



Snohomish County Council

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Title: Receiving Notice of Amendments to Hearing Examiner's Rules of Procedure 1.8 and 3.3

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Attachments:

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County code authorizes the Hearing Examiner to adopt Rules of Procedure. When the Hearing Examiner amends the Rules, the Hearing Examiner must notify County Council. County code does not require approval or any action by Council prior to the effectiveness of the amendment. County Council may take no action, modify the amendment, or veto the amendment. If Council modifies or vetoes the amendment, the Hearing Examiner must incorporate Council's changes or veto in the Rules of Procedure within ten days of Council action. SCC 2.02.090 (2013).

The Hearing Examiner amends Rules of Procedure 1.8 (Notice Requirements) and 3.3 (Motions), effective July 1, 2021.

The Office of Hearings Administration published the proposed amendments on its county web page and solicited comments from attorneys who appeared before the Hearing Examiner during the last two years. The Office received one comment before the comment period closed on May 6, 2021.

Rule 1.8 The amendment to Rule 1.8 establishes electronic delivery as the default mode for service. A party may opt-out of electronic delivery by notifying the Office of Hearings Administration. The Office received no comments regarding this proposed amendment.

Rule 3.3 The amendments to Rule 3.3 provide for standard periods for responding and replying to motions to dismiss or for summary judgment. The current rule does not identify when responses and replies must be filed. In addition, the current rule allows dispositive motions to be filed on the eve of a hearing, potentially wasting time and effort of principal parties and the Office of Hearings Administration in preparing for the hearing. The amendment establishes dates for filing dispositive motions, responses, and replies and a cut-off date before the open record hearing.

Many appellants, especially in code enforcement and animal control appeals, are not represented by lawyers and are unfamiliar with reading rules of procedure. The amendment requires the movant (typically either the county or a party by a lawyer) to place a table with the response date at the beginning of the motion to inform the other principal parties when responses will be due.

The sole comment on this proposed amendment noted that the current rule did not limit the pages of a reply,

though the number of pages in a dispositive motion and response were limited. In addition, the commenter pointed out that not all responses oppose the motion, e.g., an applicant may file a motion to dismiss an appeal and the Planning and Development Services department joins or acquiesces in the motion. The current rule explicitly assumes and therefore arguably limits responses to opposition to the motion.

The Hearing Examiner incorporated the comments into the amendments.

1.8 Notice Requirements

Purpose

Notice by electronic mail unless a party objects or unless otherwise required by law saves paper, is more convenient for participants who do not subscribe to a legal messenger service and increases efficiency. The amendment recognizes existing practice and expectations by allowing notice by electronic mail unless county code or other law requires a different method of notice. Parties may opt out of receiving notices by electronic mail by filing an objection with the Office of the Hearings Administration.

Amended Rule 1.8 (Clean Text)

1.8 Notice Requirements

Whenever an action of a Party of Record or principal party requires notice to other Party of Record or principal party, notice shall be made according to the procedures specified in the Snohomish County Code. If no procedure is specified, notice shall be sent by: (a) electronic mail (unless the receiving party previously filed an objection to receiving notices by electronic mail with the Office of Hearings Administration); (b) first class regular mail; or (c) by personal service. A declaration of service or other proof of service shall be filed with the Office of Hearings Administration. A list of Parties of Record or principal parties may be obtained from the Clerk. Attachments to electronic mail must be in a common standard file format that can be opened and reviewed by the recipient without purchasing software, such as the portable document format (PDF).

Previous Rule 1.8 with Amendment (Red-lined Text)

1.8 Notice Requirements

Whenever an action of a Party of Record or principal party requires notice to another Party or parties of Record or principal party, notice shall be made according to the procedures specified in the Snohomish County Code. If no procedure is specified, notice shall be sent by: (a) electronic mail (unless the receiving party previously filed an objection to receiving notices by electronic mail with the Office of Hearings Administration); (b) first class regular mail; or (c) by personal service to all parties of record, and. A declaration of service or other proof of service shall be filed with the Office of Hearings Administration Hearing Examiner's Office. A list of Parties of Record or principal parties may be obtained from the Clerk. Attachments to electronic mail must be in a common standard file format that can be opened and reviewed by the recipient without purchasing software, such as portable document format (PDF).

