

MINNESOTA CODE OF AGENCY RULES

RULES OF THE DEPARTMENT OF HUMAN RIGHTS

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**THE OFFICE OF REVISOR OF STATUTES
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DEPARTMENT OF ADMINISTRATION
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DEPARTMENT OF HUMAN RIGHTS

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DEPARTMENT OF HUMAN RIGHTS

CHAPTER ONE: HumRts 1-50

DEFINITIONS

All words defined in Section 363.01 of the Act shall have the meanings therein ascribed to them for the purposes of these Rules. All other words shall have the meanings herein ascribed to them.

HumRts 1 “Charge” means a sworn written statement filed by any person, including the commissioner, containing an allegation that a person may have engaged or may be engaging in an unfair discriminatory practice.

HumRts 2 “Complaint” means a document issued by the commissioner pursuant to Section 363.06 of the Act alleging that a respondent has engaged in or is engaging in an unfair discriminatory practice.

HumRts 3 “Party” means a charging party, a complainant, or a respondent.

HumRts 4 “State” means State of Minnesota.

HumRts 5 “Act” means the Minnesota Human Rights Act, Minnesota Statutes, Chapter 363.

HumRts 6 “Bidder” means any person who submits a bid to any agency of the State for a contract which is required by law or otherwise to be based on competitive bids.

HumRts 7 “Applicant” means any person who has made application to the commissioner for a certificate of compliance, but shall not include a respondent-applicant.

HumRts 8 “Public Contract” means any contract for or on behalf of the state or its political subdivisions, including any county, city, borough, town, township, school district, or any other district in the state.

HumRts 9 “Panel” means a three-person hearing panel, at least one of whom shall be an attorney admitted to the practice of law, appointed by the commissioner from the state board of human rights to hear a complaint.

HumRts 10 “Certificate of compliance” means a certificate issued to a person pursuant to the rules and regulations contained herein.

HumRts 11 “Compliance review” means a review of an applicant's or holder's activities in respect of public contracts in accordance with the rules and regulations contained herein for the purpose of determining whether the applicant or holder is in compliance with the Act and the rules and regulations adopted pursuant thereto.

HumRts 12 “Compliance application” means an application for a certificate of compliance submitted to the commissioner by a respondent-applicant.

HumRts 13 “Agency” means any officer, board, commission, bureau, division, department, or agency of the state.

HumRts 14 “Pending application” means an application for a certificate of compliance pending before the commissioner except a compliance application.

HumRts 15 “Holder” means any person who has been issued a certificate of compliance which has neither been suspended or revoked.

HumRts 16 “Respondent-applicant” means any person whose certificate of compliance has been denied or revoked pursuant to Section 363.073, Subd. 2 of the Act, and who submits a compliance application to the commissioner.

HumRts 17 “Contract letting agency” means any department or agency of the State or its political subdivisions which is responsible for awarding public contracts.

HumRts 18 “Commissioner” means the Commissioner of Human Rights or an agent authorized by the Commissioner of Human Rights.

HumRts 19-50 Reserved for Future Use.

Amended November 13, 1975.

CHAPTER TWO: HumRts 51-100

CERTIFICATES OF COMPLIANCE FOR PUBLIC CONTRACTS

HumRts 51 Reserved for Future Use.

HumRts 52 Issuance of Certificates of Compliance

(a) No agency shall award any contract estimated to exceed \$2,000, to any bidder unless prior to the award of the contract, the bidder:

(1) is a holder of a certificate of compliance; or

(2) has pending before the commissioner an application for a certificate of compliance which has not been denied.

(b) Certificates of compliance shall be issued to any person who makes written application to the commissioner therefor and is not found pursuant to Section 363.073, Subd. 2 of the Act to have committed an unfair discriminatory practice in respect of any public contract which the applicant has performed within six months of making application or which the applicant is performing at the time of, or subsequent to, making such application.

(1) Application shall be made in accordance with the rules herein upon such forms as the commissioner shall provide and shall be mailed or delivered to the St. Paul office of the Department of Human Rights.

(2) Where an applicant has performed on a public contract within six months of making application for a certificate of compliance or where an applicant is performing a public contract at the time of, or subsequent to, making such application, the commissioner may request additional information relative to the applicant's compliance with the Act in respect of the public contract.

