

§ 501.727

Law Judge. Motions by the Director must be filed with the Administrative Law Judge and served upon each party respondent or respondent's representative. All written motions must be served in accordance with, and otherwise meet the requirements of, § 501.705. The Administrative Law Judge may order that an oral motion be submitted in writing. No oral argument shall be heard on any motion unless the Administrative Law Judge otherwise directs.

(b) *Opposing and reply briefs.* Except as provided in § 501.741(e), briefs in opposition to a motion shall be filed not later than 15 days after service of the motion. Reply briefs shall be filed not later than 3 days after service of the opposition. The failure of a party to oppose a written motion or an oral motion made on the record shall be deemed a waiver of objection by that party to the entry of an order substantially in the form of any proposed order accompanying the motion.

(c) *Dilatory motions.* Frivolous, dilatory, or repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

(d) *Length limitation.* Except as otherwise ordered by the Administrative Law Judge, a brief in support of, or in opposition to, a motion shall not exceed 15 pages, exclusive of pages containing any table of contents, table of authorities, or addendum.

(e) A motion to set aside a default shall be made within a reasonable time as determined by the Administrative Law Judge, state the reasons for the failure to appear or defend, and, if applicable, specify the nature of the proposed defense in the proceeding. In order to prevent injustice and on such conditions as may be appropriate, the Administrative Law Judge, at any time prior to the filing of his or her decision, or the Secretary's designee, at any time during the review process, may for good cause shown set aside a default.

§ 501.727 Motion for summary disposition.

(a) At any time after a respondent's answer has been filed, the respondent or the Director may make a motion for summary disposition of any or all allegations contained in the Order Insti-

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tuting Proceedings. If the Director has not completed presentation of his or her case-in-chief, a motion for summary disposition shall be made only with permission of the Administrative Law Judge. The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noticed pursuant to § 501.732(b).

(b) *Decision on motion.* The Administrative Law Judge may promptly decide the motion for summary disposition or may defer decision on the motion. The Administrative Law Judge shall issue an order granting a motion for summary disposition if the record shows there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law.

(c) 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, transcripts, affidavits, and any other evidentiary materials that the moving party contends support its position. The motion must also be accompanied by a brief containing the points and authorities in support of the moving party's arguments. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which such party contends a genuine dispute exists. The opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

§ 501.728 Subpoenas.

(a) *Availability; procedure.* In connection with any hearing before an Administrative Law Judge, either the respondent or the Director may request the issuance of subpoenas requiring the attendance and testimony of witnesses at the designated time and place of

hearing, and subpoenas requiring the production of documentary or other tangible evidence returnable at a designated time and place. Unless made on the record at a hearing, requests for issuance of a subpoena shall be made in writing and served on each party pursuant to § 501.705.

(b) *Standards for issuance.* If it appears to the Administrative Law Judge that a subpoena sought may be unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may, in his or her discretion, as a condition precedent to the issuance of the subpoena, require the person seeking the subpoena to show the general relevance and reasonable scope of the testimony or other evidence sought. If after consideration of all the circumstances, the Administrative Law Judge determines that the subpoena or any of its terms is unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena, or issue a modified subpoena as fairness requires. In making the foregoing determination, the Administrative Law Judge may inquire of the other participants whether they will stipulate to the facts sought to be proved.

(c) *Service.* Service of a subpoena shall be made pursuant to the provisions of § 501.705.

(d) *Application to quash or modify—(1) Procedure.* Any person to whom a subpoena is directed or who is an owner, creator or the subject of the documents or materials that are to be produced pursuant to a subpoena may, prior to the time specified therein for compliance, but not later than 15 days after the date of service of such subpoena, request that the subpoena be quashed or modified. Such request shall be made by application filed with the Administrative Law Judge and served on all parties pursuant to § 501.705. The party on whose behalf the subpoena was issued may, not later than 5 days after service of the application, file an opposition to the application.

(2) *Standards governing application to quash or modify.* If the Administrative Law Judge determines that compliance with the subpoena would be unreasonable, oppressive or unduly burdensome, the Administrative Law Judge may quash or modify the subpoena, or may

order return of the subpoena only upon specified conditions. These conditions may include, but are not limited to, a requirement that the party on whose behalf the subpoena was issued shall make reasonable compensation to the person to whom the subpoena was addressed for the cost of copying or transporting evidence to the place for return of the subpoena.

(e) *Witness fees and mileage.* Witnesses summoned to appear at a proceeding shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

§ 501.729 Sanctions.

(a) *Contemptuous conduct—(1) Subject to exclusion or suspension.* Contemptuous conduct by any person before an Administrative Law Judge or the Secretary's designee during any proceeding, including any conference, shall be grounds for the Administrative Law Judge or the Secretary's designee to:

(i) Exclude that person from such hearing or conference, or any portion thereof; and/or

(ii) If a representative, summarily suspend that person from representing others in the proceeding in which such conduct occurred for the duration, or any portion, of the proceeding.

(2) *Adjournment.* Upon motion by a party represented by a representative subject to an order of exclusion or suspension, an adjournment shall be granted to allow the retention of a new representative. In determining the length of an adjournment, the Administrative Law Judge or the Secretary's designee shall consider, in addition to the factors set forth in § 501.737, the availability of another representative for the party or, if the representative was a counsel, of other members of a suspended counsel's firm.

(b) *Deficient filings; leave to cure deficiencies.* The Administrative Law Judge, or the Secretary's designee in the case of a request for review, may in