemed necessary, and has not been completed; and
 - (g) Any other matters that may aid in shortening the hearing on the merits and in the disposition of the appeal.

- 200.2 The Chairperson shall make an order or memorandum which shall recite the action taken at the conference. This order or memorandum when filed shall be a part of the record in the appeal and shall control the subsequent course of the appeal unless modified by the Board or the Chairperson.
- 200.3 Based on an examination of the pleadings, and its determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit pre-hearing briefs in any case in which a hearing will be held.
- 200.4 If the Board does not require pre-hearing briefs either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a pre-hearing brief to the Board.
- 200.5 In any case where a pre-hearing brief is submitted, it shall be furnished so as to be received by the Board at least fifteen (15) days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

AUTHORITY: Unless otherwise noted, the authority for this chapter is An Act approved July 1, 1902, 32 *Stat.* 591, ch. 1352, D.C. Code §1-331 (1981), and Part VI C. of Organization Order No. 9 issued July 6, 1968 in C.O. 68-399.

SOURCE: 36 DCCR §§8.1 and 8.2, DCR Sp. Ed. at 14 (August 30, 1970); as amended by Final Rulemaking published at 33 DCR 24, 28 (January 3, 1986).

201 EVIDENCE

- 201.1 Oral and documentary evidence, not ordinarily admissible under the generally accepted rules of evidence, may be received in evidence in the discretion of the Board.
- 201.2 The Board may exclude any evidence which is irrelevant, immaterial, unduly repetitious or cumulative, or which is not of the kind which would affect reasonable and fair-minded persons in the conduct of their daily affairs.
- 201.3 The Board may take official notice of matters not appearing in evidence in the record, but the Board shall in each instance so advise the parties who shall be afforded an opportunity, within the time specified by the Board, to show the contrary.
- 201.4 When books, papers, records, or documents have been received in evidence, a true copy of the evidence, or of any part of the evidence as may be material or relevant, may be substituted for the books, papers, records or documents.
- 201.5 Where written matter offered in evidence is embraced in a document containing other matter which is not intended to be offered in evidence, the offering party shall present the original document for inspection at the hearing or at the pre-hearing conference and shall offer a true copy of the matter which is to be introduced, unless the Chairperson, or the Board, determines that the matter is short enough to be read into the record. Other parties shall be afforded opportunity to introduce in evidence, in like manner, other portions of the original document.
- 201.6 After a final order has been entered, the Board may, upon request, permit the withdrawal of original exhibits, or any part thereof, by the party entitled to the

exhibits. Unless notified that a court appeal has been taken or is proposed, the Board may, at any time more than one (1) year from the date of the final order, dispose of any physical (as opposed to document) exhibits, unless it has been earlier withdrawn by the party that submitted it.

- 201.7 In order to conserve time and to reduce the length of transcripts of hearings, the direct testimony of any witness may be presented in writing when stipulated by the parties or directed in a pre-hearing conference order. The proposed testimony shall be dated, subscribed and sworn to by the witness.
- 201.8 Copies of the proposed testimony, taken pursuant to §201.7 shall be served upon all parties to the appeal at least five (5) days in advance of the session of the hearing at which that testimony is to be offered, unless all parties agree that all or any part of the five (5) days' prior service be waived or unless the Board permits the introduction of that testimony after having afforded all parties reasonable opportunity (not less than twenty-four (24) hours) to examine it.
- 201.9 Unless otherwise agreed by all parties, a witness whose written testimony is offered shall be present and shall be subject to cross examination. When written testimony is received in evidence it shall be incorporated by reference into the transcript of the hearing and shall not be set forth in full.

SOURCE: 36 DCRR §§9.1, 9.2, 9.3, 9.4 and 9.5, DCR Sp. Ed. at 14 and 15 (August 30, 1970); as amended by Final Rulemaking published at 33 DCR 24, 29 (January 3, 1986).

