

the Judge. Written stipulations must be signed and served upon all parties.

§ 904.215 Consolidation.

The Judge may order two or more proceedings that involve substantially the same parties or the same issues consolidated and/or heard together.

§ 904.216 Prehearing conferences.

(a) Prior to any hearing or at other time deemed appropriate, the Judge may, upon his or her own initiative, or upon the application of any party, arrange a telephone conference and, where appropriate, record such telephone conference, or direct the parties to appear for a conference to consider:

(1) Simplification or clarification of the issues or settlement of the case by consent;

(2) The possibility of obtaining stipulations, admissions, agreements, and rulings on admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(3) Agreements and rulings to facilitate the discovery process;

(4) Limitation of the number of expert witnesses or other avoidance of cumulative evidence;

(5) The procedure, course, and conduct of the hearing;

(6) The distribution to the parties and the Judge prior to the hearing of written testimony and exhibits in order to expedite the hearing;

(7) Such other matters as may aid in the disposition of the proceeding.

(b) The Judge in his or her discretion may issue an order showing the matters disposed of in such conference.

DISCOVERY

§ 904.240 Discovery generally.

(a) *Preliminary position on issues and procedures.* Prior to hearing the Judge will ordinarily require from the parties a written submission stating their preliminary positions on legal and factual issues and procedures, listing potential witnesses and summarizing their testimony, and listing exhibits. Except for information regarding a respondent's ability to pay an assessed penalty, this document, which must be served on all other parties, will normally obviate

the need for further discovery. Failure to provide the requested information may result in the exclusion of witnesses and/or exhibits at the hearing. See also § 904.212. A party has the affirmative obligation to supplement the submission as new information becomes known to the party.

(b) *Additional discovery.* Upon written motion by a party, the Judge may allow additional discovery only upon a showing of relevance, need, and reasonable scope of the evidence sought, by one or more of the following methods: deposition upon oral examination or written questions, written interrogatories, production of documents or things for inspection and other purposes, and requests for admission. With respect to information regarding a respondent's ability to pay an assessed penalty, the Agency may serve any discovery request (*i.e.*, deposition, interrogatories, admissions, production of documents) directly upon the respondent without first seeking an order from the Judge.

(c) *Time limits.* Motions for depositions, interrogatories, admissions, or production of documents or things may not be filed within 20 days of hearing except on order of the Judge for good cause shown. Oppositions to a discovery motion must be filed within 10 days of service unless otherwise provided in these rules or by the Judge.

(d) *Oppositions.* Oppositions to any discovery motion or portion thereof must state with particularity the grounds relied upon. Failure to object in a timely fashion constitutes waiver of the objection.

(e) *Scope of discovery.* The Judge may limit the scope, subject matter, method, time, or place of discovery. Unless otherwise limited by order of the Judge, the scope of discovery is as follows:

(1) *In general.* As allowed under paragraph (b) of this section, parties may obtain discovery of any matter, not privileged, that is relevant to the allegations of the charging document, to the proposed relief, or to the defenses of any respondent, or that appears reasonably calculated to lead to the discovery of admissible evidence.