

O. DEPOSITIONS

OVERVIEW:

Section [2423.24](#)(a) empowers the ALJ to regulate the course of pre-hearing matters. One such pre-hearing matter that is subject to the ALJ's discretionary power is the taking of depositions.

OBJECTIVE:

To provide guidance concerning the use of, and other administrative matters relating to, depositions.

1. WHEN USE OF A DEPOSITION IS APPROPRIATE:

a. *To preserve the testimony of a witness who will be unavailable to testify at the hearing.*

For example, a material witness who will be out of the country for an extended period of time prior to the scheduled hearing may necessitate that a request for taking a deposition be made.

b. *When Respondent's witness testifies about a document or note that is not brought to the trial and appears to be important, the Trial Attorney requests that the record remain open to review the document or note and to depose the witness about the contents of the document or note, if necessary. This saves time because the ALJ does not have to reconvene the hearing.*

c. *As a rule, use of depositions for purpose of pre-trial discovery is not appropriate.*

d. *Depositions are authorized at the discretion of the ALJ.*

2. PRACTICE AND PROCEDURE:

a. *How to arrange for a deposition:*

Upon discovery that a material witness will be unavailable for the scheduled hearing, the Trial Attorney: (1) requests the ALJ to issue an order for the taking of the deposition, or (2) jointly agrees with opposing counsel for the taking of a deposition.

b. *Other administrative matters:*

- The party for whom the deposed witness will appear arranges for a court reporter and normally bears the cost of that service.
- A suitable conference room for the taking of the deposition is arranged.
- If either party objects during the questioning of a witness, the witness must answer the question.
- Prior to submitting the transcript as substantive evidence at the trial, the Trial Attorney obtains rulings on any evidentiary objections raised during the deposition. If the deposition occurs post-hearing, the court reporter sends a copy to the ALJ who will make the necessary ruling.

c. *Introduction of deposition transcript from related proceeding:*

Opportunities may arise where a deposition transcript from a related proceeding, e.g., EEO proceeding, may be used either:

- i. To impeach the party witness if he testifies at trial inconsistently with the transcript; or
- ii. As a party admission, as substantive evidence in the GC's case-in-chief. In this circumstance, it is

appropriate to move those portions of the transcript that contain the admissions into evidence.

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[Part 1, Chapter J](#) concerning Pre-trial Preparation of Witnesses;

[Part 1, Chapter P](#) concerning Pre-hearing Order; and

[Part 2, Chapter EE](#) concerning Leaving the Record Open for Additional Evidence.

RESERVED