

WAC 162-08-282 Summary judgment. (1) **Authorized.** At any time prior to the tenth day before the date of a hearing, any party may serve and file a motion for summary judgment in the party's favor as to all or part of the case.

(2) **Procedure.** The usual procedure for motions made before an administrative law judge, WAC 162-08-271, shall apply except where this section provides a different procedure.

(3) **Response.** Any party may serve and file opposing affidavits and a response, or either of these, within seven days after the motion for summary judgment has been served on that party.

(4) **When decided.** The administrative law judge shall decide a motion for summary judgment promptly after ten days have elapsed since the motion was filed with the administrative law judge.

(5) **Oral argument optional.** Oral argument shall be heard only if ordered by the administrative law judge.

(6) **What is decided.** The administrative law judge's final order shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, and other documents and evidence properly before the administrative law judge, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of whether an unfair practice has been committed although there is a genuine issue as to the amount or nature of relief to be ordered. Otherwise, summary judgment shall be denied.

(7) **Orders when case not fully adjudicated on motion.** If summary judgment is not ordered for the whole case or for all of the relief asked and a hearing is necessary, the administrative law judge shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. The administrative law judge may summon counsel for all parties and interrogate them for this purpose. The administrative law judge shall then make an order specifying the facts that appear without substantial controversy, including the extent to which the amount or nature of relief is not in controversy, and directing such further proceedings as are just. At the hearing, the facts so specified shall be deemed established, and the hearing shall be conducted accordingly.

(8) **Form of affidavits; further testimony.** Supporting and opposing affidavits must be made on personal knowledge, must set forth facts that would be admissible in evidence, and must show affirmatively that the affiant is competent to testify to what is stated. Sworn or certified copies of all papers or parts of papers referred to in an affidavit shall be attached to the affidavit or served with it. The administrative law judge may permit affidavits to be supplemented or opposed by depositions or by further affidavits.

(9) **When affidavits are unavailable.** Should it appear from the affidavits of a party opposing the motion that the party cannot, for reasons stated, present by affidavit facts essential to justify the party's opposition, the administrative law judge may refuse the motion, or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had, or the administrative law judge may issue such other order as is just.

(10) **Affidavits made in bad faith.** Should it appear to the satisfaction of the administrative law judge at any time that any of the affidavits were presented in bad faith or solely for the purpose of delay, the administrative law judge shall order the party employing them to pay to the other party the amount of the reasonable expenses

which the filing of the affidavits caused the party to incur, including reasonable attorney's fees. The administrative law judge shall include this order in the final order.

[Statutory Authority: RCW 49.60.120(3). WSR 89-23-020, § 162-08-282, filed 11/7/89, effective 12/8/89; Order 35, § 162-08-282, filed 9/2/77.]