

# Rules of the Equal Opportunities Commission

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### **1. Procedural Rules of the Equal Opportunities Commission**

#### **1.1 Commission Officers**

1.11 The Equal Opportunities Commission (EOC) at its first regular meeting of each year shall elect a President, Vice President and a Secretary. A nominating committee will be appointed, which will identify and present a proposed slate of officers. 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 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 and shall decide all points of

procedure subject to reversal by a majority of the EOC members.

- 1.14 Designated staff shall promptly prepare minutes of all meetings. The original copy of the minutes shall remain in the City of Madison's public legislative information database and retained pursuant to the City of Madison's Records Retention and Disposition Schedule, as set forth in the Mayor's Administrative Procedure Memorandum 3-6. In the absence of City staff, the Secretary of the EOC will prepare the minutes.

## 1.2 Powers and Duties

- 1.21 The powers and duties of the EOC shall be those set forth in Madison General Ordinance section 39.03(10)(b).

## 1.3 Quorum

- 1.31 A quorum for a meeting of the EOC shall be reached pursuant to Madison General Ordinance section 33.01(8).
- 1.32 The EOC shall adhere to Madison General Ordinance section 33.01(8) where a quorum is not reached.
- 1.33 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 shall be held the second Thursday of each month or as otherwise scheduled by the EOC at a time and place officially posted in accordance with the applicable procedural rules set forth in Chapter 33 of the Madison General Ordinances.
- 1.42 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.
- 1.431 Notice of a special meeting shall be provided to each member at least 48 (forty-eight) hours before the time of the meeting or by notice given orally at least 24 (twenty-four) hours before the time of the meeting.
- 1.44 Any matter that may be considered at a regular EOC meeting may be considered at a special meeting.

## 1.5 Committees

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

subject to the EOC's discretion.

## 1.52 Standing Committees and Ad Hoc Committees

1.521 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.

1.5211 The EOC Nominations Committee shall be a standing committee for the purpose of identifying and proposing to the EOC officer nominations in January of each calendar year. Members of this committee shall be confirmed by the EOC.

1.522 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.

1.523 Standing committees and ad hoc committees shall be comprised exclusively of EOC members appointed by the President.

1.524 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.

## 1.53 Special Committees

The EOC may create special committees where it requires independent expertise or additional resources.

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.

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.

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

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).

1.5351 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.

1.5352 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.

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.

1.54 Attendance at committee meetings shall be governed by Madison General Ordinance section 33.01(8).

1.55 Each committee shall elect a chair and vice chair at its first meeting. Each committee 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 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 EOC members 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 EOC members.

1.64 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.

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

#### 1.7 Testifying Before the Equal Opportunities Commission

1.71 Speakers shall pre-register their desire to testify before the EOC. A speaker's testimony is limited to three minutes.

1.72 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 Speakers shall hold their questions until after all registrants have spoken.

#### 1.8 Emergencies

1.81 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 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: 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: An attempt to resolve a dispute in a neutral and open manner.
- 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 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.
- 2.8 Formal Complaint: A written statement of allegations which, if proven, would establish a prima facie case of discrimination.
- 2.9 Filing: The receipt of a document at the DCR-EOD office.

- 2.10 Geographic Jurisdiction: The Equal Opportunities Commission's authority over events and persons within the bounds of a particular geographic territory.
- 2.11 Informal complaint: A complaint which does not require Equal Opportunities Division action, but may be resolved through administrative action by the staff.
  - 2.111 An informal complaint need not be a written complaint.
  - 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.
- 2.15 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.
- 2.16 Respondent: 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.
- 2.17 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.
- 2.18 Subject Matter Jurisdiction: The Equal Opportunities Commission's authority to render a judgment concerning a particular allegation of discrimination.

