

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
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7 Pages

MINNESOTA STATE REGULATIONS

Notice of filing by the Commissioner of Administration

We have received on this date, stamped and filed 2 copies of Rules and Regulations pertaining to the Human Rights
(Agency or Board)

Regulation No. 51b, 52(c), 53(b)(1), 53(2), 54(c), 55(b), 101, 102(b) ~~102(F), 103(d), 104(b) 104(c), 105(b) 105(c), 105(e), 105(F) 106(a) 106(b) 106(c)~~ 106(d) 107(A) 107(c) 107(F) 107(g), 108, 110, 111(d), 113(b), 114(b) 114(c) 121(a)

Subject: Compliance, Commissioners orders and actions of the panel or hearing examiner

Department of Administration
Publication, Central Services Division
Documents Section
140 Centennial Office Building
St. Paul, Minnesota 55155
Telephone: (612) 296-2874

FILED
RICHARD L. BRUBACHER
Commissioner of Administration

NOV 13 1975

BY Ela Slaudeman 3:15 PM RS
AUTH. SIGNATURE

Stamped and filed with the Secretary of State Nov-13, 1975 3:15 PM

Rev. 9-72

RULES AND REGULATIONS

51(b) "Commissioner" means the Commissioner of Human Rights or an agent authorized by the Commissioner of Human Rights.

52(c) An applicant for a certificate of compliance shall certify to the commissioner, prior to the issuance of the certificate of compliance, that he or she will abide by the terms and conditions of the certificate of compliance including the compliance review procedures as set forth herein, and will agree to comply with the Act and the rules adopted pursuant thereto with respect to public contracts.

53(b)(1) Holders of certificates of compliance shall permit access to the commissioner during normal business hours to their books, records, accounts and personnel relevant to compliance with the Act with respect to any public contract which has been awarded to the holder following the issuance of a certificate of compliance.

53(2) Holders of certificates of compliance shall file with the commissioner a contract compliance review report in respect of their performance under public contracts six (6) months after the date of issuance of the certificate of compliance, and annually thereafter, upon such forms as the commissioner shall provide and in accordance with the directions contained therein.

54(c) In complying with HumRts 54(a) and (b) the commissioner shall endeavor to eliminate the unfair discriminatory practice through education, conference, conciliation and persuasion at the place where the practice occurred, or where the respondent resides or has his or her principal place of business. Such endeavors shall include recommendations to the applicant or holder which would bring the conduct into conformity with the Act and which will remedy injuries resulting from the unfair discriminatory practice.

55(b) Upon receipt of the compliance application, and the other information required by HumRts 55(a), the commissioner shall issue within 90 days a certificate of compliance after the commissioner finds that the respondent-applicant has ceased engaging in such unfair discriminatory practices. If the commissioner finds that the respondent-applicant has not ceased in engaging in such unfair discriminatory practices, the commissioner shall so notify the respondent-applicant in writing setting forth the reasons therefor.

101 POLICY

No person before the Department of Human Rights shall have his or her rights, privileges, or duties determined without regard for fundamental fairness. Any person may be represented by legal counsel at any stage of proceedings before the department. In any contested case before the department, all parties thereto shall be provided with an adequate notice of hearing; fair hearing; and an objective decision supported by substantial evidence.

102(b) Notwithstanding the provisions of HumRts 1 and 102(a), a charge is deemed filed when the department receives from a person making a charge a written statement sufficiently precise to identify the parties and describe generally the action or practices complained of.

102(f) It is the continuing responsibility of a charging party to provide the department with written information sufficient to allow it to communicate with him or her by phone or in writing during the pendency of a charge or any complaint issued thereto. If a charging party fails to comply with this requirement, the commissioner may terminate any proceedings related to that charge; provided, however, that 30 days prior to said termination the commissioner shall direct a notice of the intention to so act to the charging party by mailing a certified letter to the charging party's last known address.

103(d) The commissioner may order any party to complete written interrogatories relating to the subject matter of a charge or complaint. Such written interrogatories shall be completed and returned to the commissioner within fifteen days of receipt thereof. For good cause, the commissioner may grant an extension of time for the completion and return of the written interrogatories.