202 DEPOSITIONS

- 202.1 After an appeal has been docketed by the Board either party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for use as evidence at the hearing of the appeal. The attendance of witnesses may be compelled by the use of subpoenas as provided in §203.
- 202.2 All expenses in connection with the taking of a deposition shall be paid by the party taking the deposition, except as provided in §202.3.
- 202.3 Any other party shall be entitled to a copy of the deposition only upon payment of reasonable charges.
- 202.4 At any hearing or in any proceeding before the Board, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, to the extent provided in §§202.5 through 202.8.
- 202.5 Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.
- 202.6 The deposition of a party or of any one who at the time of taking the deposition was an officer, director, or managing agent of a public or private corporation, partnership, or association which is a party may be used by an adverse party for any purpose.
- 202.7 The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Board finds the following:

- (a) That the witness is dead;
 - (b) That the witness is at a greater distance than one hundred (100) miles from the District of Columbia, unless it appears that the absence of the witness was procured by the party offering the deposition;
 - (c) That the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment;
 - (d) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or
 - (e) That, upon application and notice, such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.
- 202.8 If only part of a deposition is offered in evidence by a party, an adverse party or the Board may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts.
- 202.9 Objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.
- 202.10 Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held; elsewhere the deposition may be taken before an officer or person agreed upon by the parties or designated by the Board.
- 202.11 A party desiring to take the deposition of any person upon oral examination shall give at least fifteen (15) days notice in writing to every other party to the appeal. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or her or the particular class or group to which he or she belongs. A copy of the notice shall be filed with the Board.
- 202.12 The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by some one acting under his or her direction and in his or her presence, record the testimony of the witness.
- 202.13 The testimony should be taken stenographically and transcribed unless the parties agree otherwise.
- 202.14 All objections made at the time of examination to the qualification of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, should be noted by the officer upon the deposition.
- 202.15 Evidence objected to shall be taken subject to the objections.

- 202.16 In lieu of participating in the oral examination parties served with notice of taking a deposition may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim.
- 202.17 When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by the witness, unless that examination and reading are waived by the witness and the parties.
- 202.18 Any change in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign.
- 202.19 If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress the Board holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.
- 202.20 Each deposition shall have a caption as in §108, and shall show the date and place of taking, the name of witness, and the names of all persons present.
- 202.21 The officer shall certify on the deposition that the witness was duly sworn by him and her and that the deposition is a true record of the testimony given by the witness, and shall enclose the original deposition and exhibits, if any, in a sealed package and shall promptly file the same with the Board or send it by registered or certified mail, postage prepaid, to the Board for filing.
- 202.22 A party desiring to take the deposition of any person upon written interrogatories shall serve them upon every other party with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom the deposition is to be taken, and shall file a copy of the notice with the Board.
- 202.23 Within fifteen (15) days a party served with written interrogatories may serve cross interrogatories upon the party proposing to take the deposition. Within (ten) 10 days thereafter the latter may serve redirect interrogatories upon the party who has served cross interrogatories. Within five (5) days after being served with redirect interrogatories, a party may serve recross interrogatories upon the party proposing to take the deposition.
- 202.24 A copy of the notice and copies of all interrogatories served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly in the manner provided by §§202.12 through 202.21 to take the testimony of the witness in response to the interrogatories and to prepare, certify, and file or mail the deposition, attaching a copy of the notice and interrogatories received by him or her.

SOURCE: 36 DCRR §§10.1, 10.2, 10.3, 10.4, 10.5 and 10.6, DCR Sp. Ed. at 16, 17 and 18 (August 30, 1970).

