**Section 1848.9 Discovery**

a) Discovery methods. Parties may obtain discovery by one or more of the following methods:

1) Depositions upon oral examination or upon written questions;

2) Written interrogatories;

3) Production of documents or things or permission to enter upon land or other property, for inspection and other purposes; or

4) Requests for admission.

b) Time for discovery. A party desiring to initiate discovery shall request a pre-hearing conference for purposes of setting a discovery schedule. At such pre-hearing conference, the requesting party shall present the hearing officer and other parties with a proposed discovery plan and schedule. Any discovery approved by the hearing officer shall be conducted in accordance with this Section.

c) Scope of discovery.

1) Unless otherwise limited by order of the hearing officer in accordance with these rules, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. To the extent that any aspect of discovery is not addressed in this Section, the rules of discovery as applied in civil cases in the circuit courts of Illinois shall be followed. In the case of conflict between this Section and the rules of discovery as applied in civil cases in the circuit courts of Illinois, the latter shall govern.

2) Upon motion by a party or the person from whom discovery is sought, and for good cause shown, the hearing officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

A) The discovery may not be had;

B) The discovery may be had only on specified terms and conditions, including a designation of the time or place;

C) The discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

D) Certain matters not relevant may not be inquired into, or the scope of discovery shall be limited to certain matters;

E) Discovery shall be conducted with no one present except persons designated by the hearing officer; or

F) A trade secret or other confidential research, development, or commercial information may not be disclosed or shall be disclosed only in a designated way.

d) Sequence and timing of discovery. Unless the hearing officer upon motion, for the convenience of parties and witnesses and in the interest of justice, orders others, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

e) Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

1) A party is under a duty to timely supplement his response with respect to any question directly addressed to:

A) The identity and location of persons having knowledge of discoverable matters; and

B) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which he is expected to testify and the substance of his testimony.

2) A party is under a duty to timely amend a prior response if he later obtains information upon the basis of which:

A) He knows the response was incorrect when made; or

B) He knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

3) A duty to supplement responses may be imposed by order of the hearing officer or agreement of the parties.

f) Stipulations. If the parties so stipulate, depositions and discovery may take place before any person, for any purpose, at any time or place and in any manner.

g) Effect of discovery disclosure. Disclosure of any matter obtained by discovery is not conclusive, but may be contradicted by other evidence.

h) Reasonable attempt to resolve differences required. Every motion with respect to discovery shall incorporate a statement that after personal consultation and reasonable attempts to resolve differences, the parties have been unable to reach an accord. The hearing officer may order that reasonable costs, including attorney's fees, be assessed against a party or his attorney who unreasonably fails to facilitate discovery under this provision.

i) Depositions upon oral examination or upon written questions.

1) Any party may take the testimony of any party or person by deposition upon oral examination or written questions for the purpose of discovery or for use as evidence in the action. Any party desiring to take the testimony of any other party or other person by deposition upon oral examination shall, without leave of the hearing officer, give reasonable notice in writing to every other party, to the person to be examined and to the hearing officer, of:

A) The proposed time and place of taking the deposition;

B) The name and address of each person to be examined, if known, or if the name is not known, a general description sufficient to identify him or the particular group or class to which he belongs;

C) The matter upon which each person will be examined;

D) Whether the deposition is to be a discovery deposition or an evidence deposition. In the absence of specification the deposition shall be a discovery deposition only; and

E) The name or descriptive title and address of the officer before whom the deposition is to be taken.

2) A deposition upon oral examination may be taken before any officer authorized to administer oaths by the laws of Illinois.

3) Scope and manner of examination and cross-examination.

A) The deponent in a discovery deposition may be examined regarding any matter subject to discovery under these rules. He may be questioned by any party as if under cross-examination.

B) In an evidence deposition the examination and cross-examination shall be the same as though the deponent were testifying at the hearing.

4) Taking of the deposition. The actual taking of the deposition upon oral examination shall proceed as follows:

A) The deposition shall be on the record;

B) The officer before whom the deposition is to be taken shall put the witness under oath or affirmation;

C) Examination and cross - examination shall proceed as at a hearing;

D) Objections made at the time of the examination shall be included in the deposition. The officer before whom the deposition is taken shall not rule on objections to the evidence; evidence objected to shall be taken subject to the objection.

E) In lieu of participating in the oral examination, parties served with notice of taking a deposition may transmit written questions to the officer, who shall propound them to the witness and record the answers verbatim.

