

Rules of the Equal Opportunities Commission
Draft June 9, 2016

1. Procedural Rules of the Equal Opportunities Commission

1.1 Commission Officers

1.11 The Equal Opportunities Commission (EOC) at its first regular meeting ~~in June~~ of each year shall elect a President, Vice President and a Secretary. A nominating committee will be appointed ~~in May~~, which will present a proposed slate of officers ~~in June~~. These duly elected officers plus two EOC members elected at large shall constitute the Executive Committee to conduct Commission business between regular meetings.

1.12 The EOC Commission may designate two additional members to serve as alternates for the Executive Committee. In the absence of an Executive Committee member, an alternate may substitute and vote in place of said Executive Committee member at any properly convened meeting of the Executive Committee.

1.13 The President shall preside over all meetings ~~of the Commission~~ and shall decide all points of procedure subject to reversal by a majority of the EOC members. ~~of the Commission.~~

1.14 ~~The Executive Assistant~~ Designated staff shall promptly prepare minutes of all meetings and shall mail a copy to each EOC member ~~of the Commission~~. The original copy of the minutes shall remain in the EOC ~~Equal Opportunities Commission~~ office as part of ~~the its~~ permanent records. ~~of the Commission. In the absence of the Executive Assistant, the Commission shall appoint one of its members or staff to promptly prepare the minutes.~~

1.2 Powers and Duties

1.21 The powers and duties of the EOC Commission shall be those set forth in Madison General Ordinance section 39.03 (10)(b). ~~Sec. 39.03 (10), M.G.O.~~

1.3 Quorum

1.31 ~~A quorum for a meeting of the Equal Opportunities Commission, shall be interpreted consistently with the requirements found in Sec. 33.01(3), M.G.O.~~ A quorum for a meeting of the EOC shall be reached pursuant to Madison General Ordinance section 33.01(8).

1.32 ~~The Equal Opportunities Commission shall adhere to Sec. 33.01(3)(a), M.G.O. in instances where a quorum has not been secured.~~ The EOC shall adhere to Madison General Ordinance section 33.01(8) where a quorum is not reached.

1.33 ~~Sec. 33.01(3)(d), M.G.O. shall define the votes necessary to pass motions by the Equal Opportunities Commission.~~ Madison General Ordinance section 33.01(8)(d) determines the number of votes necessary to pass motions by the EOC.

1.4 Regular and Special Meetings

1.41 Regular meetings ~~of the Commission~~ shall be held the second Thursday of each month or as otherwise scheduled by the EOC at a time and place ~~as~~ officially posted, in accordance with the applicable procedural rules set forth in Chapter 33 ~~of the Madison General Ordinances, M.G.O.~~

1.42 ~~Commission Attendance. All Commissioners shall call the DCR EOD office when unable to attend a Commission meeting or hearing. When possible, calls shall be placed at least the day prior to the scheduled meeting. Commissioners shall attend meetings in accordance with Common Council Resolution No. 7965, adopted November 20, 1990.~~ Where a Commissioner is unable to attend an EOC meeting or hearing, such Commissioner shall notify the Department of Civil Rights, Equal Opportunities Division (EOD). Such notification must be received by the EOD at least one day prior to the scheduled meeting. Commissioners shall attend meetings in accordance with Common Council Resolution No. 7965, adopted November 20, 1990.

1.43 Special meetings may be called by the President, or at the request of any two EOC members. ~~of the Commission.~~

1.431 Notice of a special meeting shall be ~~mailed~~ ~~provided~~ to each member at least ~~48~~ ~~72~~ (seventy-two) hours before the time of the meeting or by notice given orally at least 24 (twenty-four) hours before the time of the meeting.

~~1.432 Oral notices shall be deemed sufficient if oral notice is left with someone at the member's place of business or abode.~~

1.44 Any matter that may be considered at a regular EOC meeting ~~of the Commission~~ may be considered at a special meeting.

1.5 Committees.

1.51 The EOC ~~Commission~~ may periodically establish committees to assist in the discharge of its duties. To establish committees, a majority vote shall be taken by those EOC ~~Commission~~ members in attendance. The nature and scope of committee activities shall be subject to the EOC's ~~Commission~~ discretion.

~~1.51~~ 1.52 Standing Committees ~~Regular~~ and Ad Hoc Committees

~~1.511~~ 1.521 Regular Committees are groups such as the EOC Executive Committee created by the Commission which are expected to have an on-going role in carrying out the Commission's mission. The EOC may establish standing committees to aid in matters such as the study of denials of equal opportunities on the bases of various protected classes; the formulation of equal opportunities

policies; and the review of cases on appeal from decisions issued by the EOC Hearing Examiner.

~~1.512~~ 1.522 ~~Ad Hoc Committees are created by the Commission to address a specific issue and which are expected to meet for a limited period of time. The~~ EOC may establish ad hoc committees to address more specific issues. Ad hoc committees are expected to meet for a limited period of time.

~~1.513~~ 1.523 ~~Membership on regular and ad hoc committees shall be composed exclusively of Commission members. Members are appointed by the President. Standing committees and ad hoc committees shall be comprised exclusively of EOC members appointed by the President.~~

~~1.514~~ 1.524 ~~A quorum for any meeting of a regular or ad hoc committee of the Equal Opportunities Commission shall be composed of more than one-half of appointed members. For both a standing committee and an ad hoc committee, a quorum shall consist of more than one-half of the committee's appointed members.~~

~~1.52~~ 1.53 Special Committees

~~1.521~~ 1.531 ~~Special Committees are created to assist the Commission in carrying out its mission where the Commission has determined that outside expertise or additional resources are needed. The EOC may create special committees where it requires independent expertise or additional resources.~~

~~1.522~~ 1.532 ~~Membership on any Special Committee shall consist of a maximum of twenty-five (25) voting members. Additional persons may participate as non-voting members, including serving on subcommittees and task forces and participating in discussions. A special committee shall consist of 25 maximum voting members. Additional persons may participate as non-voting members, serve on subcommittees and task forces, and participate in discussions.~~

~~1.523~~ 1.533 ~~The Employment Committee membership shall consist of 15 maximum voting members. Additional persons may participate as non-voting members. Membership of the Employment Committee is open to a City of Madison company, business or non-profit designee and to individual representatives. The Employment Committee is a subcommittee that is limited to 15 maximum voting members. Additional persons may participate as non-voting members. Membership in the Employment Committee is open to a City of Madison company, business or non-profit designee and to individual representatives.~~

~~1.524~~ 1.534 At least one voting member of the Employment Committee and any special committee shall be a member of the ~~Commission~~ EOC.

~~1.525~~ 1.535 Upon creation of a new Special Committee, the EOD Division Manager and the Commission, shall recommend committee members for a period of one year unless otherwise determined by the Commission. Recommendations for membership of non-Commission members on Special Committees shall be forwarded to the Mayor and Common Council for confirmation in compliance with Sec. 33.01(4)(e), M.G.O. Upon creation of a new special committee, the EOD Division Manager and the EOC shall recommend committee members for a period of one year unless otherwise determined by the EOC. Recommendations of non-EOC members for membership on a special committee shall be forwarded to the Mayor and the Common Council for confirmation pursuant to Madison General Ordinance section 33.01(5)(a).

~~1.5251~~ 1.5351 After the first year, the committee will recommend members for Commission approval, prior to submission to the Mayor and Common Council for confirmation. Term expiration is open. Once the special committee has been in place for one year, the committee will recommend members for EOC approval, prior to submission to the Mayor and Common Council for confirmation. Term expiration is open.

~~1.5252~~ 1.5352 Prior to being eligible for appointment to the committee, a prospective new member must demonstrate consistent regular attendance for committee meetings. A prospective new member must demonstrate consistent, regular attendance at committee meetings before he, she, or they may be eligible for appointment to the special committee.

~~1.526~~ 1.536 Where possible, the membership of Special Committees shall be representative of advocacy groups, residents, and protected classes as contained in the Ordinance, private sector representatives and social service agencies as may have concern with the subject matter of the committee, and shall be committed to the principle of equal opportunities. Where possible, special committees shall be comprised of residents, representatives of advocacy groups, members of protected classes under Madison General Ordinance section 39.03(2), private sector representatives and social service agencies; and such committee members shall be committed to the principle of equal opportunities.

~~1.53~~ 1.54 Attendance at ~~Committee~~ committee meetings shall be governed by Madison General Ordinance section 33.01(8). ~~M.G.O. 33.01(3)(b).~~

~~1.54~~ 1.55 Each committee shall elect a chair and vice chair at its first meeting. ~~Those~~ Each committees ~~remaining in service~~ shall conduct elections annually thereafter. The chair will preside over all meetings of the committee and shall decide all points of procedure subject to reversal by a majority of the voting committee members.

1.6 Amendments and Rules of Order

~~1.61 These Rules may be amended by a vote of a majority of the members of the Commission at any regular or special meeting of the Commission. Ten (10) days notice of the proposed amendment shall be given to each member of the Commission. The Rules of the EOC may be amended by a majority vote of EOC members at any regular or special meeting. Ten (10) days notice of the proposed amendment shall be given to each EOC member.~~

1.62 Except where otherwise provided in these bylaws, a majority vote of ~~the EOC~~ members ~~of the Commission~~ in attendance at any meeting thereof shall prevail on any motion or action.

~~1.63 Committees may be established or dissolved only by a majority vote of a majority of the members of the Commission. Committees may be established or dissolved only by a majority vote of EOC members.~~

~~1.64 Except as otherwise provided herein, and in the absence of a standing rule established by the Commission, ROBERT'S RULES OF ORDER NEWLY REVISED shall govern the proceedings at the meeting of the Commission or of any committee thereof. Except as otherwise provided herein, and in the absence of a standing rule established by the EOC, ROBERT'S RULES OF ORDER NEWLY REVISED shall govern EOC meetings and the meetings of any EOC committee.~~

~~1.64~~ 1.65 Notwithstanding EOC Rule 1.6, or any other rule adopted by this body, the President or any person acting in ~~his or her~~ ~~their~~ stead may vote on any matter properly brought before the ~~EOC Commission~~ or before any committee or sub-committee on which the President serves.

1.7 ~~Testimony~~ Testifying Before the Equal Opportunities Commission

~~1.71 Speakers are required to pre-register their desire to speak before the Equal Opportunities Commission. Speakers will be granted five (5) minutes for their testimony before the Commission. Speakers shall pre-register their desire to testify before the EOC. A speaker's testimony is limited to five minutes.~~

~~1.72 The Commission, by a majority vote, may extend the time limit for an individual speaker or may modify the time limit for testimony because of the length of the agenda, the number of speakers or time constraints of the body. The EOC, by a majority vote, may extend the time limit for an individual speaker or may modify the time limit for testimony due to the length of the agenda, the number of speakers or time constraints.~~

~~1.73 Questions of speakers will be held~~ Speakers shall hold their questions until after all registrants have spoken.

1.8 Emergencies

1.81 ~~When a racially tense situation or any emergency is brought to the attention of the~~

~~DCR Director or any member of the Commission, the Director and/or members of the Commission will decide on action best suited to remedy the particular situation. When an emergency, such as a racially tense situation, is brought to the attention of the Department of Civil Rights Director or to any member of the EOC, the Director and/or applicable EOC members shall determine the appropriate remedial action.~~

~~1.82 The Director and/or the Commission shall keep the Mayor, the Police Department, appropriate offices, and the Common Council informed as to the nature and extent of the problem and the plans to alleviate conditions, and the progress of such action. The Director and/or the EOC shall keep the Mayor, the Police Department, appropriate offices, and the Common Council informed about the nature and extent of the emergency, about remedial plans, and about the progress of such plans.~~

2. Definitions

2.1 Affidavit: A statement in writing based on personal knowledge and made under oath.

2.2 Complainant: ~~A Complainant is any person who has filed a complaint under Sec. 39.03, M.G.O in which it is alleged that an act of discrimination has been committed in violation of said law.~~ Any person who has filed a complaint under Madison General Ordinance section 39.03 and who has alleged that an act of discrimination was committed in violation of the Ordinance.

2.3 Conciliation: ~~The adjustment and settlement of a dispute in a neutral unantagonistic manner. Conciliation may be formal or informal, and may be accomplished by the parties, or with the assistance of the Commission.~~ An attempt to resolve a dispute in a neutral and open manner.

~~2.4 Conciliation or Settlement Agreement: The terms and conditions for the resolution of a complaint. A conciliation agreement may be entered into by the parties with or without the assistance of the Commission.~~

2.4 Conciliation Agreement: A written document resolving the allegations of a complaint to which the DCR or the EOC is a party.