104(b) The commissioner shall issue an order dismissing a charge when he or she has determined after investigating the allegations of such charge that there is no probable cause to believe that the respondent has engaged in an unfair discriminatory practice. A copy of an order dismissing a charge following a no probable cause determination shall be served by registered or certified mail upon the charging party and the respondent within ten days of such determination. Such order shall be a final decision of the department unless an appeal is taken as provided in HumRts 105.

104(c) When the commissioner has determined after investigating the allegations of a charge that there is probable cause to believe that the respondent has engaged in an unfair discriminatory practice, the commissioner shall attempt to eliminate such practice by way of conciliation in accordance with the Act and these Rules.

105(b) The commissioner shall acknowledge in writing the receipt of a timely notice of appeal and shall forward a copy of such notice to the chairperson of the State Board of Human Rights.

105(c) The chairperson of the State Board of Human Rights shall designate three persons from such Board to sit as a review board to hear the appeal. The chairperson shall appoint one of three persons on the review board to act as the presiding member of the board.

105(e) The charging party and the commissioner shall appear at the hearing. The respondent may make an appearance. If the charging party cannot appear at the time and date scheduled for the hearing, he or she shall give at least 24 hours notice to the presiding member of the review board, who may reschedule the hearing. A charging party who fails to appear at the hearing, and who has not given notice as required herein, shall have waived the right to a hearing.

105(f) The presiding member of the review board shall conduct the hearing in a manner that he or she deems just and proper. The commissioner shall make all the information in the possession of the Department of Human Rights which is relevant to the case on appeal available to the members of the review board. The commissioner, the charging party, and the respondent may make opening and closing statements, introduce evidence, and present and cross-examine witnesses. The members of the review board may examine any party or witness and may inspect any documents or other evidence submitted by the commissioner, the charging party, and the respondent.

106(a) When the commissioner has determined after investigation that there is probable cause to believe that the respondent has engaged in an unfair discriminatory practice, the commissioner shall serve upon the respondent by registered or certified mail a written notice of such determination and a written invitation to participate in a conciliation conference for the purpose of attempting to eliminate the unfair discriminatory practice by informal means. Such invitation shall set a 10 day limitation on the time in which the respondent shall respond to the invitation. For good

106(b) If a respondent fails or refuses to respond to the commissioner's invitation to participate in a conciliation conference, or if the respondent fails or refuses to make a good faith effort to conciliate, the commissioner shall terminate attempts to conciliate the matter and shall issue a complaint in accordance with the Act and these Rules. Conciliation efforts may be resumed at any time upon written request of the commissioner to the respondent.

106(c) The commissioner and a respondent may at any time enter into an agreement or stipulation to conciliate, settle, or compromise the subject matter of a charge or a complaint. Such agreement or stipulation may provide for the commissioner to waive the right to proceed against the respondent under the Act and for the respondent to take such affirmative actions as may effectuate the purpose of the Act. Such affirmative actions may include, but are not limited to, the payment of money damages, the hiring, reinstatement, or upgrading of an aggrieved person, or the sale or lease of real property. Any agreement entered into by the commissioner and the respondent shall be reduced to writing and shall be enforceable in the same manner as a final decision of the department. A panel or examiner may issue an order embodying the terms of any agreement or stipulation entered into by the commissioner and a respondent. Such order shall be enforceable as a final decision of the department.

106(d) The commissioner shall not disclose any information concerning efforts to eliminate an unfair discriminatory practice by way of conciliation.

107(a) The commissioner shall issue a complaint: (1) when the commissioner has determined that there is probable cause to believe that a person has engaged or is engaging in an unfair discriminatory practice and after attempts to eliminate the unfair discriminatory practice by conciliation have been terminated: or (2) when the commissioner has reason to believe that a person is engaging in an unfair discriminatory practice.

107(e) With the permission of the charging party, the commissioner may sue on behalf of a class only if:

(1) there are questions of law or fact common to the class, and

(2) the claims of members of the class are of sufficient similarity that a fair hearing of them is possible in a class action, and

(3) the commissioner will fairly and adequately protect the interests of the class, and

(4) one of the following three conditions exists:

(aa) the prosecution of separate actions by the commissioner on behalf of individual members of the class would create a risk of

(i) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(ii) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(bb) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate relief that includes final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(cc) the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods of the controversy. The matters pertinent to the findings include: (i) the interest of members of the class in individually affecting the prosecution of separate actions; (ii) the extent and nature of any litigation concerning the controversy already commenced by members of the class; (iii) the desirability or undesirability of concentrating the litigation of the claims in the administrative hearing; (iv) the difficulties likely to be encountered in the management of a class action.

