

**CITY OF MINNEAPOLIS
COMMISSION ON CIVIL RIGHTS**



***RULES OF PROCEDURE FOR
CONTESTED CASE HEARINGS***

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MINNEAPOLIS COMMISSION ON CIVIL RIGHTS

Rules of Procedure for Commission Hearings Conducted Pursuant to Chapter 141.50 (d) (*Probable Cause*), Chapter 141.50 (e) (*No Probable Cause*) and Chapter 139.50 *Contract Compliance*).

**MINNEAPOLIS COMMISSION ON CIVIL RIGHTS
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RULES APPLICABLE TO ALL HEARINGS

RULE 1. Definitions

Subpart 1. “Chair” means the Chair of the Minneapolis Commission on Civil Rights or that member of the commission who is then discharging the duties of the Chair.

Subpart 2. “Chapter 139 and Chapter 141” mean the Minneapolis Code of Ordinances, Title 7, Chapters 139 and 141.

Subpart 3. “Civil Rights Ordinance” means the Minneapolis Code of Ordinances, Title 7, Chapters 139 and 141. ***Subpart 4. “Commission”*** means the Minneapolis Commission on Civil Rights.

Subpart 5. “Contract Compliance Panel” means the panel of three members of the Commission, one of whom shall be a lawyer, appointed by the Chair to hear a case following the referral of a complaint pursuant to the provisions of Chapter 139.50 (e), or any hearing examiner duly appointed to hear such a case in lieu of a Commission panel.

Subpart 6. “Department” means the Minneapolis Department of Civil Rights.

Subpart 7. “Director” means the Director of the Minneapolis Department of Civil Rights.

Subpart 8. “Hearing Committee.” means a panel of three members of the Commission, one of whom shall be a lawyer, appointed by the Chair to hear a case following the Director’s or review committee’s determination of probable cause pursuant to Chapter 141.50 (d), or any hearing examiner duly appointed to hear such a case in lieu of a commission committee.

Subpart 9. “Party” means any person having a legally cognizable interest in a proceeding covered by the civil rights ordinance, or such person’s attorney of record or other representative.

Subpart 10. “Presiding Commissioner” means the attorney member of a contract compliance panel, hearing committee, or review committee, or any hearing examiner who is duly appointed to hear such a case in lieu of a Commission panel or committee.

Subpart 11. “Review Committee” means the panel of three members of the Commission, one of whom shall be a lawyer, appointed by the Chair to hear an appeal of the Director’s determination that no probable cause exists pursuant to Chapter 141.50(d) or any hearing examiner duly appointed to hear such a case in lieu of a Commission committee.

Subpart 12. “Service or serve” means personal service or, unless otherwise provided by law, service by first class United States mail or a licensed overnight express mail service, postage prepaid and addressed to the party at his or her last known address. An affidavit of service shall be made by the person making the service. Service by mail or licensed overnight express mail service is complete upon placing the item to be served in the mail or delivering it to the authorized agent of the express mail service. Personal service may be accomplished by either delivering a document to the person or by leaving a document at the person’s home or place of business with someone of suitable age and discretion who resides in the same house or who is located at the same business address of the person to be served. If a person is confined to a federal or state institution, a copy of the document must also be served upon the chief executive officer of the institution.

RULE 2. Documents Filed

Forms, documents, or written materials prepared specifically for and used or filed in any hearings before the Commission must be on standard size 8 ½ inch by 11 inch paper, must be served on the opposing party, and the original and two copies of the form, document or written material must be filed with the Commission along with an affidavit of service on the opposing party.

RULE 3. Access to Department Investigative Files and Personnel

Subpart 1. Access by parties following finding of no probable cause or probable cause. Following the Department’s finding of no probable cause or probable cause, the charge and the Director’s determination are public data. The remaining data contained in the Department’s investigative file is accessible to the parties, except the following data is protected non-public data:

- (a) Opinions of the City Attorney relating to the case;
- (b) Memoranda between or among City Departments unless such memoranda constitute substantive evidence in the case;
- (c) Internal memoranda of or between the Department and the Commission relating to the case;
- (d) Documents relating to mediation or conciliation efforts by the Department or Commission; and
- (e) Medical or private information of the parties or third parties, unless the party receives written consent by the third party, or such information constitutes substantive evidence in the case; or
- (f) Information identified by a party as trade secrets, confidential research development, commercial information, or other security interests of the parties, unless such information constitutes substantive evidence in the case.

The Department shall describe the nature of any redacted or withheld data in a manner that, without revealing information itself privileged or protected, enables the parties to determine the applicability of this Rule.

Upon request of a party, the party shall be informed by a case investigator of the content and meaning of that data contained in the Department's investigative file. After a party has been informed of its meaning, the data need not be explained to that party for six months thereafter unless a dispute or action pursuant to Minn. Stat. § 13.04 is pending or additional data on the party has been collected or created.

Subpart 2. Access to Department investigative file by Commissioners following finding of no probable cause. The Commissioners assigned to a no probable cause review committee pursuant to Rule 31 may examine the Department's investigative data, except for the data noted in Subpart 1 (a) - (f).

Subpart 3. Access by Presiding Commissioner on probable cause proceedings. The Presiding Commissioner may examine the Department's investigative data on a charge assigned to the Presiding Commissioner for purposes of deciding a motion to compel under subpart 4.

Subpart 4. Discoverability of data during probable cause review by Commission. If a party seeks access to removed or redacted data contained in the Department's investigative file during a probable cause review by the Commission, the party seeking access may bring a motion to compel before the Presiding Commissioner pursuant to Rule 14, and shall also serve a copy of the motion upon the Director. Within ten (10) working days after the motion is filed, the Director may intervene with written notice to the Presiding Commissioner and the parties. Prior to ruling on the motion to compel, the Presiding Commissioner may conduct an *in camera* review of the file, and may make the Department's investigative data subject to a protective order, as provided under *Minn. R. Civ. P. 26.03*.