~~2.5 Day: When used in time computation by the Equal Opportunities Division, means a calendar day, except that if the last day of the time period is a Saturday, Sunday or holiday observed by the City of Madison, the last day shall be the next business day.~~

~~2.6 Department of Civil Rights may be abbreviated as DCR. Equal Opportunities Commission may be abbreviated as EOC in these rules. Equal Opportunities Division may be abbreviated as EOD in these rules.~~

2.5 Discovery: A period of time before a hearing on the merits when a Complainant can request information from a Respondent and vice versa.

2.6 Due Notice: The liberal effort of the Equal Opportunities Division to contact a Complainant or a Respondent to make either party aware of a legal process affecting rights, obligations or duties.

2.7 Ex Parte Communication: Occurs when a party communicates with the Hearing Examiner outside the presence of the other party.

~~2.7~~ 2.8 Formal Complaint: ~~A formal complaint is a complaint which requires administrative action under the procedures outlined in Rule 3.0.~~ A written statement of allegations which, if proven, would establish a prima facie case of discrimination.

~~2.8~~ 2.9 Filing: The ~~physical~~ receipt of a document at the DCR-EOD office. ~~Filing may include personal or postal delivery. Documents shall not be served by a facsimile transmission or e-mail.~~

2.10 Geographic Jurisdiction: The Equal Opportunities Commission's authority over events and persons within the bounds of a particular geographic territory.

~~2.9~~ 2.11 Informal complaint: ~~An informal complaint is a~~ A complaint which does not require Equal Opportunities Division action, but may be resolved through administrative action by the staff.

~~2.91~~ 2.111 An informal complaint need not be a written complaint.

~~2.92~~ 2.112 The staff or the Commission may, at any time, change the classification of an informal complaint to become a formal complaint as defined above.

2.12 Injunctive Relief: Refers to a party's written request that the Hearing Examiner require the other party to do or not do something.

2.13 Motion: A written request by a party to the Hearing Examiner. Motions generally require the Hearing Examiner to decide a specific, contested issue.

2.14 Prima Facie Case: What a Complainant must demonstrate in order to require an explanation from a Respondent. It is a minimum set of facts which a Complainant must be prepared to actually prove.

~~2.10~~ 2.15 Probable Cause: Probable cause means there is reasonable ground for belief supported by facts and circumstances strong enough in themselves to warrant a prudent person in the belief that discrimination probably has been or is being committed.

~~2.11~~ 2.16 Respondent: ~~A Respondent is any person who is alleged by a "complainant" to have committed an act of discrimination in violation of Section 39.03 Madison General Ordinances.~~ A person or persons complained of and alleged by a Complainant to have committed an act of discrimination in violation of Madison General Ordinance 39.03.

~~2.5~~ 2.17 Settlement Agreement: A written document resolving the allegations of a complaint that is signed by the parties but to which the DCR or EOC is not a party.

~~2.17~~ 2.18 Subject Matter Jurisdiction: The Equal Opportunities Commission's authority to render a judgment concerning a particular allegation of discrimination.

~~2.12 A word or term referred to in these Rules shall have the meaning as defined or understood in Sec. 39.03, M.G.O. Sec. 39.03, M.G.O means the Equal Opportunities Ordinance except where specifically noted.~~

3. Procedures for Processing Complaints

3.1 Filing of Complaints

3.11 The ~~EOD~~ Equal Opportunities Division shall not accept any complaint filed more than three hundred (300) days after the alleged discrimination occurred, except that complaints of housing discrimination may be filed up to one (1) year after the alleged discrimination occurred.

~~3.111 Where a Complainant alleges a pattern or practice of discrimination, the period referred to shall begin to run from the last act or occurrence of alleged discrimination.~~ Once a complaint is filed with the EOD, an Investigator will determine whether the allegations of the complaint occurred within 300 days of the filing. Any allegedly discriminatory act that occurs outside of that 300-day period will not be investigated.

~~3.112 Where a Complainant alleges that there is a continuing violation of the Ordinance, the period referred to shall begin to run from the last act or occurrence of alleged discrimination.~~ If a complaint alleges facts sufficient to set forth a pattern or practice of discrimination, the complaint will be timely if at least one incident establishing the pattern or practice occurred no more than 300 days prior to the date on which the complaint was filed with the Department. A pattern or practice may be established if three (3) or more substantially similar incidents of discrimination are alleged to have occurred with respect to the same individual. If a pattern or practice of discrimination is established, incidents forming the pattern or practice of discrimination that fall outside of the 300 day period prior to the filing of the complaint may be considered as part of the allegation of discrimination.

3.12 A formal complaint may be filed by the Complainant in person, ~~or~~ mailed, or transmitted electronically to the office of the Equal Opportunities Division. ~~The Complainant may be required to provide additional information to the Equal Opportunities Division staff during the "intake" of the complaint such that the complaint will meet the standard set forth below in 3.121 through 3.123, or to obtain information necessary before the investigation process begins.~~

3.121 A formal complaint shall be set forth on an approved form.

3.122 A formal complaint must contain a statement of allegations which, if proven, would establish a “prima facie” case of discrimination.

3.123 ~~The Equal Opportunities Division (EOD)~~ staff ~~will~~ may provide assistance in the identification and clarification of issues and in the drafting of the formal complaint.

3.13 A Complainant may be required to provide additional information and/or documentation to DCR staff during the “intake” of the complaint to meet the standards set forth in Equal Opportunities Commission (EOC) Rules 3.121 through 3.123 or to obtain necessary information before the investigation process begins.

~~3.13 3.14 Once a complaint has been filed, the EOD DCR shall serve notice upon the Complainant, acknowledging the filing, and advising the Complainant of the applicable time limits and the choice of forums available to the Complainant. Once a complaint has been filed, the EOD shall serve notice upon the Complainant. Such notice shall acknowledge the filing and advise the Complainant of applicable time limits.~~

~~3.14 3.15 Upon service of the complaint upon the Respondent, the Respondent shall be notified of the right to file a written answer to the allegation of the complaint. If the Respondent chooses to file an answer, said answer shall be filed within twenty (20) days of the service of the complaint. The EOD shall serve notice upon a Respondent that a complaint has been filed. Such notice shall notify the Respondent of the right to file a written answer to the complaint. If the Respondent chooses to file an answer, the answer shall be filed within 20 days of service of the complaint.~~

~~3.15~~ 3.16 The EOD shall not investigate any complaint which is not a formal complaint as defined in ~~EOC Rule 2.8~~ ~~Section 2.7~~ or which has not been served on the Respondent.

~~3.16~~ 3.17 Any person who files a complaint with the ~~Equal Opportunities Division~~ EOD shall promptly inform the EOD of any changes of address or telephone number, or any prolonged absences from the address which he or she has provided to the EOD when necessary. In addition, a Complaint shall, at the time of filing a complaint, provide the EOD with the name, address and telephone number of a person who will always know how to reach the Complainant.

3.2 Amending a Complaint.

~~3.21 A complaint may be amended or supplemented by the Complainant, at any time prior to the issuance of a notice of hearing. A Complainant may amend or supplement a complaint at any time before the issuance of a Notice of Hearing.~~

3.3 Withdrawal of Complaint

3.31 ~~The A~~ Complainant may withdraw their complaint at any time. ~~Reasons for the request to withdraw shall be stated in writing.~~

3.32 ~~Withdrawal of a charge, in whole or in part, is accomplished by notifying the EOD in writing, of the Complainant's desire to withdraw a complaint and shall identify what portions of the complaint are being withdrawn. Said notification must include the Complainant's signature, or that of his or her representative of record.~~ A Complainant may withdraw a complaint, in whole or in part, by notifying the EOD of the reasons for withdrawal in writing. Said notification must identify what portions of the complaint to withdraw and it must include either the Complainant's signature or that of their representative of record.

3.33 Withdrawal of a complaint shall be without prejudice unless the parties agree in writing to the contrary.

3.4 Administrative Dismissal of Complaints

3.41 ~~After due notice, The~~ the EOD may dismiss a complaint under the following circumstances:

3.411 If ~~the a~~ Complainant fails to provide requested necessary information or facts.

3.412 If ~~the a~~ Complainant ~~refuses to appear or to be available for interviews or conferences.~~ Complainant fails to appear or to be available for an interview, a scheduled hearing, or a Fact Finding Conference.

3.413 If ~~the a~~ Complainant ~~refuses to cooperate to the extent that the EOD is unable to resolve the complaint.~~ fails to cooperate to the extent that the EOD is unable to resolve the complaint. Failure to cooperate includes the failure of a Complainant to keep their contact information up-to-date.

3.414 If ~~the a~~ Complainant withdraws the complaint.

3.415 ~~If the Commission lacks geographic jurisdiction.~~ If the EOC lacks either geographic or subject matter jurisdiction.

~~3.42 After due notice, the EOD may dismiss the complaint.~~

~~3.42 A dismissal pursuant to this subsection shall be without prejudice and the Complainant shall have twenty (20) days from the date on the Notice of Dismissal in which to appeal. The Notice of Dismissal shall be dated with the same date as the date it is mailed.~~ An administrative dismissal shall be without prejudice. An appeal to a

dismissal under this subsection must be made by filing a written request with the EOD no later than 15 days after the receipt of the dismissal.

~~3.44 The Hearing Examiner may dismiss a complaint where she/he has made a finding of “no jurisdiction” regarding allegations in the complaint. See Rule 4.5.~~

~~3.4545 In the event a Complainant cannot be reached prior to the time a case has been certified to public hearing, the following procedure shall be used prior to dismissing the complaint:~~

~~3.441 A letter shall be sent to the Complainant's last known address.~~

~~3.442 Such letter shall specify that the Complainant must contact the EOD staff and reaffirm Complainant's desire to pursue the complaint not later than fifteen (15) days from the date such letter is sent to the Complainant's last known address.~~

~~3.443 Complainant's failure to respond within the time period specified shall be sufficient basis to dismiss the complaint.~~

~~3.444 If the letter is returned undeliverable, the case may be dismissed at any time by the EOD Manager or Hearing Examiner if the Complainant has failed to respond or has not contacted the EOD.~~

~~3.46 3.43 In any appeal to the Commission from the EOD Manager's dismissal of a complaint under Rules 3.41-3.444, or Hearing Examiner's dismissal of a complaint for lack of jurisdiction the Commission may reverse the dismissal for good cause shown. In any appeal to the EOC from the dismissal of a complaint under EOC Rules 3.411-3.414 by either the EOD Manager or the Hearing Examiner or from the Hearing Examiner's dismissal of a complaint for lack of jurisdiction under EOC Rule 3.415, the EOC may reverse the dismissal for good cause shown.~~

3.5 Worksharing Agreement Incorporated

3.51 The Memorandum of Agreement on Worksharing and Cooperation Between the U.S. Equal Employment Opportunity Commission (EEOC) and the ~~Madison Equal Opportunities Division~~ EOD and any subagreements, including any amendments or modifications made hereafter to such agreement or subagreement, are hereby incorporated into these rules.

3.52 The ~~EOD Madison Equal Opportunities Division~~ shall give full faith and credit to the EEOC's final disposition of complaints which are initially filed with the EEOC and cross-filed with the ~~EOC Commission~~ pursuant to the Worksharing Agreement. Upon final disposition of such complaints by the EEOC, the corresponding complaint cross-filed with the EOD shall be dismissed, except ~~where there is an area over alleged~~

~~discrimination in which the EEOC does not have jurisdiction. Such dismissals are NOT appealable, where the complaint contains an allegation of discrimination over which the EEOC lacks jurisdiction. Such dismissals are NOT appealable.~~

3.53 The Memorandum of Agreement on Worksharing and Cooperation Between the Department of Workforce Development, Equal Rights Division (ERD) and the ~~EOD City of Madison's Equal Opportunities Division~~ and any subagreements, including any amendments or modifications made hereafter to such agreement or subagreement, are hereby incorporated into these rules.

3.54 ~~The EOD shall give full faith and credit to the Equal Rights Division's (ERD) final disposition of complaints which are initially filed with ERD and cross-filed with the EOD pursuant to the Worksharing Agreement. Upon final disposition of such complaints by ERD, the corresponding complaint cross-filed with the Commission shall be dismissed, except where there is an area over alleged discrimination in which the ERD does not have jurisdiction. Such dismissals are NOT appealable.~~ The EOD shall give full faith and credit to the ERD's final disposition of complaints which are initially filed with the ERD and cross-filed with the EOD pursuant to the Worksharing Agreement. Upon the ERD's final disposition of such complaints, the corresponding complaint cross-filed with the EOC shall be dismissed, except where the complaint contains an allegation of discrimination over which the ERD lacks jurisdiction. Such dismissals are NOT appealable.

4. Investigation

4.1 General Procedure

4.11 All complaints filed as stated in Equal Opportunity Commission (EOC) Rule 3.1 above shall be investigated ~~by an Investigator~~ to determine whether or not probable cause exists to believe that the Ordinance may have been violated. ~~Such~~ Once a complaint has been filed, an investigation shall commence within 30 days. ~~no later than the 30th day after filing of the complaint.~~

4.2 Powers and Duties of ~~the an~~ Investigator

4.21 When a complaint is assigned, ~~the an~~ Investigator ~~shall~~ requests information, documents and/or witness~~s~~ statements from the parties.

4.22 All information requested by ~~the an~~ Investigator shall be submitted in a timely manner. In the event ~~that a party requests~~ an extension ~~is requested by a party~~, ~~the an~~ Investigator may grant one (1) extension of no more than fifteen (15) days.

4.23 ~~The An~~ Investigator may use whatever means necessary in conducting their investigation, including but not limited to, ~~requesting the production of documents~~, an on-site visit, interviewing witnesses, ~~holding one or more Fact-Finding Conferences~~, and reviewing records or other documents.

~~4.24 The Investigator may hold one or more Fact Finding Conferences to gather evidence upon which a conclusion may be based.~~

~~4.25~~ 4.24 The An Investigator shall provide the parties and their attorneys or advocates with an opportunity to ~~provide~~ submit additional information to support their positions.

~~4.26~~ 4.25 When ~~the~~ an Investigator determines that she/he has gathered sufficient information, a 10-Day Letter will be sent to all parties. The 10-Day Letter notifies the parties of the expected date of an Initial Determination and provides the parties with a final opportunity to submit additional information.

~~4.27~~ 4.26 When the 10-day period expires, an Initial Determination is issued with a conclusion of ~~either~~ Probable Cause, No Probable Cause, or a combination of Probable Cause and No Probable Cause to believe discrimination ~~has~~ may have occurred., ~~or may be occurring.~~

4.3 Fact Finding Conference

4.31 Attendance at a Fact Finding Conference

4.311 Attendance by the parties at a ~~fact-finding~~ Fact Finding conference is mandatory.

4.312 If a party refuses to attend a ~~fact-finding~~ Fact Finding conference or otherwise fails to provide requested information or evidence, he/she may be required by subpoena to appear at the EOD offices and to provide the requested information.

4.313 Failure of ~~the~~ a Complainant to appear at a ~~fact-finding~~ Fact Finding conference may result in an administrative dismissal, pursuant to EOC Rule 3.412.

~~4.314 Appeal of an administrative dismissal for failure of the Complainant to appear may be appealed within twenty (20) days for good cause shown, pursuant to Rule 3.45.~~

4.32 Appearance of Attorneys and Lay Advocates at Investigative Fact Finding Conferences.

~~4.321 Attorneys and/or lay advocates may appear with a party, however, it is mandatory that the parties also be present at the fact finding conferences.~~ Attorneys and/or lay advocates may appear on a party's behalf. However, it is mandatory that the parties themselves also be present at a scheduled Fact Finding Conference.

4.322 ~~The An~~ attorney or lay advocate may not answer questions on behalf of ~~the a~~ party, but ~~a-that~~ party may consult with the attorney or lay advocate prior to answering a question that has been posed.

4.323 ~~The An~~ attorney or lay advocate may advise ~~the a~~ party not to answer a particular question.

4.324 ~~In the event that a party fails to appear at a fact finding conference, the appearance of the attorney and/or lay advocate shall not excuse the nonappearance by a party and the fact finding conference shall be deemed canceled. The Investigator may write an initial determination without rescheduling the fact finding conference.~~ In the event that a party fails to appear at a Fact Finding Conference, the appearance of that party's attorney and/or lay advocate shall not excuse the party's non-appearance and the Fact Finding Conference shall be deemed canceled. An Investigator may write an Initial Determination without rescheduling the Fact Finding Conference.

4.33 Record of Fact Finding Conference

4.331 ~~The An~~ Investigator shall make and retain ~~in the file~~ a written record of ~~the a~~ Fact Finding Conference ~~in a party's file~~.

4.332 The written record of the Fact Finding Conference shall include the names and addresses of all persons appearing at the conference, a statement summarizing the positions of the parties, and a summary of the evidence provided by each person in attendance ~~at the conference~~.

4.333 The notes taken by ~~the an~~ Investigator during the Fact Finding Conference may serve as the written record of the conference, provided ~~they that the notes~~ satisfy the requirements of ~~this rule~~ EOC Rule 4.332.

4.34 Electronic Recordation

4.341 ~~The Commission may, in its discretion, make an electronic recording of the Fact Finding Conference, which shall be available for review by the Investigator in aid of making the Initial Determination. Such recording shall be made available to the Hearing Examiner pursuant to Rule 5.35.~~ The EOC may, in its discretion, make an electronic recording of a Fact Finding Conference, which shall be available for review by an Investigator to aid in the rendering of an Initial Determination. Such recording shall be made available to the Hearing Examiner pursuant to EOC Rule 5.46.

~~4.4 All motions other than those made during a hearing shall be in writing and shall state the type of relief applied for and the grounds for the motion.~~

~~Upon receipt of any written motion, the Hearing Examiner shall determine what procedures shall be used to address said motion. Except as otherwise expressly provided in these rules, the Hearing Examiner need address only those motions which he or she determines will expedite the administrative processing of the case.~~

4.5 Respondent's Challenge to Subject Matter Jurisdiction

~~4.51 If Respondent challenges the subject matter jurisdiction of the Commission over any allegation of a complaint, the complaint shall be transferred to the Hearing Examiner for a jurisdictional determination.~~

~~4.52 In determining whether to dismiss a complaint for lack of jurisdiction, the Hearing Examiner may consider documents and affidavits presented by any party and may hold a hearing to allow the parties to establish facts which may have a bearing on whether the complaint should be dismissed.~~

~~4.53 If the Hearing Examiner issues an order dismissing the complaint, a copy of the order and a notice of appeal rights shall be sent to the last known address of each party and to their attorney or representative, if any.~~

~~4.54 A finding of NO JURISDICTION can be appealed by the Complainant, by submission of an appeal in writing within fifteen (15) days from the date of the letter.~~

~~4.55 A finding of jurisdiction may not be appealed, except as part of an appeal of the Hearing Examiner's findings of fact, conclusions of law and order.~~

5. Initial Determination of Probable/No Probable Cause

~~5.1 After an investigation, the Investigator shall prepare an initial determination in writing as to whether or not there is probable cause to believe that the Ordinance may have been violated and on what facts such determination is based. Copies of the Investigator's initial determination shall be sent by mail to the Complainant and the Respondent and with a copy to their Attorneys or Advocates. At the close of an investigation, an Investigator shall issue a written Initial Determination as to whether there is probable cause to believe that the Ordinance may have been violated and on what facts such determination is based. Copies of the Initial Determination shall be sent to the parties and their attorneys and/or lay advocates.~~

5.2 Dismissal of a Complaint Before the Issuance of an Initial Determination

5.21 If the Department of Civil Rights, Equal Opportunities Division (EOD) experiences difficulty in contacting a Complainant before the issuance of an Initial Determination, the following procedure shall be used before the EOD dismisses a complaint:

5.211 The EOD shall send a letter to the Complainant's last known address.

5.212 Such letter shall specify that the Complainant must submit to the EOD a written response reaffirming the desire to pursue the complaint no later than 15 days from the letter's date of issuance.

5.213 The Complainant's failure to respond within the 15-day time period shall be sufficient basis to dismiss the complaint.

5.214 If the EOD's letter to the Complainant is returned as undeliverable, the complaint may be dismissed at any time by the EOD Manager.

~~5.2~~ 5.3 Initial Determinations of Probable Cause, No Probable Cause, or a Combination of Both

~~5.31~~ An Investigator may find Probable Cause, No Probable Cause, or a combination of Probable Cause/No Probable Cause, according to the issues presented in the complaint.

~~5.34~~ 5.32 The Complainant may appeal any part of the Initial Determination which finds No Probable Cause.

5.33 An Initial Determination of Probable Cause may not be appealed by a Respondent.

~~5.22~~ 5.34 Where an Investigator issues an Initial Determination of Probable Cause/No Probable Cause, further proceedings for issues where Probable Cause was found shall be stayed until any issues for which No Probable Cause was found are resolved.

~~5.3~~ 5.4 Appeals of No Probable Cause to the Hearing Examiner

~~5.34~~ 5.41 ~~Within 15 days after the date of an initial determination finding that there is no probable cause, a Complainant may file a written request for a hearing on the issue of no probable cause. The request for hearing shall state specifically the grounds upon which the appeal is based. The department shall notify the Respondent that an appeal has been filed within 10 days of receiving the appeal. Initial Determinations of probable cause cannot be appealed.~~ A Complainant may file a written appeal no later than 15 days after the receipt of an Initial Determination of No Probable Cause. In the written appeal, the Complainant shall state specifically the grounds upon which the Initial Determination should be reversed. The EOD shall notify a Respondent that an appeal has been filed within 10 days of receiving the appeal.

~~5.32~~ 5.42 In an appeal from an Initial Determination of No Probable Cause, the parties shall be afforded a reasonable opportunity to submit additional evidence or arguments to the Hearing Examiner. Any such evidence or arguments must be submitted in writing.

~~5.33~~ 5.43 ~~For briefs and all other written material submitted in the appeal of a no probable cause finding, the Hearing Examiner may grant one (1) extension of no more than fifteen (15) days for the submission of the briefs or materials, except that a request for discovery shall not be considered a request for an extension.~~ The Hearing Examiner

may grant one extension of no more than 15 days for the submission of additional evidence or arguments.

~~5.34~~ 5.44 ~~Discovery shall be permitted in an appeal from an Initial Determination of No Probable Cause in accordance with Rule 7.52.~~ A request for discovery will be considered separately from a request for an extension. Discovery shall be permitted in an appeal from an Initial Determination of No Probable Cause in accordance with EOC Rule 8.13.

~~5.35~~ 5.45 ~~In an appeal of an Initial Determination of No Probable Cause, the Hearing Examiner shall review and consider the investigative file, including the record of the Fact Finding Conference, if any, and any additional evidence submitted by the parties, to determine whether there is probable cause to believe Respondent has discriminated against the Complainant in violation of the ordinance.~~ The Hearing Examiner shall review and consider the investigative file to determine whether there is probable cause to believe that a Complainant suffered discrimination in violation of the Ordinance. As part of the review of the investigative file, the Hearing Examiner may consider the record of any Fact Finding Conference and any additional evidence submitted by the parties.

~~5.36~~ 5.46 ~~The Hearing Examiner will review and consider any electronic recording of the Fact Finding Conference if, before the expiration of the period allowed for the submission of additional evidence, any party files a written request for review of the electronic recording.~~ The Hearing Examiner will review and consider any electronic recording of a Fact Finding Conference upon the written request of either party. Such a request must be submitted before the expiration of the period allowed for the submission of additional evidence or arguments provided by EOC Rule 5.42.

~~5.37~~ 5.47 The Hearing Examiner shall issue a Decision and Order on Review of Initial Determination of No Probable Cause either affirming or reversing, in whole or in part, an Initial Determination. Alternatively, the Hearing Examiner may issue a Decision and Order vacating an Initial Determination and remanding the case to an Investigator for further investigation or findings.

5.48 If the Hearing Examiner ~~finds Probable Cause~~ reverses an Initial Determination of No Probable Cause, the complaint shall be transferred to conciliation.

5.49 In the case of a Decision and Order reversing an Initial Determination of No Probable Cause, if the Hearing Examiner is unable to contact the Complainant to schedule a Pre-Hearing Conference within 15 days of the re-mailing, the Hearing Examiner will issue a Notice of Dismissal subject to EOC Rule 3.42.

5.410 In the case of a Decision and Order that affirms only part of an Initial Determination of No Probable Cause, if the Hearing Examiner is unable to contact the Complainant to schedule a Pre-Hearing Conference within 15 days of the re-mailing,

and the Complainant did not appeal the No Probable Cause affirmation, the Hearing Examiner shall issue a Notice of Dismissal subject to EOC Rule 3.42.

