

2007 PROPOSED AMENDMENTS TO MINNEAPOLIS COMMISSION ON CIVIL RIGHTS, RULES OF PROCEDURE FOR CONTESTED CASE HEARINGS

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Section 1. That following the introduction of the Minneapolis Commission on Civil Rights, Rules of Procedure for Contested Case Hearings be amended to read as follows:

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

Section 2. That following the introduction, the Minneapolis Commission on Civil Rights, Rules of Procedure for Contested Case Hearings be amended to read as follows:

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- Rule 44. Construction

Section 3. That the Minneapolis Commission on Civil Rights, Rules of Procedure for Contested Case Hearings be amended to read as follows:

Rule 1. Definitions

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

Rule 2. Documents Filed

Forms, documents, or written materials prepared specifically for and used or filed in any hearings before the Commission must be on standard size 8 1/2 inch by 11 inch paper, must be served on the opposing party, and the original and two copies of the form, document or written material must be filed with the Commission along with an affidavit of service on the opposing party.

Rule 3. Access To Department Investigative Files And Personnel

~~**Subpart 1. Access by parties.** Following completion of the Department's investigation of a case, any party shall be allowed to review the Department's file and to discuss its contents with the case investigator. However, the following materials shall not be disclosed to any party: Opinions of the City Attorney relating to the case; memoranda between or among City Departments unless such memoranda constitute substantive evidence in the case; and, internal memoranda of the Department and the Commission. The review and discussion of the disclosable portions of the Department file shall be made at the Department office at reasonable times.~~

~~**Subpart 2. Copies by parties.** A party may make copies of any exhibits, documents or information (except those excluded under Subpart 1) for a reasonable cost as determined by the Department.~~

~~**Subpart 3. Access by presiding commissioner.** The presiding commissioner may examine the Department files, subject to the exclusions under Subpart 1.~~

Subpart 1. Access by parties following finding of no probable cause or probable cause.

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

- (a) Opinions of the City Attorney relating to the case;
- (b) Memoranda between or among City Departments unless such memoranda constitute substantive evidence in the case;
- (c) Internal memoranda of or between the Department and the Commission relating to the case;
- (d) Documents relating to mediation or conciliation efforts by the Department or

Commission; and

(e) Medical or private information of the parties or third parties, unless the party receives written consent by the third party, or such information constitutes substantive evidence in the case; or

(f) Information identified by a party as trade secrets, confidential research development, commercial information, or other security interests of the parties, unless such information constitutes substantive evidence in the case.

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

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

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

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

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

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

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Rule 7. Hearing Committee

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

Rule 8. Notice Of And Order For Hearing

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

* * *

B. A statement of the determination of the Director or the review committee pursuant to Chapter 141.50 (~~ed~~) together with a citation to the relevant provisions of the civil rights ordinance;

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

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Rule 10. Intervention By The City Attorney

Subpart 1. Request for Intervention. Within ten (10) days after the referral of a complaint by the Director to the Commission under Chapter 141.50 (~~ed~~), the Director may request the Minneapolis City Attorney to intervene in the case for the purpose of representing the general welfare and civil rights of the people of Minneapolis.

Rule 11. Consolidation Of Cases

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

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

Rule 12. Prehearing Conference

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

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

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Rule 18. Subpoenas

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

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

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Rule 22. Rules of Evidence

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

Rule 23. Hearing Record

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

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Rule 25. Hearing Committee Conduct

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

Rule 28. Hearing Committee Decision

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

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Rule 30. Request for Oral Hearing

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

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

Rule 31. Review Committee

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

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Rule 33. Procedure When Request For Oral Hearing Is Denied

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

Rule 34. Procedure When Request for Oral Hearing Is Granted

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

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

Rule 35. Record

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

1. Complaint, answer of respondent (if any), all other records and documents in the Department file not otherwise excluded under these Rules, and all legal motions and rulings on them; . . .

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Rule 37. Standard of Review

~~The review committee shall view the entire record in the light most favorable to the Director's determination of no probable cause.~~ The Director's determination shall be sustained unless the review committee, ~~applying this standard,~~ finds that the Director's determination of no probable cause was clearly erroneous. If the complainant has presented new evidence (regardless of whether the respondent has presented rebuttal evidence) and the review committee either reverses the Director's determination outright or remands the case to the Department for further investigation, the review committee's decision must contain express findings of fact and conclusions of law. If the decision is to remand the case for further investigation, the decision must indicate specific areas in which the investigation is to be supplemented. The Department shall notify the parties that further investigation shall occur, but the review committee's remand order containing instructions for further investigation shall not be disclosed to either party . . .

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