Subpart 5. Copies by parties. A party may make copies of any record in the Department investigative file, except those excluded under Subpart 1(a) - (f), for a reasonable cost as determined by the Department.

RULE 4. Right to Counsel

Parties may be represented by an attorney, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law.

RULE 5. Time

Subpart 1. Computation of time. In computing any period of time prescribed by these rules, the day of the last act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday.

Subpart 2. Extra Time; Service by Mail. Whenever a party has the right or is required to do some act or take some action within a prescribed period after the service of a notice or other paper upon the party, or whenever service is required to be made within a prescribed period before a specified event, and the notice or paper is served by mail, three (3) days shall be added to the prescribed period.

RULE 6. Commissioner/Hearing Officer Disqualification

Subpart 1. Withdrawal. A commissioner serving on a contract compliance panel, hearing committee, or review committee or a duly appointed hearing examiner shall withdraw at any time if he or she deems himself or herself disqualified for any reason.

Subpart 2. Affidavit of Prejudice. Upon the filing in good faith by a party of any affidavit of prejudice, the Chair shall determine the matter as part of the record provided the affidavit shall be filed no later than five (5) days prior to the date set for the hearing. If the Chair is the subject of the affidavit, the Commission (without participation of the Chair) will decide the question at its next regular meeting or at a special meeting called for that purpose.

RULES APPLICABLE TO PROBABLE CAUSE HEARINGS

RULE 7. Hearing Committee

Subpart 1. Appointment. Within thirty (30) days following the referral of a complaint pursuant to Chapter 141.50 (d), the Chair shall appoint a presiding officer or a hearing examiner and shall notify the Department of the appointment. If a hearing committee is to hear the case, the Chair shall appoint a hearing committee within forty-five (45) days prior to the date of the public hearing and shall notify the Department of the appointment. If a hearing committee is to hear the case, the Chair shall also appoint a fourth commissioner to serve as an alternate committee member.

Subpart 2. Notification. Upon notification of the appointment, the Department shall promptly notify the members of the hearing committee and the alternate or the hearing officer of the appointment. The Department will include with this notice a copy of the complaint and answer, if any. In addition, the presiding commissioner shall also be sent a copy of the Department's proposed settlement terms (with a rationale for them) and a summary of the Department's investigation. The Department shall also at this time notify the parties of the names of the hearing committee members or the hearing examiner.

Subpart 3. Substitutions. The Chair may, if necessary, make substitutions as to the membership of the hearing committee or the appointment of the hearing examiner. Upon notification of such changes, the Department shall promptly provide notice to the hearing committee or hearing examiner and to the parties of such changes.

RULE 8. Notice Of and Order for Hearing

Subpart 1. Commencement of Case. The case is commenced, subsequent to the appointment of the hearing committee, by the service of a notice and order or hearing by the Department.

Subpart 2. Contents of Notice and Order. A notice of and order for hearing, which shall be a single document, shall be served upon all parties by the Department and shall contain, among other things, the following:

- A. The time, date and place of the prehearing conference;
- B. A statement of the determination of the Director or the review committee pursuant to Chapter 141.50 (d) together with a citation to the relevant provisions of the civil rights ordinance;
- C. Notification of the right of the parties to be represented by an attorney, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law;
- D. A citation to these rules and notification of how copies thereof may be obtained;
- E. A brief description of the procedures to be followed at the prehearing conference and the hearing;

- F. A statement advising the parties to bring to the hearing all documents, records, and witnesses they need to support their position;
- G. A statement that subpoenas may be available to compel the attendance of witnesses or the production of documents;
- H. A statement advising the parties that failure to appear at the hearing may result in default and a statement which explains the possible results of default; and
- I. A statement advising the parties that if not public data is admitted into evidence it may become public data unless a party objects and asks for relief.

Subpart 3. Service. The notice of and order for the prehearing conference shall be served at least 14 days prior to the scheduled prehearing conference.

RULE 9. Reserved

RULE 10. Intervention by the City Attorney

Subpart 1. Request for Intervention. Within ten (10) days after the referral of a complaint by the Director to the Commission under Chapter I41.50 (d), the Director may request the Minneapolis City Attorney to intervene in the case for the purpose of representing the general welfare and civil rights of the people of Minneapolis.

Subpart 2. Notice of, objection to, and effect of intervention. If the City Attorney intervenes, these Rules shall apply to the City Attorney in the same manner as they apply to the other parties in the case. Intervention by the City Attorney shall be made by notice to all parties; any objection to the intervention shall be made by written motion in accordance with these rules.

RULE 11. Consolidation of Cases

Subpart 1. Standards for Consolidation. Cases pending before the Commission shall be consolidated in the following circumstances:

- A. Any case filed pursuant to Chapter 139.50 (k)(3) shall be consolidated with the case underlying the Chapter 139.50 (k)(3) complaint; and
- B. Whenever two or more separate cases present substantially the same issues of fact and law, that a holding in one case would affect the rights of parties in another case, that consolidating the cases for hearing would save time and costs, and that consolidation would not prejudice any party, such cases may be consolidated for hearing.

Subpart 2. Service of Petition. A party requesting consolidation shall serve a petition for consolidation on all parties to the cases to be consolidated and shall file the original with the presiding commissioner assigned to the cases, together with a proof of service showing service as required herein. Any party objecting to the petition shall serve and file their objections within ten (10) calendar days following service of the petition for consolidation.

Subpart 3. Determination of Petition. When more than one hearing committee is assigned to the cases which are the subject of the petition for consolidation, the petition will be determined by the presiding commissioner assigned to the first case referred to the Commission pursuant to Chapter 141.50 (d).

Subpart 4. Order. Upon determining whether cases should be consolidated, the presiding commissioner shall serve a written order on all parties which shall contain, among other things, a description of the cases for consolidation, the reasons for the decision, and notification of a consolidated prehearing conference if one is being scheduled.