### **3. Procedures for Processing Complaints**

#### **3.1 Filing of Complaints**

- 3.11 The 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 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 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 two (2) 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, mailed, or transmitted electronically to the office of the Equal Opportunities Division.
  - 3.121 A formal complaint shall be set forth on an approved form.
  - 3.122 Electronic signatures will be accepted on the approved Complaint form filed through the Department of Civil Rights website, with the party filing the Complaint affirmatively indicating on that form that they are signing the document electronically.
  - 3.123 A formal complaint must contain a statement of allegations which, if proven, would establish a prima facie case of discrimination.
  - 3.124 EOD staff 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.
- 3.14 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.
- 3.15 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.
- 3.16 The EOD shall not investigate any complaint which is not a formal complaint as defined in EOC Rule 2.8 or which has not been served on the Respondent.
- 3.17 Any person who files a complaint with the EOD shall promptly inform the EOD of any changes of address, telephone number, email address, or any prolonged absences from the address which he, she, or they has provided to the EOD when necessary. In addition, a Complainant 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 Complainant may amend a complaint at any time before the issuance of a Notice of Hearing.
- 3.3 Withdrawal of Complaint
- 3.31 A Complainant may withdraw their complaint at any time.
- 3.32 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 EOD may dismiss a complaint under the following circumstances:
- If a Complainant fails to provide requested necessary information or facts.
- If a Complainant fails to appear or to be available for an interview, a scheduled hearing, or a Fact Finding Conference.
- If a Complainant 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.
- If a Complainant withdraws the complaint.
- If the EOC lacks either geographic or subject matter jurisdiction.
- 3.42 An administrative dismissal shall be without prejudice. An appeal to a dismissal under this subsection must be made by filing a written request, via U.S. Mail, electronically, or in person, with the EOD no later than 15 days after the receipt of the dismissal.
- 3.43 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 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 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 EOD pursuant to the Fair Employment Practice Agency (FEPA) contract. Upon final disposition of such complaints by the EEOC, the corresponding complaint cross-filed with the EOD shall be dismissed, except 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 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 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 EOD shall be dismissed, except where the complaint contains an allegation of discrimination over which the ERD lacks jurisdiction. Such dismissals are NOT appealable.

#### **4. Mediation**

##### **4.1 Policy**

- 4.11 It is the policy of the Department of Civil Rights Equal Opportunities Commission to afford parties every opportunity to resolve a complaint of discrimination prior to going through the hearing process and the rendering of a decision by the Hearing Examiner.
- 4.12 The assistance of an EOD Mediator will be made available to the parties, throughout the process, upon request.
- 4.13 Parties to a complaint of discrimination may be represented by legal counsel or an advocate at mediation, however, representation is not required.
- 4.14 If a party, or advocate or attorney of a party, is located outside of the Madison area, they may be allowed to participate in the mediation by phone, but must notify the Mediator at least one business day in advance of the scheduled mediation.
- 4.15 In cases where, upon acceptance of the Complaint, the Equal Opportunities Division intake person and Equal Opportunities Division Manager determine a matter to be appropriate for injunctive relief, the case will be assigned immediately to an Investigator. The assistance of an EOD Mediator will still be available to the parties while the investigation proceeds.

##### **4.2 Early Mediation**

- 4.21 Within ten (10) business days of the EOD's acceptance of a Complaint, a Notice of Early Mediation, giving the date, time, location and name and contact information

for the Mediator, shall be mailed or transmitted electronically to the Complainant and Respondent along with service of the Complaint.

4.22 Early Mediation shall be concluded no later than 30 days following the EOD's acceptance of the Complaint except as identified in 4.221.

4.221 Should circumstances require that the mediation be rescheduled for a date later than 30 days following the EOD's acceptance of the Complaint, an Investigator will be assigned to the Complaint, and the investigation shall proceed while the mediation is still pending.

4.23 Early Mediation will be a voluntary process. Should either party choose to waive participation in mediation, they shall notify the Mediator assigned to their case at least 48 hours prior to the scheduled mediation.

4.231 If either party waives participation in mediation, the case shall be assigned within five business days to an Investigator to determine whether or not probable cause exists to believe that the Ordinance may have been violated.

4.232 Complaints may be resolved in ways that could include, but are not limited to, private settlements, public settlements that the Commission may be a party to, and public or private partial settlements, in which claims of some, but not all, of the allegations are resolved.

4.233 If the mediation is unsuccessful, within five business days the case shall be assigned to an Investigator to determine whether or not probable cause exists to believe that the Ordinance may have been violated.

4.234 If the mediation is successful, the Complainant shall sign an EOD Withdrawal Form, withdrawing their Complaint, and the EOD will take no further action.

