

protective order and shall take all appropriate steps to preserve the confidentiality of such documents or any parts thereof, including closing a hearing or portions of a hearing to the public. Release of any information under seal or to the extent inconsistent with a protective order, in any form or manner, is subject to the sanctions and the exercise of the authorities as are provided with respect to ex parte communications under § 501.719.

(4) If the Administrative Law Judge denies placement of any document under seal or under protective order, any party, and any person whose document or material is at issue, may obtain interlocutory review by the Secretary's designee. In such cases the Administrative Law Judge shall not release or expose any of the records or documents in question to the public or to any person for a period of 20 days from the date of the Administrative Law Judge's ruling, in order to permit a party the opportunity either to withdraw the records and documents or obtain interlocutory review by the Secretary's designee and an order that the records be placed under seal or a protective order.

(5) Upon settlement, final decision, or motion to the Administrative Law Judge for good cause shown, all materials (including all copies) under seal or protective order shall be returned to the submitting parties, except when it may be necessary to retain a record until any judicial process is completed.

(6)(i) Written notice of each request for release of documents or materials under seal or subject to a protective order shall be given to the parties at least 20 days prior to any permitted release or prior to any access not specifically authorized under a protective order. A copy of each request for information, including the name, address, and telephone number of the requester, shall be provided to the parties.

(ii) Each request for access to protected material shall include the names, addresses, and telephone numbers of all persons on whose behalf the requester seeks access to protected information. The Administrative Law Judge may impose sanctions as provided under § 501.729 for failure to provide this information.

(b) *Application.* An application for a protective order or to place under seal shall be filed with the Administrative Law Judge. The application shall be accompanied by a sealed copy of the materials as to which confidential treatment is sought.

(1) *Procedure for supplying additional information.* The person making the application may be required to furnish in writing additional information with respect to the grounds for objection to public disclosure. Failure to supply the information so requested within 14 days from the date of receipt of a notice of the information required shall be deemed a waiver of the objection to public disclosure of that portion of the information to which the additional information relates, unless the Administrative Law Judge shall otherwise order for good cause shown at or before the expiration of such 14-day period.

(2) *Confidentiality of materials pending final decision.* Pending the determination of the application for confidential treatment, transcripts, non-final orders including an initial decision, if any, and other materials in connection with the application shall be placed under seal; shall be for the confidential use only of the Administrative Law Judge, the Secretary's designee, the applicant, the Director, and any other respondent and representative; and shall be made available to the public only in accordance with orders of the Administrative Law Judge or the Secretary's designee.

(3) *Public availability of orders.* Any final order of the Administrative Law Judge or the Secretary's designee denying or sustaining an application for confidential treatment shall be made public. Any prior findings or opinions relating to an application for confidential treatment under this section shall be made public at such time as the material as to which confidentiality was requested is made public.

#### § 501.726 Motions.

(a) *Generally.* Unless made during a hearing or conference, a motion shall be in writing, shall state with particularity the grounds therefor, shall set forth the relief or order sought, and shall be accompanied by a written brief of the points and authorities relied

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upon. Motions by a respondent must be filed with the Administrative Law Judge and served upon the Director through the Office of Chief Counsel and with any other party respondent or respondent's representative, unless otherwise directed by the Administrative 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.

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### § 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 Instituting 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.