Subpart 5. Stipulations. Nothing contained in this rule shall be deemed to prohibit parties from stipulating and agreeing to a consolidation which shall be granted upon submission of a written stipulation, signed by all parties, to the presiding commissioner. A presiding commissioner may consolidate two or more cases presently pending before the same hearing committee on the presiding commissioner's own motion, applying the standards in

Subpart 6. Petition for Severance. Following receipt of a notice or order for consolidation, any party may petition for severance by serving it on all other parties and filing it with the presiding commissioner at least seven (7) business days prior to the first scheduled hearing date. If the presiding commissioner finds that the consolidation will prejudice the petitioner, the presiding commissioner shall order the severance or other relief which will prevent the prejudice from occurring.

RULE 12. Prehearing Conference

Subpart 1. Scheduling. The presiding commissioner shall set the date of the initial prehearing conference and shall notify the Department. The time, place and date of the initial prehearing conference shall be included in the notice of and order for the prehearing conference. Upon the request of any party or upon his or her own motion, the presiding commissioner may, in his or her discretion, hold additional prehearing conferences prior to the probable cause hearing.

Subpart 2. Purpose. The purpose of the prehearing conference is to simplify the issues to be determined, to obtain stipulation in regard to foundation for testimony or exhibits, to determine whether the parties are interested in mediation by the Commission, to obtain stipulations or agreement on nondisputed facts or the application of particular laws, to consider the proposed witnesses for each party, to identify and exchange documentary evidence intended to be introduced at the hearing, to determine deadlines for the completion of any discovery, to establish hearing dates, to consider such other matters that may be necessary or advisable and, if possible, to reach a settlement without the necessity of further hearing.

Subpart 3. Prehearing Statements. The parties must file and serve on all parties a completed prehearing statement at least seven (7) days before the scheduled prehearing conference. The prehearing statement shall include, at a minimum, the following information: whether or not a party is interested in mediation by the Commission; statement of legal issues; brief factual statement; proposed exhibits; list of proposed witnesses; and a statement regarding the length of time for presentation of the party's case in chief.

Subpart 4. Procedure. The prehearing conference shall be an informal proceeding conducted expeditiously by the presiding commissioner. Agreements on the simplification of issues, stipulations, or other matters may be entered on the record or may be made the subject of a prehearing order by the presiding commissioner.

Subpart 5. Settlement. The parties, their attorneys or other persons with full authority to settle the case shall appear at the prehearing conference. Any final settlement shall be set forth in a Stipulation for Dismissal and Order for Dismissal. Both the Stipulation and Order shall set forth the terms of the settlement, and may contain a provision providing for enforcement of their terms by application to the District Court by means of an Order to Show Cause, as authorized by Chapter 141.60 (c). Upon receipt of the stipulation signed by all parties, the hearing committee will sign the Order of Dismissal and file it and the Stipulation for Dismissal with the Department.

Subpart 6. Length of Hearing. If the case is not settled at the prehearing conference, the presiding commissioner shall determine how many hours are likely to be needed for the hearing. If the presiding commissioner determines that the hearing will take more than 16 hours, he or she shall so notify the Chair. Thereafter, the Chair may, in his or her discretion, appoint a hearing examiner in lieu of a hearing committee.

Subpart 7. Scheduling Hearing: Notice. Following the prehearing conference, the presiding commissioner, in consultation with the other members of the hearing committee, or the hearing examiner shall determine the date of the hearing and shall so notify the Department. The Department shall then notify the parties thereof. .

RULE 13. Mediation

Subpart. 1. Selection of a mediator. If the parties agree to mediation by the Commission, or other qualified mediators, the presiding commissioner shall notify the Chair of the Commission, the Chair of the Commission shall provide the parties with a list of Commissioners who are qualified neutrals and who are not members or alternates of the hearing committee. From such list or otherwise, the parties may mutually agree on selection of a mediator. Absent such agreement, the Chair of the Commission shall provide the parties with a list of three (3) Commissioners who are so qualified, each party may strike the name of one mediator from such list and the mediator not so stricken shall serve as the designated mediator.

Subpart. 2. Mediation agreement. After selection of a mediator, the parties and the mediator shall execute a mutually acceptable Mediation Agreement, covering such matters as the confidentiality of the proceedings, the scheduling of the proceedings and other matters as the parties and the mediator may agree.

Subpart. 3. Scheduling of mediation. When the parties have agreed to pursue mediation by the Commission, the presiding commissioner shall not schedule a public hearing or take any other action with respect to such matter until the earlier of (i) the date the matter is settled through mediation; (ii) the date the parties or the mediator have advised the presiding commissioner that the parties have reached an impasse; or (iii) 90 days after a mediator has been selected. If the mediation is not successful or if matter is not settled within 90 days after appointment of the mediator, the presiding commissioner shall schedule a public hearing consistent with these rules. Additional time for consolidation may be granted by the presiding commissioner upon the request of the parties and the mediator.

Subpart. 4. Conduct of mediation. The mediator shall conduct mediation at such time and in such manner as the parties and the mediator may agree. Any party or the mediator may determine that settlement is not likely and declare that an impasse has occurred. If any party or the mediator declares than an impasse has occurred, the presiding commissioner shall be notified and a public hearing shall be scheduled in accordance with these rules.

Subpart. 5. Successful mediation. In the event the mediation successfully settles the dispute, the mediator and the parties shall prepare such agreements as they deem appropriate, including a stipulation of dismissal to be submitted to the presiding commissioner and the Chair.