107(f) After an action is brought as a class action, the panel or hearing examiner shall determine by order whether it is to be so maintained. At the discretion of the panel or examiner, such order may be a part of the final order issued in accordance with Section 363.071 of the Act. If the order is not part of the final order, it may be conditional and may be amended or altered before the decision on the merits.

107(g) In any class action, prior to the hearing, the panel or hearing examiner shall direct to the members or potential members of the class the best notice practicable under the circumstances. Notice shall be reasonably certain to inform those affected, or, where conditions do not reasonably permit such notice, the form of notice shall not be substantially less likely to give notice than other of the feasible and customary substitutes. If the complaint seeks compensatory relief, the notice shall advise each member:

(1) he or she will be excluded from the class, with respect to monetary relief, if he or she so requests by a specified date, and

(2) the decision whether favorable or not, will include all members who do not request exclusion.

(h) In the conduct of class actions, the panel or hearing examiner may make appropriate orders:

(1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

(2) requiring a specific type of notice or other protections for the members of the class or for the fair conduct of the action;

(3) dealing with other procedural matters.

The orders may be altered or amended as may be desirable from time to time, and they are not final decisions of the department.

(i) A class action shall not be dismissed or compromised without the approval of the panel or hearing examiner. Notice of the proposed dismissal or compromise shall be given to all members of the class in such a manner as the panel or hearing examiner directs.

(j) In a class action, the order issued in accordance with Section 363.071 of the Act, whether or not favorable to the class, shall include and describe those persons who are members of the class. This order is a final decision of the department and is subject to judicial review.

108 A respondent shall serve an answer upon the department within 20 days after service of the complaint. A copy of such answer shall be served upon the complainant not less than ten days before the hearing by registered or certified mail. The original answer, together with an attached affidavit of service, shall be filed with the panel or examiner. Failure to answer the complaint shall be deemed an admission of the allegations therein. A respondent may amend an answer at any time.

110 The commissioner shall serve upon a respondent by registered or certified mail a written notice of hearing which shall set forth the date, time, and place for a hearing on a complaint issued in accordance with the Act and HumRts 107. A notice of hearing shall be served upon a respondent at least thirty days before the hearing.

111(d) A member of a panel or an examiner shall withdraw from participation in a case at any time prior to final decision if such a person deems himself or herself disqualified for any reason. Upon the filing in good faith by a party of a timely and sufficient affidavit of prejudice, the panel or examiner shall determine the matter as part of the record and decision in the case.

113(b) Prior to a hearing, the panel or examiner shall take no part in any investigation or inquiry into the facts or issues involved in the case except as permitted by HumRts 112.

114(b) Any party may be a witness or may present witnesses on his or her behalf at a hearing. All testimony at a hearing shall be under oath or affirmation. Every party shall have the right of cross-examination of the witnesses who testify. A party called as a witness by an adverse party may be interrogated by leading questions and contradicted and impeached on material matters in all respects.

114(c) The panel or examiner may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable prudent people in the conduct of their affairs. The panel or examiner shall give effect to the rules of privilege recognizable by law. Evidence which is incompetent, irrelevant, immaterial or repetitious may be excluded.

121(a) The commissioner may issue a letter setting forth the policy with respect to a provision or provisions of the Act. A policy letter may be issued upon the request of any interested person or upon the commissioner's own initiative.

APPROVED AS TO FORM AND LEGALITY
NOV 13 1975 19
WARREN SPANNAUS ATTORNEY GENERAL
BY /s/ Michael B. Miller
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
NOV 13 1975 - 3:15 pm
Joan Anderson Growe
Secretary of State

FILED
RICHARD L. BRUBACHER
Commissioner of Administration
NOV 13 1975
BY Eda Steinmann
AUTH. SIGNATURE
3:15 PM.

