

## § 12.205

within ten (10) days after the date of service upon him of the motion;

(b) *Supplemental pleadings.* At any time before the parties have concluded their submissions of proof, and upon such terms as are just, the Judgment Officer may, upon motion by a party, permit a party to serve a supplemental pleading setting forth transactions, occurrences or events which have happened since the date of the pleadings sought to be supplemented and which are relevant to any of the issues in the proceeding: *Provided However,* That any pleading as supplemented may not contain an allegation of damages in excess of \$30,000. Any party may file a response to a motion to supplement the pleadings within ten (10) days after the date of service upon him of the motion.

(c) *Pleadings to conform to the evidence.* When issues not raised by the pleadings but reasonably within the scope of a summary decisional proceeding are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.

[49 FR 6621, Feb. 22, 1984, as amended at 59 FR 9637, Mar. 1, 1994]

### § 12.205 Motions.

(a) *In general.* Motions for relief not otherwise specifically provided for in subpart D of these rules, other than discovery-related motions and motions for extensions of time and similar procedural orders, shall not be allowed. Except as otherwise specifically provided in these rules, all motions permitted under these rules shall be directed to the Judgment Officer prior to the filing of the initial decision, and to the Commission after the initial decision has been filed. Motions for extensions of time and similar procedural orders may be acted upon at any time, without awaiting a response thereto. Any party adversely affected by such action may request reconsideration, vacation or modification of such action.

(b) *Answer to motions.* Any party may serve and file a written response to a motion within ten (10) days after service of the motion upon him, or within such longer or shorter period as is established by these rules, or as the

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Judgment Officer or the Commission may direct.

(c) *Dismissal—(1) By the Judgment Officer.* A Judgment Officer, acting upon his own motion, may

(i) Dismiss the entire proceeding without prejudice to counterclaims, if he finds that the matters alleged in the complaint fail to state a claim cognizable in reparations; or

(ii) Order dismissal of any claim, counterclaim, or party from the proceeding if he finds, after review of the record, that such claim or counterclaim (by itself or as applied to any party) is not cognizable in reparations.

(2) *Motion for dismissal by a party.* Any party who believes that grounds exist for dismissal of the entire complaint, or of any claim therein, or of any counterclaim or party from the proceeding, may file a motion for dismissal specifying the claims or parties to be dismissed and the reasons therefor. Upon consideration of the whole record, the Judgment Officer may grant or deny such motion, in whole or in part.

(3) *Content and effect of order of dismissal.* Any order of dismissal entered pursuant to this rule shall contain a brief statement of the findings and conclusions which serve as the basis for the order. An order of dismissal of the entire proceeding pursuant to this rule shall have the effect of an initial decision (see §12.213(d)), and may be appealed to the Commission in accordance with the requirements of §12.401 of these rules.

### § 12.206 Pre-decision conferences.

At any time after a summary decisional proceeding has been commenced pursuant to §12.26(b), the Judgment Officer may, in his discretion, conduct one or more pre-decision conferences to be held in Washington, DC or by telephone, with all parties, for the purposes of:

(a) Discussing the advisability of electing the voluntary decisional procedure;

(b) Encouraging settlement of the entire case, or any part thereof, (such discussions may be *ex parte* with the consent of all parties);

(c) Simplifying or clarifying issues;