RULE 14. Motions

Any application to the presiding commissioner for an order shall be made by motion which, unless made during a hearing, shall be made in writing, shall state with particularity the grounds there for, and shall set forth the relief or order sought. Motions shall be served on all parties and the presiding commissioner. The written motion shall advise the other parties that should they wish to contest the motion they must file a written response with the presiding commissioner and serve copies on all parties within ten (10) working days after it is received. If any party desires a hearing on the motion, they shall make a request for a hearing at the time of the submission of their motion or response. A response shall set forth the nonmoving party's objections. A hearing on a motion will be ordered by the presiding commissioner only if it is determined that a hearing is necessary to the development of a full and complete record on which a proper decision can be made. All orders on such motions, other than those made during the course of the hearing, shall be in writing and shall be served upon all parties of record. In ruling on motions where these rules are silent, the presiding commissioner shall apply the Rules of Civil Procedure for the District Court for Minnesota to the extent it is determines appropriate in order to promote a fair and expeditious proceeding.

RULE 15. Discovery

Subpart 1. Witnesses; Statement by Parties or Witnesses. Each party shall, within ten (10) days of a demand by another party, disclose the following: A. The names and addresses of all witnesses that a party intends to call at the hearing. All witnesses unknown at the time of said disclosure shall be disclosed as soon as they become known; B. Any relevant written or recorded statements made by the party or by witnesses on behalf of a party. The demanding party shall be permitted and reproduce any such statements. Any party unreasonably failing upon demand to make the disclosure required by this subpart may, in the discretion of the presiding commissioner, be foreclosed from presenting any evidence at the hearing through witnesses not disclosed or through witnesses whose statements are not disclosed.

Subpart 2. Discovery of other information. Any means of discovery available pursuant to the Rules of Civil Procedures for the District Court of Minnesota is allowed. If the party from whom discovery is sought objects to the discovery, the party seeking discovery may bring a motion before the presiding commissioner to obtain an order compelling discovery. In the motion proceeding, the party seeking discovery shall have the burden of showing that the discovery is needed for the proper presentation of the party's case, is not for the purpose of delay, and that the issues or amounts in controversy are significant enough to warrant the discovery. In ruling on a discovery motion, the presiding commissioner shall recognize all privileges recognized by law.

Subpart 3. Noncompliance. Upon the failure of a party to reasonably comply with an order of the presiding commissioner made pursuant to subpart 2, the presiding commissioner may make a further order as follows: A. An order that the subject matter of the order for discovery or any other relevant facts shall be taken as established for the purposes of the case in accordance with the claim of the party requesting the order; B. An order refusing to allow the party failing to comply to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence.

Subpart 4. Protective Order. When a party is asked to reveal material considered to be proprietary information or trade secrets, that party shall bring the matter to the attention of the presiding commissioner, who shall make such protective orders as are reasonable and necessary or as otherwise provided by law.

Subpart 5. Filing. Copies of a party's requests for discovery as well as the responses to those requests and copies of discovery depositions shall not be filed with the Commission unless otherwise ordered by the presiding commissioner or unless they are filed in support of any motion or unless they are introduced as evidence in the hearing.

RULE 16. Requests for Admission of Facts or Opinions

A party may serve upon any other party a written request for the admission of relevant facts or opinions, or of the application of law to relevant facts or opinions, including the genuineness of any document. The request must be served at least fifteen (15) days prior to the hearing, and it shall be answered in writing by the party to whom the request is directed within ten (10) days of receipt of the request. The written answer shall either admit or deny the truth of the matters contained in the request or shall make a specific objection thereto. Failure to make a written answer within ten (10) days will result in the subject matter of the request being admitted unless it can be shown that there was a justifiable excuse for failing to respond.

RULE 17. Depositions to Preserve Testimony

Upon the request of any party, the presiding commissioner may order that the testimony of any witness be taken by deposition to preserve that witness's testimony in the manner prescribed by law for depositions in civil actions. The request shall indicate the relevancy of the testimony and shall make a showing that the witness will be unable or cannot be compelled to attend the hearing or show other good cause.

RULE 18. Subpoenas.

Subpart 1. Request. Pursuant to Chapter 141.50 (1), any party may request in writing that the Chair, the presiding commissioner or the hearing committee apply to the District Court for a subpoena to require a witness to appear at any hearing (or at any deposition held pursuant to the authority of Chapter 141.80 (c)(5) to give testimony or to require the production at the hearing or deposition of any books, papers or documents relative to the complaint which is the subject of the proceeding. The request for subpoena(s) must be filed within fourteen (14) days of the hearing or deposition, and state the name(s) and last known home or business address of the person(s) to be subpoenaed, and shall describe with sufficient particularity the books, papers or documents desired. The person to whom the request is made may require the proponent of the request to state reasons why such witnesses or other materials are needed.

Subpart 2. Procurement; Service; Challenge. The Chair, the presiding commissioner, or the hearing committee shall, if it grants the request for the subpoenas, direct the Department to arrange for the procurement of the requested subpoenas pursuant to Chapter 141.80 (c)(5). The party requesting the subpoenas shall make the request within fourteen (14) days of the hearing or deposition, and shall tender to the Department a check payable to the District Court Administrator for the cost of the subpoenas. The party requesting the subpoena(s) is responsible for serving it in a proper and timely manner. Any person who wishes to challenge a subpoena must do so by proper motion before the issuing court, after giving notice to the requesting party and the City Attorney.

RULE 19. Sanctions

If either party believes that the other is intentionally and frivolously delaying the proceedings in bad faith, they may bring a motion before the presiding commissioner by following the procedures in RULE 14. If the presiding commissioner determines that a party has deliberately delayed the proceedings for immaterial, meritless, trivial or unjustifiable reasons, after also giving consideration to the number of issues and amount of damages in controversy, any pattern of similar acts by the party, and the effects of delay, the presiding commissioner shall issue an order containing any of the following:

- A. That the party shall cease and desist from the acts;
- B. Compelling cooperation during further pendency of the case;
- C. Dismissing any or all charges or defenses to charges, which ever may be appropriate;
- D. Foreclosing the testimony of specified witnesses or the presentation of evidence on specified issues;
- E. That the delay will be taken into consideration in awarding damages or attorney fees; or
- F. Any sanctions available in civil cases in the District Court of Minnesota.

