

§ 60-30.10

date as the Administrative Law Judge may order, any party may serve upon an opposing party written interrogatories. Each interrogatory shall be answered separately and fully in writing under oath, unless objected to. Answers are to be signed by the person making them and objections by the attorney or by whoever is representing the party. Answers and objections shall be filed and served within 25 days of service of the interrogatory.

(b) *Admissions.* Not later than 14 days prior to the date of the hearing, except for good cause shown, or not later than 14 days prior to such earlier date as the Administrative Law Judge may order, any party may serve upon an opposing party a written request for the admission of the genuineness and authenticity of any relevant documents described in and exhibited with the request, or for the admission of the truth of any relevant matters of fact stated in the request. Each of the matters as to which an admission is requested shall be deemed admitted, unless within 25 days after service, the party to whom the request is directed serves upon the requesting party a sworn statement either (1) denying specifically the matter as to which an admission is requested, or (2) setting forth in detail the reasons why he cannot truthfully either admit or deny such matters.

(c) *Objections or failures to respond.* The party submitting the interrogatory or request may move for an order with respect to any objection or other failure to respond.

§ 60-30.10 Production of documents and things and entry upon land for inspection and other purposes.

(a) After commencement of the action, any party may serve on any other party a request to produce and/or permit the party, or someone acting on his behalf, to inspect and copy any unprivileged documents, phonorecords, and other compilations, including computer tapes and printouts which contain or may lead to relevant information and which are in the possession, custody, or control of the party upon whom the request is served. If necessary, translation of data compila-

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tions shall be done by the party furnishing the information.

(b) After commencement of the action, any party may serve on any other party a request to permit entry upon designated property which may be relevant to the issues in the proceeding and, which is in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying or photographing, testing, or sampling the property or any designated object or area.

(c) Each request shall set forth with reasonable particularity the items to be inspected and shall specify a reasonable time and place for making the inspection and performing the related acts.

(d) The party upon whom the request is served shall respond within 25 days after the service of the request. The response shall state, with respect to each item, that inspection and related activities will be permitted as requested, unless there are objections, in which case the reasons for each objection shall be stated. The party submitting the request may move for an order with respect to any objection or to other failure to respond.

§ 60-30.11 Depositions upon oral examination.

(a) *Depositions; notice of examination.* After commencement of the action, any party may take the testimony of any person, including a party, having personal or expert knowledge of the matters in issue, by deposition upon oral examination. A party desiring to take a deposition shall give reasonable notice in writing to every other party to the proceeding, and may use an administrative subpoena. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. The notice shall also set forth the categories of documents the witness is to bring with him to the deposition, if any. A copy of the notice shall be furnished to the person to be examined unless his name is unknown.

(b) *Production of witnesses; obligation of parties; objections.* It shall be the obligation of each party to produce for examination any person, along with such documents as may be requested, at the time and place, and on the date, set forth in the notice, if that party has control over such person. Each party shall be deemed to have control over its officers, agents, employees, and members. Unless the parties agree otherwise, depositions shall be held within the county in which the witness resides or works. The party or prospective witness may file with the Administrative Law Judge an objection within 5 days after notice of production of such witness is served, stating with particularity the reasons why the party cannot or ought not to produce a requested witness. The party serving the notice may move for an order with respect to such objection or failure to produce a witness. All errors or irregularities in compliance with the provisions of this section shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is or, with due diligence, might have been ascertained.

(c) *Before whom taken; scope of examination; failure to answer.* Depositions may be taken before any officer authorized to administer oaths by the laws of the United States or of the place where the deposition is held. At the time and place specified in the notice, each party shall be permitted to examine and cross-examine the witness under oath upon any matter which is relevant to the subject matter of the proceeding, or which is reasonably calculated to lead to the production of relevant and otherwise admissible evidence. All objections to questions, except as to the form thereof, and all objections to evidence are reserved until the hearing. A refusal or failure on the part of any person under the control of a party to answer a question shall operate to create a presumption that the answer, if given, would be unfavorable to the controlling party, unless the question is subsequently ruled improper by the Administrative Law Judge or the Administrative Law Judge rules that there was valid justification for the witness' failure or re-

fusal to answer the question: *Provided,* That the examining party shall note on the record during the deposition the question which the deponent has failed, or refused to answer, and state his intention to invoke the presumption if no answer is forthcoming.

(d) *Subscription; certification; filing.* The testimony shall be reduced to typewriting, either by the officer taking the deposition or under his direction, and shall be submitted to the witness for examination and signing. If the deposition is not signed by the witness because he is ill, dead, cannot be found, or refuses to sign it, such fact shall be noted in the certificate of the officer and the deposition may then be used as fully as though signed. The officer shall immediately deliver the original copy of the transcript, together with his certificate, in person or by mail to the Administrative Law Judge. Copies of the transcript and certificate shall be furnished to all persons desiring them, upon payment of reasonable charges, unless distribution is restricted by order of the Administrative Law Judge for good cause shown.

(e) *Rulings on admissibility; use of deposition.* Subject to the provisions of this section, objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying. Any part or all of a deposition, so far as admissible in the discretion of the Administrative Law Judge, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice, in accordance with the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of a party or of any one who at the time of taking the deposition was an officer, director, or managing agent, or was designated to testify on behalf of a public or private corporation, partnership, association, or governmental agency which is a party may be used by the adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the administrative law judge finds: (i) That the witness is dead; or (ii) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (iii) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (iv) upon application and notice, that such exceptional circumstances exist as to make it desirable to allow the deposition to be used.

(4) If only part of a deposition is introduced in evidence by a party, any party may introduce any other parts by way of rebuttal and otherwise.

(f) *Stipulations.* If the parties so stipulate in writing, depositions may be taken before any person at any time or place, upon any notice and in any manner, and when so taken may be used like other depositions.

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§ 60-30.12 Prehearing conferences.

(a) Upon his own motion or the motion of the parties, the Administrative Law Judge may direct the parties or their counsel to meet with him for a conference to consider:

- (1) Simplification of the issues;
- (2) Necessity or desirability of amendments to pleadings for purposes of clarification, simplification, or limitation;
- (3) Stipulations, admissions of fact and of contents and authenticity of documents;
- (4) Limitation of number of witnesses;
- (5) Scheduling dates for the exchange of witness lists and of proposed exhibits;
- (6) Such other matters as may tend to expedite the disposition of the proceedings.

(b) The record shall show the matters disposed of by order and by agreement in such pretrial conferences. The subsequent course of the proceeding shall be controlled by such action.

§ 60-30.13 Consent findings and order.

(a) *General.* At any time after the issuance of a complaint and prior to or during the reception of evidence in any

proceeding, the parties may jointly move to defer the receipt of any evidence for a reasonable time to permit negotiation of an agreement containing consent findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be in the discretion of the Administrative Law Judge after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement being reached which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding shall also provide:

- (1) That the order shall have the same force and effect as an order made after full hearing;
- (2) That the entire record on which any order may be based shall consist solely of the complaint and the agreement;
- (3) That any further procedural steps are waived; and
- (4) That any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement is waived.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their counsel may:

- (1) Submit the proposed agreement to the Administrative Law Judge for his consideration;
- (2) Inform the Administrative Law Judge that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and an order is submitted within the time allowed, the Administrative Law Judge, within 30 days, shall accept such agreement by issuing his decision based upon the agreed findings, and his decision shall constitute the final Administrative order.

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