203 DISCOVERY GENERALLY: WRITTEN INTERROGATORIES, ADMISSION OF FACTS, PRODUCTION OF DOCUMENTS

- 203.1 The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order required to protect a party or person from annoyance, embarrassment, or undue burden or expense. Those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.
- 203.2 After an appeal has been docketed and complaint filed, a party may serve on the other party written interrogatories, requests for admissions, and requests for production of documents.
- 203.3 Written interrogatories shall be answered separately in writing, signed under oath, and answered or objected to within forty-five (45) days after service.
- 203.4 An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory may involve an opinion or contention that relates to fact or the application of law to fact, but the Board may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-hearing conference has been held, or some other event has occurred.
- 203.5 A written request for the admission of the truth of any matter, within the proper scope of discovery, that relates to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents, is to be answered in writing and signed or objected to within forty-five (45) days after service; otherwise, the matter therein may be deemed to be admitted.
- 203.6 A written request for the production, inspection, and copying of any documents or objects not privileged, which reasonably may lead to the discovery of admissible evidence, shall be answered or objected to within forty-five (45) days after service.
- 203.7 Upon request of either party, or on its own initiative, the Board may prescribe a period of time other than that specified in this section.

SOURCE: Final Rulemaking published at 33 DCR 24, 29 (January 3, 1986).

204 SUBPOENAS

- 204.1 Subpoenas for the attendance of witnesses or for the production of documentary evidence, or both, unless directed by the Board upon its own motion, will issue only upon application in writing to the Board or the Chairperson.
- 204.2 The written applications shall specify the relevancy, materiality, and scope of the testimony or documentary evidence sought, including, as to documentary evidence, specification as nearly as may be of the documents desired and the facts to be proved by them in sufficient detail to indicate the materiality and relevancy of the documents.
- 204.3 The party on whose application a subpoena is issued shall, unless otherwise provided by law, pay all fees of such witness, and each application, except when on behalf

of the District of Columbia, shall be accompanied by a deposit, satisfactory to the Chairperson, which shall at least equal the fees to which the witness to be subpoenaed may become entitled.

- 204.4 All subpoenas shall be issued by the Chairperson in the name of the Chief Judge of the Superior Court for the District of Columbia upon forms approved and provided by the Board.
- 204.5 Every witness, except those employed by the District of Columbia, subpoenaed to appear before the Board is entitled to the same fees as are paid witnesses for appearance before the Superior Court for the District of Columbia, except that the fees need not be tendered to the witness in advance of his or her appearing and testifying and/or producing books, records, papers, or other documents before the Board. [D.C. Code §4-801 (1981)]
- 204.6 A subpoena may be served by a member of the Metropolitan Police Department or, when authorized by the Board or the Chairperson, by any other person who is not a party to the appeal and is not less than eighteen (18) years of age. Service of subpoena upon the person named may be made by delivering a copy thereof to him or her or by leaving a copy thereof at his or her place of business with some person of suitable age and discretion there employed by that person, or at his or her dwelling house or usual place of abode and with some person of suitable age and discretion then residing therein.
- 204.7 Service by a member of the Metropolitan Police Department shall be procured by delivering the original subpoena with the copy to be served to the Chief of Police, Room 5080, East Administration Building, Municipal Center, 3rd Street and Indiana Avenue, N.W., Washington, D.C., and if personal service is desired specific request shall be made to the Chief of Police.
- 204.8 If service of a subpoena is made by a member of the Metropolitan Police Department, the service shall be evidenced by his or her return thereon. If service is made by any other person, that person shall make affidavit thereto, describing the manner, place, and time of service, and shall return the affidavit on or with the original subpoena.
- 204.9 In the event any witness having been personally served with a subpoena shall neglect or refuse to obey the subpoena issued, on written application by the party who procured the issuance of the subpoena, the Board may report the fact of the neglect or refusal to a judge of the Superior Court for the District of Columbia who may compel obedience to the subpoena as provided in D.C. Code §4-803 (1981).

SOURCE: 36 DCCR §§11.1, 11.2, 11.3, 11.4, and 11.5, DCR Sp. Ed. at 19 and 20 (August 30, 1970).

EDITOR'S NOTE: Reference in §204.4, §204.5, and §204.9 to the "United States District Court for the District of Columbia" was changed to the "Superior Court of District of Columbia" in conformance with the District of Columbia Court Reorganization Act of 1970, D.C. Code §11-921(a) (1981).