~~5.38 In an appeal of an Initial Determination of No Probable Cause, the Hearing Examiner shall issue a decision and order either affirming or reversing, in whole or in part, the Initial Determination, or vacating the Initial Determination and remanding the case to the Investigator for further investigation or findings.~~

~~5.4~~ 5.5 Appeals of No Probable Cause Affirmations to the Equal Opportunities Commission

~~5.41 Appeals of No Probable Cause to the Commission shall be made in accordance to Rule 11.~~

~~5.42-5.51 In the event of a second determination of NO PROBABLE CAUSE, entered by the Hearing Examiner, the Complainant may appeal that determination to the Commission by filing an appeal in writing within fifteen (15) days of receipt of the Hearing Examiner's decision and order. If the Hearing Examiner affirms an Initial Determination of No Probable Cause, a Complainant may, pursuant to EOC Rule 11, submit a written appeal to the EOD within 15 days of receipt of the Hearing Examiner's Decision and Order.~~

~~5.43-5.52~~ The Commission EOC may consider the following:

~~5.431~~ 5.521 The record compiled by ~~the~~ an Investigator.

~~5.432~~ 5.522 Any additional documents or arguments submitted to the Hearing Examiner.

~~5.433~~ 5.523 Any briefs properly submitted by the parties, their attorney or lay advocates.

~~5.434~~ 5.524 Any oral arguments deemed appropriate by the Commission EOC.

~~5.4341~~ 5.5241 The parties must submit a request in writing, stating good cause for the need for oral argument.

~~5.4342~~ 5.5242 If the Commission EOC deems that good cause has not been shown it need not grant oral argument.

~~5.43~~ 5.53 The Commission EOC may find Probable Cause, No Probable Cause or a combination of Probable/No Probable Cause according to the issues presented in the complaint.

~~5.431~~ 5.531 If the Commission EOC finds Probable Cause, the complaint shall be transferred to conciliation.

~~5.432~~ 5.532 If the ~~Commission~~ EOC finds No Probable Cause to believe the Ordinance may have been violated, the finding shall constitute the final order of the Commission.

~~5.433~~ 5.533 If the ~~Commission~~ EOC is unable to find Probable Cause or No Probable Cause, the complaint shall be remanded to ~~the an~~ Investigator for further investigation or findings or to the Hearing Examiner for further findings.

~~5.44~~ 5.54 In the event the ~~Commission~~ EOC determines there is NO PROBABLE CAUSE, the ~~Commission~~ EOC shall issue an order dismissing the complaint or the issue(s) in the complaint to which No Probable Cause applies.

5.6 Dismissal of a Complaint after the Issuance of a Decision and Order on Review of Initial Determination

5.61 The Hearing Examiner may dismiss a complaint pursuant to EOC Rules 3.412 and 3.413 if he, she, or they experiences difficulty in contacting a Complainant at any time after the issuance of a Decision and Order on Review of Initial Determination of No Probable Cause.

5.62 The following procedure shall be used before the Hearing Examiner administratively dismisses a complaint:

5.621 Where the Hearing Examiner's Decision and Order or Notice of Pre-Hearing Conference is mailed via receipt verified to the Complainant and either document is returned to the EOD as undeliverable, the Hearing Examiner shall re-mail the appropriate document via regular mail to the Complainant's last known address.

5.622 In the case of a Decision and Order affirming an Initial Determination of No Probable Cause, the Hearing Examiner will issue a Notice of Dismissal subject to EOC Rule 3.42, if the Complainant does not submit a written appeal to the Hearing Examiner within 15 days of the re-mailing.

~~6. Conciliation/Negotiated Settlements Agreements and Settlement Agreements~~

~~6.1 Settlement of complaints of discrimination are encouraged by the Commission at any stage of the process. A settlement agreement may contain any provisions mutually agreed upon by the parties except those contrary to local, state or federal law. The Commission may or may not be a party to the settlement or conciliation agreement.~~

~~6.11 Any party may waive conciliation.~~

~~6.2 In case of any determination that there is probable cause to believe that the Ordinance has been violated, a staff member designated by the Commission shall act as Conciliator and~~

~~attempt to resolve the matter complained of by agreement between the two parties. The terms of a conciliation agreement may be negotiated among the parties and the Commission.~~

~~6.3 The Commission may require, as a term of settlement, reporting systems, affirmative action, monitoring or other terms as may be necessary to effectuate the purposes of the Ordinance.~~

~~6.4 In the event that an agreement is reached, a conciliation agreement in writing shall be signed by the Complainant and Respondent and may be signed by the President of the Equal Opportunities Commission. A conciliation agreement, signed by the President of the Equal Opportunities Commission, shall have the effect of a final order of the Commission.~~

~~6.5 Should conciliation fail or be waived by any party, the conciliator shall certify, in writing to the Hearing Examiner, that conciliation has been unsuccessful. Copies of this letter shall be sent to all parties. Nothing in this section shall prohibit the Commission from attempting to conciliate a complaint between or among any consenting parties, where there are multiple Complainants or Respondents.~~

6. Conciliation Agreements and Settlement Agreements

6.1 Conciliation Agreements

6.11 Where an Investigator has determined that there is probable cause to believe that the Ordinance may have been violated, a staff member designated by the Equal Opportunities Commission (EOC) shall act as a Conciliator and attempt to resolve the matter by agreement between the two parties.

6.111 Any party may waive conciliation.

6.112 Should conciliation fail or be waived by any party, a conciliator shall certify, in writing to the Hearing Examiner, that conciliation was unsuccessful. Copies of said certification shall be sent to all parties.

6.113 Where an agreement is reached during conciliation, a written conciliation agreement shall be signed by the Complainant and Respondent and may be signed by the EOC President or their designee. A conciliation agreement signed by the EOC President shall have the effect of a final order of the EOC.

6.114 The EOC may be a party to a conciliation agreement. Further, the EOC may require the terms of the conciliation agreement to include reporting systems, affirmative action, monitoring or other terms as may be necessary to effectuate the purposes of the Ordinance.

6.12 Notwithstanding EOC Rule 6.1, the EOC may attempt to conciliate, mediate or otherwise settle a complaint between or among any consenting parties, where there are multiple Complainants or Respondents.

6.2 Settlement Agreements

6.21 Settlement of discrimination complaints is encouraged by the EOC and settlement may occur at any stage of the complaint process. A settlement agreement may contain any provisions mutually agreed upon by the parties except those contrary to local, state or federal law.

6.22 The parties may attempt to settle their dispute privately or with the assistance of the EOC. In the latter case, the EOC may be a party to the settlement agreement.

7. ~~General Hearing Procedures~~ Authority and Duties of the Hearing Examiner

7.1 ~~Purpose and Scope~~ General Procedure

7.11 ~~If conciliation fails, the Commission shall designate a person or persons to hear evidence and arguments at a hearing pursuant to Sec. 39.03(10)(c)(2), M.G.O. The Commission's designee, who shall be identified as the Hearing Examiner, shall set a time for the hearing and give the parties not less than thirty (30) days notice.~~ If conciliation fails, the Equal Opportunities Commission (EOC) shall designate a Hearing Examiner to hear evidence and arguments at a hearing pursuant to Madison General Ordinance section 39.03(10)(c)2. The Hearing Examiner shall set a time for the hearing and give the parties not less than 30 days notice.

7.2 ~~Powers and Duties~~ Authority of the Hearing Examiner

7.21 General Powers and Duties

7.211 ~~A~~ The Hearing Examiner shall ~~have the duty to~~ conduct fair and impartial hearings.

7.212 ~~To take all necessary action to avoid delay in the disposition of proceedings and to maintain order. She or he shall have all power necessary to those ends, including but not limited to the following:~~ The Hearing Examiner shall take all necessary action to avoid delays in the disposition of proceedings and to maintain order. To that end, the Hearing Examiner's authority shall include, but not be limited to, the power:

7.2121 To administer oaths and affirmations;

7.2122 To issue subpoenas;

7.2123 To rule upon offers of proof and receive evidence;

7.2124 To regulate the course of the hearings and the conduct of the parties and their agents or representatives;

7.2125 To hold conferences for settlement, simplification or stipulation of the issues, or any other proper purpose;

7.2126 To consider and rule upon all procedural and other motions appropriate to the proceeding and the parties; and

7.2127 To make and file a recommended decision.

~~7.2128~~ 7.213 Notwithstanding any provision of ~~this sub-paragraph~~ EOC Rule 7.212, the Hearing Examiner may grant only one (1) extension of no more than fifteen (15) days with further extensions granted only where good cause is demonstrated.

7.22 Interference-

7.221 No officer, employee or agent or any representative of the parties to a complaint shall interfere with the Hearing Examiner in the performance of adjudicative functions.

7.23 Ex Parte Communications

7.231 No person, nor ~~her or his or their~~ agent, employee, or representative, who has an interest in a particular proceeding shall communicate ex parte, directly or indirectly with the Hearing Examiner with respect to the merits of that ~~proceeding~~ or a factually related proceeding.

7.232 However, any person or their agent, employee or representative who has an interest in a particular proceeding may make an ex parte request for the issuance of a subpoena or for communications related to scheduling of proceedings.

~~7.232~~ 7.233 The Hearing Examiner shall not communicate ex parte, directly or indirectly with any person, nor ~~his or her their~~ agent, employee, or representative, who has an interest in a particular proceeding, with regard to the merits of that, or a factually related proceeding.

~~7.233~~ 7.234 If an ex parte communication is made to or by the Hearing Examiner in violation of ~~paragraphs~~ EOC Rules 7.231 or 7.232 ~~of these rules~~, the Hearing Examiner shall promptly disclose the content of such communication to all parties.

~~7.234 Any person, or his or her agent, employee or representative, who has an interest in a particular proceeding may make an ex parte request for the limited purposes of requesting the issuance of a subpoena or for communications related to scheduling of proceedings.~~

7.24 Disqualification of the Hearing Examiner

~~7.241 When a Hearing Examiner deems herself or himself disqualified to preside in a particular proceeding, she or he shall withdraw by notice on the record.~~

~~7.242~~ 7.241 Any party may file an affidavit, stating in detail the ~~matters alleged to constitute~~ grounds for disqualification. Only one such affidavit shall be filed by the same party in ~~the~~ a case. An affidavit of prejudice must be filed no later than ten (10) days after the case has been certified to hearing or from the date that a party becomes aware or should have become aware of the grounds for disqualification.

~~7.243~~ 7.242 If, in the opinion of the Hearing Examiner, the affidavit of prejudice is sufficient on its face, the Hearing Examiner shall disqualify herself or himself and withdraw from the proceeding ~~by notice on the record~~.

~~7.244~~ 7.243 If the Hearing Examiner does not disqualify herself or himself, she or he shall so rule upon the record, stating the grounds for the ruling and proceed with the hearing.

~~7.3 Prehearing Procedures. The Hearing Examiner may, at her or his own discretion, direct counsel or representatives for all parties to meet for a conference to consider any or all of the following:~~

~~—— 7.31 Simplification and clarification of the issues;~~

~~—— 7.32 Stipulations, admissions of fact and the contents and authenticity of documents;~~

~~7.33 Such other matters as may aid in the orderly and expeditious disposition of the proceedings, including disclosure of the names of witnesses and of documents or other physical exhibits which will be introduced in evidence in the course of the proceedings; and~~

~~—— 7.34 any other requirements established by the Hearing Examiner.~~

~~7.35 Record of prehearing conference. The Hearing Examiner shall enter in the written or recorded record a summary which recites the results of the conference. Such summary shall include the Hearing Examiner's rulings upon matters considered at the conference, together with appropriate directions to the parties.~~

~~7.4 Notice of Hearings/Scheduling~~

~~The Hearing Examiner shall cause written notice of the hearing to be issued and served not less than thirty (30) days prior to the hearing, provided that a hearing may be held on shorter notice where substantial injury to a party would otherwise result or pursuant to the requirements of section 10.2. Notice shall include:~~

~~7.41 A statement of the time, date, place and nature of the proceedings;~~

~~7.42 A reference to the particular sections of the ordinance and rules involved;~~

~~7.43 A statement of the nature of the claim involved;~~

~~7.44 A statement of the requirement that the Respondent file an answer pursuant to Sec.39.03(10), M.G.O.~~

~~7.5 Procedural Steps~~

~~7.51 Motions~~

~~During the time a proceeding is before the Hearing Examiner, any motion shall be addressed to the Hearing Examiner. Every motion or answering statement and accompanying papers shall be served on all parties or their attorneys if represented by counsel and filed with the Hearing Examiner along with proof of service.~~

~~7.511 Upon receipt of any written motion, the Hearing Examiner shall determine what procedures shall be used to address said motion. Except as otherwise expressly provided in these rules, the Hearing Examiner need address only those motions which he or she determines will expedite the administrative processing of the case.~~

~~7.52 Discovery~~

~~7.521 Depositions and other discovery shall be allowed in accordance with Wis. Stats. Sec. 804 as amended except that neither depositions nor discovery shall be permitted prior to the time:~~

~~7.5211 When it has been certified that conciliation has been unsuccessful pursuant to Equal Opportunities Commission Rule 6.5.~~

~~7.5212 An appeal has been made of an Initial Determination of No Probable Cause pursuant to Rule 5.31.~~

~~7.522 No further discovery of any kind shall be allowed on appeals pursuant to Rules 4.54, 5.4 and/or 11.1 except with special leave of the Commission; any motions for such special leave should first be made to the Commission.~~

~~7.523 For extensions in the discovery period, the Hearing Examiner may grant one (1) extension of no more than fifteen (15) days. Further extensions granted only where good cause is demonstrated.~~

~~7.53 Subpoenas~~

~~Subpoenas may be issued as authorized by Wis. Stats. Sec. 885.~~

~~7.531 Subpoenas may be issued by the attorney of record as provided by Wis. Stats. Sec. 805.07. Where individuals are not represented by an attorney, parties may request ex parte for subpoenas to be issued by the Hearing Examiner. If such requests are made and rulings thereon are made, such shall remain ex parte unless otherwise ordered by the Hearing Examiner.~~

~~7.532 The parties are responsible for serving any subpoenas they request from the Hearing Examiner and the party serving the subpoena must pay the cost of fees to any witness who is subpoenaed as provided by Wis. Stats. Sec. 814.67(1)(b)1, 2, and (c).~~

~~7.6 Sanctions~~

~~7.61 If a party, or an agent or an officer of a party, refuses to make discovery or comply with an order, the Hearing Examiner shall have the authority to direct the person to answer or produce the discovery item in question. If the person continues to refuse, the Hearing Examiner shall take such action in regard thereto as is just, including but not limited to the following:~~

~~7.611 Infer that the admission, testimony, documents, or other evidence sought would have been adverse to the party.~~

~~7.612 Order that for the purposes of the proceeding, the matter or matters concerning which the order or subpoena was issued be taken as established adversely to the party.~~

~~7.613 Order that the party may not introduce into evidence or otherwise rely, in support of any claim or defense, upon testimony by such party, officer, or agent, or the documents or other evidence.~~

~~7.614 Order that the party may not object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents or other evidence would have shown.~~

~~7.615 Order that a pleading, or part of a pleading, or a motion or other submission by the party concerning which the order or subpoena was issued, be stricken or that a decision of the proceeding be rendered against the party, or both.~~

~~7.616 The Hearing Examiner has the authority to render any remedy necessary to achieve justice between parties.~~

~~7.62 It shall be the duty of parties to seek, and the Hearing Examiner to grant, such of the foregoing means of relief or other appropriate relief as may be sufficient to compensate for the lack of withheld testimony, documents, or other evidence.~~

~~7.63 In case of failure to make discovery or to comply with an order, the Hearing Examiner may invoke the aid of the City Attorney who shall apply to the appropriate court for an order or other court action necessary to secure enforcement of such discovery orders.~~

~~7.7 Submission of Documentary Evidence in Advance~~

~~Where practicable, the Hearing Examiner may require:~~

~~7.71 That all documentary evidence which is to be offered during the taking of evidence be submitted to the Hearing Examiner and to the other parties to the proceeding sufficiently in advance of such taking of evidence to permit study and preparation of cross examination and rebuttal evidence.~~

~~7.72 That documentary evidence not submitted in advance, as may be required by subsection 7.71, be not received in evidence in the absence of a showing that the offering party has good cause for his/her failure to produce that evidence sooner.~~

~~7.8 Oath or Affirmation~~

~~All public testimony before the Hearing Examiner shall be taken under oath or by affirmation.~~

~~7.9 Rights of Parties~~

~~Every party shall have the right of due notice, cross examination, presentation of evidence, objection, argument, motion, and all other rights essential to a fair hearing, except where such rights have been forfeited due to default or failure to comply with discovery or other orders of the Commission.~~

~~7.10 Pleadings~~

~~7.101 Respondent's Answer~~

~~Respondent shall file with the Hearing Examiner and serve on all parties an answer within ten (10) days after service of the Notice of Hearing. An answer may be amended as a matter of right within ten (10) days of service and thereafter at the discretion of the Hearing Examiner, if justice will be served thereby.~~

~~7.102 Default~~

~~7.1021 Motion. When a party against whom a judgment for affirmative relief is sought has failed to appear, plead, or otherwise defend as provided by these rules and that fact is made to appear by motion and proof of service of the pleading and notice of hearing, a motion for default may be made with the Hearing Examiner.~~

~~7.1022 Notice. All parties shall be served with a written copy of the motion for default and the supporting proof of service. It is within the discretion of the Hearing Examiner to call for oral argument prior to ruling on the motion.~~

~~7.1023 Setting Aside Default. For good cause shown and upon such terms as the Hearing Examiner deems just, she or he may set aside a default judgment.~~

~~7.10231 Either party may appeal to the Commission the Hearing Examiner's decision on a Motion to Set Aside Default Judgment. Said appeal must be in writing and must be filed with the Commission and served on the opposing party within fifteen (15) days after issuance of the Hearing Examiner's decision.~~

~~8. Conduct of a Hearing~~

~~8.1 Hearings in administrative proceedings shall be presided over by a duly qualified Hearing Examiner.~~

~~8.2 Evidence~~

~~The rules of evidence governing these hearings shall be the same as those prescribed by the Wisconsin Administrative Procedure Act, under. 227, Wis. Stat., for hearings in contested cases.~~

~~8.3 Nature of Proceedings~~

~~Proceedings in contested cases are those formal proceedings conducted under the Equal Opportunities Ordinance and Sections 7 and 8 of the Rules of the EOC. Such proceedings are required to be determined on the record after a hearing by the Hearing Examiner.~~

~~8.4 Content of the Record. The record of a hearing conducted by the Hearing Examiner shall include, but need not be limited to, the following materials:~~

~~8.41 All pleadings and the Commission's complaint;~~

~~8.42 All evidence received or considered which shall include all exhibits and other materials filed;~~

~~8.43 A statement of all matters officially noticed;~~

~~8.44 A recommended decision containing the recommended findings, conclusions, and order of the Hearing Examiner; and~~

~~8.45 Recordings made on electronic equipment, after the case has been certified to hearing, or certified transcripts thereof.~~

8.5 Hearing Format

A public hearing shall include, but need not be limited to, the following elements:

~~8.51 A brief introductory statement by the Hearing Examiner;~~

~~8.52 Presentation of the Complainant's case;~~

~~8.53 Presentation of the Respondent's case;~~

~~8.54 Opportunity for cross-examination;~~

~~8.55 Opportunity for a rebuttal presentation; and~~

~~8.56 Opportunity for questions by the Hearing Examiner.~~

~~8.6 Both parties shall appear at the hearing, may call, examine and cross-examine witnesses, and may introduce papers, documents or other evidence, in person, by counsel, or other representative as authorized by these rules. The rules of evidence prescribed by the Wisconsin Administrative Procedure Act, ch. 227, Wis. Stats., for hearings in contested cases, shall be followed.~~

~~8.7 Should the Complainant fail to appear within one-half hour of the scheduled time for the hearing, in the absence of a clear showing that the Complainant had good cause for not appearing at the hearing, the Hearing Examiner shall issue an order dismissing the complaint.~~

~~8.8 Should the Respondent fail to appear within one-half hour of the scheduled time for the hearing, and in the absence of a clear showing that the Respondent had good cause for not appearing at the hearing, and if the Complainant makes a prima facie showing of a violation of the Ordinance, the Hearing Examiner shall issue a finding of violation and order such relief as is appropriate.~~

~~8.9 If any party fails to appear at the hearing, she/he must submit a written explanation stating good cause for the failure to appear. The Hearing Examiner may then issue an order declaring why a default judgment should not be entered against the party and may reopen the hearing.~~

~~8.10 Electronic Recordation. Except as otherwise provided, hearings shall be electronically recorded and such recordings shall be a part of the official hearing record. Copies of the electronic recording of a particular proceeding shall be made available to the public on request and the cost of such copying shall be the burden of the requester. Upon leave of the Hearing Examiner and upon terms and conditions that she/he designates, a written transcript may be made a part of the official hearing record in lieu of an electronic recordation.~~

~~8.11 If, after hearing, the Hearing Examiner designee finds that the Respondent has engaged in discrimination, he/she shall make recommended findings of fact and conclusions of law and shall order such remedy as authorized by Rule 10, and shall effectuate the purposes of the~~

~~Ordinance. The Hearing Examiner shall serve a copy of the recommended findings of fact and conclusions of law and order upon the parties.~~

~~8.12 If the Hearing Examiner finds that the Respondent has not engaged in discrimination as alleged in the complaint, she or he shall make recommended findings of fact and conclusions of law and prepare an order dismissing the complaint. She or he shall serve a copy of the recommended findings of fact and conclusions of law and order dismissing the complaint on the Complainant and the Respondent.~~

8. Hearing Procedures

8.1 Pre-Hearing Procedures

8.11 Pre-Hearing Conferences

8.111 The Hearing Examiner may, at their own discretion, direct counsel or representatives for all parties to meet for a conference to obtain any of the following:

8.1111 Simplification and clarification of factual and/or legal issues;

8.1112 Stipulations, admissions of fact and clarification of the contents and authenticity of documents;

8.1113 Disclosure of the names of witnesses and of documents or other physical exhibits which will be introduced into evidence in the course of the proceedings; and

8.1114 Such other matters as may aid in the orderly and expeditious disposition of the proceedings.

8.112 The Hearing Examiner shall enter in the written or recorded record a summary which recites the results of a conference. Such summary shall include the Hearing Examiner's rulings upon matters considered at the conference, together with appropriate directions to the parties.

8.12 Notice of Hearing

8.121 The Hearing Examiner shall issue and serve upon all parties a Notice of Hearing not less than 30 days prior to the hearing. A hearing may be held on shorter notice where substantial injury to a party would otherwise result or pursuant to the requirements of Equal Opportunities Commission (EOC) Rule 10.2.

8.122 The Notice of Hearing shall include:

8.1221 A statement of the time, date, place and nature of the proceedings;

8.1222 A reference to the particular sections of the Ordinance and rules involved;

8.1223 A statement of the nature of the claim involved;

8.1224 A statement of the requirement that the Respondent file an answer pursuant to Madison General Ordinance section 39.03(10)(c)2.

8.123 Answer to Notice of Hearing

8.1231 Respondent shall file with the Hearing Examiner and serve on all parties an answer within 10 days of its receipt of the Notice of Hearing. An answer may be amended as a matter of right within 10 days of service of the answer and thereafter at the discretion of the Hearing Examiner, if justice will be served thereby.

8.13 Scheduling Order

8.131 A Scheduling Order shall be attached to the Notice of Hearing issued by the Hearing Examiner under EOC Rule 8.121.

8.132 The Scheduling Order shall include:

8.1321 A deadline for the completion of discovery;

8.1322 A deadline for the filing and exchange of witness lists and amended witness lists;

8.1323 A deadline for the filing of dispositive motions; and

8.1324 A deadline for the filing and exchange of proposed hearing exhibits.

8.14 Motions

8.141 General Procedure

8.1411 Either party may submit a motion to the Hearing Examiner at any time before a hearing on the merits.

8.1412 Such motions shall be in writing and shall state the type of relief applied for and the grounds for the motion.

8.1413 Upon receipt of a written motion, the Hearing Examiner shall review the motion and issue a Decision and Order. Except as otherwise expressly provided in the Equal Opportunities Commission (EOC) Rules, the Hearing Examiner may choose to address only those motions which he, she, or they determines will expedite the administrative processing of a case.

8.1414 The Department of Civil Rights, Equal Opportunities Division does not accept Motions for Summary Judgment except where the basis for the motion is a lack of jurisdiction.

8.142 Motions to Dismiss for Lack of Jurisdiction

8.1421 If a Respondent challenges either the geographic jurisdiction or the subject matter jurisdiction of the EOC over any allegation of a complaint, such complaint shall be transferred to the Hearing Examiner for a jurisdictional determination.

