

(1) The ruling or order would compel testimony of Bureau officers or employees, or those from another governmental agency, or the production of documentary evidence in the custody of the Bureau or another governmental agency;

(2) The ruling or order involves a motion for disqualification of the hearing officer pursuant to § 1081.105(c)(2) of this part;

(3) The ruling or order suspended or barred an individual from appearing before the Bureau pursuant to § 1081.107(c) of this part; or

(4) Upon motion by a party, the hearing officer is of the opinion that:

(i) The ruling or order involves a controlling question of law as to which there is substantial ground for difference of opinion; and

(ii) An immediate review of the ruling or order is likely to materially advance the completion of the proceeding or subsequent review will be an inadequate remedy.

(d) *Interlocutory review.* A party whose motion for certification has been denied by the hearing officer may petition the Director for interlocutory review.

(e) *Director review.* The Director shall determine whether or not to review a ruling or order certified under this section or the subject of a petition for interlocutory review. Interlocutory review is disfavored, and the Director will grant a petition to review a hearing officer ruling or order prior to his or her consideration of a recommended decision only in extraordinary circumstances. The Director may decline to review a ruling or order certified by a hearing officer pursuant to paragraph (c) of this section or the petition of a party who has been denied certification if he or she determines that interlocutory review is not warranted or appropriate under the circumstances, in which case he or she may summarily deny the petition. If the Director determines to grant the review, he or she will review the matter and issue his or her ruling and order in an expeditious fashion, consistent with the Bureau's other responsibilities.

(f) *Proceedings not stayed.* The filing of a motion requesting that the hearing officer certify any of his or her

prior rulings or orders for interlocutory review or a petition for interlocutory review filed with the Director, and the grant of any such review, shall not stay proceedings before the hearing officer unless he or she, or the Director, shall so order. The Director will not consider a motion for a stay unless the motion shall have first been made to the hearing officer.

§ 1081.212 Dispositive motions.

(a) *Dispositive motions.* This section governs the filing of motions to dismiss and motions for summary disposition. The filing of any such motion does not obviate a party's obligation to file an answer or take any other action required by this part or by an order of the hearing officer, unless expressly so provided by the hearing officer.

(b) *Motions to dismiss.* A respondent may file a motion to dismiss asserting that, even assuming the truth of the facts alleged in the notice of charges, it is entitled to dismissal as a matter of law.

(c) *Motion for summary disposition.* A party may make a motion for summary disposition asserting that the undisputed pleaded facts, admissions, affidavits, stipulations, documentary evidence, matters as to which official notice may be taken, and any other evidentiary materials properly submitted in connection with a motion for summary disposition show that:

(1) There is no genuine issue as to any material fact; and

(2) The moving party is entitled to a decision in its favor as a matter of law.

(d) *Filing of motions for summary disposition and responses.* (1) After a respondent's answer has been filed and documents have been made available to the respondent for inspection and copying pursuant to § 1081.206, any party may move for summary disposition in its favor of all or any part of the proceeding.

(2) A motion for summary disposition must be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue. Such motion must be supported by documentary evidence, which may

take the form of admissions in pleadings, stipulations, depositions, investigatory depositions, transcripts, affidavits and any other evidentiary materials that the moving party contends support his or her position. The motion must also be accompanied by a brief containing the points and authorities in support of the contention of the moving party. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which he or she contends a genuine dispute exists. Such opposition must be supported by evidence of the same type as may be submitted in support of a motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

(3) Any affidavit or declaration submitted in support of or in opposition to a motion for summary disposition shall set forth such facts as would be admissible in evidence, shall show affirmatively that the affiant is competent to testify to the matters stated therein, and must be signed under oath and penalty of perjury.

(e) *Page limitations for dispositive motions.* A motion to dismiss or for summary disposition, together with any brief in support of the motion (exclusive of any declarations, affidavits, or attachments) shall not exceed 35 pages in length. Motions for extensions of this length limitation are disfavored.

(f) *Opposition and reply response time and page limitation.* Any party, within 20 days after service of a dispositive motion, or within such time period as allowed by the hearing officer, may file a response to such motion. The length limitations set forth in paragraph (e) of this section shall also apply to such responses. Any reply brief filed in response to an opposition to a dispositive motion shall be filed within five days after service of the opposition. Reply briefs shall not exceed 10 pages.

(g) *Oral argument.* At the request of any party or on his or her own motion, the hearing officer may hear oral argument on a dispositive motion.

(h) *Decision on motion.* Within 30 days following the expiration of the time for filing all responses and replies to any dispositive motion, the hearing officer

shall determine whether the motion shall be granted. If the hearing officer determines that dismissal or summary disposition is warranted, he or she shall issue a recommended decision granting the motion. If the hearing officer finds that no party is entitled to dismissal or summary disposition, he or she shall make a ruling denying the motion. If it appears that a party, for good cause shown, cannot present by affidavit prior to hearing facts essential to justify opposition to the motion, the hearing officer shall deny or defer the motion.

§ 1081.213 Partial summary disposition.

If on a motion for summary disposition under § 1081.212 a decision is not rendered upon the whole case or for all the relief asked and a hearing is necessary, the hearing officer shall issue an order specifying the facts that appear without substantial controversy and directing further proceedings in the action. The facts so specified shall be deemed established.

§ 1081.214 Prehearing conferences.

(a) Prehearing conferences. The hearing officer may, in addition to the scheduling conference, on his or her own motion or at the request of any party, direct counsel for the parties to meet with him or her (in person or by telephone) at a prehearing conference for further discussion of the issues outlined in § 1081.203, or for discussion of any additional matters that in the view of the hearing officer will aid in an orderly disposition of the proceeding, including but not limited to:

(1) Identification of potential witnesses and limitation on the number of witnesses;

(2) The exchange of any prehearing materials including witness lists, statements of issues, stipulations, exhibits, and any other materials;

(3) Stipulations, admissions of fact, and the contents, authenticity, and admissibility into evidence of documents;

(4) Matters of which official notice may be taken; and

(5) Whether the parties intend to introduce prior sworn statements of witnesses as set forth in § 1081.303(h).