205 HEARINGS

- 205.1 Hearings shall be held in the District of Columbia and at the office of the Board unless otherwise directed by the Board.
- 205.2 When several appeals involving the same contract, or a common question of law or fact, are pending before the Board, on motion or its own initiative the Board may

order a joint hearing of any or all of the matters in issue in the appeals; it may order all such appeals consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

- 205.3 The Board shall give the parties at least seven (7) days' notice of the time and place of hearing, but such notice may be waived by the parties.
- 205.4 If the appellant desires to submit his or her appeal without a hearing, he or she shall so advise the Board in writing. In that event, there shall be no hearing on the merits, unless the Government objects or the Board otherwise directs. The parties may submit briefs within the periods of time specified in §206 of this title.
- 205.5 If a party, his or her attorney, or authorized representative fails to appear at the time and place set for a hearing, the Board shall wait a reasonable time before adjourning the hearing. If, within five (5) days thereafter, the absence is explained to the satisfaction of the Board, a new hearing date shall be set; otherwise the party shall be deemed to have waived a hearing and to have submitted his or her case subject to his or her right to file briefs as provided in §206.
- 205.6 All hearings shall be conducted by the Chairperson alone, unless the Board otherwise determines or one (1) of the parties objects. Prior to setting a date for a hearing which is to be conducted by the Chairperson alone he or she shall so notify the parties who shall have five (5) days from the date of notice to file an objection. At hearings the parties may supplement the record (see §§103.2, 103.6, and 103.7) with evidence produced at the hearing which, if admitted, shall become a part of the record.
- 205.7 Questions concerning the admissibility of evidence and other matters that may arise in the course of the hearing may be ruled upon by the Chairperson or the Board. Unless otherwise stipulated by the parties, every decision upon the merits or which constitutes a final disposition of any appeal or part thereof shall be by the Board.
- 205.8 Any member of the Board who is not present for all or part of a hearing may, nevertheless, participate in the decision of the Board, but he or she shall read the entire transcript of the hearing, or the portions of the transcript covering the period or periods of his absence from the hearing, and at least those other portions of the record (see §207) to which the parties refer at the hearing or in their briefs, together with the briefs and other submissions of the parties.
- 205.9 Witnesses at hearings shall be examined orally under oath or affirmation, which shall be administered by the Chairperson or a member of the Board designated by him or her. Any member of the Board may question any witness at any time during or after examination or cross-examination by the parties.
- 205.10 An official reporter designated by the Board shall make an official transcript of the proceedings at hearings on the merits. After the close of a hearing this transcript, together with any exhibits, briefs, or other documents filed in the proceeding, shall be filed with the board and become a part of the record.
- 205.11 The Board shall transmit one (1) copy of the transcript to the Government and, upon request, copies of the official transcript shall be supplied to other parties by

the official reporter at such rates as may be fixed by contract between the District Government and the official reporter.

- 205.12 Motions to correct an official transcript shall be filed with the Board within ten (10) days after the receipt of the last portion of the transcript, and shall certify the date when the last portion of the transcript was received by the maker of the motion.

SOURCE: 36 DCRR §§12.1 through 12.11, DCR Sp. Ed. at 20-22 (August 30, 1970); as amended by Final Rulemaking published at 33 DCR 24, 30 (January 3, 1986).

206 BRIEFS

- 206.1 Post-hearing briefs may be submitted upon the terms as may be directed by the Chairperson or the presiding officer at the conclusion of the hearing.

- 206.2 Briefs shall conform to the requirements of §108 of these rules except §108.3, and shall be served as provided in §109 of these rules.

SOURCE: 36 DCRR §§13.1 through 13.4, DCR Special Edition at 22 (August 30, 1970); as amended by Final Rulemaking published at 30 DCR 4065 (August 12, 1983).

207 RECORD

- 207.1 The record of the appeal shall include the notice of appeal, complaint, answer, appeal file, all motions and other papers filed by the parties with the Board pursuant to these rules, all correspondence exchanged between the Board and the parties or their attorney, transcripts made of hearings before the Board, and all findings, decisions, opinions and orders of the Board.