RULE 20. Rights and Responsibilities of Parties

Subpart 1. Generally. All parties shall have the right to present evidence, rebuttal testimony, and argument with respect to the issues, and to cross-examine witnesses.

Subpart 2. Necessary Preparation. A party shall have all evidence to be presented, both oral and written, available on the date for hearing. Requests for subpoenas, depositions, or continuances shall be made within a reasonable time after their need becomes evident to the requesting party. In cases where the hearing time is expected to exceed one day, the parties shall be prepared to present their evidence at the date and time ordered by the presiding commissioner or as agreed upon at a prehearing conference.

Subpart 3. Responding to Orders. If the presiding commissioner orders that parties do an act or not do an act, the parties shall comply with the order. If a party objects to an order, the objection shall be stated in advance of the order as part of the record. If the party has no advance knowledge that the order was to be issued, any objection shall be made as part of the record as soon as the party becomes aware of the order.

Subpart 4. Copies. The presiding commissioner and hearing committee shall send copies of all orders or decisions to all parties simultaneously. Any party sending a letter, exhibit, brief, memorandum, or other document to the presiding commissioner or the hearing committee shall simultaneously send a copy to all other parties; provided, however, that this requirement shall not apply to requests for subpoenas.

Subpart 5. Representation by Attorney. A party need not be represented by an attorney. If a party has notified other parties of that party's representation by an attorney, all communications shall be directed to that attorney.

RULE 21. Witnesses

Any party may be a witness and may present witnesses on the party's behalf at the hearing. All oral testimony at the hearing shall be under oath or affirmation. At the request of a party or upon the presiding commissioner's own motion, the presiding commissioner shall exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

RULE 22. Rules of Evidence

Subpart 1. Admissible Evidence. The presiding commissioner may admit all evidence which possesses probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs. The presiding commissioner shall give effect to the rules of privilege, recognized by law. Evidence which is incompetent, irrelevant, immaterial, or unduly repetitious shall be excluded.

Subpart 2. Evidence Part of Record. All evidence to be considered in the case, including all records and documents in the possession of the Department not otherwise excluded under these Rules, or a true and accurate photocopy thereof, must be offered by a party and made a part of the record of the case. No other factual documentary or testimonial information or evidence not so offered shall be considered in the determination of the case.

Subpart 3. Documents. Documentary evidence in the form of copies or excerpts may be received or incorporated by reference in the discretion of the presiding commissioner or upon agreement of the parties. Copies of a document shall be received to the same extent as the original document unless a genuine question is raised as to the accuracy or authenticity of the copy or, under the circumstances, it would be unfair to admit the copy in lieu of the original.

Subpart 4. Official Notice of Facts. The hearing committee may take notice of judicially cognizable facts but shall do so on the record and with the opportunity for any party to contest the facts so noticed.

Subpart 5. Burden of Proof. The complainant must prove the fact at issue by a preponderance of the evidence. If the respondent asserts an affirmative defense, the respondent shall have the burden of proving the existence of the defense by a preponderance of the evidence.

Subpart 6. Examination of Adverse Party. A party may call an adverse party or managing agent, or employees or an officer, director, managing agent, or employee of the state or any political subdivision thereof or of a public or private corporation or of a partnership or association or body politic which is an adverse party, and interrogate that party by leading questions and contradict and impeach that party on material matters in all respects as if that party had been called by the adverse party. The adverse party may be examined by that party's counsel upon the subject matter of that party's examination in chief under the rules applicable to direct examination, and may be cross-examined, contradicted, and impeached by any other party adversely affected by the testimony.

RULE 23. Hearing Record

Subpart 1. Content The hearing record shall contain the complaint, the answer; the Director's or review committee's determination; prehearing statement; motions; orders; evidence offered or considered; offers of proof; objections and rulings thereon; all memoranda and briefs; a transcript of the proceedings, if one was prepared; and the Findings of Fact, Conclusion of Law, Orders and Memoranda after a decision in the case.

Subpart 2. Verbatim Record. A verbatim record of the hearing shall be taken. The presumptive method of recording the proceeding shall be by using a court reporter, whose presence shall be secured and paid for by the Department, unless all parties agree at the prehearing conference to use a tape recorder. However, the hearing committee may order that a tape recorder be used in lieu of a court reporter at a given hearing if exigent circumstances

Subpart 3. Transcript; Prior to Appeal. The verbatim record shall be transcribed if requested by a party. If a transcription is made, a copy of the transcript shall be provided by the requesting party to the hearing committee. The cost of the transcript shall be paid by the requesting party and other persons who request copies.

Subpart 4. Transcript; Appeal. In the event a decision is appealed pursuant to Chapter 141.60 (b), the petitioner shall order and pay for the necessary transcript according to the pertinent provisions of the “*Minnesota Rules of Appellate Procedure.*” In the event the decision is enforced pursuant to Chapter 141.60 (c), the respondent shall bear the cost of any full or partial transcript which the District Court deems necessary to decide the matter. In either event, a party who is responsible for the cost of a transcript and who claims indigency may file the necessary affidavits with the hearing committee, who shall decide whether to certify the party’s indigent status in the same manner and with the same authority as a trial court. If indigence status is certified by the hearing committee, the Department shall pay for the transcript.

RULE 24. Continuances

Requests for a continuance of a hearing shall be granted upon a showing of good cause. Unless time does not permit, a request for continuance of the hearing shall be made in writing to the presiding commissioner and shall be served upon all parties of record. In determining whether good cause exists, due regard shall be given to the ability of the party requesting a continuance to effectively proceed without a continuance. A request for continuance filed within five business days of the hearing shall be denied unless the reason for the request could not have been earlier ascertained.