5) When the testimony is fully transcribed, the deposition shall be submitted to the deponent for examination and signature, unless examination and signature are waived by the deponent. The officer shall certify within the deposition that the deponent was duly sworn by him and that the deposition is a true record of the testimony given by the deponent. If the deposition is not signed by the deponent, the officer shall certify the deposition and state the reason for the omission of the signature. A certified deposition requires no further proof of authenticity.

6) Fees and charges. The party at whose instance the deposition is taken shall pay the fees of the witness and of the officer and the charges of the recorder or stenographer for attending.

7) Depositions on written questions.

A) Where the deposition is to be taken upon written questions, the party taking the deposition shall serve a copy of the questions, showing each question separately and consecutively numbered, on every other party with a notice stating the name and address of the person who is to answer them, and the name, description, title, and address of the officer before whom they are to be taken. Within fourteen (14) days after service, any other party may serve cross questions. Within seven (7) days after being served with cross questions a party may likewise serve redirect questions. Within seven (7) days after being served with redirect questions, a party may likewise serve recross questions.

B) The party at whose instance the deposition is taken shall transmit a copy of the notice and copies of the initial and subsequent questions served to the officer designated in the notice who shall proceed promptly to take the testimony of the deponent in response to the questions and to prepare, certify, and mail the deposition, attaching thereto the copy of the notice and the questions received by him. No party, attorney or person interested in the event of the action (unless he is the deponent) shall be present during the taking of the deposition or dictate, write or draw up any answers to the questions.

8) Use of depositions.

A) Purposes for which discovery depositions may be used. Discovery depositions taken under the provisions of this Section may be used only:

i) For the purpose of impeaching the testimony of the deponent as a witness;

ii) As an admission made by a party or by an officer or agent of a party;

iii) If otherwise admissible as an exception to the hearsay rule; or

iv) For any purpose for which an affidavit may be used.

B) Use of evidence depositions. Evidence depositions may be used for any purpose for which a discovery deposition may be used, and may be used by any party for any purpose if the hearing officer finds that at the time of the hearing:

i) The deponent is dead or unable to attend or testify because of age, sickness, infirmity or imprisonment;

ii) The deponent is out of the county, unless it appears that the absence was procured by the party offering the deposition, provided that a party who is not a resident of this state may introduce his own deposition if he is absent from the county; or

iii) The party offering the deposition has exercised reasonable diligence but has been unable to procure the attendance of the deponent by subpoena; or finds, upon notice and motion in advance of the hearing, that exceptional circumstances exist which make it desirable, in the interest of justice and with due regard for the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

C) Partial use. If only a part of a deposition is read or used at the hearing by a party, any other party may at that time read or use or require him to read any other part of the deposition which ought in fairness be considered in connection with the part read or used.

j) Written interrogatories to parties.

1) Directing interrogatories. A party may direct written interrogatories to any other party. One (1) copy of the interrogatories shall be filed with the hearing officer with proof of service on all other parties entitled to notice. Written interrogatories shall be reasonably spaced so as to permit the answering party to make his answer on the interrogatories served upon him. The answering party may attach an addendum to the copies if the space provided is insufficient.

2) Duty of attorney. It is the duty of an attorney directing interrogatories to restrict them to the subject matter of the particular case, to avoid undue detail, and to avoid the imposition of any unnecessary burden or expense on the answering party.

3) Answers and objections. Within twenty-eight (28) days after service of the interrogatories upon the party to whom they are directed, he shall file a sworn answer or an objection to each interrogatory, with proof of service upon all other parties entitled to notice. If an interrogatory is objected to, the reasons for objection shall be stated in lieu of the answer. Any objection to an answer or to the refusal to answer an interrogatory shall be heard by the hearing officer upon prompt notice and motion of the party propounding the interrogatory. The answering party shall set forth in full each interrogatory being answered immediately preceding the answer. Sworn answers to interrogatories directed to a public or private corporation or a partnership, association or governmental agency shall be made by an officer, partner or agent, who shall furnish such information as is available to the party.

4) Interrogatories may relate to any matters which can be inquired into under subsection (c). An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the hearing officer may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-hearing conference or other later time.

5) Option to produce documents. When the answer to an interrogatory may be obtained from documents in the possession or control of the party on whom the interrogatory was served, it shall be a sufficient answer to the interrogatory to specify those documents and to afford the party serving the interrogatory a reasonable opportunity to inspect the documents and to make copies thereof or compilations, abstracts, or summaries therefrom.

