

§ 76.10

28 CFR Ch. I (7-1-08 Edition)

§ 76.10 Motions and requests.

(a) *Generally.* Any application for an order or any other request shall be made by motion which shall be in writing (unless the Judge in the course of an oral hearing or appearance consents to accept such motion orally), state with particularity the grounds therefor, and set forth the relief or order sought. Motions or requests made during the course of any oral hearing or appearance before a Judge may be stated orally or in writing and made part of the transcript. All parties shall be given reasonable opportunity to respond or object to the motion or request.

(b) *Responses to motions.* Within ten (10) days after a written motion is served, or within such other period as the Judge may fix, the other party to the proceeding may file a response to the motion, accompanied by such affidavits or other evidence as the party desires to rely upon. Unless the Judge provides otherwise, no reply to a response shall be filed.

(c) *Oral arguments or briefs.* No oral argument will be heard on motions unless the Judge otherwise directs. Written memoranda or briefs may be filed with motions or responses to motions, stating the points and authorities relied upon in support of the position taken.

§ 76.11 Notice of hearing.

(a) When the Judge receives the complaint and answer, the Judge shall cause to be served a Notice of Hearing upon the parties in the manner prescribed by 28 CFR 76.6(d).

(b) Such notice shall include:

(1) The time and place and nature of the hearing. In fixing the time and place of the hearing, the Judge will attempt to minimize the costs to the parties;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The description of the procedures for the conduct of the hearing;

(4) A notice that the respondent party may waive the right to an oral hearing and request that the matter be determined on written motions and written submission of the evidence; and

(5) Such other matters as the Judge deems appropriate.

§ 76.12 Prehearing statements.

(a) At any time prior to the commencement of the hearing, the Judge may order any party to file a prehearing statement of position.

(b) A prehearing statement shall state the name of the party on whose behalf it is presented and shall briefly set forth the following matters, unless otherwise ordered by the Judge:

(1) Issues involved in the proceedings and whether the respondent requests an oral hearing;

(2) Facts stipulated;

(3) Facts in dispute;

(4) Witnesses, except to the extent that disclosure would be privileged, and exhibits by which disputed facts will be litigated;

(5) A brief statement of applicable law;

(6) The conclusions to be drawn;

(7) The estimated time required for presentation of the party's case; and

(8) Any appropriate comments, suggestions, or information which might assist the parties or the Judge in preparing for the hearing or otherwise aid in the disposition of the proceeding.

§ 76.13 Parties to the hearing.

The parties to the hearing shall be the United States of America and the respondent.

§ 76.14 Separation of functions.

An employee or an agent of the Department who is or was engaged in investigative or prosecutive functions for or on behalf of the United States in a case may not participate in the decision of that case.

§ 76.15 *Ex parte* communications.

(a) *Generally.* The Judge shall not consult with any party, attorney or person (except persons in the office of the Judge) on any legal or factual issue unless upon notice and opportunity for all parties to participate. No party or attorney representing a party shall communicate in any instance with the Judge on any matter at issue in a case, unless notice and opportunity has been afforded for the other party to participate. This provision does not prohibit a