

§ 908.45

Board or any party, sever the proceeding for separate resolution of the matter as to any respondent only if the presiding officer finds that undue prejudice or injustice to the moving party would result from not severing the proceeding and such undue prejudice or injustice would outweigh the interests of judicial economy and expedition in the complete and final resolution of the proceeding.

§ 908.45 Motions.

(a) *Written motions.* (1) Except as otherwise provided herein, an application or request for an order or ruling must be made by written motion.

(2) All written motions shall state with particularity the relief sought and must be accompanied by a proposed order.

(3) No oral argument may be held on written motions except as otherwise directed by the presiding officer. Written memoranda, briefs, affidavits, or other relevant material or documents may be filed in support of or in opposition to a motion.

(b) *Oral motions.* A motion may be made orally and on the record at a hearing, unless the presiding officer directs that such motion be reduced to writing and filed with the presiding officer. Oral motions must be made a part of the record of the hearing, and accompanied by a proposed order.

(c) *Filing of motions.* Motions shall be filed with the presiding officer, except that following the filing of a recommended decision with the Board of Directors, motions must be filed with the Board of Directors in accordance with §908.64.

(d) *Responses.* (1) Except as otherwise provided herein, any party may file a written response to a motion within ten days after service of any written motion, or within such other period of time as may be established by the presiding officer or the Board of Directors. The presiding officer shall not rule on any oral or written motion before each party has had an opportunity to file a response.

(2) The failure of a party to oppose a written motion or an oral motion made on the record is deemed to be consent by that party to the entry of an order

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substantially in the form of the order accompanying the motion.

(e) *Dilatory motions.* Frivolous, dilatory, or repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

(f) *Dispositive motions.* Dispositive motions shall be governed by §§908.51 and 908.52.

§ 908.46 Discovery.

(a) *Limits on discovery.* Subject to the limitations set out in paragraphs (b), (d), and (e) of this section, any party to a hearing under this part may obtain document discovery by serving a written request to produce documents. For purposes of a request to produce documents, the term *documents* may be defined to include drawings, graphs, charts, photographs, recordings, data stored in electronic form, and other data compilations from which information can be obtained or translated, if necessary, by the parties through detection devices into reasonably usable form, as well as written material of all kinds.

(b) *Relevance.* A party may obtain document discovery regarding any matter not privileged provided that the information sought has a logical connection to consequential facts (i.e., material) or may tend to prove or disprove a matter in issue (i.e., relevant) related to the merits of the pending action. Any request to produce documents that calls for irrelevant or immaterial information, or that is unreasonable, oppressive, excessive in scope, unduly burdensome, or repetitive of previous requests, or that seeks to obtain privileged documents, shall be denied or modified. A request is unreasonable, oppressive, excessive in scope, or unduly burdensome if, among other things, it fails to include justifiable limitations on the time period covered and the geographic locations to be searched, the time provided to respond in the request is inadequate, or the request calls for copies of documents to be delivered to the requesting party and fails to include the requestor's written agreement to pay in advance for the copying, in accordance with §908.47.

(c) *Forms of discovery.* Document discovery shall be limited to requests for

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production of documents for inspection and copying. No other form of discovery shall be allowed. Discovery by use of interrogatories may be permitted. This paragraph shall not be interpreted to require the creation of a document.

(d) *Privileged matter.* Privileged documents shall not be discoverable. Privileges include the attorney-client privilege, work-product privilege, any government's or government agency's deliberative process privilege and any other privileges provided by the Constitution, any applicable act of Congress, or the principles of common law.

(e) *Time limits.* All discovery, including all responses to discovery requests, shall be completed within the time set by the presiding officer, but in no case later than ten (10) days prior to the service deadline for pre-hearing submissions in accordance with §908.54. No exception to this time limit shall be permitted, unless the presiding officer finds on the record that good cause exists for waiving the requirements of this paragraph.

§908.47 Request for document discovery from parties.

(a) *General rule.* Any party may serve on any other party a request to produce for inspection any discoverable documents that are in the possession, custody, or control of the party upon whom the request is served. Copies of the request shall be served on all other parties. The request must identify the documents to be produced either by individual item or by category and must describe each item and category with reasonable particularity. Documents must be produced as they are kept in the usual course of business or they shall be labeled and organized to correspond with the categories in the request.

(b) *Production or copying.* The request shall specify a reasonable time, place and manner for production and performing any related acts. In lieu of inspecting the documents, the requesting party may specify that all or some of the responsive documents be copied and the copies delivered to the requesting party. If copying of fewer than 250 pages is requested, the party to whom the request is addressed shall bear the

cost of copying and shipping charges. If a party requests more than 250 pages of copying, the requesting party shall pay for copying and shipping charges. Copying charges are at the current rate per page imposed by the Finance Board at §910.9(g) of this chapter for requests for documents filed under the Freedom of Information Act, 5 U.S.C. 552. The party to whom the request is addressed may require payment in advance before producing the documents.

(c) *Obligation to update responses.* A party who has responded to a discovery request is not required to supplement the response, unless:

(1) The responding party learns that in some material respect the information disclosed is incomplete or incorrect, and

(2) The additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(d) *Motions to strike or limit discovery requests.* (1) Any party that objects to a discovery request may, within ten (10) days of being served with such request, file a motion in accordance with the provisions of §908.45 requesting the presiding officer order the request be stricken or otherwise limited. If an objection is made to only a portion of an item or category in a request, the objection shall specify that portion. Any objections not made in accordance with this paragraph and §908.45 are waived.

(2) The party who served the request that is the subject of a motion to strike or limit may file a written response within five (5) days of service of the motion. No other party may file a response.

(e) *Privilege.* At the time other documents are produced, all documents withheld on the grounds of privilege must be reasonably identified, together with a statement of the basis for the assertion of privilege. When similar documents that are protected by deliberative process, attorney work-product, or attorney-client privilege are voluminous, these documents may be identified by category instead of by individual document. The presiding officer has discretion to determine when the identification by category is insufficient.