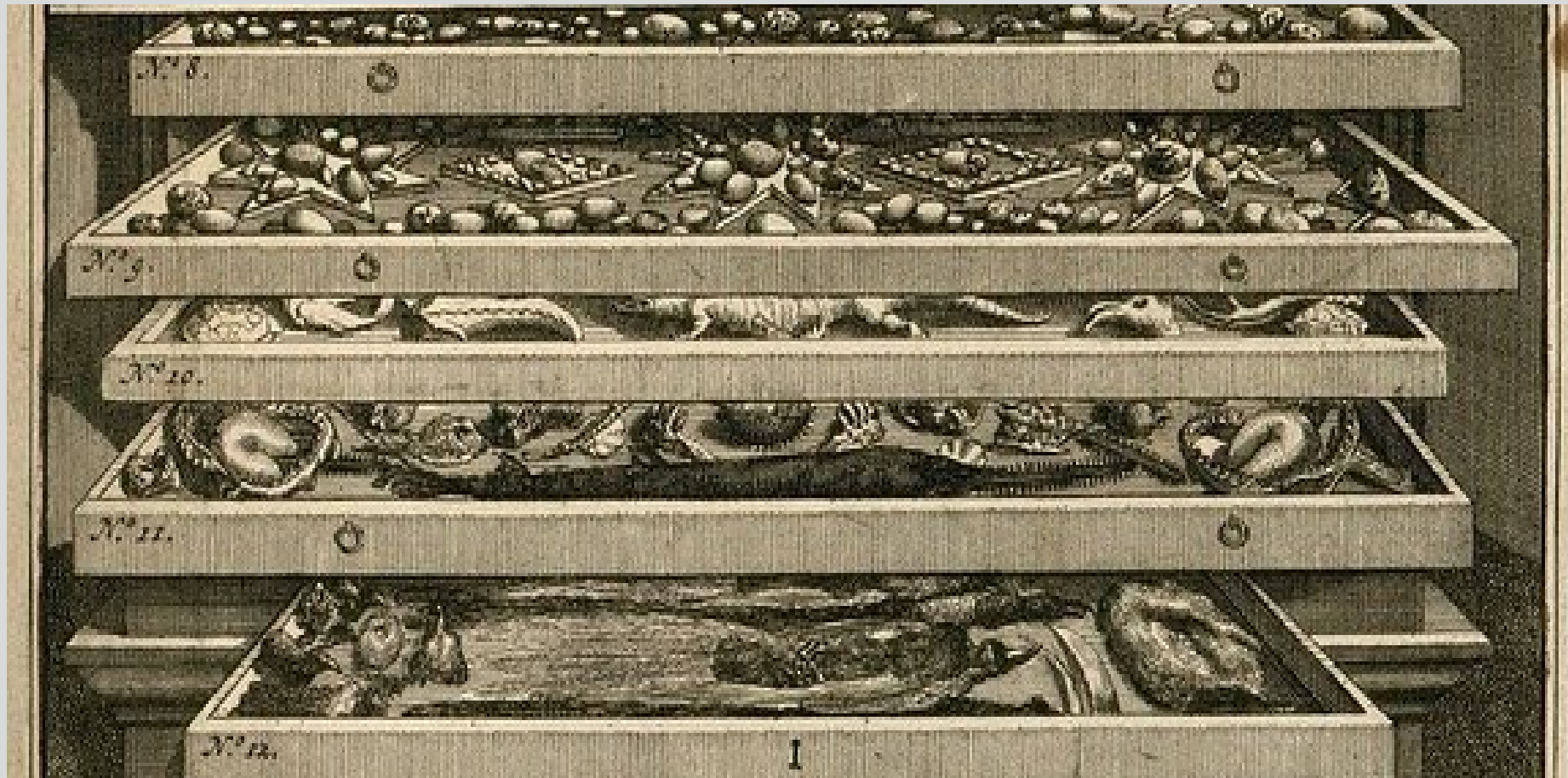


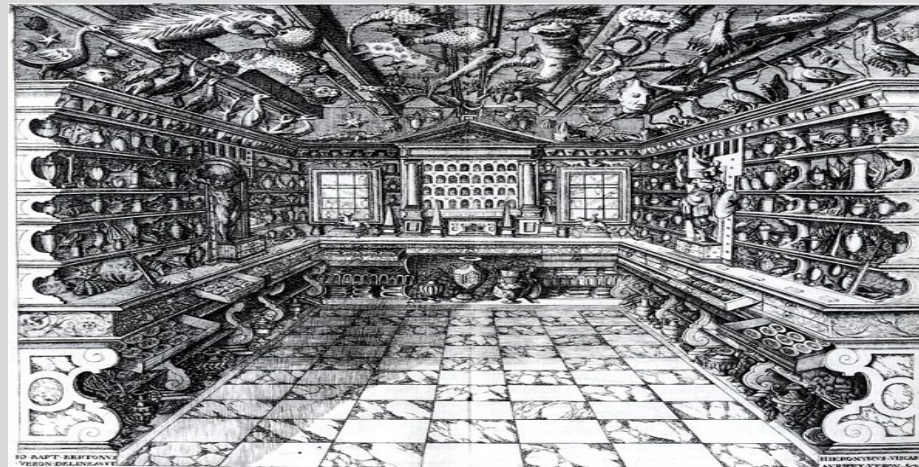
THE MINNESOTA HUMAN RIGHTS ACT'S CABINET OF CURIOSITIES



THE MINNESOTA HUMAN RIGHTS ACT'S CABINET OF CURIOSITIES

Perspective

- 50 years of active work with the MHRA's employment provisions
- Pride in the MHRA's strength and scope
- Understanding of employee, employer, and neutral views
- Management-side employment lawyer and litigator/mediator



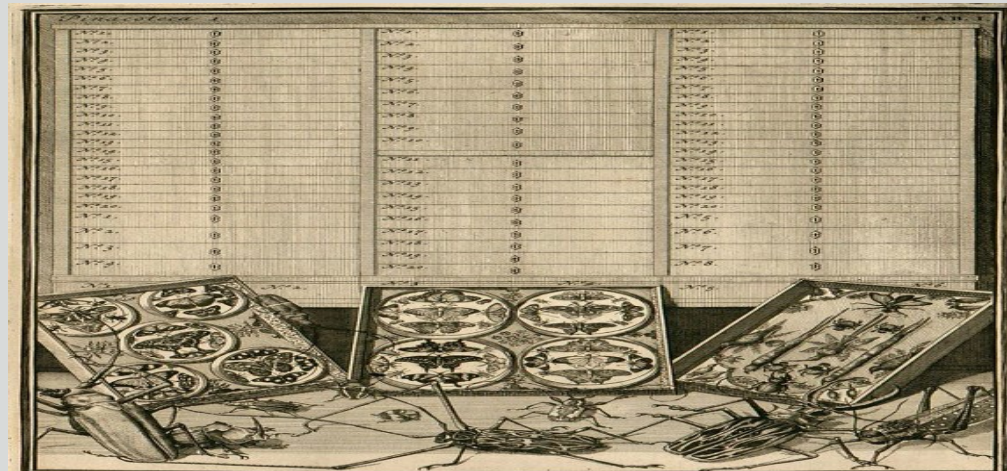
THE MINNESOTA HUMAN RIGHTS ACT'S CABINET OF CURIOSITIES

Today's topics

- Lesser-known provisions of the MHRA
- Oddities, challenges, and exemptions
- Joint jurisdiction, exhaustion of remedies, and MHRA claims in litigation



LESSER-KNOWN MHRA PROVISIONS



LESSER-KNOWN MHRA PROVISIONS



MARITAL STATUS DISCRIMINATION: Situation, identity, actions, or beliefs of spouse, in addition to being married, single, widowed, divorced, or separated, cannot be the basis for discrimination.

AGE DISCRIMINATION: Discrimination on the basis of age for all Minnesotans over the age of majority, not just those over 40.

STATUS WITH REGARD TO PUBLIC ASSISTANCE: Being a recipient of public welfare programs cannot be the basis for discrimination.

FAMILIAL STATUS: Living with minors or other dependents cannot be the basis for discrimination.