(c) An applicant for a certificate of compliance shall certify to the commissioner, prior to the issuance of the certificate of compliance, that he or she will abide by the terms and conditions of the certificate of compliance including the compliance review procedures as set forth herein, and will agree to comply with the Act and the rules adopted pursuant thereto with respect to public contracts.

(d) In lieu of the requirements for issuance of a certificate of compliance as provided herein, an applicant shall be issued a certificate of compliance upon certification to the commissioner by the appropriate federal agency that the applicant's business operation located within the state is in compliance with the regulations of the federal government in respect of discriminatory practices.

(e) Upon request, the commissioner shall furnish to any unit of state or local government which awards public contracts or to any local commission a list of persons who either have received certificates of compliance or have pending an application therefor. Any unit of state or local government which awards public contracts desiring to receive such information on a regular basis may register with the commissioner for that purpose. The commissioner shall, at least quarterly, provide such a list to registered units of state or local government which awards public contracts and local commissions.

HumRts 53 Compliance Review. For the purpose of obtaining information regarding compliance with the Act by an applicant or holder, the commissioner may conduct compliance reviews.

(a) Applicants for Certificates of Compliance

(1) Upon receipt of an application for a certificate of compliance, the commissioner may send to an applicant who has performed on a public contract within six months of making such application or who is performing on a public contract at the time of, or subsequent to, the making of such application, a compliance review questionnaire which shall be completed and returned by the applicant to the commissioner within 30 days of receipt thereof. For good cause, the commissioner may grant an extension of time for completion of the compliance review questionnaire.

(2) The commissioner may make an on-site investigation of the business operation of an applicant in respect of public contracts which an applicant has performed within six months of making application or is performing at the time of, or subsequent to, the making of an application under rules herein. Where the commissioner makes such on-site investigation, the applicant shall permit access to the commissioner during normal business hours to his books, records, accounts and personnel relevant to compliance with the Act with respect to public contracts.

(3) Where an applicant has not performed on a public contract within six months of making application for a certificate of compliance, or is not presently engaged in the performance of a public contract at the time of making an application to the commissioner, and does not become so engaged while the application is pending, the commissioner shall issue a certificate of compliance to the applicant within ninety (90) days upon receipt of the application, provided the applicant has complied with the requirements of HumRts 52(c).

(b) Holders of Certificates of Compliance

(1) Holders of certificates of compliance shall permit access to the commissioner during normal business hours to their books, records, accounts and personnel relevant to compliance with the Act with respect to any public contract which has been awarded to the holder following the issuance of a certificate of compliance.

(2) Holders of certificates of compliance shall file with the commissioner a contract compliance review report in respect of their performance under public contracts six (6) months after the date of issuance of the certificate of compliance, and annually thereafter, upon such forms as the commissioner shall provide and in accordance with the directions contained therein.

(3) In addition to receiving contract compliance review reports, the commissioner may conduct further investigations, including review of employment practices and on-site inspections of the holder's business operations with respect to public contracts.

(4) Nothing contained herein shall be construed to exempt holders who are also certified as being in compliance with the regulations of the federal government in respect of discriminatory practices pursuant to HumRts 52(d) from the applicable compliance review procedures in 53(b) of the rules herein.

HumRts 54 Denial, Suspension, Revocation

(a) Whenever the commissioner has received a verified charge filed pursuant to Section 363.06, Subd. 1 of the Act in respect of a public contract and the commissioner has determined that probable cause exists to credit the allegations of the unfair discriminatory practice, the commissioner may issue a complaint in accordance with the provisions of Section 363.06 of the Act.

(b) Whenever the commissioner has reason to believe that an applicant for, or a holder of, a certificate of compliance has engaged in an unfair discriminatory practice in respect of a public contract, the commissioner may issue a complaint in accordance with the provisions of Section 363.06 of the Act.

(c) In complying with HumRts 54(a) and (b) the commissioner shall endeavor to eliminate the unfair discriminatory practice through education, conference, conciliation and persuasion at the place where the practice occurred, or where the respondent resides or has his or her principal place of business. Such endeavors shall include recommendations to the applicant or holder which would bring the conduct into conformity with the Act and which will remedy injuries resulting from the unfair discriminatory practice.

