

§ 1.253

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(c) Affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

(d) The presiding officer may, in his discretion, set the matter for argument and call for the submission of proposed findings, conclusions, briefs or memoranda of law. The presiding officer, giving appropriate weight to the nature of the proceeding, the issue or issues, the proof, and to the need for cross-examination, may grant a motion for summary decision to the extent that the pleadings, affidavits, materials obtained by discovery or otherwise, admissions, or matters officially noticed, show that there is no genuine issue as to any material fact and that a party is otherwise entitled to summary decision. If it appears from the affidavits of a party opposing the motion that he cannot, for good cause shown, present by affidavit or otherwise facts essential to justify his opposition, the presiding officer may deny the motion, may order a continuance to permit affidavits to be obtained or discovery to be had, or make such other order as is just.

(e) If all of the issues (or a dispositive issue) are determined on a motion for summary decision no hearing (or further hearing) will be held. The presiding officer will issue a Summary Decision, which is subject to appeal or review in the same manner as an Initial Decision. See §§1.271 through 1.282. If some of the issues only (including no dispositive issue) are decided on a motion for summary decision, or if the motion is denied, the presiding officer will issue a memorandum opinion and order, interlocutory in character, and the hearing will proceed on the remaining issues. Appeal from interlocutory rulings is governed by §1.301.

(f) The presiding officer may take any action deemed necessary to assure that summary decision procedures are not abused. He may rule in advance of a motion that the proceeding is not appropriate for summary decision, and may take such other measures as are necessary to prevent any unwarranted delay.

(1) Should it appear to the satisfaction of the presiding officer that a motion for summary decision has been presented in bad faith or solely for the purpose of delay, or that such a motion is patently frivolous, he will enter a determination to that effect upon the record.

(2) If, on making such determination, the presiding officer concludes that the facts warrant disciplinary action against an attorney, he will certify the matter to the Commission with his findings and recommendations, for consideration under §1.24.

(3) If, on making such determination, the presiding officer concludes that the facts warrant a finding of bad faith on the part of a party to the proceeding, he will certify the matter to the Commission, with his findings and recommendations, for a determination as to whether the facts warrant addition of an issue as to the character qualifications of that party.

[37 FR 7507, Apr. 15, 1972, as amended at 42 FR 56508, Oct. 26, 1977]

§ 1.253 Time and place of hearing.

(a) The Commission will specify the day on which and the place at which any hearing is to commence.

(b) The presiding officer will specify the days on which subsequent hearing sessions are to be held.

(c) If the Commission specifies that a hearing is to commence in the District of Columbia, it shall be moved therefrom only by order of the Commission.

(d) If the Commission specifies that a hearing is to commence at a field location, all appropriate proceedings will be completed at such location before the hearing is moved therefrom. When such proceedings are completed, the presiding officer may move the hearing from the field location specified to another appropriate field location or to the District of Columbia.

§ 1.254 Nature of the hearing; burden of proof.

Any hearing upon an application shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate but in which both the burden of proceeding with the introduction of evidence upon any issue specified by the Commission,