#### 4.3 Mediation Services

4.31 The services of the EOD's paralegal/mediator will be made available to either party to a Complaint at any time after such Complaint is accepted by the EOD, and may be requested by either party at any time throughout the process.

## 5. Investigation

### 5.1 General Procedure

5.11 All complaints filed as stated in Equal Opportunities Commission (EOC) Rule 3.1 above shall be investigated to determine whether or not probable cause exists to believe that the Ordinance may have been violated. Upon assignment to the Investigator, , an investigation shall commence within 30 days.

## 5.2 Powers and Duties of an Investigator

- 5.21 When a complaint is assigned, an Investigator shall request information, documents and/or witness statements from the parties.
- 5.22 All information requested by an Investigator shall be submitted in a timely manner. In the event that a party requests an extension, an Investigator may grant one (1) extension of no more than fifteen (15) days.
- 5.23 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.
- 5.24 An Investigator shall provide the parties and their attorneys or advocates with an opportunity to submit additional information to support their positions.
- 5.25 When an Investigator determines that she/he/they 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.
- 5.26 When the 10-day period expires, an Initial Determination is issued with a conclusion of Probable Cause, No Probable Cause, or a combination of Probable Cause and No Probable Cause to believe discrimination may have occurred.

## 5.3 Fact Finding Conference

### 5.31 Attendance at a Fact Finding Conference

- 5.311 Attendance by the parties at a Fact Finding conference is mandatory.
- 5.312 If a party refuses to attend a Fact Finding conference or otherwise fails to provide requested information or evidence, he/she/they may be required by subpoena to appear at the EOD offices and to provide the requested information.
- 5.313 Failure of the Complainant to appear at a Fact Finding conference may result in an administrative dismissal, pursuant to EOC Rule 3.412.

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

- 5.321 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.
- 5.322 An attorney or lay advocate may not answer questions on behalf of a party, but that party may consult with the attorney or lay advocate prior to answering a question that has been posed.

5.323 An attorney or lay advocate may advise a party not to answer a particular question.

5.324 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.

5.33 Record of Fact Finding Conference

5.331 An Investigator shall make and retain a written record of a Fact Finding Conference in a party's file.

5.332 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.

5.333 The notes taken by an Investigator during the Fact Finding Conference may serve as the written record of the conference, provided that the notes satisfy the requirements of EOC Rule 5.332.

5.34 Electronic Recordation

5.341 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 6.46.

## 6. Initial Determination

6.1 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.

6.2 Dismissal of a Complaint Before the Issuance of an Initial Determination.

6.21 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.

6.211 The EOD shall send a letter to the Complainant's last known address and email address.

6.212 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.

- 6.213 The Complainant's failure to respond within the 15-day time period shall be sufficient basis to dismiss the complaint.
- 6.214 If the EOD's letter to the Complainant is returned as undeliverable, the complaint may be dismissed at any time by the EOD Manager.
- 6.3 Initial Determinations of Probable Cause, No Probable Cause, or a Combination of Both
- 6.31 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.
- 6.32 The Complainant may appeal any part of the Initial Determination which finds No Probable Cause.
- 6.33 An Initial Determination of Probable Cause may not be appealed by a Respondent.
- 6.34 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.
- 6.4 Appeals of No Probable Cause to the Hearing Examiner
- 6.41 A Complainant may file a written appeal via U.S. Mail, electronically or in person, 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.
- 6.42 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 via U.S. Mail, electronically or in person,.
- 6.43 The Hearing Examiner may grant one extension of no more than 15 days for the submission of additional evidence or arguments.
- 6.44 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 9.15.
- 6.45 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.
- 6.46 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 6.42.

- 6.47 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.
- 6.48 If the Hearing Examiner reverses an Initial Determination of No Probable Cause, the complaint shall be transferred to conciliation.
- 6.49 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 issuance, the Hearing Examiner will issue a Notice of Dismissal subject to EOC Rule 3.42.
- 6.410 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 issuance, 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.

