

**§ 308.518 Prehearing conferences.**

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ will schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

- (1) Simplification of the issues;
  - (2) The necessity or desirability of amendments to the pleading, including the need for a more definite statement;
  - (3) Stipulations and admissions of fact as to the contents and authenticity of documents;
  - (4) Whether the parties can agree to submission of the case on a stipulated record;
  - (5) Whether a party chooses (subject to the objection of other parties) to waive appearance at an oral hearing and to submit only documentary evidence and written argument;
  - (6) Limitation of the number of witnesses;
  - (7) Scheduling dates for the exchange of witness lists and of proposed exhibits;
  - (8) Discovery;
  - (9) The time, date, and place for the hearing; and
  - (10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.
- (d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

**§ 308.519 Disclosure of documents.**

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 308.503(b) of this subpart are based, unless such documents are subject to a privilege under federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the re-

viewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 308.504 of this subpart is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 308.508 of this subpart.

**§ 308.520 Discovery.**

(a) The following types of discovery are authorized:

- (1) Requests for production of documents for inspection and copying;
- (2) Requests for admission of the authenticity of any relevant document or of the truth of any relevant fact;
- (3) Written interrogatories; and
- (4) Depositions.

(b) For the purpose of this section and §§ 308.521 and 308.522 of this subpart, the term *documents* includes information, documents, reports, answers, records, accounts, papers, and other data or documentary evidence. Nothing contained in this subpart will be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ will regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion with the ALJ and a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition, must accompany such motions.

(2) Within 10 days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 308.523 of this subpart.

(3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought: