

**Amendments to the Rules of the Equal Opportunities Commission
Adopted December 11, 2008**

11. Appeals to the EOC Commission

- 11.1 Either party may appeal the recommended findings of fact, conclusions of law and order ~~of~~ to the Hearing Examiner (including appeals of no probable cause under Rule 5.4) by filing a written request for an appeal with the Equal Opportunities Division no later than fifteen (15) days after issuance of said findings
- 11.2 All appeals to the Equal Opportunities Commission shall be heard by the Appeals Committee except as specified in rule 11.34.
- 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 (1) 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 ~~Chair of 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. ~~The Chair of the Appeals Committee shall be the most senior member.~~
- 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) consecutive 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.
- 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 11.34 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 The original and six (6) copies of each appeal and/or cross appeal and subsequent briefs must be submitted to the office of the Department of Civil Rights, Equal Opportunities Division for an appeal and/or cross appeal.

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.
- 11.75 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.
- 11.76 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.
- 11.77 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.

- 11.8 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.
- 11.9 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.
- 11.91 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.
- 11.10 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.
- 11.11 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 ~~not~~ inconsistent with the due process rights of the parties. The official record shall be returned to the Equal Opportunities Division subsequent to the Appeal Committee or the Appeals Committee's or the Equal Opportunities Commission's final decision.

12. Service of Papers and Other Documents

- 12.1 Documents **SHALL NOT** be served upon the Commission by facsimile transmission. However, service is deemed effective on date of postmark or date of receipt, whichever occurs first, except as set forth in Section 13.21.

- 12.2 Service may be made in person or by mail.
- 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. Unless earlier receipt is shown, service by mail shall be deemed complete upon the third day following the day upon which the papers are placed in the mail, unless the third day falls on a Saturday, Sunday, or holiday observed by the City of Madison, in which case service shall be deemed complete on the first business day thereafter.
- 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 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 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 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 must 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 12.5 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.

13. General Provisions

13.1 Representation

A party may be represented before the Division and/or Commission by the following persons: Any attorney at law entitled to practice as authorized by the State of Wisconsin, any attorney at law entitled to practice before the highest court of record of any other state or 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.

13.2 Computation of Time

Computation of any period of time prescribed or allowed by these 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. Documents shall **not** be served by a facsimile transmission.

13.3 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.

14. 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.