Rule 22. Subpoenas

(a) Voluntary Cooperation—Each party is expected:

(1) To cooperate and make available witnesses and evidence under its control as requested by the other party without issuance of a subpoena, and

(2) To secure voluntary attendance of desired third-party witnesses and production of desired third-party books, records, documents, or tangible things whenever possible.

(b) General—Upon written request of either party, or on his or her own initiative, an Administrative Judge may issue a subpoena requiring:

(1) Testimony at a deposition—The deposing of a witness in the city or county where the witness resides or is employed or transacts business in person, or at another location convenient for the witness that is specifically determined by the Board;

(2) Testimony at a hearing—The attendance of a witness for the purpose of taking testimony at a hearing; and

(3) Production of books and records—The production by the witness at the deposition or hearing of books and records (including electronically stored information and other tangible things) designated in the subpoena.

(c) Request for Subpoena—

(1) A request for subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought; or

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

(2) The Board may honor a request for subpoena not made within the time limitations set forth in paragraph (c)(1) of this Rule.

(3) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books and records sought. The Board may require resubmission of a request that does not provide this information.

(d) Requests to Quash or Modify—Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may quash or modify the subpoena if it is unreasonable or oppressive or for other good cause shown, or require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Board may act upon such a request at any time after a copy of the request has been served upon the opposing party.

(e) Form of Subpoena—

(1) Every subpoena shall state the name of the Board and the caption of the appeal, and shall

command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and records at a time and place therein specified. In issuing a subpoena to a requesting party, the Administrative Judge will sign the subpoena, enter the name of the witness and may otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781.

(f) Service—

(1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served in any state, commonwealth, territory, or the District of Columbia. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day’s attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law. However, where the subpoena is issued on behalf of the Government, payment need not be tendered in advance of attendance.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking such evidence as the Board deems appropriate.

(g) Contumacy or Refusal to Obey a Subpoena—In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board may apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

Parent topic: RULES