ADMIN. 1000

STATE OF MINNESOTA

DEPARTMENT Human Rights

Office Memorandum

TO : Mike Miller
Special Assistant Attorney General

DATE: 12-18-75

FROM : Erica Jacobson
Special Assistant Attorney General
304 Capitol Square Building

SUBJECT: Rules and Regulations of the Department of Human Rights

The following typographical errors should be corrected before the Rules and Regulations are printed by the Documents Section:

1. 107(a)
Line 6 should read:

tice by conciliation have been terminated; or (2) when

(NOT: tice by conciliation have been termianted: or (2) when)

2. 107(e)(4)(cc)
Line 6 should read:

for the fair and efficient adjudication of the controversy. The matters per-

(NOT: of the controversy. The matters per-)

3. 107(g)(2)
Line 1 should read:

(2) the decision, whether favorable or not, will

(NOT: (2) the decision whether favorable or not, will)

4. 108
Delete second sentence.

The rule should read:

A respondent shall serve an answer upon the department within 20 days after service of the complaint. The original answer, together with an attached

affidavit of service, shall be filed with the panel or examiner. Failure to answer the complaint shall be deemed an admission of the allegations therein. A respondent may amend an answer at any time.

Explanation of Changes:

1. Change colon to semicolon.

2. Six words were omitted. See 107(f)(3) of the Proposed Rules and Regulations.

3. Add a comma after "decision".

4. The sentence requiring that an answer be served not less than ten days before the hearing was in the 1971 Rules and Regulations and should be deleted in the new Rules and Regulations. The new 103 requires that an answer be served within 20 days after service of the complaint.

cc: Eda Staudenmaier
Cecilia Dion

ADMIN. 1000

STATE OF MINNESOTA

DEPARTMENT Attorney General

Office Memorandum

TO : Mike Miller

DATE: 10-22-75

FROM : Joan Swartz

SUBJECT: Human Rights Department Amendments to Rules & Regulations

Enclosed are the forms for the Human Rights Department amendments to its current rules. Aside from the grammatical changes, the major change involves the addition of procedures for class action contested cases. There is no special rush on these, but the public hearing was held in May, so we'd like to get them approved fairly soon. If you have any questions, you can call me at 5671 or Erica Jacobsen at 6139.

10/23

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE WILLIAM L. WILSON

COMMISSIONER OF THE MINNESOTA

DEPARTMENT OF HUMAN RIGHTS

In the Matter of the *

Proposed Adoption of *

Rules of Practice by the * NOTICE OF HEARING

Minnesota Department of *

Human Rights *

NOTICE IS HEREBY GIVEN that a public hearing will be held pursuant to Minnesota Statutes 15.0412 (1974) and Minnesota Statutes Section 363.05 subd. 1(8) (1974), in the above-entitled matter in Conference Room A, on the 1st floor of the Capitol Square Building, 550 Cedar Avenue, St. Paul, Minnesota on May 6 , 1975, commencing at 9:00 a.m. and continuing until all representatives or other interested groups or persons have had an opportunity to be heard concerning the adoption of the proposed rules captioned above by submitting either oral or written data, statements or arguments. Statements or briefs may be submitted in writing without appearing at the hearing by mailing to the Minnesota Department of Human Rights, Room 200, Capitol Square Building, 55101 at any time prior to the closing of the record. The record shall close at 4:30 p.m. on May 26, 1975.

Copies of the proposed rules are now available and may be obtained by writing to the Minnesota Department of Human Rights at the address below. Additional copies will be available at the door on the date of the hearing.

These rules are proposed rules only and are subject to alterations or modifications as the Department deems necessary and appropriate from its consideration of all the evidence adduced at the hearing and all statements entered into the record.

Dated this 27 day of March, 1975.

Minnesota Department of Human Rights

By William L. Wilson
William L. Wilson, Commissioner

Minnesota Department of Human Rights
Room 200, Capitol Square Building
550 Cedar Avenue
St. Paul, Minnesota 55101

Telephone: (612) 296-5663

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE WILLIAM L. WILSON
COMMISSIONER OF THE MINNESOTA
DEPARTMENT OF HUMAN RIGHTS

In the Matter of the *
Proposed Adoption of *
Rules of Practice by the * ORDER FOR HEARING
Minnesota Department of *
Human Rights *

To effectively implement Minnesota Statutes §363.01 et seq. (1974), the commissioner of the Minnesota Department of Human Rights deems it necessary to consider adoption of the proposed rules captioned above pursuant to the authority vested in me by Minnesota Statutes §15.0412 (1974) and Minnesota Statutes §363.05 subd. 1(8) (1974).