6) Use of answers to interrogatories. Answers to interrogatories may be used in evidence to the same extent as a discovery deposition.

k) Discovery of documents, objects and tangible things; inspection of real estate.

1) Scope. Any party may by written request direct any other party to produce for inspection, copying, reproduction, photographing, testing or sampling specified documents, objects, or tangible things, or to permit access to real estate for the purpose of making surface or subsurface inspections or surveys or photographs, or tests or taking samples, or to disclose information calculated to lead to the discovery of the whereabouts of any of these items, whenever the nature, contents, or condition of such documents, objects, tangible things, or real estate is relevant to the subject matter of the action.

2) The request shall specify a reasonable time, which shall not be less than twenty-eight (28) days except by agreement or by order of the hearing officer, and the place and manner of making the inspection and performing the related acts. One copy of the request shall be filed with the proof of service on all other parties entitled to notice.

3) A party served with the written request shall:

A) Comply with the request within the time specified; or

B) Serve upon the party who made the request written objections on the ground that the request is improper in whole or in part. If written objections to a part of the request are made, the remainder of the request shall be complied with. Any objection to the request or the refusal to respond shall be heard by the hearing officer upon prompt notice and motion of the party submitting the request. If the party claims that the item is not in his possession or control or that he does not have information calculated to lead to the discovery of its whereabouts, he may be ordered to submit to examination in open hearing or by deposition regarding such claim. If requested, the party producing documents shall furnish an affidavit stating whether the production is complete in accordance with the request.

l) Admissions.

1) A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the genuineness and authenticity of any relevant document described in or attached to the request, or for the admission of the truth of any specified relevant matter or fact.

2) Each matter of which an admission is requested is admitted unless, within twenty-eight (28) days after service of the request or such shorter or longer time as the hearing officer may allow, the party to whom the request is directed serves on the requesting party:

A) A sworn statement denying specifically the relevant matters of which an admission is requested;

B) A sworn statement setting forth in detail the reasons why he can neither truthfully admit nor deny them; or

C) Written objections on the grounds that some or all of the matters involved are privileged or irrelevant or that the request is otherwise improper in whole or in part. If written objections to a part of the request are made, the remainder of the request shall be answered within the period designated in the request. Any objection to a request or to an answer shall be heard by the hearing officer upon prompt notice and motion of the party making the request.

3) An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny.

4) The party who has requested the admission may move to determine the sufficiency of the answer or objection. Unless the hearing officer determines that an objection is justified, he shall order that an answer be served. If the hearing officer determines that an answer does not comply with the requirement of subsection (1)(2), he may order either that the matter is admitted or that an amended answer be served. The hearing officer may, in lieu of these orders, determine that final disposition of the request be made at a pre-hearing conference or at a designated time prior to hearing.

5) Any matter admitted under this subsection is conclusively established unless the hearing officer on motion permits withdrawal or amendment of the admission.

6) Any admission made by a party under this subsection is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

m) Failure to comply with rules or orders relating to discovery.

1) If a deponent fails to answer a question propounded, or a party upon whom a request is made pursuant to subsection (k), or a party upon whom answers to interrogatories are served fails to adequately respond or objects to the request, or any part thereof, or fails to permit inspection as requested, the discovering party may move the hearing officer for an order compelling a response or inspection in accordance with the request.

A) The motion shall set forth:

i) The nature of the questions or request;

ii) The response or objection of the party upon whom the request was served; and

iii) Arguments in support of the motion.

B) If the motion arose out of a failure to answer questions at a deposition, the motion shall be accompanied by a certified copy of the deposition transcript or a certified copy of that portion of the transcript containing the questions and responses.

2) For purposes of this subsection, an evasive answer or incomplete answer or response shall be treated as a failure to answer or respond.

3) In ruling on a motion made pursuant to this subsection, the hearing officer may issue a protective order, if authorized pursuant to subsection (c)(2).

n) Failure to comply with orders compelling discovery. If a party or an officer, director, or other agent of a party fails to obey an order to provide or permit discovery, the hearing officer before whom the action is pending may make such orders in regard to the failure as are just, including but not limited to the following:

1) An order that the matters sought to be discovered or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters into evidence; or

3) An order striking pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any party thereof, or rendering a judgment by default against the disobedient party.