“Good cause” shall include: Death or incapacitating illness of a party, representative, or attorney of a party; a court order requiring a continuance; lack of proper notice of the hearing; a substitution of the representative or attorney of a party if the substitution is shown to be required; a change in the parties or pleadings requiring postponement; and agreement for a continuance by all parties provided that it is shown that more time is clearly necessary to complete authorized discovery or other mandatory preparation for the case and the parties and the presiding commissioner have agreed to a new hearing date, or the parties have agreed to a settlement of the case.

“Good cause” shall not include: Intentional delay; unavailability of counselor or other representative due to engagement in another judicial or administrative proceeding unless all other members of the attorney’s or representative’s firm familiar with the case are similarly engaged, or if the notice of the other proceeding was received subsequent to the notice of the hearing for which the hearing is sought; unavailability of a witness if the witness’ testimony can be taken by deposition; and failure of the attorney or representative to prepare for the hearing in a timely manner. During a hearing, if it appears in the interests of justice that further testimony should be received and sufficient time does not remain to conclude the testimony, the hearing committee shall either order the additional testimony be taken by deposition or continue the hearing to a future date and oral notice on the record shall be sufficient.

RULE 25. Hearing Committee Conduct

Subpart 1. Ex Parte Communication. The members of the hearing committee or a hearing examiner shall not communicate, directly or indirectly, in connection with any issue of fact or law with any person, other than another member of the hearing committee, concerning any pending case except upon notice and opportunity for all parties to participate. When these rules authorize communications contrary to this rule, the communications shall be limited to only those matters permitted by these rules. Members of the hearing committee or the hearing examiner may respond to questions relating solely to procedures for the hearing without violating this rule. Members of the hearing committee or the hearing examiner may also communicate with the City Attorney’s office, as authorized by Chapter 141.70, without violating this part.

Subpart 2. Investigation; Questioning. The hearing committee shall take no part in any independent investigation into the facts or issues involved in the case. However, the hearing committee may ask questions of witnesses called by the parties. Additionally, prior to the conclusion of the hearing and after the parties have rested, the hearing committee may call any witness, by subpoena or otherwise, to testify to any material issue and may receive any exhibit.

Subpart 3. Role of Alternate. The commissioner appointed as an alternate member of the hearing committee shall be available and on-call by telephone during the first half-hour of the first scheduled hearing session to serve in the event that either of the non-attorney members of the hearing committee are unable to be present. If an alternate hears any evidence in the case, the alternate shall replace the original member of the hearing committee in all subsequent proceedings in the case.

Subpart 4. Role of Presiding Commissioner. The presiding commissioner shall decide all questions of law raised during the proceedings. Whenever the presiding commissioner deems it appropriate, he or she may consult with the other members of the hearing committee before ruling on a question of law. However, to avoid the appearance of impropriety, the Presiding Commissioner is the only member of the hearing panel who may attend any pre-hearing conference or proceeding prior to the public hearing, where issues of fact are likely to be discussed or raised by the parties.

RULE 26. Conduct of Hearing

Subpart 1. Procedures. The hearing shall be conducted in substantially the following manner:

- A. The presiding commissioner shall open the hearing by reading the title of the case, briefly stating the issues, including, where applicable, the amount of any monetary claim made by any party.
- B. After opening the hearing, the presiding commissioner shall, unless all parties are represented by counsel or are otherwise familiar with the procedures, state the procedural rules for the hearing including the following:
 - (1) All parties may present evidence and argument with respect to the issues and cross-examine witnesses. At the request of the party or the attorney for the party whose witness is being cross-examined, the presiding commissioner may make such rulings as are necessary to prevent repetitive or irrelevant questioning and to expedite the cross-examination, to the extent consistent with disclosure of all relevant testimony and information.
 - (2) All parties have a right to be represented by an attorney at the hearing.
 - (3) The rules of evidence in RULE 22.
- C. Any stipulations, settlement agreements, or consent orders entered into by any of the parties prior to the hearing shall be entered into the record.
- D. The complainant may make an opening statement. All other parties may make statements in a sequence determined by the presiding commissioner.
- E. After any opening statements, the complainant shall begin with the presentation of evidence unless the parties have agreed otherwise or the presiding commissioner determines that requiring another party to proceed first would be more expeditious and would not jeopardize the rights of any other party. It shall be followed by the other parties in a sequence determined by the presiding commissioner.
- F. Cross-examination of witnesses shall be conducted in a sequence and in a manner determined by the presiding commissioner to expedite the hearing while ensuring a fair hearing. At the request of a party whose witness is being cross-examined, the presiding commissioner shall make rulings as are necessary to prevent argumentative, repetitive, or irrelevant questioning and to expedite the cross-examination to the extent consistent with the disclosure of all relevant testimony and information.
- G. Any party may be a witness or may present other persons as witnesses at the hearing. All evidentiary testimony presented to prove or disprove a fact at issue shall be under oath or affirmation.
- H. When all parties and witnesses have been heard, opportunity shall be offered to present oral final argument, in a sequence determined by the presiding commissioner. Final argument may, in the discretion of the presiding commissioner, be in the form of written memoranda or oral argument, or both. Final argument need not be recorded, in the discretion of the presiding commissioner. Written memoranda may, in the discretion of the presiding commissioner, be submitted simultaneously or sequentially and within time periods as the presiding commissioner may prescribe.

- I. After final argument, the hearing shall be closed unless a continuance has been ordered. If continued, it shall be either: Continued to a certain time and day, announced at the time of the hearing and made a part of the record; or continued to a date to be determined later, which must be upon no less than five (5) days' written notice to the parties.
- J. The record of the proceeding shall be closed upon receipt of the final written memorandum, transcript, if any, or late filed exhibits which the parties and the presiding commissioner have agreed should be received into the record, whichever occurs latest.

Subpart 2. Minnesota Clean Indoor Act. The Minnesota Clean Indoor Air Act shall be in effect and strictly enforced at all hearings.

Subpart 3. Accessibility. All hearings will be held in facilities which are architecturally accessible and barrier-free to people with impaired mobility.