6.5 Appeals of No Probable Cause Affirmations to the Equal Opportunities Commission

- 6.51 If the Hearing Examiner affirms an Initial Determination of No Probable Cause, a Complainant may, pursuant to EOC Rule 12, submit a written appeal via U.S. Mail, electronically or in person, to the EOD within 15 days of receipt of the Hearing Examiner's Decision and Order.
- 6.52 The EOC may consider the following:
- 6.521 The record compiled by an Investigator.
- 6.522 Any additional documents or arguments submitted to the Hearing Examiner.
- 6.523 Any briefs properly submitted by the parties, their attorney or lay advocates.
- 6.524 Any oral arguments deemed appropriate by the EOC.
- 6.5241 The parties must submit a request in writing, via U.S. Mail, electronically or in person, stating good cause for the need for oral argument.
- 6.5242 If the EOC deems that good cause has not been shown it need not grant oral argument.
- 6.53 The EOC may find Probable Cause, No Probable Cause or a combination of Probable/No Probable Cause according to the issues presented in the complaint.

- 6.531 If the EOC finds Probable Cause, the complaint shall be transferred to conciliation.
- 6.532 If the EOC finds No Probable Cause to believe the Ordinance may have been violated, the finding shall constitute the final order of the Commission.
- 6.533 If the EOC is unable to find Probable Cause or No Probable Cause, the complaint shall be remanded to an Investigator for further investigation or findings or to the Hearing Examiner for further findings.
- 6.54 In the event the EOC determines there is NO PROBABLE CAUSE, the EOC shall issue an order dismissing the complaint or the issue(s) in the complaint to which No Probable Cause applies.
- 6.6 Dismissal of a Complaint after the Issuance of a Decision and Order on Review of Initial Determination
- 6.61 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.
- 6.62 The following procedure shall be used before the Hearing Examiner administratively dismisses a complaint:
- 6.621 Where the Hearing Examiner's Decision and Order or Notice of Pre-Hearing Conference is email and/or mailed via receipt verified to the Complainant and either document is returned to the EOC as undeliverable, the Hearing Examiner shall re-mail the appropriate document via regular mail to the Complainant's last known address.
- 6.622 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 via U.S. Mail, electronically or in person, to the Hearing Examiner within 15 days of issuance.

## **7. Conciliation Agreements and Settlement Agreements**

- 7.1 Conciliation Agreements
- 7.11 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.
- 7.111 Any party may waive conciliation.
- 7.112 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.

- 7.113 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.
- 7.114 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.
- 7.12 Notwithstanding EOC Rule 7.1, 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.
- 7.2 Settlement Agreements
- 7.21 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.
- 7.22 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.

## **8. Authority and Duties of the Hearing Examiner**

### 8.1 General Procedure

- 8.11 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.

### 8.2 Authority of the Hearing Examiner

#### 8.21 General Powers and Duties

- 8.211 The Hearing Examiner shall conduct fair and impartial hearings.
- 8.212 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:
- 8.2121 To administer oaths and affirmations;
- 8.2122 To issue subpoenas;
- 8.2123 To rule upon offers of proof and receive evidence;



- 8.2124 To regulate the course of the hearings and the conduct of the parties and their agents or representatives;
- 8.2125 To hold conferences for settlement, simplification or stipulation of the issues, or any other proper purpose;
- 8.2126 To consider and rule upon all procedural and other motions appropriate to the proceeding and the parties; and
- 8.2127 To make and file a recommended decision.
- 8.213 Notwithstanding any provision of EOC Rule 8.212, 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.
- 8.22 Interference
- 8.221 No officer, employee or agent or any representative of the parties to a complaint shall interfere with the Hearing Examiner in the performance of his, her, or their adjudicative functions.
- 8.23 Ex Parte Communications
- 8.231 No person, nor 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.
- 8.232 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.
- 8.233 The Hearing Examiner shall not communicate ex parte, directly or indirectly with any person, nor 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.
- 8.234 If an ex parte communication is made to or by the Hearing Examiner in violation of EOC Rules 8.231 or 8.232, the Hearing Examiner shall promptly disclose the content of such communication to all parties.
- 8.24 Disqualification of the Hearing Examiner
- 8.241 Any party may file an affidavit, stating in detail the grounds for disqualification. Only one such affidavit shall be filed by the same party in 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.

- 8.242 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.
- 8.243 If the Hearing Examiner does not disqualify herself, himself, or themselves, she, he, or they shall so rule upon the record, stating the grounds for the ruling and proceed with the hearing.

## 9. Hearing Procedures

### 9.1 Pre-Hearing Procedures

#### 9.11 Pre-Hearing Conferences

- 9.111 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:
- 9.1111 Simplification and clarification of factual and/or legal issues;
  - 9.1112 Stipulations, admissions of fact and clarification of the contents and authenticity of documents;
  - 9.1113 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
  - 9.1114 Such other matters as may aid in the orderly and expeditious disposition of the proceedings.
- 9.112 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.

#### 9.12 Notice of Hearing

- 9.121 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 11.2.
- 9.122 The Notice of Hearing shall include:
- 9.1221 A statement of the time, date, place and nature of the proceedings;
  - 9.1222 A reference to the particular sections of the Ordinance and rules involved;

- 9.1223 A statement of the nature of the claim involved;
  - 9.1224 A statement of the requirement that the Respondent file an answer pursuant to Madison General Ordinance section 39.03(10)(c)2.
- 9.123 Answer to Notice of Hearing
- 9.1231 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.
- 9.13 Scheduling Order
- 9.131 A Scheduling Order shall be attached to the Notice of Hearing issued by the Hearing Examiner under EOC Rule 9.121.
  - 9.132 The Scheduling Order shall include:
    - 9.1321 A deadline for the completion of discovery;
    - 9.1322 A deadline for the filing and exchange of witness lists and amended witness lists;
    - 9.1323 A deadline for the filing of dispositive motions; and
    - 9.1324 A deadline for the filing and exchange of proposed hearing exhibits.
- 9.14 Motions
- 9.141 General Procedure
    - 9.1411 Either party may submit a motion to the Hearing Examiner at any time before a hearing on the merits.
    - 9.1412 Such motions shall be in writing and shall state the type of relief applied for and the grounds for the motion.
    - 9.1413 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.

9.1414 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.

9.142 Motions to Dismiss for Lack of Jurisdiction

9.1421 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.

9.1422 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.

9.1423 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.

9.1424 If the Hearing Examiner finds no jurisdiction, a Complainant may, pursuant to EOC Rule 12, submit a written appeal via U.S. Mail, electronically or in person, 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.

9.1425 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.

9.143 Motions for Default Judgment

9.1431 If a Respondent fails to appear, plead or otherwise defend or fails to answer a Notice of Hearing pursuant to EOC Rule 9.1231, a Complainant may submit to the Hearing Examiner a written motion for default judgment.

9.1432 All parties shall be served with a written copy of the motion for default judgment and the supporting proof of service.

9.1433 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.

9.1434 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 9.161. If the Hearing Examiner denies the motion, they shall order that proceedings continue as scheduled.

9.1435 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.

9.1436 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.

9.1437 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 via U.S. Mail, electronically or in person, and served on the opposing party within 15 days after receipt of the Hearing Examiner's decision.

9.144 Motions to Dismiss for a Complainant's Failure to Appear, Answer Discovery Requests, or Otherwise Participate in the Complaint Process

9.1441 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.

9.1442 All parties shall be served with a written copy of the motion to dismiss and the supporting proof of service.

9.1443 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.

9.1444 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 9.161. If the Hearing Examiner denies the motion, they shall order that proceedings continue as scheduled.

- 9.1445 A copy of the Hearing Examiner's Decision and Order on Respondent's Motion to 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.
- 9.1446 A Decision and Order denying a motion to dismiss cannot be appealed.
- 9.1447 However, a Decision and Order granting a motion to dismiss may be appealed pursuant to EOC Rule 12.

## 9.15 Discovery

- 9.151 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:
- 9.1511 The parties are notified that conciliation was unsuccessful, pursuant to EOC Rule 7.112.
- 9.1512 There is an appeal of an Initial Determination of No Probable Cause pursuant to EOC Rule 6.41.
- 9.152 No further discovery shall be allowed on appeals under EOC Rule 6.4 (No Probable Cause affirmation), EOC Rule 9.1424 (dismissal of complaint for lack of jurisdiction) and/or EOC Rule 10.3 (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.
- 9.153 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.

