

**WAC 391-45-310 Motions for discretionary review—Examiner decisions.** (1)(a) A party seeking review by the commission of an interlocutory decision of the executive director, the executive director's designee, or an examiner must file a motion for discretionary review with the commission and a copy with the person who issued the interlocutory decision within seven days after the decision is issued.

(b) Discretionary review of an interlocutory decision issued by the executive director, the executive director's designee, or an examiner will be accepted by the commission only:

(i) If the executive director, the executive director's designee, or the examiner has committed an obvious error that would render further proceedings useless;

(ii) If the executive director, the executive director's designee, or the examiner has committed probable error and the interlocutory decision substantially alters the status quo or substantially limits the freedom of a party to act; or

(iii) If the executive director, the executive director's designee, or the examiner has so far departed from the accepted and usual course of administrative proceedings as to call for immediate review by the commission.

(c) The commission will not accept motions for discretionary review of:

(i) The scope of proceedings issued in a cause of action statement under WAC 391-45-110;

(ii) Application of the six-month statute of limitations; or

(iii) Any evidentiary ruling by an examiner during the course of a hearing.

(d) If a motion for discretionary review is filed, the due date for any response is seven days following the date on which a party wishing to file a response is served with the motion. Responses must be filed and served as required by WAC 391-08-120.

(e) A motion for discretionary review, and any response, should not exceed 15 pages (double-spaced, 12-point type) excluding appendices.

(f) Denial of discretionary review of a decision does not affect the right of a party to obtain later review of the interlocutory decision or the issues pertaining to that decision.

(2) After the close of a hearing and the filing of all briefs, an examiner shall issue a decision containing findings of fact, conclusions of law, and an order. Unless appealed to the commission under WAC 391-45-350, a decision issued under this section is the final order of the agency with the same force and effect as if issued by the commission.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and 49.39.060. WSR 22-23-101, § 391-45-310, filed 11/16/22, effective 1/1/23. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.120, and 49.39.060. WSR 10-20-172, § 391-45-310, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.120. WSR 08-04-058, § 391-45-310, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.065, 41.56.160 and 41.59.150. WSR 00-14-048, § 391-45-310, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-45-310, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.073,

41.56.180, 41.59.150 and 53.18.015. WSR 90-06-074, § 391-45-310, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-048 (Order 80-7), § 391-45-310, filed 9/30/80, effective 11/1/80.]