(d) If the panel or hearing examiner finds that an applicant or a holder has committed an unfair discriminatory practice in respect of a public contract, the panel or hearing examiner shall make findings of fact and conclusions of law and shall issue an order denying, suspending or revoking the certificate of compliance, and directing the applicant or holder to cease and desist from engaging in the unfair discriminatory practice found to exist, and to take such affirmative or remedial action with respect to the unfair discriminatory practice as will effectuate the purposes of Chapter 363. The panel or hearing examiner shall cause the findings of fact, conclusions of law, and order to be served upon the applicant or holder personally.

The commissioner shall reinstate a suspended certificate of compliance within 90 days after he finds that the former holder has ceased engaging in any unfair discriminatory practice, and has in all other respects complied with the order of the panel or hearing examiner.

(e) Upon denial, suspension or revocation of a certificate of compliance by a panel or hearing examiner in an order based upon a finding that an applicant or holder has committed an unfair discriminatory practice in respect of a public contract, the commissioner shall notify all agencies and departments of the state and local commissions of such denial, suspension or revocation, and, in addition, shall notify any county, city, borough, town, township, school, school district, or any other district in the state or other political subdivision of the state for which the applicant or holder is performing under a public contract.

(f) In making an order based on a finding that the holder or applicant has committed an unfair discriminatory practice in respect of a public contract, the panel or examiner shall not terminate or abridge any public contract which the applicant or holder has with any department or agency of the state where the commissioner's complaint was issued after the date of the award of the public contract.

(g) A hearing on a complaint issued pursuant to HumRts 54(a) and (b)

shall be conducted in accordance with rules for public hearing promulgated by the commissioner and in accordance with Minnesota Statutes, Chapters 15 and 363.

(h) Section 363.072 of the Act shall govern any appeal taken from the order of the panel or the hearing examiner. For purposes of appeal, the order of the panel or the hearing examiner shall be considered to be the final decision of the Department of Human Rights.

HumRts 55 Compliance Applications

(a) Following the denial or revocation of a certificate of compliance, a person may reapply for said certificate by submitting to the commissioner a compliance application upon such forms as the commissioner shall provide. In addition to the information required pursuant to HumRts 52, the compliance application shall set forth information showing that the respondent-applicant has ceased engaging in the unfair discriminatory practice upon which the panel or hearing examiner based its order denying or revoking the respondent-applicant's certificate of compliance, and has in all other respects complied with the order of the panel or hearing examiner.

(b) Upon receipt of the compliance application, and the other information required by HumRts 55 (a), the commissioner shall issue within 90 days a certificate of compliance after the commissioner finds that the respondent-applicant has ceased engaging in such unfair discriminatory practices. If the commissioner finds that the respondent-applicant has not ceased in engaging in such unfair discriminatory practices, the commissioner shall so notify the respondent-applicant in writing setting forth the reasons therefor.

(c) A denial of compliance application shall not be construed to prevent a person from submitting another compliance application.

HumRts 56 Referral to Local Commissions

(a) The commissioner may refer an application for a certificate of compliance to a local commission for investigation, study and report in accordance with Section 363.115 of the Act. The local commission shall, within sixty (60) days upon receipt of the referral, make a report and recommendations to the commissioner. Such report and recommendations shall be conducted by the local commission in accordance with the rules contained herein and shall be made in lieu of an investigation made by the commissioner in accordance with these rules.

(b) Upon receipt of the report, the commissioner shall, within thirty (30) days, issue the certificate of compliance or issue a complaint upon a determination that there is reason to believe that the applicant is engaging in an unfair discriminatory practice in respect of a public contract.

HumRts 57 Violations. Except where otherwise specifically provided, any person violating, or failing to comply with a provision of the Act or the rules contained herein shall be deemed by the commissioner to have committed an unfair discriminatory practice as set forth in Section 363.03, Subd. 6(4) of the Act and the commissioner may issue a complaint pursuant thereto.