## 9.16 Sanctions

- 9.161 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:
- 9.1611 Infer that an admission, testimony, documents or other evidence sought would have been adverse to the non-compliant party;
- 9.1612 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;

9.1613 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;

9.1614 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;

9.1615 Order that a pleading, part of a pleading, motion or other submission by the non-compliant party be stricken;

9.1616 Order that a complaint be dismissed or that a judgment of liability be entered against the non-compliant party.

9.162 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.

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

#### 9.17 Subpoenas

9.171 Either party may issue subpoenas pursuant to Chapter 885 of the Wisconsin Statutes.

9.172 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.

9.173 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).

#### 9.2 Hearing on the Merits

##### 9.21 General Procedure

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

9.212 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.

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

## 9.22 Evidence

9.221 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.

## 9.23 Hearing Format

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

9.231 A brief introductory statement by the Hearing Examiner;

9.232 Presentation of the Complainant's case;

9.233 Presentation of the Respondent's case;

9.234 Opportunity for cross-examination;

9.235 Opportunity for a rebuttal presentation; and

9.236 Opportunity for questions by the Hearing Examiner.

## 9.24 Content of the Hearing Record

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

9.241 The complaint of discrimination and all pleadings;

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

9.243 A statement of all matters officially noticed;

9.244 Hearing Examiner's Recommended Findings of Fact, Conclusions of Law and Order;

9.245 Electronic hearing recordings or certified transcripts thereof.

## 9.25 Electronic Recordation

9.251 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.

9.26 Failure to Appear at the Hearing

9.261 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.

9.262 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.

9.263 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.

9.3 Rights of Parties

9.31 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.

**10. Hearing Examiner's Recommended Findings of Fact, Conclusions of Law and Order**

10.1 General Procedure

10.11 The Hearing Examiner who presided at the hearing on the merits under Equal Opportunities Commission (EOC) Rule 9.2 shall issue the Recommended Findings of Fact, Conclusions of Law and Order after completion of the hearing.

10.12 The Hearing Examiner's Recommended Decision shall include a statement of:

10.121 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.

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

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

10.2 Hearing Examiner's Determination of Liability

10.21 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 11. 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.

10.22 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.

10.3 Appeals to the Equal Opportunities Commission

10.31 Pursuant to EOC Rule 12, an appeal of the Hearing Examiner's Recommended Findings of Fact, Conclusions of Law and Order must be made by filing a written request via U.S. Mail, electronically or in person, with the Department of Civil Rights, Equal Opportunities Division no later than fifteen (15) days after the receipt of said findings.

## 11. Remedies

11.1 Compensatory Damages and Costs

11.11 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.

11.12 Equal Opportunities Commission (EOC) Rule 11.11 does not expressly limit the EOC's authority to order other remedies permitted or required under Madison General Ordinance section 39.03.

11.2 Temporary Injunctive Relief

11.21 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 decision by the EOC with respect to a complaint alleging discrimination under Madison General Ordinance Section 39.03 provided:

11.211 that any such request be made in accordance with the provisions of EOC Rules 11.21 through 11.24;

11.212 that an Equal Opportunities Division (EOD) Investigator has conducted an expedited investigation pursuant to EOC Rule 11.22, and has concluded:

11.2121 that there is probable cause to believe an act of discrimination has been or is being committed, and

11.2122 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

11.213 that the DCR Director or the Director's designee has determined:

11.2131 that the Complainant has a reasonable likelihood of success on the merits;

11.2132 that temporary injunctive relief is necessary to preserve the status quo,

11.2133 that the Complainant will suffer irreparable harm unless an injunction issues, and

11.2134 that the Complainant does not have an adequate remedy at law.

## 11.22 Expedited Investigations

11.221 Upon the filing of a formal complaint alleging discrimination under Madison General Ordinance Section 39.03, 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.

11.222 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 discrimination complaint has been filed and that an expedited investigation of the complaint will be conducted.

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

## 11.23 Results of Expedited Investigations

11.231 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.

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

11.24 Transfer to the City Attorney

11.241 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 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.

11.242 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.

11.25 Conciliation Conference

11.251 Whenever the circuit court grants temporary injunctive relief, the 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.

11.26 Injunctive Relief Hearing

11.261 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 Order within five (5) working days following the date the hearing concludes.

11.27 Waiver of Time Limitations

11.271 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 11.21 through 11.26. Such agreement must be made in writing.