NOW THEREFORE, IT IS ORDERED this 27th day of March, 1975 that a public hearing on the proposed rules captioned above be held in Conference Room A, Capitol Square Building, St. Paul, Minnesota, May 6, 1975 commencing at 9:00 a.m. and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of said hearing be given to all representatives of associations or other interested groups or persons who have registered their names with the Secretary of State for that purpose and all persons who are presently members of the Minnesota legislature.

State of Minnesota
Department of Human Rights

By William L. Wilson
William L. Wilson, Commissioner

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE WILLIAM L. WILSON
COMMISSIONER OF THE MINNESOTA
DEPARTMENT OF HUMAN RIGHTS

In the Matter of the *
Proposed Adoption of *
Rules of Practice by the * AFFIDAVIT
Minnesota Department of *
Human Rights *

Dorothy Olson, being duly sworn on oath deposes and says:

1) That she is an employee of the Human Rights Department of the State of Minnesota.

2) That on the first day of April, 1974, she went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M.S. 15.0412.

3) That on the first day of April, 1974, in response to the above request, the Secretary of State provided her with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Dorothy Olson

Subscribed and sworn to before
me this 2nd day of April, 1975.

RICHARD L. VARCO
Notary Public, Ramsey County, Minn.
My Commission Expires [illegible] 1977

Richard L. Varco
Notary Public

_____ County, Minnesota

My Commission expires _____.

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE WILLIAM L. WILSON
COMMISSIONER OF THE MINNESOTA
DEPARTMENT OF HUMAN RIGHTS

In the Matter of the *
Proposed Adoption of *
Rules of Practice by the *
Minnesota Department of *
Human Rights *

CERTIFICATE

(420 labels + one sheet)

I hereby certify that the attached 20 sheets constitute the complete list of persons, associations, and other interested groups who as of 9:30 o'clock, a.m. this 1st day of April, 1975, have requested pursuant to Minn. Stat. §15.0412 (1974), that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Joan Anderson Growe
Secretary of State

JOAN A. GROWE

By Neil Dion

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE WILLIAM L. WILSON
COMMISSIONER OF THE MINNESOTA
DEPARTMENT OF HUMAN RIGHTS

In the Matter of the *
Proposed Adoption of *
Rules of Practice by the *
Minnesota Department of *
Human Rights *

AFFIDAVIT
OF MAILING

Dorothy Olson, being first duly sworn, deposes and says:

That on the 2nd day of April, 1975, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State and by delivery of copies thereof to the Legislative Post Office for distribution to all members of the Minnesota Legislature.

Dorothy Olson

Subscribed and sworn to before
me this 2nd day of April, 1975

RICHARD L. VARCO
Notary Public, Ramsey County, Minn.
My Commission Expires July 15, 1977

Richard L. Varco Jos.
Notary Public

_____ County, Minnesota

My Commission expires _____.

STATE OF MINNESOTA

COUNTY OF RAMSEY

DEPARTMENT OF HUMAN RIGHTS

In the Matter of the Proposed Rules Governing Procedures of the Department of Human Rights

STATEMENT OF NEED

The above-captioned rules are amendments to the existing rules of the Department of Human Rights. The last time the rules were amended was June 4, 1971.

The Commissioner of the Minnesota Department of Human Rights is required by Minn. Stat. § 363.05 subd. 1(8) (1974) to adopt suitable rules and regulations for effectuating the purposes of the Minnesota Human Rights Act. These proposed rules are intended to effectuate the purposes of the Act by improving existing procedures for the filing of charges, conduct of investigations, issuance of complaints, and conduct of public hearings. These rules are also intended to change the language of the present rules so that the masculine gender is not used exclusively.

Human Rights 102(b) is needed to protect an aggrieved person's cause of action if the six month statute of limitations lapses between the time an informal letter is written to the Department and a formal charge is filed with the Department.