HumRts 58 Severability. If any provision of the rules contained herein, or the application thereof to any person is held invalid, the invalidity does not affect any provision or application of these rules which can be given effect without the invalid provision or application, and to this end the provisions of these rules are severable.

HumRts 59 Construction. These rules and regulations shall be construed liberally to effectuate the purposes of the Act.

HumRts 60-100 Reserved for Future Use

Amended November 13, 1975.

CHAPTER THREE: HumRts 101-150

RULES OF PRACTICE

HumRts 101 Policy. No person before the Department of Human Rights shall have his or her rights, privileges, or duties determined without regard for fundamental fairness. Any person may be represented by legal counsel at any stage of proceedings before the department. In any contested case before the department, all parties thereto shall be provided with an adequate notice of hearing; fair hearing; and an objective decision supported by substantial evidence.

HumRts 102 Charges

(a) A charge shall contain: (1) the name and address of the person filing the charge; (2) the name and address of the person against whom the charge is filed; (3) a clear and concise statement of the facts which, in the judgment of the person filing the charge, may constitute the alleged unfair discriminatory practice; (4) the signature of the person filing the charge; and (5) any other information required by the commissioner.

(b) Notwithstanding the provisions of HumRts 1 and 102(a), a charge is deemed filed when the department receives from a person making a charge a written statement sufficiently precise to identify the parties and describe generally the action or practices complained of.

(c) A copy of the charge shall be served by the commissioner upon a respondent either by personal delivery or by registered or certified mail within five days after it has been filed with the department.

(d) A charge may be withdrawn at any time before a complaint is issued by the commissioner.

(e) A charge may be amended: (1) to cure technical defects or omissions; (2) to allege additional facts if they relate to or grow out of the facts alleged in the original charge; (3) to add, remove, or change a party; or (4) if the purposes of the Act will be served thereby.

(f) It is the continuing responsibility of a charging party to provide the department with written information sufficient to allow it to communicate with him or her by phone or in writing during the pendency of a charge or any complaint issued thereto. If a charging party fails to comply with this requirement, the commissioner may terminate any proceedings related to that charge; provided, however, that 30 days prior to said termination the commissioner shall direct a notice of the intention to so act to the charging party by mailing a certified letter to the charging party's last known address.

HumRts 103 Investigation and Discovery

(a) Any person against whom a charge has been filed may submit to the commissioner a written reply to the charge. Such reply may contain a statement of the respondent's position and may present any evidence related to the subject matter of the charge.

(b) The commissioner may by interview or deposition take the testimony

of any person, including a party, relating to the subject matter of a charge or a complaint. The attendance of witnesses may be compelled by the use of subpoena as provided in the Act.

(c) The commissioner may order any person, including a party, to produce and permit the inspection and copying or photographing of any designated documents, papers, books, accounts, letters, photographs, or other tangible things, not privileged, which may constitute or contain evidence relating to the subject matter of a charge or a complaint. The production of any matter heretofore enumerated may be compelled by the use of subpoena as provided in the Act.

(d) The commissioner may order any party to complete written interrogatories relating to the subject matter of a charge or complaint. Such written interrogatories shall be completed and returned to the commissioner within fifteen days of receipt thereof. For good cause, the commissioner may grant an extension of time for the completion and return of the written interrogatories.

(e) The commissioner shall not disclose any information obtained during investigation or discovery except as permitted by HumRts 105, 106, and 113.

HumRts 104 Determination of Unfair Discriminatory Practices

(a) The commissioner shall issue an order dismissing a charge when the subject matter of such charge falls outside the jurisdiction of the Act or when the charge was filed more than six months after the occurrence of the alleged unfair discriminatory practice. Such order shall be a final decision of the department. A copy of an order dismissing a charge shall be served by mail upon the charging party and the respondent.

(b) The commissioner shall issue an order dismissing a charge when he or she has determined after investigating the allegations of such charge that there is no probable cause to believe that the respondent has engaged in an unfair discriminatory practice. A copy of an order dismissing a charge following a no probable cause determination shall be served by registered or certified mail upon the charging party and the respondent within ten days of such determination. Such order shall be a final decision of the department unless an appeal is taken as provided in HumRts 105.

