

by a party to expedite the administrative proceeding may, at the discretion of the Judge, be made orally or in writing with concurrent actual notice to all parties. Upon granting a motion to expedite the scheduling of an administrative proceeding, the Judge may expedite pleading schedules, prehearing conferences and the hearing, as appropriate. If a motion for an expedited administrative proceeding is granted, a hearing on the merits may not be scheduled with less than 5 business days notice, unless all parties consent to an earlier hearing.

§ 904.210 Summary decision.

The Judge may render a summary decision disposing of all or part of the administrative proceeding if:

- (a) Jointly requested by every party to the administrative proceeding; and
- (b) There is no genuine issue as to any material fact and a party is entitled to summary decision as a matter of law.

§ 904.211 Failure to appear.

(a) If, after proper service of notice, any party appears at the hearing and an opposing party fails to appear, the Judge is authorized to:

- (1) Dismiss the case with prejudice, where the Agency is a non-appearing party; or
- (2) Where the respondents have failed to appear, find the facts as alleged in the NOVA, NOPS and/or NIDP and enter a default judgment against the respondents.

(b) Following an order of default judgment, a non-appearing party may file a petition for reconsideration, in accordance with § 904.272. Only petitions citing reasons for non-appearance, as opposed to arguing the merits of the case, will be considered.

(c) The Judge will place in the record all the facts concerning the issuance and service of the notice of time and place of hearing.

(d) The Judge may deem a failure of a party to appear after proper notice a waiver of any right to a hearing and consent to the making of a decision on the record.

(e) Failure to appear at a hearing shall not be deemed to be a waiver of

the right to be served with a copy of the Judge's decision.

§ 904.212 Failure to prosecute or defend.

(a) Whenever the record discloses the failure of any party to file documents, respond to orders or notices from the Judge, or otherwise indicates an intention on the part of any party not to participate further in the administrative proceeding, the Judge may issue:

- (1) An order requiring any party to show why the matter that is the subject of the failure to respond should not be disposed of adversely to that party's interest;
 - (2) An order requiring any party to certify intent to appear at any scheduled hearing; or
 - (3) Any order, except dismissal, as is necessary for the just and expeditious resolution of the case.
- (b) [Reserved]

§ 904.213 Settlements.

If settlement is reached before the Judge has certified the record, the Judge shall remove the case from the docket upon notification by the Agency.

§ 904.214 Stipulations.

The parties may, by stipulation, agree upon any matters involved in the administrative proceeding and include such stipulations in the record with the consent of the Judge. Written stipulations must be signed and served upon all parties.

§ 904.215 Consolidation.

The Chief Administrative Law Judge may order that two or more administrative proceedings that involve substantially the same parties or the same issues be consolidated and/or heard together, either upon request of a party or *sua sponte*.

§ 904.216 Prehearing conferences.

(a) Prior to any hearing or at any other time deemed appropriate, the Judge may, upon his or her own initiative, or upon the application of any party, direct the parties to appear for a conference or arrange a telephone conference. The Judge shall provide at least 24 hours notice of the conference

to the parties, and shall record such conference by audio recording or court reporter, to consider:

(1) Simplification or clarification of the issues or settlement of the case by consent;

(2) The possibility of obtaining stipulations, admissions, agreements, and rulings on admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(3) Agreements and rulings to facilitate the discovery process;

(4) Limitation of the number of expert witnesses or other avoidance of cumulative evidence;

(5) The procedure, course, and conduct of the administrative proceeding;

(6) The distribution to the parties and the Judge prior to the hearing of written testimony and exhibits in order to expedite the hearing; or

(7) Such other matters as may aid in the disposition of the administrative proceeding, including the status of settlement discussions.

(b) The Judge in his or her discretion may issue an order showing the matters disposed of in such conference, and shall provide a transcript of the conference upon the request of a party.

DISCOVERY

§ 904.240 Discovery generally.

(a) *Preliminary position on issues and procedures (PPIP)*. Prior to hearing the Judge will ordinarily require the parties to submit a written PPIP. Except for information regarding a respondent's ability to pay an assessed civil penalty, this PPIP will normally obviate the need for further discovery.

(1) The PPIP shall include the following information: A factual summary of the case; a summary of all factual and legal issues in dispute; a list of all defenses that will be asserted, together with a summary of all factual and legal bases supporting each defense; a list of all potential witnesses, together with a summary of their anticipated testimony; and a list of all potential exhibits.

(2) The PPIP shall be signed by the party and by an attorney, if one is retained. The PPIP shall be served upon

all parties, along with a copy of each potential exhibit listed in the PPIP.

(3) A party has the affirmative obligation to supplement the PPIP as available information or documentation relevant to the stated charges or defenses becomes known to the party.

(b) *Additional discovery*. Upon written motion by a party, the Judge may allow additional discovery only upon a showing of relevance, need, and reasonable scope of the evidence sought, by one or more of the following methods: Deposition upon oral examination or written questions, written interrogatories, production of documents or things for inspection and other purposes, and requests for admission. With respect to information regarding a respondent's ability to pay an assessed civil penalty, the Agency may serve any discovery request (*i.e.*, deposition, interrogatories, admissions, production of documents) directly upon the respondent without first seeking an order from the Judge.

(c) *Time limits*. Motions for depositions, interrogatories, admissions, or production of documents or things may not be filed within 20 days of the hearing except on order of the Judge for good cause shown. Oppositions to a discovery motion must be filed within 10 days of service unless otherwise provided in these rules or by the Judge.

(d) *Oppositions*. Oppositions to any discovery motion or portion thereof must state with particularity the grounds relied upon. Failure to object in a timely fashion constitutes waiver of the objection.

(e) *Scope of discovery*. The Judge may limit the scope, subject matter, method, time, or place of discovery. Unless otherwise limited by order of the Judge, the scope of discovery is as follows:

(1) *In general*. As allowed under paragraph (b) of this section, parties may obtain discovery of any matter, not privileged, that is relevant to the allegations of the charging document, to the proposed relief, or to the defenses of any respondent, or that appears reasonably calculated to lead to the discovery of admissible evidence.