3.3 Motions

Purpose

The amendment establishes dates for filing dispositive motions, responses, and replies. The amendment is modeled after Washington State Civil Rule 56 but with different time periods and provides for 14 calendar days

to respond to a dispositive motion and 7 calendar days to reply to a response. The amendment establishes a dispositive motion cut-off of 30 calendar days before the open record hearing. Many appellants are not lawyers and unfamiliar with reading rules of procedure. The amendment requires the movant (typically either the county or a represented party) to place a table with the response date at the beginning of the motion to inform the other principal parties when responses will be due.

A comment was received suggesting a page limitation to the replies in support of the motion, noting that page limits are placed on the motion and responses to the motion. A new section -- 3.3(e) - was added to limit replies to 5 pages.

The comment also pointed out that not all responses may oppose a motion, but previous rule 3.3(c) (which was proposed to be retained unchanged) implies that responses may only oppose the motion. "A response shall provide a concise statement setting forth the factual and legal basis **as to why the motion should not be granted** and may be in the form of a legal brief." H. Ex. R. of Proc. 3.3(c) (2019) (emphasis added). The amendment clarifies the rule: "A response shall provide a concise statement setting forth the factual and legal basis of the responding party's position regarding the motion ~~as to why the motion should not be granted~~ and may be in the form of a legal brief."

Proposed Rule 3.3 as Amended (Clean Text)

3.3 Motions

- a) Dispositive Motions. Principal parties to an appeal may file a motion to dismiss all or part of an appeal. A motion to dismiss and any supporting affidavits, memoranda of law, or other documentation shall be filed with the Office of Hearings Administration and served on all other principal parties not later than 30 calendar days before the open record hearing on the appeal. The adverse party may file and serve its opposition, response, opposing affidavits, memoranda of law or other documentation not later than 14 calendar days after the moving party files its motion to dismiss. The moving party may file and serve any rebuttal documents not later than 21 calendar days after it files its motion. If the date for filing either the response or rebuttal falls on a Saturday, Sunday, or legal holiday, then it shall be filed and served not later than the next business day. The Hearing Examiner will take the motion under advisement and in his discretion either set a hearing on the motion or issue a written decision on the motion. An order such as a scheduling order in an individual matter may establish different dates and supersedes the schedule established by this rule. All dispositive motions shall contain the following table (or substantially similar table) at the beginning of the motion:

	<u>Date Due</u>
Motion filed and served on all principal parties	[Insert date of filing and service]
Response Due	[Insert the date of the first business day on or after 14 calendar days after filing and service of motion]
Reply Due	[Insert the date of the first business day on or after 21 calendar days after filing and service of motion]

- b) Other Pre-Hearing Motions. A principal party may request a limitation on the introduction of evidence or testimony or other matter through a timely filed motion. Except as otherwise provided in these Rules or scheduling order, pre-hearing motions may be filed in writing by any principal party any time up until the tenth (10th) calendar day prior to the hearing. Motions shall be concurrently served on all principal parties by email (unless a principal party previously filed an objection to receiving documents by email), by certified mail with a return receipt requested, or personal service. The opposing party or parties may file a responsive pleading with the Hearing Examiner no later than five (5) days prior to the hearing, which response shall be served on the

moving party. A reply may be filed no later than 3 days prior to the hearing. Absent a showing of good cause, any such motion made after the time required in this Rule shall be denied as untimely. Failure to provide notice of a motion to all other parties of record as required by these Rules may also be grounds for denial of the motion.

- c) Contents. A motion shall provide a concise statement of the factual and legal basis for the motion and may be accompanied by a supporting legal brief. A motion and accompanying brief shall not exceed 10 pages in length without the prior permission of the Hearing Examiner upon a showing of good cause.
- d) Response to a Motion. A response shall provide a concise statement of the responding party's position regarding the motion and may be in the form of a legal brief. Responses shall not exceed 10 pages in length without prior permission of the Hearing Examiner upon a showing of good cause. Failure to timely respond to a motion shall constitute a waiver of any objection to the motion. Late responses may be considered at the Examiner's discretion where good cause is shown, if received prior to issuance of a dispositive Order ruling on the motion.
- e) Reply. A movant may file a reply to the response. Replies shall not exceed five pages in length without prior permission of the Hearing Examiner upon a showing of good cause.
- f) Decision. Motions will be decided without oral argument, unless specifically requested by the Hearing Examiner. The Examiner will make every effort to rule on each motion by issuance of a written Order prior to the start of the hearing. However, in some circumstances, such as the late filing of a motion, the Examiner may rule on a motion at the start of the hearing or in the Examiner's written decision. Where efficiency would be served, the Hearing Examiner may consolidate multiple motions for purposes of issuing a single Order.