(c) When the commissioner has determined after investigating the allegations of a charge that there is probable cause to believe that the respondent has engaged in an unfair discriminatory practice, the commissioner shall attempt to eliminate such practice by way of conciliation in accordance with the Act and these Rules.

HumRts 105 Review Board

(a) A charging party against whom a determination of no probable cause has been made may appeal such determination to a review board by serving a written notice of appeal upon the commissioner and the respondent by hand delivery or by mail within 15 days after service of an order dismissing a charge.

(b) The commissioner shall acknowledge in writing the receipt of a timely

notice of appeal and shall forward a copy of such notice to the chairperson of the State Board of Human Rights.

(c) The chairperson of the State Board of Human Rights shall designate three persons from such board to sit as a review board to hear the appeal. The chairperson shall appoint one of three persons on the review board to act as the presiding member of the board.

(d) The presiding member of the review board shall set the date, time, and place for the hearing. In no event shall the hearing be held later than 30 days after the date on which the commissioner received a notice of appeal from a charging party. The commissioner, the charging party, and the respondent shall be given at least five days written notice of the date, time, and place of the hearing.

(e) The charging party and the commissioner shall appear at the hearing. The respondent may make an appearance. If the charging party cannot appear at the time and date scheduled for the hearing, he or she shall give at least 24 hours notice to the presiding member of the review board, who may reschedule the hearing. A charging party who fails to appear at the hearing, and who has not given notice as required herein, shall have waived the right to a hearing.

(f) The presiding member of the review board shall conduct the hearing in a manner that he or she deems just and proper. The commissioner shall make all the information in the possession of the Department of Human Rights which is relevant to the case on appeal available to the members of the review board. The commissioner, the charging party, and the respondent may make opening and closing statements, introduce evidence, and present and cross-examine witnesses. The members of the review board may examine any party or witness and may inspect any documents or other evidence submitted by the commissioner, the charging party, and the respondent.

(g) The review board shall by written decision, together with a sufficient statement of the reasons therefor, either sustain the determination of no probable cause or remand the case to the commissioner for further investigation and determination as to whether there is probable cause to believe that the respondent has engaged in an unfair discriminatory practice. A decision of the review board to sustain the commissioner's determination of no probable cause shall be a final decision of the department.

(h) A decision of the review board shall be served by registered or certified mail upon the charging party and the respondent within 30 days after the hearing.

HumRts 106 Conciliation and Settlement

(a) When the commissioner has determined after investigation that there is probable cause to believe that the respondent has engaged in an unfair discriminatory practice, the commissioner shall serve upon the respondent by registered or certified mail a written notice of such determination and a written invitation to participate in a conciliation conference for the purpose of attempting to eliminate the unfair discriminatory practice by informal means. Such invitation shall set a 10 day limitation on the time in which the respondent shall respond to the invitation. For good cause the commissioner may grant an extension of time.

(b) If a respondent fails or refuses to respond to the commissioner's invitation to participate in a conciliation conference, or if the respondent fails or refuses to make a good faith effort to conciliate, the commissioner shall terminate attempts to conciliate the matter and shall issue a complaint in accordance with the Act and these Rules. Conciliation efforts may be resumed at any time upon written request of the commissioner to the respondent.

(c) The commissioner and a respondent may at any time enter into an agreement or stipulation to conciliate, settle, or compromise the subject matter of a charge or a complaint. Such agreement or stipulation may provide for the commissioner to waive the right to proceed against the respondent under the Act and for the respondent to take such affirmative actions as may effectuate the purpose of the Act. Such affirmative actions may include, but are not limited to, the payment of money damages, the hiring, reinstatement, or upgrading of an aggrieved person, or the sale or lease of real property. Any agreement entered into by the commissioner and the respondent shall be reduced to writing and shall be enforceable in the same manner as a final decision of the department. A panel or examiner may issue an order embodying the terms of any agreement or stipulation entered into by the commissioner and a respondent. Such order shall be enforceable as a final decision of the department.

(d) The commissioner shall not disclose any information concerning efforts to eliminate an unfair discriminatory practice by way of conciliation.