SOURCE: 36 DCRR §14.1, DCR Sp. Ed. at 23 (August 30, 1970); as amended by Final Rulemaking published at 33 DCR 24, 30 (January 3, 1986).

208 DECISIONS

- 208.1 Decisions shall be made in writing, solely on the record, as described in §207.1.

- 208.2 With every decision finally disposing of an appeal or of any part thereof the Board will file separate findings of fact and conclusions of law, but if an opinion is filed the findings of fact and conclusions of law may appear therein.

- 208.3 A copy of each decision, including decisions after reconsideration, with its supporting findings of fact and conclusions of law or opinion, shall be transmitted to each party or his or her attorney and §112.9 shall apply.

- 208.4 A party may file a motion for reconsideration with the Board within twenty (20) days after the date of transmission of a copy of a decision to such party. Such motion shall clearly state its grounds, and if based upon alleged errors in any findings of fact or conclusions of law it shall specifically identify such alleged errors and state the changes or corrections desired.

- 208.5 Each alleged error shall be stated in a separately numbered paragraph. Opposition to such motion may be filed as provided in §107.3. The Board may permit or require submission of briefs, or oral argument, or both.

208.6 If the motion is granted the decision shall be vacated and the Board may require additional evidence, and may amend its findings of fact and conclusions of law or make new findings and conclusions, and make a new decision, or the Board may affirm its findings and conclusions and reinstate its decision. The action of the Board after reconsideration shall be set forth in writing and shall be considered a decision within the meaning of this section.

208.7 Every decision of the Board shall become final upon expiration of the time within which a motion for reconsideration of the decision may be filed or, if the motion has been filed, upon denial of the motion. A party may, in writing, waive the right to file a motion for reconsideration, and if all parties so waive the decision shall become final.

SOURCE: 36 DCRR §§15.1, 15.2, 15.3, DCR Sp. Ed. at 23, 24 (August 30, 1970); as amended by Final Rulemaking published at 33 DCR 24, 30 (January 3, 1986).

209 **OPTIONAL SMALL CLAIMS (EXPEDITED) AND ACCELERATED PROCEDURES**

209.1 The procedures in this section are available solely at the election of the appellant.

209.2 In appeals where the amount in dispute is ten thousand dollars (\$10,000) or less, the appellant may elect to have the appeal processed under a **SMALL CLAIMS (EXPEDITED)** procedure requiring decision of the appeal, whenever possible, within one hundred twenty (120) days after the Board receives written notice of the appellant's election to utilize this procedure. An appellant may elect the **ACCELERATED** procedure rather than the **SMALL CLAIMS (EXPEDITED)** procedure for any appeal eligible for the **SMALL CLAIMS (EXPEDITED)** procedure.

209.3 In appeals where the amount in dispute is fifty thousand dollars (\$50,000) or less, the appellant may elect to have the appeal processed under an **ACCELERATED** procedure requiring decision of the appeal, whenever possible, within one hundred eighty (180) days after the Board receives written notice of the appellant's election to utilize this procedure.

209.4 The appellant's election of either the **SMALL CLAIMS (EXPEDITED)** procedure or the **ACCELERATED** procedure may be made by written notice within sixty (60) days after receipt of docketing, unless the period is extended by the Board for good cause. The election may not be withdrawn except with permission of the Board and for good cause.

209.5 In cases proceeding under the **SMALL CLAIMS (EXPEDITED)** procedure, the following time periods shall apply:

- (a) Within ten (10) days from the Government's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the **SMALL CLAIMS (EXPEDITED)** procedure, the Government shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any; remaining documents required under §103.1 shall be submitted in accordance with times specified in that rule unless the Board otherwise directs; and