RULE 27. Disruption of Hearing

Subpart 1. Cameras. Television, newsreel, motion picture, still or other cameras may be operated in the hearing room while the hearing is in progress only with permission of the hearing committee. Audio recording devices may be operated in the hearing room during the course of the hearing only with the permission of the hearing committee.

Subpart 2. Other Conduct. Pursuant to and in accordance with Minnesota Statutes, Section 624.72, 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 the hearing. In the event of interference, disruption, or threat, the presiding commissioner shall read this subpart to those persons causing such interference or disruption and thereafter proceed as deemed appropriate, which may include ordering the disruptive person to leave or be removed from the hearing.

RULE 28. Hearing Committee Decision

Subpart 1. Based on Record. No factual information or evidence which is not a part of the record shall be considered by the hearing committee in the determination of a case.

Subpart 2. Administrative Notice. The hearing committee may take administrative notice of general, technical, or scientific facts within their specialized knowledge in conformance with Minnesota Statutes, Section 14.60.

Subpart 3. Completion. After conclusion of the hearing, the hearing committee shall make written findings of fact, conclusion of law and an order, which may be supplemented by a written memorandum. Such order shall constitute the final decision of the Commission and shall be appealable in accordance with Chapter 141.60 (b).

Subpart 4. Service. Service of the findings of fact, conclusion of law and order shall be made in accordance with Chapter 141.50 (m).

Subpart 5. Failure to Make Decision. If a hearing committee fails to render a decision and order within ninety (90) days after the close of the record, any party may petition the Court of Appeals for an order requiring the hearing committee to render a decision and order on the case within such time as the court determines to be appropriate. The order shall be issued unless the hearing committee shows that further delay is reasonable.

RULE 29. Reserved

RULES APPLICABLE TO NO PROBABLE CAUSE HEARINGS

RULE 30. Request for Oral Hearing

Subpart 1. Time for Filing Request. If the complainant wishes to have an oral hearing on an appeal from the Directors determination of No Probable Cause, a request for such hearing must be included in the complainant's notice of appeal filed pursuant to Chapter 141.50 (e).

Subpart 2. Contents of Request. The request for oral hearing must be accompanied by a statement demonstrating the existence of material evidence newly discovered which was not considered by the Department during its investigation and which with reasonable diligence could not have been found and presented to the Department during its investigation.

Subpart 3. Service. The complainant shall serve a copy of the appeal, request for hearing and accompanying statement upon all parties, and shall file an affidavit of service confirming compliance with this subpart.

RULE 31. Review Committee

Subpart 1. Appointment. Within thirty (30) days following the transmittal of an appeal by the complainant of the Director's determination of No Probable Cause, pursuant to Chapter 141.50 (e), the Chair shall assign a case to the next panel of the rotating roster and shall notify the Department of the appointment. If a review committee is to conduct an oral hearing, the Chair shall also appoint a fourth Commissioner to serve as an alternate committee member.

Subpart 2. Notification. Upon notification of the appointment, the Department shall promptly notify the members of the review committee and the alternate or the hearing examiner of the appointment. The Department shall also at this time notify the parties of the names of the review committee members or the hearing examiner.

Subpart 3. Substitutions. The Chair may, if necessary, make substitutions as to the membership of the review committee or the appointment of a hearing examiner. Upon notification of such changes, the Department shall promptly provide notice to the review committee and to the parties of such changes. Should a panelist be unable to participate in the panel to which she or he has been assigned, the panelist requiring replacement shall notify the Chair one month in advance of the panelist' assigned hearing and the Chair shall be responsible for appointing the alternate.

Subpart 4. Review Committee Conduct. The review committee will take no part in any independent investigation into the facts or issues involved in the case. The review committee will not communicate with any person, including a party or Department staff, with respect to any substantive aspect of the case, except upon prior notice and opportunity for all parties to participate. No member of the review committee shall serve as a member of any hearing committee which may later be named to decide the merits of the case.

RULE 32. Consideration of Hearing Request

The presiding commissioner shall review the complainant's hearing request and accompanying statement to determine whether or not the request for hearing should be granted. Unless the presiding commissioner affirmatively determines that there is material evidence newly discovered which the complainant could not with reasonable diligence have earlier been made known to the Department, the presiding commissioner shall deny the complainant's request for an oral hearing.

RULE 33. Procedure When Request for Oral Hearing is Denied

The presentation to the review committee which the complainant is allowed to make pursuant to Chapter 141.50 (e) shall be made in writing. The complainant's written submission shall be made no later than thirty (30) days after receiving notice of the denial of an oral hearing. The respondent may then file a responsive written presentation within twenty (20) days of receiving the complainant's presentation. The review panel's hearing shall be scheduled as soon as practicable following the submission of the respondent's written presentation, or following the expiration of the twenty-day period in which it may be submitted, whichever is earlier. The notice and order for the hearing shall be served on all parties at least ten (10) days prior to the scheduled date.

RULE 34. Procedure When Request for Oral Hearing Is Granted

Subpart 1. Scheduling of Hearing. The date, time and place of the hearing shall be determined by the presiding commissioner. The notice and order for the hearing shall be served on all parties at least twenty (20) days prior to the scheduled date.

Subpart 2. Notice of Rebuttal Evidence. The opposing parties must notify the complainant and the review committee of any evidence (including witnesses) which they intend to use to rebut the complainant's new evidence at least ten (10) days prior to the hearing.

Subpart 3. Conduct of Hearing.

- A. The complainant may make an opening oral statement. All other parties may then make an oral statement in a sequence determined by the presiding commissioner.
- B. The complainant may present evidence to the review committee; only that evidence which was designated in the complainant's request for hearing shall be heard or considered at the hearing. The opposing parties may then present any rebuttal evidence; only that rebuttal evidence which was disclosed pursuant to Subpart 2 shall be heard or considered at the hearing.
- C. The review committee may call for testimony by the Director or any other Department staff which the review committee deems appropriate to hear, for the purpose of clarifying the investigation process and/or for the finding of no probable cause.
- D. After all evidence has been heard, the parties may make final presentations. The complainant shall give the first presentation, and the respondent(s) shall be heard last. The final presentations may be made in writing, orally, or both, at the discretion of the review committee.

