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Procedure for motions for new trial in actions tried without a jury.

§ 1308.39 Briefs and motions.

(a) All motions shall be accompanied by a brief or memorandum setting forth supporting authorities. Briefs in opposition to a motion shall be served within 10 days after receipt of the motion, unless otherwise specified in this part, or by order of the Hearing Officer.

(b) The Hearing Officer shall set the schedule for service of prehearing and posthearing briefs on the merits.

(c) A motion to dismiss an appeal for lack of jurisdiction should be served seasonably, but may be served at any time. The issue of lack of jurisdiction may be raised by the Hearing Officer sua sponte, in which case the Hearing Officer shall set a briefing schedule on the issue in the document raising it to the parties.

(d) A motion for summary judgment may be made at any time after the appeal file has been transmitted under § 1308.26.

Subpart E—Subpoenas

§ 1308.51 Form.

(a) A subpoena shall state the name of the Board and the title of the appeal; shall command the person to whom it is directed to attend and give testimony at a deposition or hearing, as appropriate, and, if appropriate, to produce specified books, papers, documents, or tangible things at a time and place therein specified; and shall notify the person of the right to request that the subpoena be quashed or modified and of the penalties for contumacy or failure to obey.

(b) [Reserved]

§ 1308.52 Issuance.

(a) A deposition subpoena shall not issue except upon the filing of a notice of deposition of the person to be subpoenaed, which notice should normally be filed at least 15 days in advance of the scheduled deposition.

(b) A subpoena for the attendance of a witness at an evidentiary hearing shall not issue except upon the filing of a request for appearance at the hearing of the person to be subpoenaed, which request should normally be filed at least 30 days in advance of the scheduled hearing. The request should state:

(1) The name and address of the witness;

(2) The general scope of the witness' testimony;

(3) The books, records, papers, and other tangible things sought to be produced; and

(4) The general relevance of the matters sought to the case.

(c) Upon receipt of a notice of deposition or request for appearance at a hearing, the Hearing Officer shall fill in the name of the witness and sign and issue a subpoena otherwise in blank to the party seeking it, together with a duplicate for proof of service. The party requesting the subpoena shall fill in both copies before service.

(d) Letters rogatory may be issued by the Hearing Officer as provided in 28 U.S.C. 1781–1784.

§ 1308.53 Service.

A subpoena may be served at any place, and may be served by any individual not a party who is at least 18 years of age, or as otherwise provided by law. Service may be made by an attorney or employee of a party. Service shall be made by personal delivery of the subpoena to the individual named therein, together with tender of the amounts required by 5 U.S.C. 503 or other applicable law. The individual making service shall file with the Board the duplicate subpoena, filled out as served, with the return of service filled in, signed and notarized.

§ 1308.54 Requests to quash or modify.

The person served with a subpoena (or a party, if the person served is a party's employee) may request the Hearing Officer to quash or modify a subpoena. Such requests shall be made and determined in accordance with the time limits and principles of Rule 45(a), (b) and (d) of the Federal Rules of Civil Procedure.

§ 1308.55 Penalties.

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 will apply to the court through the General