

must participate in the prehearing conference and be prepared to discuss, narrow, and resolve the issues set forth in the complaint and answer, as well as any prehearing disclosure matters or disputes. When necessary, the Administrative Law Judge shall prepare and file for the record a written summary of actions taken at the conference. Summaries of the conference shall be served on all parties in accordance with §2429.12 of this subchapter. The following may also be considered at the prehearing conference:

(1) Settlement of the case, either by the Judge conducting the prehearing conference or pursuant to §2423.25;

(2) Admissions of fact, disclosure of contents and authenticity of documents, and stipulations of fact;

(3) Objections to the introduction of evidence at the hearing, including oral or written testimony, documents, papers, exhibits, or other submissions proposed by a party;

(4) Subpoena requests or petitions to revoke subpoenas;

(5) Any matters subject to official notice;

(6) Outstanding motions; or

(7) Any other matter that may expedite the hearing or aid in the disposition of the case.

(e) *Sanctions.* The Administrative Law Judge may, in the Judge's discretion or upon motion by any party through the motions procedure in §2423.21, impose sanctions upon the parties as necessary and appropriate to ensure that a party's failure to fully comply with subpart B or C of this part is not condoned. Such authority includes, but is not limited to, the power to:

(1) Prohibit a party who fails to comply with any requirement of subpart B or C of this part from, as appropriate, introducing evidence, calling witnesses, raising objections to the introduction of evidence or testimony of witnesses at the hearing, presenting a specific theory of violation, seeking certain relief, or relying upon a particular defense.

(2) Refuse to consider any submission that is not filed in compliance with subparts B or C of this part.

#### § 2423.25 Post complaint, prehearing settlements.

(a) *Informal and formal settlements.* Post complaint settlements may be either informal or formal.

(1) Informal settlement agreements provide for withdrawal of the complaint by the Regional Director and are not subject to approval by or an order of the Authority. If the Respondent fails to perform its obligations under the informal settlement agreement, the Regional Director may reinstitute formal proceedings consistent with this subpart.

(2) Formal settlement agreements are subject to approval by the Authority, and include the parties' agreement to waive their right to a hearing and acknowledgment that the Authority may issue an order requiring the Respondent to take action appropriate to the terms of the settlement. The formal settlement agreement shall also contain the Respondent's consent to the Authority's application for the entry of a decree by an appropriate federal court enforcing the Authority's order.

(b) *Informal settlement procedure.* If the Charging Party and the Respondent enter into an informal settlement agreement that is accepted by the Regional Director, the Regional Director shall withdraw the complaint and approve the informal settlement agreement. If the Charging Party fails or refuses to become a party to an informal settlement agreement offered by the Respondent, and the Regional Director concludes that the offered settlement will effectuate the policies of the Federal Service Labor-Management Relations Statute, the Regional Director shall enter into the agreement with the Respondent and shall withdraw the complaint. The Charging Party then may obtain a review of the Regional Director's action by filing an appeal with the General Counsel as provided in subpart A of this part.

(c) *Formal settlement procedure.* If the Charging Party and the Respondent enter into a formal settlement agreement that is accepted by the Regional Director, the Regional Director shall withdraw the complaint upon approval of the formal settlement agreement by the Authority. If the Charging Party

fails or refuses to become a party to a formal settlement agreement offered by the Respondent, and the Regional Director concludes that the offered settlement will effectuate the policies of the Federal Service Labor-Management Relations Statute, the agreement shall be between the Respondent and the Regional Director. The formal settlement agreement together with the Charging Party's objections, if any, shall be submitted to the Authority for approval. The Authority may approve a formal settlement agreement upon a sufficient showing that it will effectuate the policies of the Federal Service Labor-Management Relations Statute.

(d) *Settlement judge program.* The Administrative Law Judge, in the Judge's discretion or upon the request of any party, may assign a judge or other appropriate official, who shall be other than the hearing judge unless otherwise mutually agreed to by the parties, to conduct negotiations for settlement.

(1) The settlement official shall convene and preside over settlement conferences by telephone or in person.

(2) The settlement official may require that the representative for each party be present at settlement conferences and that the parties or agents with full settlement authority be present or available by telephone.

(3) The settlement official shall not discuss any aspect of the case with the hearing judge.

(4) No evidence regarding statements, conduct, offers of settlement, and concessions of the parties made in proceedings before the settlement official shall be admissible in any proceeding before the Administrative Law Judge or Authority, except by stipulation of the parties.

#### § 2423.26 Stipulations of fact submissions.

(a) *General.* When all parties agree that no material issue of fact exists, the parties may jointly submit a motion to the Administrative Law Judge or Authority requesting consideration of the matter based upon stipulations of fact. Briefs of the parties are required and must be submitted within 30 days of the joint motion. Upon receipt

of the briefs, such motions shall be ruled upon expeditiously.

(b) *Stipulations to the Administrative Law Judge.* Where the stipulation adequately addresses the appropriate material facts, the Administrative Law Judge may grant the motion and decide the case through stipulation.

(c) *Stipulations to the Authority.* Where the stipulation provides an adequate basis for application of established precedent and a decision by the Administrative Law Judge would not assist in the resolution of the case, or in unusual circumstances, the Authority may grant the motion and decide the case through stipulation.

(d) *Decision based on stipulation.* Where the motion is granted, the Authority will adjudicate the case and determine whether the parties have met their respective burdens based on the stipulation and the briefs.

#### § 2423.27 Summary judgment motions.

(a) *Motions.* Any party may move for a summary judgment in its favor on any of the issues pleaded. Unless otherwise approved by the Administrative Law Judge, such motion shall be made no later than 10 days prior to the hearing. The motion shall demonstrate that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. Such motions shall be supported by documents, affidavits, applicable precedent, or other appropriate materials.

(b) *Responses.* Responses must be filed within 5 days after the date of service of the motion. Responses may not rest upon mere allegations or denials but must show, by documents, affidavits, applicable precedent, or other appropriate materials, that there is a genuine issue to be determined at the hearing.

(c) *Decision.* If all issues are decided by summary judgment, no hearing will be held and the Administrative Law Judge shall prepare a decision in accordance with § 2423.34. If summary judgment is denied, or if partial summary judgment is granted, the Administrative Law Judge shall issue an opinion and order, subject to interlocutory appeal as provided in § 2423.31(c) of this subchapter, and the hearing shall proceed as necessary.