- (b) Within fifteen (15) days after the Board has acknowledged receipt of appellant's notice of election, the Chairperson or the assigned law member shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties:
- (1) Identify and simplify the issues;
 - (2) Establish a simplified procedure appropriate to the particular appeal involved;
 - (3) Determine whether either party wants a hearing and, if so, fix a time and place therefor;
 - (4) Require the Government to furnish all the additional documents relevant to the appeal; and
 - (5) Establish an expedited schedule for resolution of the appeal.
- 209.6 Pleadings, discovery, and other prehearing activity shall be allowed only when consistent with the requirement to conduct the hearing on the date scheduled, or if no hearing is scheduled to close the record, on a date that will allow decisions within the one hundred twenty (120) day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under these rules as necessary to enable the Board to decide the appeal within the one hundred and twenty (120) day limit, allowing whatever time, up to thirty (30) days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.
- 209.7 Written decisions by the Board in cases processed under the **SMALL CLAIMS (EXPEDITED)** procedure shall be short and contain only summary findings of fact and conclusions. Decisions shall be rendered for the Board by the Chairperson or a single law member with the concurrence of the other, or by a majority among these two and a third member in case of disagreement.
- 209.8 In cases proceeding under the **ACCELERATED** procedure, the parties shall be encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board, in its discretion, may shorten time periods prescribed or allowed elsewhere in these rules, including §103.1, as necessary to enable the Board to decide the appeal within one hundred eighty (180) days after the Board has received the appellant's notice of election of the **ACCELERATED** procedure, and may reserve thirty (30) days for preparation of the decision.
- 209.9 Written decision by the Board in cases processed under the **ACCELERATED** procedure shall be rendered for the Board by the Chairperson or a single law member with the concurrence of the other, or by a majority among these two and a third member in case of disagreement.
- 209.10 Alternatively, in cases where the amount in dispute is ten thousand dollars (\$10,000) or less as to which the **ACCELERATED** procedure has been elected and in which

there has been a hearing, the Chairperson or the single member presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining any oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal.

209.11 Whenever an oral decision is rendered pursuant to §209.10, the Board shall subsequently furnish the parties a typed copy of the oral decision for record and payment purposes, and to establish the starting date for the period for filing a motion for reconsideration under §208.3.

209.12 Motions for reconsideration of cases decided under either the **SMALL CLAIMS (EXPEDITED)** procedure or the **ACCELERATED** procedure need not be decided within the original one hundred and twenty (120) day or one hundred eighty (180) day limit, but all motions shall be processed and decided rapidly so as to fulfill the intent of this rule.

SOURCE: Final Rulemaking published at 30 DCR 4065 (August 12, 1983).

210 **APPLICABILITY OF RULES**

210.1 The Board may at any time amend these rules in whole or in part, and the amendments shall be effective as specified by the Board in its order adopting such amendments.

210.2 This chapter shall govern proceedings in all appeals filed after December 27, 1985, and also all further proceedings in appeals then pending, except to the extent that in the opinion of the Board the application of a particular rule in a particular appeal pending when these amended rules take effect would not be feasible or would work injustice or hardship, in which event the Board shall modify the application of the rule as it may determine.

210.3 In any proceeding the Board may, in its discretion and in the interest of justice or to prevent hardship, waive any of the provisions of these rules. Any motion or request for a waiver shall be served as provided in §109 of these rules and objections may be filed within five (5) days after the date of service; failure to file objections shall be deemed a consent to the waiver sought.

SOURCE: 36 DCRR §§17.1, 17.2, 17.3, DCR Sp. Ed. at 24, 25 (August 30, 1970); as amended by Final Rulemaking published at 33 DCR 24, 30 (January 3, 1986).

211 **EX PARTE COMMUNICATIONS**

211.1 No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal, submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members or to *ex parte* communications concerning the Board's administrative functions or procedures.

SOURCE: Final Rulemaking published at 33 DCR 24, 31 (January 3, 1986).

212 SANCTIONS

212.1 If any party fails or refuses to obey an order issued by the Board, the Board may then make such order as it considers necessary to the just and expeditious conduct of the appeal.

SOURCE: Final Rulemaking published at 33 DCR 24, 31 (January 3, 1986).

299 DEFINITIONS

299.1 The meanings ascribed to the definitions appearing in §199.1 of chapter 1 of this title shall apply to the terms in this chapter.