Human Rights 102(f) is to deal with the situation that presently occurs when a charging party changes his or her address without notifying the Department and becomes unreachable. The rule both notifies charging parties of their responsibility to the Department and establishes a procedure through which the Department can close cases when necessary.

Human Rights 103(d) is needed to provide the Department with increased flexibility in its investigations of charges and to allow the Department to investigate charges more quickly.

Human Rights 107(c), 108 and 110 will ensure that a respondent has a reasonable length of time to answer a complaint and prepare for a hearing. By the present rules, the Department could serve a complaint 10 days before a hearing, the respondent would be required to answer the complaint on that same day, and the respondent would have only 10 days to prepare for the hearing.

Charges of discrimination are often directed at a practice which affects not only the charging party but also other similarly situated individuals. It is appropriate, in those circumstances, for the Department to seek class-wide relief. In Richardson v. School Board of Independent School District No. 271, 210 N.W.2d 911 (1973) the Minnesota Supreme Court recognized that Minn. Stat. chapter 363 empowers the Commissioner of the Minnesota Department of Human Rights to bring class actions. However, the court noted that the commissioner had not adopted any rules of procedure for class actions.

Human Rights 107(e) through (j) are designed to remedy that lack and to provide an orderly procedure for handling class actions.

Human Rights 113(b) is to make clear that a hearing examiner or panel may question witnesses at a hearing, although not prior to the hearing.

Dated: October 22, 1975.

William L. Wilson

WILLIAM L. WILSON
Commissioner of the
Department of Human Rights

STATE OF MINNESOTA

COUNTY OF RAMSEY

DEPARTMENT OF HUMAN RIGHTS

In the Matter of the Proposed Adoption of Rules Governing the Procedures of the Department of Human Rights

FINDINGS OF FACT

The above-entitled matter came on for a hearing before the Minnesota Department of Human Rights Commissioner on the 6th day of May, 1975 at 9:00 a.m. in Conference Room A of the Capitol Square Building, St. Paul, Minnesota, after proper notice required by Minn. Stat. § 15.0412 (1974) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose. Before the record was closed on May 26, 1975, additional material was received from interested parties and accepted into the record.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, I find the following:

1. That the Commissioner of the Minnesota Department of Human Rights is empowered by Minn. Stat. § 363.05 subd. 1(8) (1974) to adopt rules and regulations that effectuate the purposes of Minn. Stat. ch. 363 (1974).

2. That the rules provided for herein were proposed pursuant to the section cited above.

3. That the proposed rules and regulations were adopted pursuant to Minn. Stat. ch. 15.

4. That the regulations will effectuate the purposes and policy of the Minnesota Human Rights Act, as expressed in Minn. Stat. § 363.12.

5. That the modifications from the proposed rules and regulations are in keeping with the spirit and intent of the proposed regulations and do not significantly change the substance of the regulations as presented at the public hearing.

With respect to Hum.Rts. 102(b):

6. That this rule is a necessary and reasonable way to ensure that a charging party who informally writes to the Department is protected if the 6 month state of limitations lapses before a formal charge is filed.

7. That this rule is fair to all persons concerned and consistent with Minn. Stat. § 363.06.

With respect to Hum.Rts. 102(f):

8. That this rule will provide a fair and efficient way for the Department to deal with the reoccurring problem caused by charging parties who move without notifying the Department and become impossible to contact.

With respect to 103(d):

9. That this rule will aid the Department in performing an efficient and speedy investigation.

10. That 15 days is generally a reasonable time period to allow for a party to complete interrogatories.

11. That the provision allowing extensions of time for good cause will enable a party to obtain more time when 15 days is insufficient.

12. That this rule is within the commissioner's powers pursuant to Minn. Stat. § 363.05 subd. 1(9) and (10) (1974).

With respect to 107(c), 108, and 110:

13. That these rules establish time periods which are reasonable and fair. They will ensure that a respondent has adequate time in which to answer a complaint and prepare for a hearing.

With respect to 113(b):

14. That this rule merely clarifies the present rules.

15. That it is helpful for a fair and complete hearing to allow the examiner or panel to question witnesses at the hearing.

16. That this rule continues the present and important policy of not allowing the panel or examiner to question a witness prior to the hearing.