Existing Rule 3.3 with Proposed Amendment (Red-lined Text)

3.3 Motions

- a) Dispositive Motions. Principal parties to an appeal may file a motion to dismiss all or part of an appeal. A motion to dismiss and any supporting affidavits, memoranda of law, or other documentation shall be filed with the Office of Hearings Administration and served on all other principal parties not later than 30 calendar days before the open record hearing on the appeal. The adverse party may file and serve its opposition, response, opposing affidavits, memoranda of law or other documentation not later than 14 calendar days after the moving party files its motion to dismiss. The moving party may file and serve any rebuttal documents not later than 21 calendar days after it files its motion. If the date for filing either the response or rebuttal falls on a Saturday, Sunday, or legal holiday, then it shall be filed and served not later than the next business day. The Hearing Examiner will take the motion under advisement and in his discretion either set a hearing on the motion or issue a written decision on the motion. An order such as a scheduling order in an individual matter may establish different dates and supersedes the schedule established by this rule. All dispositive motions shall contain the following table (or substantially similar table) at the beginning of the motion:

	<u>Date Due</u>
<u>Motion filed and served on all principal parties</u>	<u>[Insert date of filing and service]</u>
<u>Response Due</u>	<u>[Insert the date of the first business day on or after 14 calendar days after filing and service of motion]</u>
<u>Reply Due</u>	<u>[Insert the date of the first business day on or after 21 calendar days after filing and service of motion]</u>

- ba) Other Pre-Hearing Motions. A principal party may request ~~summary dismissal, summary judgment,~~ a limitation on the introduction of evidence or testimony or other matters through a timely filed motion. Except as otherwise provided in these Rules or scheduling order, pre-hearing motions may be filed in writing by any principal party any time up until the tenth (10th) calendar day prior to the hearing. Motions shall be concurrently served on all principal parties by email (unless a principal party previously filed an objection to receiving documents by email), by certified mail with a return receipt requested, or personal service. The opposing party or parties may file a responsive pleading with the Hearing Examiner no later than five (5) days prior to the hearing, which response shall be served on the moving party. A reply may be filed no later than 3 days prior to the hearing. Absent a showing of good cause, any such motion made after the time required in this Rule shall be denied as untimely. Failure to provide notice of a motion to all other parties of record as required by these Rules may also be grounds for denial of the motion.
- cb) Contents. A motion shall provide a concise statement of the factual and legal basis for the motion and may be accompanied by a supporting legal brief. A motion and accompanying brief shall not exceed 10 pages in length without the prior permission of the Hearing Examiner upon a showing of good cause.
- de) Response to a Motion. A response shall provide a concise statement setting forth the factual and legal basis ~~as to why the motion should not be granted~~ of the responding party's position regarding the motion and may be in the form of a legal brief. Responses shall not exceed 10 pages in length without prior permission of the Hearing Examiner upon a showing of good cause. Failure to timely respond to a motion shall constitute a waiver of any objection to the motion. Late responses may be considered at the Examiner's discretion where good cause is shown, if received prior to issuance of a dispositive Order ruling on the motion.
- e. Reply. A movant may file a reply to the response. Replies shall not exceed five pages in length without prior permission of the Hearing Examiner upon a showing of good cause.
- fd) Decision. Motions will be decided without oral argument, unless specifically requested by the Hearing Examiner. The Examiner will make every effort to rule on each motion by issuance of a written Order prior to the start of the hearing. However, in some circumstances, such as the late filing of a motion, the Examiner may rule on a motion at the start of the hearing or in the Examiner's written decision. Where efficiency would be served, the Hearing Examiner may consolidate multiple motions for purposes of issuing a single Order.