8.1422 In determining whether to dismiss a complaint for lack of jurisdiction, the Hearing Examiner may consider documents and affidavits presented by any party. Further, the Hearing Examiner may hold a hearing to gather additional information which may have a bearing on whether the complaint should be dismissed.

8.1423 If the Hearing Examiner issues a Decision and Order dismissing a complaint for lack of jurisdiction, a copy of the order and a notice of appeal rights shall be sent to the last known address of each party and to their attorney or representative, if any.

8.1424 If the Hearing Examiner finds no jurisdiction, a Complainant may, pursuant to EOC Rule 11, submit a written appeal to the Department of Civil Rights, Equal Opportunities Division no later than 15 days after the receipt of the Hearing Examiner's Decision and Order.

8.1425 A finding of jurisdiction may not be appealed, except as part of an appeal of the Hearing Examiner's Findings of Fact, Conclusions of Law and Order.

8.143 Motions for Default Judgment

8.1431 If a Respondent fails to appear, plead or otherwise defend or fails to answer a Notice of Hearing pursuant to EOC Rule 8.1231, a

Complainant may submit to the Hearing Examiner a written motion for default judgment.

- 8.1432 All parties shall be served with a written copy of the motion for default judgment and the supporting proof of service.
- 8.1433 In determining whether to grant the motion for default judgment, the Hearing Examiner may consider documents and affidavits presented by either party. It is within the discretion of the Hearing Examiner to request oral arguments before ruling on the motion.
- 8.1434 The Hearing Examiner shall issue a Decision and Order either granting or denying the motion for default judgment. If the Hearing Examiner grants the motion, a judgment of liability will be entered against the Respondent. Alternatively, the Hearing Examiner may grant the motion, but impose sanctions such as those listed under EOC Rule 8.161. If the Hearing Examiner denies the motion, they shall order that proceedings continue as scheduled.
- 8.1435 A copy of the Hearing Examiner's Decision and Order on Complainant's Motion for Default Judgment and a notice of appeal rights shall be sent to the last known address of each party and to their attorney or representative, if any.
- 8.1436 If the Hearing Examiner issues a judgment of liability, the Respondent may submit a Motion to Set Aside Default Judgment within 15 days of receipt of the judgment. Thereafter, the Hearing Examiner may issue a Decision and Order setting aside the judgment for good cause shown and upon such terms as he, she, or they deems just.
- 8.1437 Either party may appeal the Hearing Examiner's Decision and Order on Respondent's Motion to Set Aside Default Judgment. Said appeal must be in writing and must be filed with the EOC and served on the opposing party within 15 days after receipt of the Hearing Examiner's decision.
- 8.144 Motions to Dismiss for a Complainant's Failure to Appear, Answer Discovery Requests, or Otherwise Participate in the Complaint Process
- 8.1441 Where a Complainant has failed to appear, answer discovery requests or otherwise participate in the complaint process, a Respondent may submit to the Hearing Examiner a written motion to dismiss.

8.1442 All parties shall be served with a written copy of the motion to dismiss and the supporting proof of service.

8.1443 In determining whether to grant the motion to dismiss, the Hearing Examiner may consider documents and affidavits presented by either party. It is within the discretion of the Hearing Examiner to request oral arguments before ruling on the motion.

8.1444 The Hearing Examiner shall issue a Decision and Order either granting or denying the motion to dismiss. If the Hearing Examiner grants the motion, the complaint will be dismissed (with/without prejudice). Alternatively, the Hearing Examiner may grant the motion, but impose sanctions such as those listed in EOC Rule 8.161. If the Hearing Examiner denies the motion, they shall order that proceedings continue as scheduled.

8.1445 A copy of the Hearing Examiner's Decision and Order on Respondent's Motion for Dismiss and a notice of appeal rights shall be sent to the last known address of each party and to their attorney or representative, if any.

8.1446 A Decision and Order denying a motion to dismiss cannot be appealed.

8.1447 However, a Decision and Order granting a motion to dismiss may be appealed pursuant to EOC Rule 11.

8.15 Discovery

8.151 Depositions and other discovery shall be allowed in accordance with Chapter 804 of the Wisconsin Statutes, except that neither depositions nor discovery shall be permitted before:

8.1511 The parties are notified that conciliation was unsuccessful, pursuant to EOC Rule 6.112.

8.1512 There is an appeal of an Initial Determination of No Probable Cause pursuant to EOC Rule 5.41.

8.152 No further discovery shall be allowed on appeals under EOC Rule 5.4 (No Probable Cause affirmation), EOC Rule 8.1424 (dismissal of complaint for lack of jurisdiction) and/or EOC Rule 9.3 (Recommended Findings of Fact, Conclusions of Law and Order), except with special leave of the EOC. A motion for such special leave should be submitted to the EOC.

8.153 The Hearing Examiner may grant one extension in the discovery period of no more than 15 days. Further extensions may be granted only where good cause is demonstrated.

8.16 Sanctions

8.161 If a party, or an agent or an officer of a party, refuses to participate in discovery or comply with an order, the Hearing Examiner shall have the authority to direct the party to produce the discovery item in question or to comply with the order. If the party still does not comply, the Hearing Examiner shall sanction that party. To that end, the Hearing Examiner's authority includes, but is not limited to, the power to:

8.1611 Infer that an admission, testimony, documents or other evidence sought would have been adverse to the non-compliant party;

8.1612 Order that, for the purposes of the proceeding, the matters addressed in either a given order or a subpoena requiring the production of documents be established adversely to the non-compliant party;

8.1613 Preclude the non-compliant party from introducing into evidence, or relying upon, testimony by such party, officer, or agent, in support of any claim or defense. Further, the Hearing Examiner may preclude the introduction of documents or other evidence;

8.1614 Preclude the non-compliant party from objecting to the introduction and use of secondary evidence to show what the withheld admission, testimony, documents or other evidence would have shown;

8.1615 Order that a pleading, part of a pleading, motion or other submission by the non-compliant party be stricken;

8.1616 Order that a complaint be dismissed or that a judgment of liability be entered against the non-compliant party.

8.162 It is the duty of either party to submit a motion to the Hearing Examiner for sanctions and to request the foregoing means of relief or other appropriate relief as may be sufficient to compensate for the lack of testimony, documents or other evidence.

8.163 To secure full participation in discovery or compliance with an order, the Hearing Examiner may invoke the aid of the City Attorney.

8.17 Subpoenas

- 8.171 Either party may issue subpoenas pursuant to Chapter 885 of the Wisconsin Statutes.
- 8.172 Subpoenas may be issued by the attorney of record as provided by Wisconsin Statute section 805.07. Either party may submit a written request to the Hearing Examiner for subpoenas, where the individuals to be served with a subpoena are not represented by an attorney. In addition to the statutory witness fee required by Wis. Stat. § 885.05, the party serving the subpoena shall add an additional \$10 fee made payable to the witness.
- 8.173 The parties are responsible for serving any subpoenas they request from the Hearing Examiner. A party serving a subpoena must compensate any witness who is subpoenaed as provided by Wisconsin Statute sections 814.67(1)(b)1-2 and (c).

8.2 Hearing on the Merits

8.21 General Procedure

- 8.211 Hearings in administrative proceedings shall be presided over by a duly qualified Hearing Examiner.
- 8.212 Both parties shall appear at the hearing and both parties may call witnesses, examine and cross-examine witnesses and introduce papers, documents or other evidence in person, by counsel or by a lay advocate.
- 8.213 All public testimony before the Hearing Examiner shall be taken under oath or by affirmation.

8.22 Evidence

- 8.221 The rules of evidence governing hearings under this subsection shall be the same as those prescribed for hearings in contested cases under Chapter 227 of the Wisconsin Statutes.

8.23 Hearing Format

The public hearing shall include, but need not be limited to, the following elements:

- 8.231 A brief introductory statement by the Hearing Examiner;

- 8.232 Presentation of the Complainant's case;
- 8.233 Presentation of the Respondent's case;
- 8.234 Opportunity for cross-examination;
- 8.235 Opportunity for a rebuttal presentation; and
- 8.236 Opportunity for questions by the Hearing Examiner.

8.24 Content of the Hearing Record

The hearing record shall include, but need not be limited to, the following materials:

- 8.241 The complaint of discrimination and all pleadings;
- 8.242 All evidence received or considered which shall include all exhibits and other materials filed;
- 8.243 A statement of all matters officially noticed;
- 8.244 Hearing Examiner's Recommended Findings of Fact, Conclusions of Law and Order
- 8.245 Electronic hearing recordings or certified transcripts thereof.

8.25 Electronic Recordation

- 8.251 Except as otherwise provided, hearings shall be electronically recorded and such recordings shall be a part of the official hearing record. Copies of the electronic recording of a particular proceeding shall be made available to the public on request and the cost of such copying shall be the burden of the requester. Upon leave of the Hearing Examiner and upon terms and conditions that he, she, or they designates, a written transcript may be made a part of the official hearing record in lieu of an electronic recordation.

8.26 Failure to Appear at the Hearing

- 8.261 Should a Complainant fail to appear within 30 minutes of the scheduled time for the hearing, the Hearing Examiner shall issue an order dismissing the complaint unless the Complainant clearly demonstrates good cause for not appearing at the hearing.

8.262 Should the Respondent fail to appear within 30 minutes of the scheduled time for the hearing, the Hearing Examiner shall issue a finding of liability and order such relief as is appropriate, provided that the Respondent failed to clearly demonstrate good cause for not appearing at the hearing and the Complainant made a prima facie showing of a violation of the Ordinance.

8.263 If either party fails to appear at the hearing, the Hearing Examiner shall issue an order requiring a written explanation of why a default judgment should not be entered against the party. If the party demonstrates good cause, the Hearing Examiner may reopen the hearing.

8.3 Rights of Parties

8.31 Every party shall have the right of due notice, cross-examination, presentation of evidence, objection, argument, motion and all other rights essential to a fair hearing, except where such rights have been forfeited due to default or failure to comply with discovery or other orders of the EOC.

9. ~~Decision~~ Hearing Examiner's Recommended Findings of Fact, Conclusions of Law and Order

9.1 ~~Recommended Decision~~ General Procedure

9.11 The Hearing Examiner who presided at the hearing on the merits under Equal Opportunities Commission (EOC) Rule 8.2 shall ~~file a recommended decision~~ issue the Recommended Findings of Fact, Conclusions of Law and Order after completion of the hearing.

9.12 The ~~contents~~ Hearing Examiner's Recommended Decision shall include a statement of:

~~9.111-9.121 The findings of fact and conclusions of law as well as the reasons or basis therefore, upon all the material issues of fact, and law presented on the record. The findings and conclusions shall be based exclusively on the evidence and on matters officially noticed; and The findings of fact and conclusions of law and the reasons therefore, based upon the material issues of fact and law presented on the record. Such statement shall be based exclusively on the evidence presented at the hearing and on matters officially noticed.~~

~~9.112~~ 9.122 An appropriate order. The recommended decision shall be based upon a consideration of the whole record.

~~9.2~~ 9.13 At any time prior to the ~~filing~~ issuance of the recommended decision, the Hearing Examiner may reopen the proceeding for good cause shown for the reception of further evidence.

9.2 Hearing Examiner's Determination of Liability

9.21 If the Hearing Examiner finds that a Respondent has engaged in discrimination, they shall make recommended Findings of Fact and Conclusions of Law and Order, including remedies as authorized by EOC Rule 10. The Hearing Examiner's order shall effectuate the purposes of the Madison General Ordinance. Further, the Hearing Examiner shall serve a copy of the Recommended Findings upon the parties.

9.22 If the Hearing Examiner finds that a Respondent has not engaged in discrimination, they shall make recommended Findings of Fact and Conclusions of Law and Order dismissing the complaint. Further, the Hearing Examiner shall serve a copy of the Recommended Findings upon the parties.

9.3 Appeals to the Equal Opportunities Commission

9.31 Pursuant to EOC Rule 11, an appeal of the Hearing Examiner's Recommended Findings of Fact, Conclusions of Law and Order must be made by filing a written request with the Department of Civil Rights, Equal Opportunities Division no later than fifteen (15) days after the ~~receipt~~ of said findings.