LESSER-KNOWN MHRA PROVISIONS



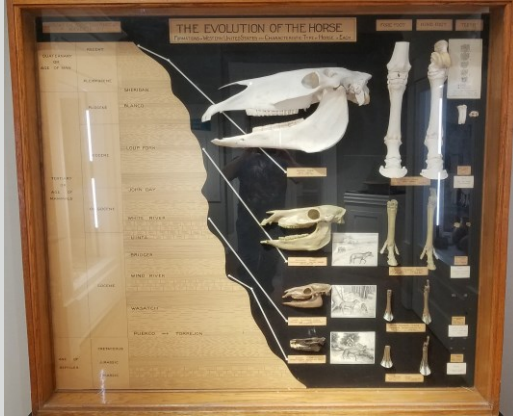
MEMBERSHIP OR ACTIVITY IN A LOCAL HUMAN RIGHTS COMMISSION: A protected class status that almost never generates complaints.

AIDING AND ABETTING: It is a violation of law to aid, abet, incite, compel or coerce a violation of Ch. 363A.

OBSTRUCTION: It is a violation of law to obstruct someone who is complying with Ch. 363A.

CREDIT DISCRIMINATION: It is a violation of law to discriminate in the extension of personal or business credit based on protected class status; it is also a violation to refuse to issue a credit card in a woman's current or former legal surname.

LESSER-KNOWN MHRA PROVISIONS



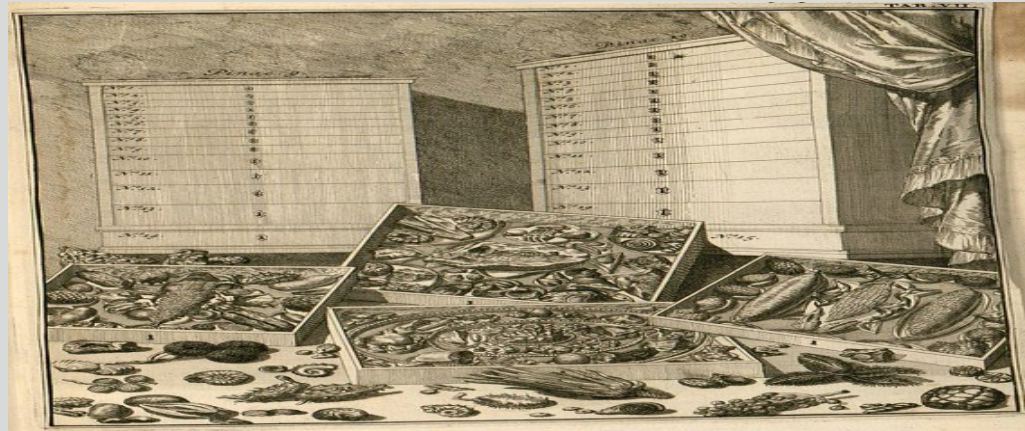
BUSINESS DISCRIMINATION: It is unlawful to refuse to do business with a woman based on her use of a current or former surname. It is also unlawful to refuse to do business or contract with a person based on protected class status or to alter the terms or conditions of a contract because of protected class status.

PAY HISTORY INQUIRIES: Employers may not inquire into or require disclosure of an applicant's pay history.

BAN-THE-BOX (Minn Stat §364.021) is enforced by the Minnesota Human Rights Department.

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ODDITIES AND EXEMPTIONS



ODDITIES AND EXEMPTIONS

What's a *positive action program* anyway? Is it affirmative action?

363A.02 PUBLIC POLICY.

§Subdivision 1. Freedom from discrimination.

