

WAC 246-10-403 Motions. (1) The presiding officer shall rule on motions. The presiding officer may rule on motions without oral argument or may request or permit the parties to argue the motion in person or by telephone. Oral argument may be limited in time at the discretion of the presiding officer.

(2) All prehearing motions, including discovery and evidentiary motions, must be made in writing and filed with the adjudicative clerk's office and served on all other parties by the dates set in the scheduling order.

(3) Motions for continuance must be made in writing and filed prior to the dates set in the scheduling order. If the adjudicative proceeding is scheduled to take place fewer than twenty days from service of the scheduling order, motions for continuance must be made within ten days of service of the scheduling order, but in no event fewer than five days prior to the hearing. Continuances may be granted by the presiding officer for good cause.

(4) The presiding officer may grant a continuance when a motion for continuance is not submitted within the time limits contained in subsection (3) of this section for good cause.

(5) The following is the recommended format for motions:

(a) A succinct statement of the facts contended to be material;

(b) A concise statement of the issue, issues or law upon which the presiding officer is requested to rule;

(c) The specific relief requested by the moving party;

(d) If the motion requires the consideration of facts or evidence not appearing on the record, the moving party shall also serve and file copies of all affidavits, declarations, and photographic or documentary evidence presented in support of the motion;

(e) The legal authority upon which the motion is based; and

(f) A proposed order may accompany the motion, and should contain findings of fact and conclusions of law.

(6) The moving party shall file the motion, and the accompanying affidavits, declarations, and photographic or documentary evidence when necessary, with the adjudicative clerk's office and shall serve the motion, and the accompanying affidavits, declarations, and photographic or documentary evidence when necessary, on all other parties. The motion may not exceed twenty-five pages without permission of the presiding officer.

(7) The opposing party shall file with the adjudicative clerk's office, and serve upon the moving party, a responsive memorandum, and accompanying affidavits, declarations, and photographic or documentary evidence when necessary, no later than eleven days following service of the motion, unless otherwise ordered by the presiding officer. A responsive memorandum may not exceed twenty-five pages without permission of the presiding officer.

(8) The moving party may file with the adjudicative clerk's office, and serve upon the opposing party, a reply memorandum no later than five days following service of the responsive memorandum, unless otherwise ordered by the presiding officer. A reply memorandum may not exceed fifteen pages without permission of the presiding officer.

(9) Unless otherwise ordered by the presiding officer, all motions must be decided without oral argument. A party requesting oral argument on a motion shall so indicate by typing "ORAL ARGUMENT REQUESTED" in the caption of the motion or the responsive memorandum. If a request for oral argument is granted, the presiding officer shall notify the parties of the date and time of the argument and whether the argument will be in person or by telephone conference.

(10) Motions to shorten time or emergency motions must be exceptions to the rule, and a party may only make such motions in exigent or exceptional circumstances. When making such a motion, the moving party shall:

(a) Suggest a date and time when the moving party seeks to have the presiding officer hear the motion to shorten time, which should be at least forty-eight hours after filing;

(b) Suggest a date and time when the moving party seeks to have the presiding officer consider the merits of the underlying motion;

(c) Describe the exigent or exceptional circumstances justifying shortening of time in an affidavit, declarations, or memorandum accompanying the motion;

(d) Certify that the motion to shorten time and the underlying motion have been served on all other parties prior to the filing of the motion with the presiding officer. Any opposition to the motion to shorten time must be served and filed within twenty-four hours of the service of the motion. If the presiding officer grants the motion to shorten time, the presiding officer shall notify the parties of the date by which the responsive memorandum to the underlying motion must be served and filed.

(11) All motions will be decided as soon as practical, but not more than thirty days following the filing of the motion. If the presiding officer will not decide the motion within this time, the presiding officer shall notify the parties in writing of the date by which the motion will be decided.

(12) If a party serves a motion or responsive memorandum by mail, pursuant to WAC 246-10-109, three days will be added to the time within which the opposing party must file and serve the responsive or reply memorandum. Service by electronic telefacsimile transmission (fax) upon each party is permitted upon agreement of the parties, with proof of confirmation of service to be filed with the presiding officer.

(13) All computations of time must be calculated pursuant to WAC 246-10-105.

(14) Departmental motions for summary actions are exempted from all requirements of this rule.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-049, § 246-10-403, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.155.040. WSR 97-12-089, § 246-10-403, filed 6/4/97, effective 7/5/97. Statutory Authority: RCW 18.130.050 and 43.70.040. WSR 96-21-027, § 246-10-403, filed 10/7/96, effective 11/7/96. Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-403, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-403, filed 6/3/93, effective 7/4/93.]