Subpart 4. Continuance. At the discretion of the hearing committee, the hearing may be continued to a date certain.

Subpart 5. Rules of Evidence. The rules of evidence for administrative hearings as set forth in Minnesota Statutes 14.60 and Minneapolis Code of Ordinances Chapter 141.50 (i) shall govern the hearing proceeding. The presiding commissioner shall determine all evidentiary and other legal issues.

Subpart 6: Verbatim Record. A verbatim record of the hearing shall be made, and shall be available to a complainant appealing the review committee's decision. The presumptive method of recording the hearing shall be by using a court reporter, whose presence shall be secured and paid for by the Department, unless all parties agree beforehand to use a tape recorder.

Subpart 7. Counsel. All parties may be represented by counsel at the hearing.

Subpart 8. Other Rules. The provisions of Rule 25, Subpart 4 and Rule 26, Subparts 2 and 3 shall apply to hearings held under this rule.

RULE 35. Record

The record in proceedings pursuant to Chapter 141.50(e), whether by written presentation or after hearing, shall consist of the following:

- (1) Complaint, answer of respondent (if any), all other records and documents in the Department file, not otherwise excluded under these Rules, and all legal motions and rulings on them;
- (2) Any testimony and other evidence received at a review hearing;
- (3) Matters judicially noticed;
- (4) Questions and offers of proof, objections, and rulings on them which arise at a review hearing;
- (5) The written presentations submitted by the parties, including legal briefs and memoranda (if any);
- (6) Any transcript prepared.

RULE 36. Decision of Review Committee

A decision of the review committee shall be made within twenty (20) days of the hearing, unless otherwise ordered by the review committee. The review committee may orally notify both parties of the result of its decision, and may request the prevailing party to submit written findings of fact and conclusions of law, if required by Rule 37.

RULE 37. Standard of Review

The review committee shall view the entire record in the light most favorable to the Director's determination of no probable cause. The Director's determination shall be sustained unless the review committee, applying this standard, finds that the Director's determination of no probable cause was clearly erroneous. If the complainant has presented new evidence (regardless of whether the respondent has presented rebuttal evidence) and the review committee either reverses the Director's determination outright or remands the case to the Department for further investigation, the review committee's decision must contain express findings of fact and conclusions of law. If the decision is to remand the case for further investigation, the decision must indicate specific areas in which the investigation is to be supplemented. A decision sustaining the Director's determination may be made summarily, but the review committee may make findings of fact and conclusions of law at its discretion.

RULE 38. Action Following Remand

If the review committee orders the case remanded to the Department for further investigation, and if after conducting that investigation the Director determines that probable cause is still lacking, the Director shall report that opinion, and the results of the further investigation, in writing, to the original review committee appointed to hear the case. The review committee shall then make a final decision on the entire record, without further written or oral presentations by the parties.

RULE 39. Appeal

A complainant who is aggrieved by a decision of the review committee sustaining the Director's determination of no probable cause may seek judicial review pursuant to Chapter 141.60 (b).

RULES APPLICABLE TO CONTRACT COMPLIANCE HEARINGS

RULE 40. Panel Appointment

No later than three business days after a complaint alleging contract non-compliance is certified to the Commission by the Department pursuant to Chapter 139.50 (a)(8)(d), the Chair shall appoint either a panel of three members of the Commission or a hearing examiner to hear the case. If a Commission panel is appointed, the presiding commissioner shall be an attorney. Once the Chair has informed the Department of the appointment(s), neither the Director nor the complaining official may withdraw the complaint except upon motion to the contract compliance panel.

RULE 41. Prehearing Conference

Immediately upon receiving notice of appointment to a contract compliance panel, the presiding commissioner shall schedule a prehearing conference for a date no later than seven (7) days after receipt of notice of the appointment, and shall notify the Department of the date. The Department shall immediately procure suitable facilities in which to hold the prehearing conference, shall notify the parties of the date and location by telephone and letter, and shall transmit to each party a prehearing statement form which must be completed by each party.

An affidavit of notice by telephone and mail shall be filed by the Department staff member who contacts the party or the party's attorney of record. The presiding commissioner shall serve as the prehearing officer. The provisions of Rule 12 shall govern the prehearing conference. If the case is not settled at the prehearing conference, the date of the final hearing shall be scheduled so as to comply with the thirty (30) day limit established by Chapter 139.50 (a)(8)(d). The presiding commissioner and the Department shall act with all the dispatch necessary to issue and serve the prehearing order so as to give all parties as much notice as possible regarding the terms of the prehearing order. The order shall set strict deadlines for the submission of requests for subpoenas so as to ensure compliance with the thirty (30) day limit.

RULE 42. Hearing

The provisions of Rules 14, 18 and 26 shall govern the conduct of the hearing. The provisions of Minnesota Statutes §14.60 and Rule 22 shall govern the receipt of evidence at the hearing.

RULE 43. Panel Decision

After the conclusion of the hearing, the contract compliance panel shall determine whether the respondent contractor is or is not in compliance with the requirements of Chapter 139.50 and shall make specific findings of fact to support its conclusions. If the contract compliance panel concludes that the respondent contractor is not in compliance with the requirements of Chapter 139.50, the panel shall order the imposition of whatever sanctions authorized by Chapter 139.50 (a)(7) the panel deems just and proper.

CONSTRUCTION OF RULES

RULE 44. Construction

Rules 1 - 44 are to be liberally construed so as to provide for the just and efficient resolution of disputes arising out of the civil rights ordinances. Unless a provision of the rules conflicts with an express prohibition contained in a controlling statute, ordinance or court ruling, these rules shall be given the full force and effect of law at all hearings governed by them.