

§ 354.11

party may serve on any other party interrogatories, requests for admissions, or requests for production of documents for inspection and copying, and a party concerned may then apply to the presiding official for such enforcement or administrative protective order as that party deems warranted concerning such discovery. The party will serve a discovery request at least 20 days before the scheduled date of a hearing, if a hearing has been requested and scheduled, unless the presiding official specifies a shorter time period. Copies of interrogatories, requests for admissions, and requests for production of documents and responses thereto will be served on all parties. Matters of fact or law of which admission is requested will be deemed admitted unless, within a period designated in the request (at least 10 days after the date of service of the request, or within such further time as the presiding official may allow), the party to whom the request is directed serves upon the requesting party a sworn statement either admitting or denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party cannot truthfully either admit or deny such matters.

(c) *Depositions.* Upon application of a party and for good cause shown, the presiding official may order the taking of the testimony of any person who is a party, or under the control or authority of a party, by deposition and the production of specified documents or materials by the person at the deposition. The application shall state the purpose of the deposition and shall set forth the facts sought to be established through the deposition.

(d) *Enforcement.* The presiding official may order a party to answer designated questions, to produce specified documents or items, or to take any other action in response to a proper discovery request. If a party does not comply with such an order, the presiding official may make any determination or enter any order in the proceedings as he or she deems reasonable and appropriate. The presiding official may strike related charges or defenses in whole or in part, or may take particular facts relating to the discovery

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request to which the party failed or refused to respond as being established for purposes of the proceeding in accordance with the contentions of the party seeking discovery. In issuing a discovery order, the presiding official will consider the necessity to protect business proprietary information and will not order the release of information in circumstances where it is reasonable to conclude that such release will lead to unauthorized dissemination of such information.

(e) *Role of the Under Secretary.* If a hearing has not been requested, the party seeking enforcement will ask the Under Secretary to appoint a presiding official to rule on motions under this section.

§ 354.11 Prehearing conference.

(a)(1) If an administrative hearing has been requested, the presiding official will direct the parties to attend a prehearing conference to consider:

- (i) Simplification of issues;
- (ii) Obtaining stipulations of fact and of documents to avoid unnecessary proof;
- (iii) Settlement of the matter;
- (iv) Discovery; and
- (v) Such other matters as may expedite the disposition of the proceedings.

(2) Any relevant and significant stipulations or admissions will be incorporated into the initial decision.

(b) If a prehearing conference is impractical, the presiding official will direct the parties to correspond with each other or to confer by telephone or otherwise to achieve the purposes of such a conference.

§ 354.12 Hearing.

(a) *Scheduling of hearing.* The presiding official will schedule the hearing at a reasonable time, date, and place, which will be in Washington, DC, unless the presiding official determines otherwise based upon good cause shown that another location would better serve the interests of justice. In setting the date, the presiding official will give due regard to the need for the parties adequately to prepare for the hearing and the importance of expeditiously resolving the matter.

(b) *Joinder or consolidation.* The presiding official may order joinder or