- (a) It is the public policy of this state to secure for persons in this state, freedom from discrimination:
- (1) in employment because of race, color, creed, religion, national origin, sex, gender identity, marital status, disability, status with regard to public assistance, sexual orientation, familial status, and age;
 - (2) in housing and real property because of race, color, creed, religion, national origin, sex, gender identity, marital status, disability, status with regard to public assistance, sexual orientation, and familial status;
 - (3) in public accommodations because of race, color, creed, religion, national origin, sex, gender identity, sexual orientation, and disability;
 - (4) in public services because of race, color, creed, religion, national origin, sex, gender identity, marital status, disability, sexual orientation, and status with regard to public assistance; and
 - (5) in education because of race, color, creed, religion, national origin, sex, gender identity, marital status, disability, status with regard to public assistance, sexual orientation, and age.
- (b) Such discrimination threatens the rights and privileges of the inhabitants of this state and menaces the institutions and foundations of democracy. It is also the public policy of this state to protect all persons from wholly unfounded charges of discrimination. **Nothing in this chapter shall be interpreted as restricting the implementation of positive action programs to combat discrimination.**



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ODDITIES AND EXEMPTIONS

Why is sexual harassment so special?

363A.08 UNFAIR DISCRIMINATORY PRACTICES RELATING TO EMPLOYMENT OR UNFAIR EMPLOYMENT PRACTICE.

Subd. 2. Employer.

Except when based on a bona fide occupational qualification, it is an unfair employment practice for an employer, because of race, color, creed, religion, national origin, sex, gender identity, marital status, status with regard to public assistance, familial status, membership or activity in a local commission, disability, sexual orientation, or age to:

- (1) refuse to hire or to maintain a system of employment which unreasonably excludes a person seeking employment; or
- (2) discharge an employee; or
- (3) discriminate against a person with respect to hiring, tenure, compensation, terms, upgrading, conditions, facilities, or privileges of employment.

363A.03 DEFINITIONS.

Subd. 13. Discriminate. The term discriminate includes separate, segregate, or harass. (NEW IN 2024)

Subd. 43. Sexual harassment.

"Sexual harassment" includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal or physical conduct or communication of a sexual nature when:

- (1) submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment, public accommodations or public services, education, or housing;
- (2) submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment, public accommodations or public services, education, or housing; or
- (3) that conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or public services, education, or housing, or creating an intimidating, hostile, or offensive employment, public accommodations, public services, educational, or housing environment.



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ODDITIES AND EXEMPTIONS

When does an exemption create an affirmative obligation?

363A.08 UNFAIR DISCRIMINATORY PRACTICES RELATING TO EMPLOYMENT OR UNFAIR EMPLOYMENT PRACTICE.

Subd. 2. **Employer.**

Except when based on a bona fide occupational qualification, it is an unfair employment practice for an employer, because of race, color, creed, religion, national origin, sex, gender identity, marital status, status with regard to public assistance, familial status, membership or activity in a local commission, disability, sexual orientation, or age to:

- (1) refuse to hire or to maintain a system of employment which unreasonably excludes a person seeking employment; or
- (2) discharge an employee; or
- (3) discriminate against a person with respect to hiring, tenure, compensation, terms, upgrading, conditions, facilities, or privileges of employment.

Subd. 4. **Employer, employment agency, or labor organization.**

(a) Except when based on a bona fide occupational qualification, it is an unfair employment practice for an employer, employment agency, or labor organization, before a person is employed by an employer or admitted to membership in a labor organization, to:

- (1) require or request the person to furnish information that pertains to race, color, creed, religion, national origin, sex, gender identity, marital status, status with regard to public assistance, familial status, disability, sexual orientation, or age;
- (2) seek and obtain for purposes of making a job decision, information from any source that pertains to the person's race, color, creed, religion, national origin, sex, gender identity, marital status, status with regard to public assistance, familial status, disability, sexual orientation, or age,



ODDITIES AND EXEMPTIONS

WHEN DOES AN EXEMPTION CREATE AN AFFIRMATIVE OBLIGATION? Continued....