HumRts 107 Complaint

(a) The commissioner shall issue a complaint: (1) when the commissioner has determined that there is probable cause to believe that a person has engaged or is engaging in an unfair discriminatory practice and after attempts to eliminate the unfair discriminatory practice by conciliation have been terminated; or (2) when the commissioner has reason to believe that a person is engaging in an unfair discriminatory practice.

(b) A complaint shall contain: (1) the name and address of the complainant; (2) the name of the respondent; (3) the relief sought and the grounds therefor; and (4) the signature of the complainant.

(c) A complaint shall be served upon a respondent by registered or certified mail and filed with a panel or examiner at least ten days before the date of the hearing on the complaint.

(d) The commissioner may amend a complaint at any time.

(e) With the permission of the charging party, the commissioner may sue on behalf of a class only if:

(1) there are questions of law or fact common to the class, and

(2) the claims of members of the class are of sufficient similarity that a fair hearing of them is possible in a class action, and

(3) the commissioner will fairly and adequately protect the interests of the class, and

(4) one of the following three conditions exists:

(aa) the prosecution of separate actions by the commissioner on behalf of individual members of the class would create a risk of

(i) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(ii) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(bb) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate relief that includes final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(cc) the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (i) the interest of members of the class in individually affecting the prosecution of separate actions; (ii) the extent and nature of any litigation concerning the controversy already commenced by members of the class; (iii) the desirability or undesirability of concentrating the litigation of the claims in the administrative hearing; (iv) the difficulties likely to be encountered in the management of a class action.

(f) After an action is brought as a class action, the panel or hearing examiner shall determine by order whether it is to be so maintained. At the discretion of the panel or examiner, such order may be a part of the final order issued in accordance with Section 363.071 of the Act. If the order is not part of the final order, it may be conditional and may be amended or altered before the decision on the merits.

(g) In any class action, prior to the hearing, the panel or hearing examiner shall direct to the members or potential members of the class the best notice practicable under the circumstances. Notice shall be reasonably certain to inform those affected, or, where conditions do not reasonably permit such notice, the form of notice shall not be substantially less likely to give notice than other of the feasible and customary substitutes. If the complaint seeks compensatory relief, the notice shall advise each member:

(1) he or she will be excluded from the class, with respect to monetary relief, if he or she so requests by a specified date, and

(2) the decision, whether favorable or not, will include all members who do not request exclusion.

(h) In the conduct of class actions, the panel or hearing examiner may make appropriate orders:

(1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

(2) requiring a specific type of notice or other protections for the members of the class or for the fair conduct of the action;

(3) dealing with other procedural matters.

The orders may be altered or amended as may be desirable from time to time, and they are not final decisions of the department.

(i) A class action shall not be dismissed or compromised without the approval of the panel or hearing examiner. Notice of the proposed dismissal or compromise shall be given to all members of the class in such a manner as the panel or hearing examiner directs.

(j) In a class action, the order issued in accordance with Section 363.071 of the Act, whether or not favorable to the class, shall include and describe those persons who are members of the class. This order is a final decision of the department and is subject to judicial review.

HumRts 108 Answer. A respondent shall serve an answer upon the department within 20 days after service of the complaint. The original answer, together with an attached affidavit of service, shall be filed with the panel or examiner. Failure to answer the complaint shall be deemed an admission of the allegations therein. A respondent may amend an answer at any time.

HumRts 109 Motions and Petitions

(a) At any time after the commissioner has determined that there is probable cause to believe that a respondent has engaged in an unfair discriminatory practice, the commissioner may petition a district court to issue a temporary restraining order in accordance with the provisions of the Act.

(b) At any time after a charge has been filed or a complaint issued, the commissioner may petition a district court to cite for contempt any person who disobeys a subpoena issued by the commissioner pursuant to the Act.

(c) A party may assert to a panel or examiner by motion only those claims, defenses, or other matters that are consistent with the Act and these Rules. All motions, unless made during a hearing, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought.

(d) When a respondent fails or refuses to comply with a final decision of the department, the commissioner may petition a district court to order the respondent to comply with the order of the department. A petition for such an order shall be made in accordance with the provisions of Section 363.091 of the Act.

