

exchange exhibit and witness lists, and designate testimony to be presented by deposition. At this conference, the Administrative Law Judge shall also resolve any outstanding evidentiary matters or pending motions (except motions for summary decision) and establish a final schedule for the evidentiary hearing.

(f) *Additional prehearing conferences and orders.* The Administrative Law Judge shall hold additional prehearing and status conferences or enter additional orders as may be needed to ensure the orderly and expeditious disposition of a proceeding. Such conferences shall be held in person to the extent practicable.

(g) *Public access and reporting.* Prehearing conferences shall be public unless the Administrative Law Judge determines in his or her discretion that the conference (or any part thereof) shall be closed to the public. The Administrative Law Judge shall have discretion to determine whether a prehearing conference shall be stenographically reported.

[50 FR 41487, Oct. 11, 1985, as amended at 61 FR 50646, Sept. 26, 1996; 66 FR 17628, Apr. 3, 2001]

§ 3.22 Motions.

(a) *Presentation and disposition.* During the time a proceeding is before an Administrative Law Judge, all motions therein, except those filed under § 3.26, § 3.42(g), or § 4.17, shall be addressed to and ruled upon, if within his or her authority, by the Administrative Law Judge. The Administrative Law Judge shall certify to the Commission any motion upon which he or she has no authority to rule, accompanied by any recommendation that he or she may deem appropriate. Such recommendation may contain a proposed disposition of the motion or other relevant comments. The Commission may order the ALJ to submit a recommendation or an amplification thereof. Rulings or recommendations containing information granted *in camera* status pursuant to § 3.45 shall be filed in accordance with § 3.45(f). All written motions shall be filed with the Secretary of the Commission, and all motions addressed to the Commission shall be in writing. The moving party shall also provide a

copy of its motion to the Administrative Law Judge at the time the motion is filed with the Secretary.

(b) *Content.* All written motions shall state the particular order, ruling, or action desired and the grounds therefor. They must also include the name, address, telephone number, fax number, and e-mail address (if any) of counsel and attach a draft order containing the proposed relief. If a party includes in a motion information that has been granted *in camera* status pursuant to § 3.45(b) or is subject to confidentiality protections pursuant to a protective order, the party shall file two versions of the motion in accordance with the procedures set forth in § 3.45(e). The party shall mark its confidential filings with brackets or similar conspicuous markings to indicate the material for which it is claiming confidential treatment. The time period specified by § 3.22(c) within which an opposing party may file an answer will begin to run upon service on that opposing party of the confidential version of the motion.

(c) *Answers.* Within ten (10) days after service of any written motion, or within such longer or shorter time as may be designated by the Administrative Law Judge or the Commission, the opposing party shall answer or shall be deemed to have consented to the granting of the relief asked for in the motion. If an opposing party includes in an answer information that has been granted *in camera* status pursuant to § 3.45(b) or is subject to confidentiality protections pursuant to a protective order, the opposing party shall file two versions of the answer in accordance with the procedures set forth in § 3.45(e). The moving party shall have no right to reply, except as permitted by the Administrative Law Judge or the Commission.

(d) *Motions for extensions.* The Administrative Law Judge or the Commission may waive the requirements of this section as to motions for extensions of time; however, the Administrative Law Judge shall have no authority to rule on *ex parte* motions for extensions of time.

(e) *Rulings on motions for dismissal.* When a motion to dismiss a complaint or for other relief is granted with the

result that the proceeding before the Administrative Law Judge is terminated, the Administrative Law Judge shall file an initial decision in accordance with the provisions of § 3.51. If such a motion is granted as to all charges of the complaint in regard to some, but not all, of the respondents, or is granted as to any part of the charges in regard to any or all of the respondents, the Administrative Law Judge shall enter his ruling on the record, in accordance with the procedures set forth in paragraph (a) of this section, and take it into account in his initial decision. When a motion to dismiss is made at the close of the evidence offered in support of the complaint based upon an alleged failure to establish a *prima facie* case, the Administrative Law Judge may defer ruling thereon until immediately after all evidence has been received and the hearing record is closed.

(f) *Statement.* Each motion to quash filed pursuant to § 3.34(c), each motion to compel or determine sufficiency pursuant to § 3.38(a), each motion for sanctions pursuant to § 3.38(b), and each motion for enforcement pursuant to § 3.38(c) shall be accompanied by a signed statement representing that counsel for the moving party has conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement. If some of the matters in controversy have been resolved by agreement, the statement shall specify the matters so resolved and the matters remaining unresolved. The statement shall recite the date, time, and place of each such conference between counsel, and the names of all parties participating in each such conference. Unless otherwise ordered by the Administrative Law Judge, the statement required by this rule must be filed only with the first motion concerning compliance with the discovery demand at issue.

[32 FR 8449, June 13, 1967, as amended at 50 FR 42672, Oct. 22, 1985; 52 FR 22293, June 11, 1987; 60 FR 39641, Aug. 3, 1995; 61 FR 50647, Sept. 26, 1996; 66 FR 17628, Apr. 3, 2001]

§ 3.23 Interlocutory appeals.

(a) *Appeals without a determination by the Administrative Law Judge.* The Commission may, in its discretion, entertain interlocutory appeals where a ruling of the Administrative Law Judge:

(1) Requires the disclosure of records of the Commission or another governmental agency or the appearance of an official or employee of the Commission or another governmental agency pursuant to § 3.36, if such appeal is based solely on a claim of privilege: *Provided*, that The Administrative Law Judge shall stay until further order of the Commission the effectiveness of any ruling, whether or not appeal is sought, that requires the disclosure of non-public Commission minutes, Commissioner circulations, or similar documents prepared by the Commission, individual Commissioner, or the Office of the General Counsel;

(2) Suspends an attorney from participation in a particular proceeding pursuant to § 3.42(d); or

(3) Grants or denies an application for intervention pursuant to the provisions of § 3.14.

Appeal from such rulings may be sought by filing with the Commission an application for review, not to exceed fifteen (15) pages exclusive of those attachments required below, within five (5) days after notice of the Administrative Law Judge's ruling. Answer thereto may be filed within five (5) days after service of the application for review. The application for review should specify the person or party taking the appeal; should attach the ruling or part thereof from which appeal is being taken and any other portions of the record on which the moving party relies; and should specify under which provisions hereof review is being sought. The Commission upon its own motion may enter an order staying the return date of an order issued by the Administrative Law Judge pursuant to § 3.36 or placing the matter on the Commission's docket for review. Any order placing the matter on the Commission's docket for review will set forth the scope of the review and the issues which will be considered and will make provision for the filing of briefs if deemed appropriate by the Commission.