10. ~~Relief~~/Remedies

10.1 Compensatory Damages and Costs

~~10.11 Compensatory losses, reasonable attorney fees and costs may be ordered along with any other appropriate remedies where the Commission finds that a Respondent has engaged in discrimination. Where the Hearing Examiner finds that a Respondent engaged in discrimination, the prevailing Complainant is entitled to recover applicable compensatory losses and reasonable attorney fees and costs along with any other appropriate remedies.~~

~~10.11~~ 10.12 This rule does not—by express reference to compensatory losses, attorney fees and costs—limit in any way the Commission's authority to order any other remedies permitted or required under Sec. 39.03, M.G.O. Equal Opportunities Commission (EOC) Rule 10.11 does not expressly limit the EOC's authority to order other remedies permitted or required under Madison General Ordinance section 39.03.

10.2 Temporary Injunctive Relief

10.21 General Procedure

The Department of Civil Rights (DCR) Director or the Director's designee may, in appropriate cases, request that the City Attorney file a civil action in circuit court for the purpose of securing temporary injunctive relief pending a final action decision by the Commission EOC with respect to a complaint alleging housing discrimination under Madison General Ordinance Section 39.03(4), M.G.O. provided that:

10.211 (a) that any such request be made in accordance with the provisions of MEOC Rules 10.21 through 10.23;

10.212 (b) that an Equal Opportunities Division (EOD) Investigator has conducted an expedited investigation pursuant to MEOC Rule 10.22, and has concluded:

10.2121 (i) that there is probable cause to believe an act of discrimination has been or is being committed, and

10.2122 (ii) that temporary injunctive relief is necessary to prevent the Respondent from performing an act which would tend to render ineffectual any order the Commission or its designee may enter with respect of the complaint, which act the Respondent is likely to perform unless restrained from doing so; and

10.213 (e) that the DCR Director or the Director's designee has determined: that

(i) 10.2131 that the Complainant has a reasonable likelihood of success on the merits;

(ii) 10.2132 that temporary injunctive relief is necessary to preserve the status quo,

(iii) 10.2133 that the Complainant will suffer irreparable harm unless an injunction issues, and

(iv) 10.2134 that the Complainant does not have an adequate remedy at law.

10.22 Expedited Investigations

10.221 Upon the filing of a formal complaint alleging housing discrimination under Madison General Ordinance Section 39.03, (4), M.G.O., an EOD Investigator shall immediately determine, on the basis of the complaint and other available information, whether a request for injunctive relief may be appropriate.

10.222 In the event it is determined that injunctive relief may be appropriate, the Investigator shall immediately undertake an expedited investigation of the

complaint and make reasonable efforts to promptly notify the Respondent that a ~~housing~~ discrimination complaint has been filed and that an expedited investigation of the complaint will be conducted.

~~10.223~~ The expedited investigation shall be completed no later than the close of the second working day following the day the complaint is filed.

10.23 Results of Expedited Investigations

~~10.231~~ In the event the Investigator determines there is probable cause to believe discrimination has been or is being committed, and that temporary injunctive relief is necessary to prevent the Respondent from performing an act which would tend to render ineffectual any order the Commission or its designee may enter with respect to the complaint, which act the Respondent is likely to perform unless restrained from doing so, the Investigator shall promptly forward the complaint file ~~to the DCR Director or to the Director's designee.~~

~~10.232~~ The Investigator shall also prepare and deliver to the DCR Director, or to the Director's designee, a ~~together with~~ a written summary of the investigation and the conclusions. ~~reached by the Investigator, to the DCR Director or the Director's designee.~~ A written initial determination need not be issued at this time, but shall be issued as soon as practicable.

10.24 Transfer to the City Attorney

~~10.241~~ Upon receipt of the Investigator's written summary and the complaint file, the DCR Director or the Director's designee shall review the same and determine whether to request that the City Attorney file a civil action in the circuit court for the purpose of securing temporary injunctive relief ~~pending final action by the Commission.~~ ~~before the EOC issues a final decision about a complaint alleging housing discrimination.~~ Said determination shall be made not later than close of the third working day following the day the complaint is filed.

~~10.25~~ ~~10.242~~ In the event the DCR Director or the Director's designee elects to request that the City Attorney file an action in the circuit court for the purpose of securing temporary injunctive relief, the DCR Director or the Director's designee shall forward a written request to the City Attorney that such an action be filed. In addition, the DCR Director or the Director's designee shall attempt to notify the Respondent or the Respondent's representative, attorney or agent of the decision to seek temporary injunctive relief by any means likely to promptly convey notice to the Respondent, and shall make a written record of all such attempts.

~~10.26~~ 10.25 Conciliation Conference

10.251 Whenever the circuit court grants temporary injunctive relief ~~against the Respondent~~, the ~~Commission~~ EOC shall endeavor to hold a conciliation conference with the parties within three working days after the date the injunction or restraining order is issued. In the event conciliation is unsuccessful, is waived by either party, or a conciliation conference cannot be held within the period prescribed by this rule, within three working days the complaint shall be certified to a public hearing.

10.27 Injunctive Relief Hearing

10.271 A public hearing shall be held no more than fourteen (14) days after the complaint is certified to hearing. The Hearing Examiner shall issue the ~~recommended findings of fact, conclusions of law and an order~~ Recommended Findings of Fact, Conclusions of Law and Order within five (5) working days following the date the hearing concludes.

10.28 Waiver of Time Limitations

10.281 ~~Any of the time limits prescribed by MEOC Rules 10.21 through 10.27 may be waived by agreement of the parties and of the DCR Director or the Director's designee. Any such agreement must be in writing and subscribed to by the parties and the DCR Director or the Director's designee, or made on the record at the hearing. The parties and the DCR Director or the Director's designee may enter into an agreement setting aside any of the time limits prescribed by EOC Rules 10.21 through 10.27. Such agreement must be made in writing.~~

~~11. Appeals to the EOC Commission~~

~~11.1 Either party may appeal the recommended findings of fact, conclusion of law and order of the Hearing Examiner by filing a written request for an appeal with the Equal Opportunities Division no later than fifteen (15) days after issuance of said findings, including appeals of No Probable Cause under Rule 5.4.~~

~~11.2 All appeals to the Equal Opportunities Commission shall be heard by the Appeals Committee except as specified in rule 11.4.~~

~~11.3 The Appeals Committee shall be comprised of three (3) members and one (1) alternate member to be appointed by the President of the EOC. The alternate shall serve in place of one of the members should one of the Appeals Committee members be unable to carry out their duties for any reason. If more than one (1) member of the committee is unable to carry out the duties of the committee, the committee shall notify the President of the Equal Opportunities Commission as promptly as possible. The President of the Equal Opportunities Commission shall then appoint another member of the Equal Opportunities Commission to fill the position.~~

~~11.31 To the extent possible, the Appeals Committee shall have two (2) members who have some experience in conducting appeals before the Commission. The committee shall, to the extent that such a member is available, have at least one (1) member who has relatively little experience in conducting appeals before the Equal Opportunities Commission.~~

~~11.32 Each member of the Appeals Committee shall serve on the committee for three (3) months.~~

~~11.33 The members of the committee shall serve until his or her successor is named and will consider all appeals within the three (3) month period. Successor members of the committee shall be appointed by the President of the EOC Commission.~~

~~11.34 The Appeals Committee shall endeavor to complete the review of a decision appealed to the Equal Opportunities Commission within forty five (45) days.~~

~~11.4 The majority of the Appeals Committee may certify an appeal for consideration by the Equal Opportunities Commission, as a whole, if in the opinion of the committee the appeal presents:~~

~~–A serious question of constitutional law;~~

~~–A novel and serious question of the interpretation of the MEOC Ordinance;~~

~~–A new legal or policy question under the MEOC ordinance, and not involving the application of established law to the facts.~~

~~11.41 The Certification from the Appeals Committee shall state the relevant facts of the case, the options for a decision, and the reason under Rule 11.3 why the appeal should be heard by the full Equal Opportunities Commission.~~

~~11.42 The Certification from the Appeals Committee shall be served upon the parties, who shall have fifteen (15) days from the date of the Certification to respond to the Certification. Any response filed by the parties shall be served upon the Equal Opportunities Commission as provided for in Rule 12.~~

~~11.43 Once certified to the Equal Opportunities Commission, the Commission shall endeavor to conduct the appeal proceeding and issue a decision within forty five (45) days.~~

~~11.5 Should an appeal be decided by the Appeals Committee, the committee shall report the results of its review to the Equal Opportunities Commission. The decision of the Appeals Committee will stand as a final order of the Equal Opportunities Commission.~~

~~11.6 Any appeal and/or cross appeal and subsequent briefs shall be submitted to the office of the Department of Civil Rights Equal Opportunities Division or the Equal Opportunities Commission. Additional copies need be submitted only when required in writing by the~~

~~Department of Civil Rights Equal Opportunities Division or the Equal Opportunities Commission.~~

~~11.7 The Appeals Committee or the Equal Opportunities Commission shall consider only the record for the particular appeal before it. The record shall consist of the following for the specified type of appeal:~~

~~11.71 Hearing Examiner's Recommended Findings of Fact, Conclusions of Law and Order. The record is comprised of the Notice of Hearing, the hearing record, the Recommended Findings of Fact, Conclusions of Law and Order, written exceptions to the recommended findings, conclusions and order, any brief properly submitted before the Appeals Committee or the Equal Opportunities Commission, and any oral arguments presented by the parties as scheduled by the Appeals Committee or the Equal Opportunities Commission.~~

~~11.72 Hearing Examiner's Review of an Initial Determination's Finding of No Probable Cause. The record shall consist of the investigation file as supplemented during the review process, the Decision and Order of the Hearing Examiner, written exceptions to the Hearing Examiner's Decision and Order, any brief properly submitted before the Appeals Committee or the Equal Opportunities Commission, and any oral arguments presented by the parties as scheduled by the Appeals Committee or the Equal Opportunities Commission.~~

~~11.73 Finding of No Jurisdiction. The record consists of the motion to dismiss, the briefs and supporting affidavits and documentary evidence of the parties, written exceptions to the Hearing Examiner's Decision and Order, any brief properly submitted before the Appeals Committee or the Equal Opportunities Commission, and any oral arguments presented by the parties as scheduled by the Appeals Committee or the Equal Opportunities Commission.~~

~~11.74 Administrative Dismissal. The record consists of any documents setting forth the requirement which the Complainant is alleged to have failed to meet, evidence of the Complainant's failure to do something required of him or her, the order dismissing the complaint, any brief properly submitted before the Appeals Committee or the Equal Opportunities Commission, and any oral arguments presented by the parties as scheduled by the Appeals Committee or the Equal Opportunities Commission.~~

~~11.8 Any party's request for oral arguments must be submitted to the office of the Department of Civil Rights, Equal Opportunities Division in writing and must be supported by good cause. Requests shall be granted or denied within the sound discretion of the Appeals Committee or the Equal Opportunities Commission.~~

~~11.9 If an appeal, or appeal and cross appeal is made to the Commission, the Commission shall consider only the record of the hearing, written exceptions to the recommended findings, conclusions and order, any brief properly submitted before it, and oral arguments presented by the parties as scheduled by the Commission.~~

~~11.10 To be properly submitted, briefs by any party must be served upon opposing parties or their counsel and received by the Appeals Committee of the Equal Opportunities Commission~~

~~in accordance with a schedule established by the Appeals Committee of the Equal Opportunities Commission.~~

~~11.11 Any party requesting a written transcript of the hearing that was held by the Hearing Examiner from which an appeal is being taken shall pay the actual cost of preparing the transcript, including copying costs.~~

~~11.12 With respect to an appeal of Recommended Findings of Fact, Conclusions of Law and Order, the Appeals Committee or the Equal Opportunities Commission shall affirm, reverse or modify the recommended findings, conclusions, and order. Any modification or reversal shall be accompanied by a statement of the facts and ultimate conclusions relied upon in rejecting the recommendations of the Hearing Examiner. Such decision of the Appeals Committee or the Equal Opportunities Commission shall be the final findings of fact, conclusions of law and order, unless otherwise specified.~~

~~11.121 In lieu of affirming, reversing or modifying, the Appeals Committee or the Equal Opportunities Commission may remand the proceeding to the Hearing Examiner for further findings of fact, conclusions of law or both. The Appeal Committee or the Equal Opportunities Commission shall specify in its order of remand what aspects of the record need supplementation.~~

~~11.13 Final orders of the Equal Opportunities Commission are enforceable as provided in the Ordinance. If the Appeals Committee or the Equal Opportunities Commission finds that the Respondent has not engaged in discrimination as alleged in the complaint, it shall serve a copy of its findings on the Complainant together with an order dismissing the complaint.~~

~~11.14 The Appeals Committee and the Equal Opportunities Commission shall utilize the Equal Opportunities Division for all necessary support services. The Hearing Examiner shall assist in a manner consistent with the due process rights of the parties. The official record shall be returned to the Equal Opportunities Division subsequent to the Equal Opportunities Commission's final decision.~~

11. Appeals to the Equal Opportunities Commission

11.1 Scope

11.11 Equal Opportunities Commission (EOC) Rule 11 applies to appeals of administrative dismissals under EOC Rule 3.42; to appeals of the Hearing Examiner's affirmations of no probable cause determinations under EOC Rule 5.6; to appeals of no jurisdiction determinations under EOC Rule 8.1424; to appeals of motions to dismiss under EOC Rule 8.1447; and to appeals of the Hearing Examiner's Recommended Findings of Fact, Conclusions of Law and Order under EOC Rule 9.3.

