

## Q. PRE-HEARING CONFERENCE

### OVERVIEW:

Pursuant to § [2423.24](#)(d), unless otherwise determined by the ALJ, pre-hearing conferences will be held at least seven days before the hearing at which time the parties will discuss, narrow, and resolve issues set forth in the complaint and answer, as well as any pre-hearing disclosure matters or disputes.

### OBJECTIVE:

To provide guidance to Trial Attorneys concerning the matters to be discussed at a pre-hearing conference.

#### 1. WHEN IS A PRE-HEARING CONFERENCE REQUESTED?

**It is OGC policy to ask for a pre-hearing conference in every case that is going to hearing.** The Trial Attorney files with the OALJ a Motion for a Pre-hearing Conference simultaneously with the Complaint. The Trial Attorney has the option of using either a separate service sheet for the Complaint and the Motion for Pre-hearing Conference or one service sheet covering both documents as long as the service sheet clearly identifies the documents served.

See [ATTACHMENT 1Q](#) for an example of a Motion for a Pre-hearing Conference.

#### 2. WHEN IS IT CONDUCTED?

Section [2423.24](#)(d) states that a pre-hearing conference shall be conducted by telephone or in person at least seven days before the hearing date unless:

- the ALJ determines that a pre-hearing conference is unnecessary **and**

- No party has moved for a pre-hearing conference.

### 3. MANDATORY PARTICIPATION:

Pursuant to § [2423.24\(d\)](#), all parties are required to participate in the pre-hearing conference.

For whatever reason, should a Charging Party indicate a reluctance or desire not to participate, the Trial Attorney reminds the Charging Party of the requirement. If the Charging Party nevertheless chooses not to participate (and the ALJ does not mandate such participation) it will not be represented at the pre-hearing conference and the Trial Attorney should state so at the pre-hearing conference. As the Public Prosecutor, the GC represents the public's interest, not the Charging Party's. If settlement is discussed at the pre-hearing conference and the Charging Party is not represented, the Region follows the procedures and principles in the **OGC Settlement Policy** in determining whether a bilateral or a unilateral settlement is appropriate.

### 4. CHECKLIST OF MATTERS TO BE DISCUSSED AT PRE-HEARING CONFERENCE:

The Trial Attorney seeks to ensure that the matters to be discussed at the pre-hearing conference are listed in the pre-hearing order issued by the ALJ. These matters include, but are not limited to:

- Discussion of settlement efforts;
- Pre-hearing disclosure of witness list, including a brief synopsis of the expected testimony of each witness; copies of documents with an index; and a statement of theory of the case including relief requested, and any and all defenses upon which Respondent intends to rely on at the hearing;



*The Trial Attorney must be familiar with the documents that comprise Respondent's pre-hearing disclosure and be prepared to discuss any insufficiency in that which has been provided. The Trial Attorney ensures that s/he has been provided with*

*complete lists of witnesses, documents, and that the Respondent does not intend to rely upon any other defenses not stated in the pre-hearing disclosure document. The Trial Attorney may seek to amend the pre-hearing disclosure document based upon Respondent's pre-hearing disclosure document. For instance, the Trial Attorney may conclude that an additional witness is necessary to provide testimony concerning an affirmative defense raised by the Respondent. The Trial Attorney has acted in good faith in meeting the disclosure requirements and the ALJ should allow the witness list to be amended at hearing. See [62 Fed. Reg. 40911](#), 40913 (July 31, 1997) (parties expected to act in good faith in meeting their pre-hearing disclosure obligations).*

- Admissions of fact, disclosure of contents and authenticity of documents;
- Obtaining ALJ's ruling on outstanding pre-hearing motions, e.g., motion for sequestration, motion to amend complaint;
- Discussion of compliance with subpoenas and possible sanctions and/or seeking enforcement due to non-compliance (if enforcement is contemplated, the Trial Attorney asks for postponement of the hearing), and petitions to revoke, if applicable;
- Stipulations of fact;
- Appropriateness of case for disposition by bench decision; and
- ALJ's preparation of summary of pre-hearing conference.



*At the close of a pre-hearing conference, the Trial Attorney requests that the ALJ prepare a summary of the matters discussed, i.e., agreements between the parties, and actions taken by the ALJ. Under § [2423.24\(d\)](#), it is within the ALJ's discretion whether to prepare a summary of the pre-hearing conference. In the event that the ALJ declines to do so, the Trial Attorney first asks the ALJ if s/he will be presiding at the hearing. If the ALJ answers no, remind the ALJ that a summary is needed for the presiding ALJ as well as for the parties. If the ALJ still refuses to prepare a summary, ask the other parties' counsel if s/he is willing to stipulate to the matters discussed and decided at the pre-hearing conference. In the event that the parties are unwilling to stipulate, the Trial Attorney memorializes the agreements among the parties and the ALJ's rulings in a pre-hearing order, covered by a motion, prepared for the ALJ's signature. If the ALJ prepares a summary, make sure that it comports with your understanding of the actions taken, and the discussion that occurred at the pre-hearing conference.*

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[Part 1, Chapter N](#) concerning Pre-hearing Disclosure; and

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