## 12. Appeals to the Equal Opportunities Commission

### 12.1 Scope

12.11 Equal Opportunities Commission (EOC) Rule 12 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 6.6; to appeals of no jurisdiction determinations under EOC Rule 9.1424; to appeals of motions to dismiss under EOC Rule 9.1447; and to appeals of the Hearing Examiner's Recommended Findings of Fact, Conclusions of Law and Order under EOC Rule 10.3.

### 12.2 Appeal Procedure for Complainants and Respondents

12.21 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) via mail, hand-delivery, or electronic transmission (dcr@cityofmadison.com).

12.22 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.

12.23 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.

12.24 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.

12.25 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.

### 12.3 Appeals Committee of the Equal Opportunities Commission

#### 12.31 Membership

12.311 The Appeals Committee shall be comprised of three members and one alternate member to be identified by the EOC Nomination Committee and 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.

12.312 To the extent possible, the Appeals Committee shall consist of at least one member who has 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.

12.313 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.

12.314 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.

## 12.32 Certification of an Appeal

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

12.3211 A serious question of constitutional law;

12.3212 A novel and serious question of the interpretation of the Equal Opportunities Ordinance;

12.3213 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.

12.322 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.

12.323 The Appeals Committee certification shall be served upon the parties by mail and/or or electronic transmission. 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 13.11 and 13.12.

12.324 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.

## 12.33 Materials the Appeals Committee Must Consider in the Appellate Review Process

12.331 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.

12.332 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:

- 12.3321 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.
- 12.3322 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.
- 12.3323 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.
- 12.3324 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.
- 12.4 Final Orders of the Appeals Committee and the Equal Opportunities Commission
- 12.41 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.
- 12.42 For the appeals referenced in EOC Rules 12.3321 – 12.3324, 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.
- 12.421 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.

- 12.43 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.
- 12.44 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.
- 12.45 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.

### **13. Service Documents**

#### **13.1 General Procedure**

- 13.11 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, electronically, through the mail, in person, in facsimile, electronic or digital form. 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 and shall be filed in accordance with these rules.
- 13.12 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. (CST). 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. (CST) on any business day will be considered to have been received on the subsequent business day.
- 13.13 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.
- 13.2 Notwithstanding any other provisions of Rule 13, actual receipt of a document by an individual or any other person specified in Rule 13 shall constitute service.
- 13.21 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.



- 13.3 Service by Mail or in Person
- 13.31 Service by mail on a Complainant shall be made at the last address provided by the Complainant.
- 13.32 Service by mail on a Respondent shall be made at Respondent's residence, principle place of business, with registered agent, or at the location where the alleged act of discrimination occurred.
- 13.33 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.
- 13.4 Service by the Hearing Examiner, the Equal Opportunities Division Manager, the Department of Civil Rights Director, or the Equal Opportunities Commission
- 13.41 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 the EOC Rules to serve. Every other paper shall be caused to be served by the party filing it.
- 13.42 All papers served by the Hearing Examiner, EOD Manager, DCR Director, the 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.
- 13.5 Subsequent to the filing of a complaint with the Commission, any person submitting 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).
- 13.51 Where the requirement to provide the opposing party(s), attorney(s) or representative(s) with copies of documents as specified in paragraph 13.6 of this section presents an economic or other hardship, the party(s) may submit a request for a waiver, stating reasons for the request. Exemptions from the requirement of 13.5 shall be granted liberally.
- 13.6 Service of Subpoenas
- 13.61 Service of subpoenas on witnesses shall be made pursuant to EOC Rule 9.17.

## 14. General Provisions

- 14.1 Representation by an Attorney or Lay Advocate
- 14.11 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.

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

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

14.113 Any lay advocate of the parties to the complaint.

14.12 Any person appearing on behalf of another must file a Notice of Appearance with the EOD and serve such Notice on all parties and their attorneys and/or representatives.

#### 14.2 Computation of Time

14.21 Computation of any period of time prescribed or allowed by the EOC Rules shall begin with the first business day following the act or event initiating such period of time. 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.

14.22 All documents submitted to the DCR Office must be received no later than 4:30 p.m. (CST) 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. (CST) on any business day will be considered to have been received on the subsequent business day.

#### 14.3 Oral Arguments

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.

**15. If future 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.**