11.2 Appeal Procedure for Complainants and Respondents

11.21 The original appeal and/or cross appeal and written arguments must be

submitted to the office of the Department of Civil Rights, Equal Opportunities Division (EOD).

11.22 To be properly submitted, written arguments by any party must be served upon opposing parties or their counsel and received by the EOC Appeals Committee pursuant to the time line provided in the Notice of Appeal to Commission and Briefing Schedule that is mailed to the parties.

11.23 A party's request for oral arguments must be submitted to the EOD in writing and must be supported by good cause. Requests shall be granted or denied within the sound discretion of either the EOC Appeals Committee or the EOC.

11.24 A party requesting a written transcript of a hearing held by the Hearing Examiner shall pay the actual cost of preparing the transcript including copying costs.

11.25 Where a party seeks an extension of the time limits provided in the Commission Briefing Schedule, the party should contact the Chair of the Appeals Committee.

11.3 Appeals Committee of the Equal Opportunities Commission

11.31 Membership

11.311 The Appeals Committee shall be comprised of three members and one alternate member to be appointed by the EOC President. The alternate shall serve in place of an Appeals Committee member, if that member is unable to carry out their duties for any reason. If more than one Appeals Committee member is unable to carry out their duties, the Appeals Committee shall promptly notify the EOC President. The EOC President shall then appoint EOC members to fill the vacancies.

11.312 To the extent possible, the Appeals Committee shall consist of at least two members who have experience in conducting EOC appeals. Further, the Appeals Committee shall, to the extent possible, consist of at least one member who is inexperienced in conducting EOC appeals.

11.313 Appeals Committee members must remain on the Committee for a minimum of three months and such members must consider all appeals certified within that time period.

11.314 An Appeals Committee member may relinquish their service at the end of the three month term. However, where said member's position cannot be filled due to extenuating circumstances, they must remain on the Appeals Committee until the successor is appointed by the EOC President.

11.32 Certification of an Appeal

11.321 The majority of the Appeals Committee may certify an appeal for consideration by the full membership of the EOC if the appeal presents:

11.3211 A serious question of constitutional law;

11.3212 A novel and serious question of the interpretation of the Equal Opportunities Ordinance;

11.3213 A new legal question or public policy concern under the Equal Opportunities Ordinance, the resolution of which does not involve the application of established law to the facts and does not involve a determination of liability.

11.322 The Appeals Committee certification shall include the relevant facts of the case, the options for a decision and the reason why the appeal should be heard by the EOC.

11.323 The Appeals Committee certification shall be served upon the parties by mail. The parties shall have 15 days from the date of the certification to respond. Any response by the parties shall be served upon the EOC pursuant to EOC Rules ~~12.21 and 12.22~~ 12.11 and 12.12.

11.324 Once an appeal is certified to the EOC, members of the EOC shall endeavor to review the appeal and issue a decision within 45 days. Upon completing its review, the Appeals Committee shall report its decision to the EOC.

11.33 Materials the Appeals Committee Must Consider in the Appellate Review Process

11.331 If a party submits an appeal and/or cross appeal to the EOC, the Appeals Committee shall consider only the record of the hearing on the merits, written exceptions to the Hearing Examiner's Recommended Findings of Fact, Conclusions and Order, any written arguments properly submitted and oral arguments permitted on appeal.

11.332 The Appeals Committee shall consider only the record for the particular appeal before it. The record shall consist of the following for the specified type of appeal:

11.3321 Hearing Examiner's Recommended Findings of Fact, Conclusions of Law and Order: The record is comprised of the Notice of Hearing, the hearing record, the Recommended Findings of Fact, Conclusions of Law and Order, written exceptions to the recommended findings, conclusions and order, any written arguments properly

submitted to the Appeals Committee and any oral arguments permitted by the Appeals Committee.

11.3322 Hearing Examiner's Decision and Order on Review of an Initial Determination of No Probable Cause: The record shall consist of the investigation file as supplemented during the review process, the Hearing Examiner's Decision and Order, written exceptions to the Hearing Examiner's Decision and Order, any written arguments properly submitted to either the Appeals Committee and any oral arguments permitted by the Appeals Committee.

11.3323 Hearing Examiner's Finding of No Jurisdiction: The record shall consist of the motion to dismiss, the parties' briefs, supporting affidavits and documentary evidence, the Hearing Examiner's Decision and Order, any written arguments properly submitted to the Appeals Committee and any oral arguments permitted by the Appeals Committee.

11.3324 Administrative Dismissals: The record consists of any documents setting forth the requirements which a party is alleged to have failed to meet, evidence of a party's failure to perform a required action, the Order for Dismissal, any written arguments properly submitted to the Appeals Committee and any oral arguments permitted by the Appeals Committee.

11.4 Final Orders of the Appeals Committee and the Equal Opportunities Commission

11.41 Upon completing its review, the Appeals Committee or the EOC, as the case may be, shall issue its decision. A decision of the Appeals Committee or the EOC constitutes a final order.

11.42 For the appeals referenced in EOC Rules 11.3321 – 11.3324, the Appeals Committee shall affirm, reverse or modify the relevant Decision and Order or the Order for Dismissal, as the case may be. Any modification or reversal shall be accompanied by a decision containing a statement of the facts and the ultimate conclusions relied upon in rejecting the Hearing Examiner's decision and/or order.

11.421 In lieu of affirming, reversing or modifying a decision and/or order of the Hearing Examiner, the Appeals Committee may remand the proceeding to the Hearing Examiner for further findings of fact, conclusions of law or both. The Appeal Committee shall specify in its order of remand what aspects of the record require supplementation.

11.43 If the Appeals Committee finds that a Respondent has not engaged in discrimination, it shall serve a copy of its findings on both parties together with an order dismissing the complaint. As an attachment to the tribunal's decision, the Complainant shall receive a Notice of Right to Appeal.

11.44 If the Appeals Committee finds that a Respondent engaged in discrimination, it shall serve a copy of its findings on both parties. As an attachment to the tribunal's decision, the Respondent shall receive a Notice of Right to Appeal.

11.45 The Appeals Committee and the EOC shall rely upon the EOD for necessary support services. In this regard, the Hearing Examiner shall provide assistance in a manner consistent with the parties' due process rights. The official appeal record shall be returned to the EOD after the Appeals Committee or the EOC issues a final decision.

12. Service ~~of Papers and Other~~ Documents

12.1 General Procedure

12.11 Subsequent to the filing of a complaint, any papers or documents to be filed with or served upon the Department of Civil Rights Equal Opportunities Division or the Equal Opportunities Commission may be filed on paper through the mail or in person or in facsimile, electronic or digital form, except as follows. Any document being filed or served upon the Department of Civil Rights or the Equal Opportunities Commission to initiate an appeal of a determination or decision shall be in writing on paper and shall be filed in accordance with these rules.

12.11 Any document filed with or served upon the Department of Civil Rights Equal Opportunities Division or the Equal Opportunities Commission must be completely received in the offices of the Department of Civil Rights no later than the close of business on the day it is due. Close of business is deemed to be 4:30 p.m. The time of receipt will be that affixed by the Department of Civil Rights Equal Opportunities Division or the Equal Opportunities Commission by time stamp or electronic receipt. Any documents received after 4:30 p.m. on any business day will be considered to have been received on the subsequent business day.

12.12 The party filing with or serving any document on the Department of Civil Rights Equal Opportunities Division or the Equal Opportunities Commission bears the risk of failed, incomplete or interrupted transmission of any document filed with or served upon the Department of Civil Rights Equal Opportunities Division or the Equal Opportunities Commission.

12.3 Notwithstanding any other provisions of Rule 12, actual receipt of a document by an individual or any other person specified in Rule 12 shall constitute service.

12.13 The party filing with or serving upon the Department of Civil Rights Equal Opportunities Division or the Equal Opportunities Commission any document shall endeavor to remove or redact any unnecessary personally identifying information from any document so filed or served.

12.2 ~~If service is made in person or by mail~~ Service by Mail or in Person

12.21 Service by mail on a Complainant shall be made at the last address provided by the Complainant.

12.22 Service by mail on a Respondent shall be made at Respondent's residence, principle place of business, or at the location where the alleged act of discrimination occurred.

12.23 If service is made by mail, the papers shall be deposited in the Post Office addressed to the party, attorney or representative to whom they are being served, with the postage prepaid.

~~12.3 Notwithstanding any other provisions of Rule 12, actual receipt of a document by an individual or any other person specified in Rule 12 shall constitute service.~~

12.4 Service by the Hearing Examiner, the Equal Opportunities Division Manager, the Department of Civil Rights Director, or the Equal Opportunities Commission

12.41 The Hearing Examiner shall cause to be served all orders, notices and other papers issued by the Hearing Examiner, together with other papers which the Hearing Examiner is required by law or ~~these rules~~ the EOC Rules to serve. Every other paper shall be caused to be served by the party filing it.

12.41 All papers served by the Hearing Examiner, EOD Manager, DCR Director, the ~~Commission~~ EOC or any party shall be served upon all counsel of record at the time of such service and upon parties not represented by counsel and their designated representatives. Any counsel or representative entering an appearance subsequent to the initiation of the proceeding shall serve a notice of appearance on the Commission, all other counsel or other representative then of record for the parties and all parties not represented by counsel.

12.5 Subsequent to the filing of a complaint with the Commission, any person submitting written materials to the Commission with respect to that complaint shall send copies of those documents to the opposing party or parties, attorney(s) or representatives(s).

12.51 Where the requirement to provide the opposing party(s), attorney(s) or representative(s) with copies of documents as specified in paragraph 12.6 of this section presents an economic or other hardship, the party(s) may submit a written request for a waiver, stating reasons for the request. Exemptions from the requirement of 12.5 shall be granted liberally.

12.5 Service of Subpoenas

12.51 Service of subpoenas on witnesses shall be made pursuant to EOC Rule 8.17.

13. General Provisions

13.1 Representation by an Attorney or Lay Advocate

13.11 A party may be represented before the Department of Civil Rights, Equal Opportunities Division (EOD) and/or the Equal Opportunities Commission (EOC) by any of the following persons:

13.111 Any attorney at law entitled to practice as authorized by the State of Wisconsin,

13.112 Any attorney at law entitled to practice before the highest court of record of any other state or

13.113 Any lay advocate of the parties to the complaint.

13.11 Any person appearing on behalf of another must file a ~~notice of appearance in the proceedings.~~ Notice of Appearance with the EOD and serve such Notice on all parties and their attorneys and/or representatives.

13.2 Computation of Time

13.21 Computation of any period of time prescribed or allowed by ~~these rules~~ the EOC Rules shall begin with the first business day following ~~that on which~~ the act or event initiating such period of time. ~~shall have occurred.~~ When the last day of the period so computed is a Saturday, Sunday, or holiday observed by the city of Madison, the period shall run until the end of the next business day.

13.21 ~~All appeals authorized by these rules must be received at the Commission offices no later than 4:30 p.m. on the date due; it shall not be sufficient for an appeal to be merely postmarked by the due date.~~ All documents submitted to the DCR Office must be received no later than 4:30 p.m. on the due date; it shall not be sufficient for a document to be merely postmarked by the due date. Any documents received after 4:30 p.m. on any business day will be considered to have been received on the subsequent business day.

13.3 Oral Arguments

13.31 Any request for oral arguments made pursuant to these rules shall be made in writing and must be supported by good cause. Requests shall be granted or denied within the sound discretion of the decision maker.

14. If future ~~ordinance~~ Ordinance changes are adopted by the Common Council that conflict with the Rules of the EOC, said Rule(s) shall be returned to the Commission for resolution.