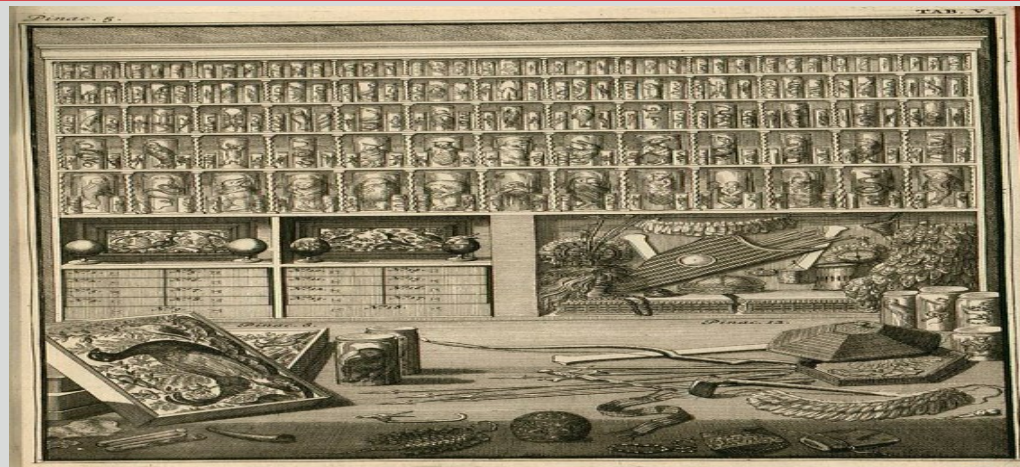
363A.20 EXEMPTION BASED ON EMPLOYMENT.

Subd. 8. Physical exam.

- (a) It is not an unfair employment practice for an employer, employment agency, or labor organization:
- (1) to require or request a person to undergo physical examination, which may include a medical history, for the purpose of determining the person's capability to perform available employment, provided:
 - (i) that an offer of employment has been made on condition that the person meets the physical or mental requirements of the job, except that a law enforcement agency filling a peace officer position or part-time peace officer position may require or request an applicant to undergo psychological evaluation before a job offer is made provided that the psychological evaluation is for those job-related abilities set forth by the Board of Peace Officer Standards and Training for psychological evaluations and is otherwise lawful;
 - (ii) that the examination tests only for essential job-related abilities;
 - (iii) that the examination except for examinations authorized under chapter 176 is required of all persons conditionally offered employment for the same position regardless of disability; and
 - (iv) that the information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations; first aid safety personnel may be informed, when appropriate, if the disability might require emergency treatment; government officials investigating compliance with this chapter must be provided relevant information on request; and information may be released for purposes mandated by local, state, or federal law; provided that the results of the examination are used only in accordance with this chapter;



JOINT JURISDICTION, EXHAUSTION OF REMEDIES, AND MHRA CLAIMS IN LITIGATION



JOINT JURISDICTION



- Federal, State and Local Agencies (FEPAs) often share jurisdiction over discriminatory acts.
- Courts and agencies seek to avoid duplication and efficiently administer justice.
- Work-sharing agreements address which agency will investigate.
- One agency taking the lead on investigation does not extinguish the jurisdiction of other agencies.
- MHRD or other FEPA can rejuvenate a closed EEOC charge, and vice-versa.
- Agencies can take a long time to review each other's determinations.
- Explanations to parties about the work-sharing relationship and its potential impacts are poor.
- Confusion, delay, and misunderstanding of the agencies' jurisdiction can create significant problems for complainants and respondents.

