

§ 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