HumRts 110 Notice of Hearing. The commissioner shall serve upon a respondent by registered or certified mail a written notice of hearing which shall set forth the date, time, and place for a hearing on a complaint issued in accordance with the Act and HumRts 107. A notice of hearing shall be served upon a respondent at least thirty days before the hearing.

HumRts 111 Hearing Panel or Examiner

(a) The commissioner shall by order, within ten days after issuing a complaint, appoint a panel or examiner to hear the complaint and thereafter shall promptly serve upon the parties by registered or certified mail a copy of such order.

(b) The members of a panel or an examiner shall not be employees of, or on retainer to, the department. One of the members of a panel and any examiner shall be admitted to practice law in Minnesota. The members of a panel and any examiner, after appointment, shall be considered employees of the department for the purposes of receiving compensation, if any, and authorization to conduct the hearing and decide the issues. In other respects the panel or examiner shall be independent of the department. All appointments hereunder shall be consistent with the intention of this Rule which is to secure as impartial and objective a panel or examiner as is possible.

(c) A duly appointed panel or examiner shall have the authority to hear and finally decide the issues raised in the complaint. Such authority shall include, but not be limited to, issuing subpoenas, administering oaths, taking testimony, ordering the production of tangible evidence, hearing and ruling on motions, making such preliminary, interlocutory, and other orders as are appropriate, conducting the hearing, and rendering findings of fact, conclusions of law, and an order deciding the case.

(d) A member of a panel or an examiner shall withdraw from participation in a case at any time prior to final decision if such a person deems himself or herself disqualified for any reason. Upon the filing in good faith by a party of a timely and sufficient affidavit of prejudice, the panel or examiner shall determine the matter as part of the record and decision in the case.

HumRts 112 Pre-Hearing Conference

(a) A pre-hearing conference may be held at the discretion of the panel or examiner preparatory to any hearing. The pre-hearing conference shall be an informal proceeding conducted fairly and expeditiously by the panel or examiner for the purpose of simplifying the issues to be determined and to reach a settlement on those issues without the necessity for further hearing. Agreements on the simplification of issues shall be put in the form of stipulations and entered on the record. Any final settlement shall be set forth in a settlement agreement or consent order and made a part of the record. Where a panel is to hear and decide the case, any member of the panel who is an attorney may represent the entire panel at the pre-hearing conference.

(b) The panel or examiner may at any stage of the proceedings, including the pre-hearing conference, after all parties have had an opportunity to present their views, dismiss any sham, capricious, or frivolous case or any case not within the jurisdiction of the department. Where only one member of the panel presides at the pre-hearing conference, the case may not be dismissed until all three members of the panel have an opportunity to hear the arguments of all parties and to decide the question of dismissal.

HumRts 113 Hearing

(a) The complainant and the respondent shall be parties to a hearing on a complaint issued in accordance with the Act and these Rules.

(b) Prior to a hearing, the panel or examiner shall take no part in any investigation or inquiry into the facts or issues involved in the case except as permitted by HumRts 112.

(c) The hearing shall be conducted in the following manner:

(1) Complainant may make an opening statement. All other parties may make such statements in a sequence determined by the panel or examiner.

(2) Complainant shall present evidence in support of his case. The presentation of evidence by other parties shall follow in a sequence determined by the panel or examiner.

(3) Cross-examination of witnesses shall be conducted in a sequence determined by the panel or examiner.

(4) When all parties and witnesses have been heard, the parties may make final arguments in a sequence determined by the panel or examiner. Final arguments and any rebuttal evidence may be presented in the form of written memoranda, oral argument, or both.

(d) At the discretion of a panel or examiner, a hearing may be continued to a certain date or to a date to be determined in the future.

HumRts 114 Evidence

(a) All parties to a hearing may present evidence and oral and written argument with respect to the issues.

(b) Any party may be a witness or may present witnesses on his or her behalf at a hearing. All testimony at a hearing shall be under oath or affirmation. Every party shall have the right of cross-examination of the witnesses who testify. A party called as a witness by an adverse party may be interrogated by leading questions and contradicted and impeached on material matters in all respects.

(c) The panel or examiner may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable prudent people in the conduct of their affairs. The panel or examiner shall give effect to the rules of privilege recognizable by law. Evidence which is incompetent, irrelevant, immaterial or repetitious may be excluded.