EXHAUSTION OF REMEDIES

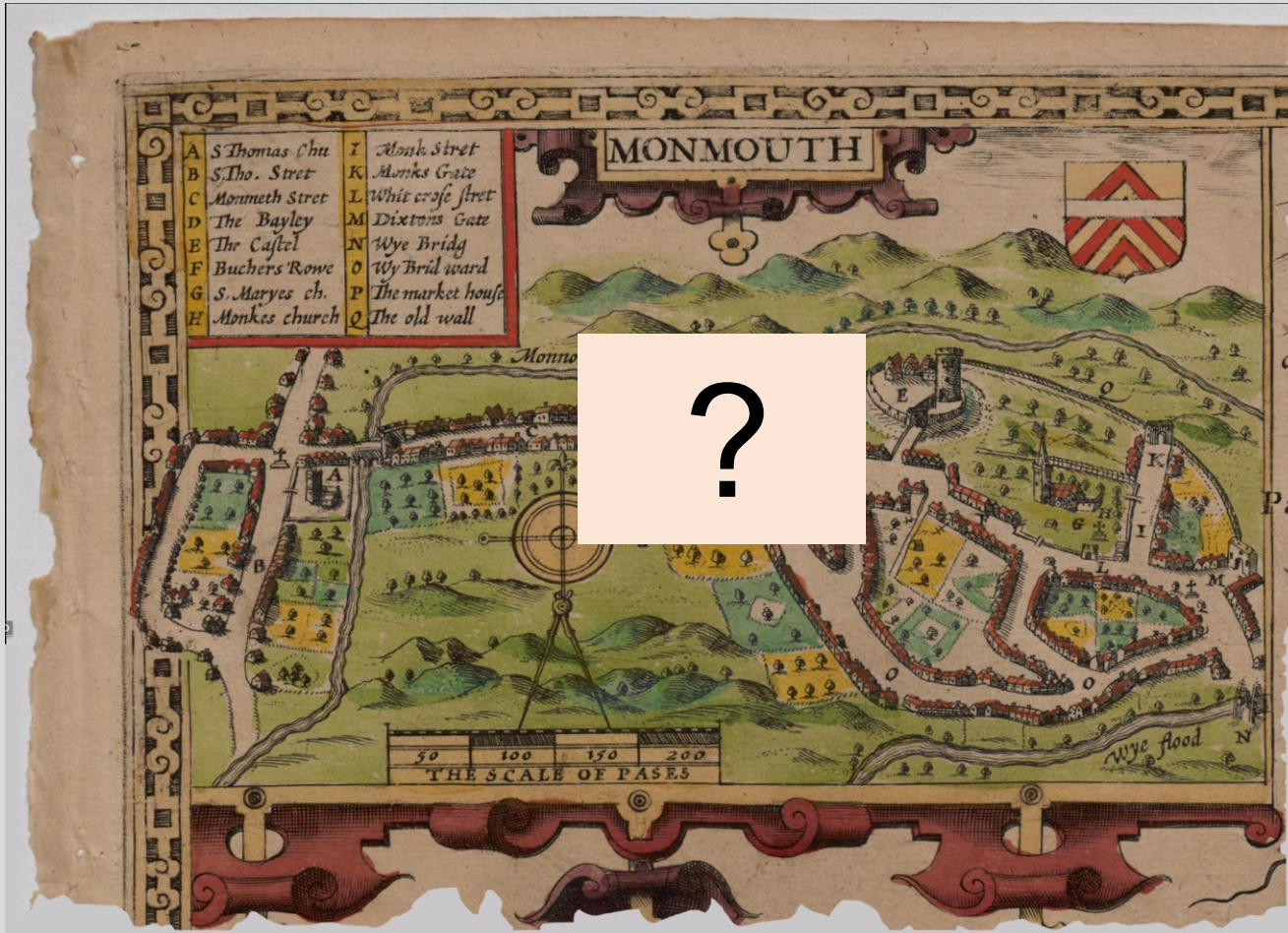


- MHRA claims can be filed directly in state district court with no agency filing required. (1 year SOL – not 365 days!)
- If a charge is filed with the MHRD, it must be withdrawn OR the MHRD must dismiss it, in order for a claim to be filed in state district court.
- If the MHRD dismisses or a charge is withdrawn, filing in state district court must occur within 90 days (was 45 days prior to 2024).
- Probable cause and no probable cause determinations are not dispositive and have little impact in private litigation.
- SOL and 90 day filing period are tolled by ADR.
- EEOC/federal claims and local FEPA claims require different processes/exhaustion of remedies.

MHRA CLAIMS IN LITIGATION



- MHRA include compensatory damages trebled, emotional distress damages, punitive damages, and a civil penalty to the state.
- Civil penalty is mandatory – 2024 amendment to MHRA.
- Punitive damages are awarded pursuant to Minn. Stat. §549.20 but query whether all provisions apply.
- If a charge has been filed with the MHRD, in a subsequent civil suit the former charging party must mail a copy of the complaint to the Human Rights Commissioner.
- The MDHR can seek to intervene in a civil action brought under the MHRA.
- Any appeal of an MHRA claim to the MN Court of Appeals or the MN Supreme Court must include proof of filing of a notice of the appeal with the Commissioner of the MDHR.



Questions?
Comments?

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