

WAC 208-08-060 Discovery. (1) Application of superior court civil rules.

(a) When applicable and not in conflict with this section, civil rules 26 through 34 and rule 36 of the Washington state superior court civil rules apply.

(b) Civil rule 45 may be applied to the extent set forth in civil rules 30 and 31.

(c) Civil rules not set forth in this subsection do not apply unless they are referred to by one of the civil rules enumerated in this subsection.

(2) **Presiding officer.** For purposes of discovery, the presiding officer is the administrative law judge assigned by the office of administrative hearings.

(3) Motion required.

(a) Any motion for discovery served upon any party prior to the assignment of an administrative law judge is stayed until an administrative law judge is assigned and the motion for discovery can be heard at the prehearing conference set forth in WAC 208-08-110.

(b) Unless discovery is included in the prehearing order as provided in WAC 208-08-110, a party wishing to make discovery must file a motion for discovery with the presiding officer. The party must also serve the discovery motion on all other parties to the proceeding. Any party opposing or otherwise responding to the motion must file a response with the presiding officer and the response must be served on all parties within ten calendar days after service of the motion.

(4) **Limitation on discovery.** In addition to limitations on discovery set forth in any other applicable law, regulation, or rule, discovery does not include:

(a) Information or documents from the personnel file of any department employee;

(b) Information or documents relating to any investigation conducted by the department against unrelated parties;

(c) Information or documents relating to any action brought by the department against unrelated parties;

(d) Information or documents relating to any examination conducted by the department of unrelated parties;

(e) Information or documents relating to any license applications or determinations made by the department of unrelated parties; or

(f) Depositions of the agency director or assistant directors.

(5) **Hearing on discovery motion.** Any party may request a hearing on a discovery motion. If the presiding officer determines that a hearing on the motion is warranted, he or she shall give all parties notice of the time and place for the hearing.

(6) **Decision on motion.** The presiding officer may determine the extent and conditions of discovery in any adjudicative proceeding, considering the criteria set forth in RCW 34.05.446(3) and WAC 208-08-070 and 208-08-080. The presiding officer must rule upon the motion only after all parties have responded or the time for response has passed.

(7) **Spoilation.** When, upon proof by a preponderance of the evidence, and without a motion to the presiding officer, a party alters, destroys, suppresses, or withholds records or information subject to discovery, the presiding officer may presume the evidence would have been unfavorable to that party's position.

(8) **Failure to comply with discovery.** Failure to comply with a lawful discovery request is grounds for default under RCW 34.05.440(2).

(9) **Appeal of discovery decision.** All decisions regarding discovery are subject to the process set forth in WAC 208-08-160 in the event of an interlocutory appeal as set forth in that section.

[Statutory Authority: RCW 34.05.250. WSR 17-16-056, § 208-08-060, filed 7/25/17, effective 10/1/17. Statutory Authority: RCW 43.320.040 and 34.05.250. WSR 96-11-035, § 208-08-060, filed 5/6/96, effective 6/6/96.]