

1400.7600 CERTIFICATION OF MOTIONS TO AGENCY.

No motions shall be made directly to or be decided by the agency subsequent to the assignment of a judge and prior to the completion and filing of the judge's report unless the motion is certified to the agency by the judge. No motions will be certified in cases where the judge's report is binding on the agency. Uncertified motions shall be made to and decided by the judge and considered by the agency in its consideration of the record as a whole subsequent to the filing of the judge's report. Any party may request that a pending motion or a motion decided adversely to that party by the judge before or during the course of the hearing, other than rulings on the admissibility of evidence or interpretations of parts 1400.5100 to 1400.8400, be certified by the judge to the agency. In deciding what motions should be certified, the judge shall consider the following:

A. whether the motion involves a controlling question of law as to which there is substantial ground for a difference of opinion; or

B. whether a final determination by the agency on the motion would materially advance the ultimate termination of the hearing; or

C. whether or not the delay between the ruling and the motion to certify would adversely affect the prevailing party; or

D. whether to wait until after the hearing would render the matter moot and impossible for the agency to reverse or for a reversal to have any meaning; or

E. whether it is necessary to promote the development of the full record and avoid remanding; or

F. whether the issues are solely within the expertise of the agency.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 363.06; 363A.28*

History: *9 SR 2276*

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