

(3) Subsequent modification of the ruling at the conclusion of the proceeding would be an inadequate remedy; or

(4) Subsequent modification of the ruling would cause unusual delay or expense.

(c) *Procedure.* Any motion for interlocutory review shall be filed by a party with the presiding officer within ten days of his ruling. Upon the expiration of the time for filing all responses, the presiding officer shall refer the matter to the Director for final disposition. In referring the matter to the Director, the presiding officer may indicate agreement or disagreement with the asserted grounds for interlocutory review of the ruling in question.

(d) *Suspension of proceeding.* Neither a request for interlocutory review nor any disposition of such a request by the Director under this section suspends or stays the proceeding unless otherwise ordered by the presiding officer or the Director.

#### § 1780.31 Summary disposition.

(a) *In general.* The presiding officer shall recommend that the Director issue a final order granting a motion for summary disposition if the undisputed pleaded facts, admissions, affidavits, stipulations, documentary evidence, matters as to which official notice may be taken and any other evidentiary materials properly submitted in connection with a motion for summary disposition show that—

(1) There is no genuine issue as to any material fact; and

(2) The movant is entitled to a decision in its favor as a matter of law.

(b) *Filing of motions and responses.* (1) Any party who believes there is no genuine issue of material fact to be determined and that such party is entitled to a decision as a matter of law may move at any time for summary disposition in its favor of all or any part of the proceeding. Any party, within 20 days after service of such motion or within such time period as allowed by the presiding officer, may file a response to such motion.

(2) A motion for summary disposition must be accompanied by a statement of material facts as to which the movant contends there is no genuine issue.

Such motion must be supported by documentary evidence, which may take the form of admissions in pleadings, stipulations, written interrogatory responses, depositions, investigatory depositions, transcripts, affidavits and any other evidentiary materials that the movant contends support its position. The motion must also be accompanied by a brief containing the points and authorities in support of the contention of the movant. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which such party contends a genuine dispute exists. Such opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

(c) *Hearing on motion.* At the request of any party or on his own motion, the presiding officer may hear oral argument on the motion for summary disposition.

(d) *Decision on motion.* Following receipt of a motion for summary disposition and all responses thereto, the presiding officer shall determine whether the movant is entitled to summary disposition. If the presiding officer determines that summary disposition is warranted, the presiding officer shall submit a recommended decision to that effect to the Director, under § 1780.53. If the presiding officer finds that the moving party is not entitled to summary disposition, the presiding officer shall make a ruling denying the motion.

#### § 1780.32 Partial summary disposition.

If the presiding officer determines that a party is entitled to summary disposition as to certain claims only, he shall defer submitting a recommended decision to the Director as to those claims. A hearing on the remaining issues must be ordered. Those claims for which the presiding officer has determined that summary disposition is warranted will be addressed in the recommended decision filed at the conclusion of the hearing.