With respect to changes to eliminate sex-based language:

17. That these changes are appropriate to make clear that the Department's rules apply to all persons, regardless of sex, and that all persons are treated with equal respect and dignity by the Department.

18. That these changes are changes in the language, rather than in the substance, of the rules.

With respect to the provisions on class actions:

19. That these rules establish reasonable and fair procedures for the conduct of class actions.

20. That these rules will remedy the situation following Richardson v. School Board of Independent School District No. 271, 210 N.W.2d 911 (1973). In that case, the Minnesota Supreme Court recognized that Minn. Stat. ch. 363 empowers the Commissioner of the Minnesota Department of Human Rights to bring class actions but noted that the commissioner had not adopted any rules of procedure for class actions.

21. That these rules are patterned after the class action proceedings used in federal and Minnesota state courts, since the court procedures are familiar to attorneys and other

people involved with discrimination cases and since these procedures offer the basis for a feasible approach to class actions.

22. That the rules make various changes in the procedures used by the courts. These changes include the omission of the numerosity requirement, the provision for intervention, and the absolute requirement of a maintenance determination as soon as practicable. These changes are appropriate because:

(1) pursuant to Minn. Stat. ch. 363, the commissioner issues the complaint and the individual against whom the discrimination allegedly occurred is not a party to the action,

(2) Minn. Stat. ch. 363 does not provide for intervention by any individual,

(3) the commissioner is serving a public interest in seeking to eliminate discrimination, and

(4) administrative procedures should be particularly simple, quick and flexible.

23. That the rules make some modifications in the proposed rules. The changes in rules 107(e) and (f) are desirable since they establish a simpler procedure in which the commissioner sues on behalf of a class only after a consideration of all the relevant factors and the maintenance order may be part of the final order when a separate, earlier maintenance determination is unnecessary. An earlier order would be unnecessary, for example, if the respondent and panel or examiner agree with the commissioner's decision to sue on behalf of a class and the commissioner's definition of the class. This modification furthers the goals of flexibility and simplicity, is consistent with the spirit and intent of the proposed regulations, and does not significantly change the substance of the regulations as they were proposed.

24. That the modification in the form of the notice requirement of 107(g) avoids the rigidity and problems which result from the wording used in the courts' rules, and yet ensures notice which complies with due process and notions of fairness. Since this rule, like the proposed rule, will generally require individual notice, the modification does not make a significant change in the substance of the regulations.

25. That the modification of the numbering and lettering of the provisions of 107 furthers clarity and causes no significant change in substance.

26. That the rules ensure fairness for all persons concerned by providing for

(1) a determination by the panel or examiner with respect to the maintenance of the class action and the definition of the class,

(2) notice to members or potential members of the class,

(3) exclusion from the class with respect to monetary relief at the request of potential members,

(4) appropriate orders by the panel or examiner during the conduct of the class action, and

(5) approval of the panel or examiner before dismissal or compromise of a class action.

27. That the class action regulations, including other provisions not specifically referred to herein, are found to be supported by the evidence, consistent with fairness, and in furtherance of the purposes of Minn. Stat. ch. 363.

Dated: October 22, 1975.

William L. Wilson

WILLIAM L. WILSON
Commissioner
Department of Human Rights

STATE OF MINNESOTA

DEPARTMENT OF HUMAN RIGHTS

COUNTY OF RAMSEY

In the Matter of the Proposed Adoption of Rules Governing the Procedures of the Department of Human Rights

ORDER ADOPTING RULES

The above-entitled matter came on for a hearing before the Minnesota Department of Human Rights Commissioner on the 6th day of May, 1975 at 9:00 a.m. in Conference Room A of the Capitol Square Building, St. Paul, Minnesota, after proper notice required by Minn. Stat. § 15.0412 (1974) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above-captioned rules.

NOW, THEREFORE, OT IS ORDERED that these rules are adopted this 22 day of October, 1975, pursuant to authority vested in me by Minn. Stat. § 363.05 subd. 1(8) (1974).

William L. Wilson

WILLIAM L. WILSON
Commissioner,
Minnesota Department of Human Rights

STATEMENT OF COMPLIANCE WITH
MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Erica Jacobson, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed.

Erica Jacobson
ERICA JACOBSON

Dated: October 21, 1975.