(d) Documentary evidence in the form of copies or excerpts may be received or incorporated by reference in the discretion of the panel or examiner or upon agreement of the parties.

(e) The panel or examiner may take notice of judicially cognizable facts and may notice technical facts within the specialized knowledge of the panel or examiner. Where final determination rests on official notice of material facts not appearing in the evidence in the record, a party is entitled, upon timely request, to an opportunity to rebut such facts.

(f) The complainant shall prove the facts at issue by substantial evidence.

HumRts 115 Disruption of Hearing

(a) Television, newsreel, motion picture, still or other cameras may be operated in the hearing room while the hearing is in progress only with the permission of the panel or examiner. No lights or other devices may be used in connection with such cameras (other than those employed to light the hearing room). Mechanical recording devices other than those provided by the department or at its direction may be operated in the hearing room during the course of the hearing only with the permission of the panel or examiner.

(b) No person shall interfere with the free, proper, and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt, or threaten interference with or disruption of a hearing. In the event of such interference or disruption or threat thereof, the panel or examiner shall read this Rule to those person causing such interference or disruption and thereafter proceed as is deemed appropriate.

HumRts 116 Record

(a) The department shall prepare an official record in each hearing held pursuant to Section 363.071 of the Act. The record shall contain the following:

- (1) all pleadings, motions and intermediate rulings;
- (2) evidence received or considered;
- (3) statement of matters officially noticed;
- (4) questions and offers of proof, objections and rulings thereon;
- (5) findings of fact, conclusions of law and order; and
- (6) any memorandum of law prepared by the panel or examiner

(b) A verbatim record of the hearing shall be taken by a court reporter. The commissioner shall provide upon request and without cost to a respondent a transcript of a hearing.

HumRts 117 Decision of Hearing Panel or Examiner

(a) No factual information or evidence not part of the record shall be considered by the panel or examiner in deciding a case.

(b) At the conclusion of a hearing held pursuant to Section 363.071 of the Act and upon consideration of the record, the panel or examiner shall decide the case by issuing an order in accordance with Section 363.071 of the Act. Such order shall be supported by written findings of fact and conclusions of law, which may be supplemented by a written memorandum. Such order shall be a final decision of the department and shall be appealable in accordance with the provisions of Section 363.072 of the Act and HumRts 118.

(c) Findings of fact, conclusions of law, orders, and memoranda issued pursuant to Section 363.071 of the Act shall be served in accordance with the provisions of that section. All other decisions and orders shall be served on the parties by registered or certified mail.

HumRts 118 District Court Review. Any person aggrieved by a final decision of the department reached after a hearing held pursuant to section 363.071 of the Act and rendered in accordance with HumRts 117 may seek judicial review pursuant to Minnesota Statutes, Section 15.0424.

HumRts 119 Time. Unless otherwise specified herein, any period of time prescribed or allowed by these Rules shall be computed in accordance with Rule 6 of the Minnesota Rules of Civil Procedure.

HumRts 120 Service. Unless otherwise specified herein, service of any matter under these Rules shall be accomplished in accordance with the appropriate rule of the Minnesota Rules of Civil Procedure.

HumRts 121 Policy Letters

(a) The commissioner may issue a letter setting forth the policy with respect to a provision or provisions of the Act. A policy letter may be issued upon the request of any interested person or upon the commissioner's own initiative.

(b) A request for a policy letter shall be in writing and shall contain: (1) the name and address of the person making the request and of other interested persons, if any; (2) a statement of all known relevant facts; (3) a statement of reasons why the policy letter should be issued; and (4) the signature of the person making the request.

HumRts 122 Severability. If any provision of these Rules is held invalid, the invalidity does not effect any provision of these Rules which can be given effect without the invalid provision and to this end the provisions of these Rules are severable.

HumRts 123 Construction. These Rules shall be construed liberally to effectuate the purposes of the Act.

HumRts 124 Repealer. The Rules of Practice and Procedure promulgated by the Minnesota Commission Against Discrimination are repealed.

HumRts 125-150 Reserved for Future Use.

Amended November 13, 1975.