

CHAPTER 5000
DEPARTMENT OF HUMAN RIGHTS
DISCRIMINATION COMPLAINTS; CERTIFICATES

5000.0100	DEFINITIONS.	5000.1800	PUBLIC CONDUCT AT HEARING.
5000.0200	GENERAL TERMS.	5000.1900	RECORD.
	AGENCY PROCEDURE	5000.2000	DECISION OF HEARING PANEL OR ADMINISTRATIVE LAW JUDGE.
5000.0300	DUE PROCESS RIGHTS.	5000.2100	DISTRICT COURT REVIEW.
5000.0400	CHARGES.	5000.2200	POLICY LETTERS.
5000.0500	INVESTIGATION AND DISCOVERY.	5000.2300	SEVERABILITY.
5000.0600	DETERMINATION OF UNFAIR DISCRIMINATORY PRACTICES.	5000.2400	CONSTRUCTION.
5000.0700	APPEAL OF NO PROBABLE CAUSE DETERMINATION.		CERTIFICATES OF COMPLIANCE FOR PUBLIC CONTRACTS
5000.0800	CONCILIATION AND SETTLEMENT.	5000.2500	CONTRACT AWARDS.
5000.0900	COMPLAINT.	5000.2600	ISSUANCE OF CERTIFICATES OF COMPLIANCE.
5000.1000	NOTICE OF HEARING ON COMPLAINT.	5000.2700	COMPLIANCE REVIEW.
5000.1100	CLASS ACTION SUITS.	5000.2800	DENIAL, SUSPENSION, AND REVOCATION.
5000.1200	ANSWER.	5000.2900	REAPPLICATION FOR COMPLIANCE CERTIFICATE.
5000.1300	MOTIONS AND PETITIONS.	5000.3000	REFERRAL TO LOCAL COMMISSIONS.
5000.1400	HEARING PANEL OR ADMINISTRATIVE LAW JUDGE.	5000.3100	VIOLATIONS.
5000.1500	PREHEARING CONFERENCE.	5000.3200	SEVERABILITY.
5000.1600	HEARING ON A COMPLAINT.	5000.3300	CONSTRUCTION.
5000.1700	EVIDENCE.		

5000.0100 DEFINITIONS.

Subpart 1. **Scope.** All words defined in Minnesota Statutes, section 363.01 shall have the meanings therein ascribed to them for the purposes of parts 5000.0100 to 5000.3300. All other words shall have the meanings herein ascribed to them.

Subp. 2. **Act.** "Act" means the Minnesota Human Rights Act, Minnesota Statutes, chapter 363.

Subp. 3. **Agency.** "Agency" means any officer, board, commission, bureau, division, department, or agency of the state.

Subp. 4. **Applicant.** "Applicant" means any person who has made application to the commissioner for a certificate of compliance, but shall not include a respondent-applicant.

Subp. 5. **Bidder.** "Bidder" means any person who submits a bid to any agency of the state for a contract which is required by law or otherwise to be based on competitive bids.

Subp. 6. **Certificate of compliance.** "Certificate of compliance" means a certificate issued to a person pursuant to the rules contained herein.

Subp. 7. **Charge.** "Charge" means a sworn written statement filed by any person, including the commissioner, containing an allegation that a person may have engaged or may be engaging in an unfair discriminatory practice.

Subp. 8. **Commissioner.** "Commissioner" means the commissioner of human rights or an agent authorized by the commissioner of human rights.

Subp. 9. **Complaint.** "Complaint" means a document issued by the commissioner pursuant to Minnesota Statutes, section 363.06 alleging that a respondent has engaged in or is engaging in an unfair discriminatory practice.

Subp. 10. **Compliance application.** "Compliance application" means an application for a certificate of compliance submitted to the commissioner by a respondent-applicant.

Subp. 11. **Compliance review.** "Compliance review" means a review of an applicant's or holder's activities in respect of public contracts in accordance with the rules contained herein for the purpose of determining whether the applicant or holder is in compliance with the act and the rules adopted pursuant thereto.

MINNESOTA RULES 1985

4405

DISCRIMINATION COMPLAINTS; CERTIFICATES 5000.0400

Subp. 12. **Contract letting agency.** "Contract letting agency" means any department or agency of the state or its political subdivisions which is responsible for awarding public contracts.

Subp. 13. **Holder.** "Holder" means any person who has been issued a certificate of compliance which has neither been suspended or revoked.

Subp. 14. **Panel.** "Panel" means a three-person hearing panel, at least one of whom shall be an attorney admitted to the practice of law, appointed by the commissioner from the state board of human rights to hear a complaint.

Subp. 15. **Party.** "Party" means a charging party, a complainant, or a respondent.

Subp. 16. **Pending application.** "Pending application" means an application for a certificate of compliance pending before the commissioner except a compliance application.

Subp. 17. **Public contract.** "Public contract" means any contract for or on behalf of the state or its political subdivisions, including any county, city, borough, town, township, school district, or any other district in the state.

Subp. 18. **Respondent-applicant.** "Respondent-applicant" means any person whose certificate of compliance has been denied or revoked pursuant to Minnesota Statutes, section 363.073, subdivision 2, and who submits a compliance application to the commissioner.

Subp. 19. **State.** "State" means state of Minnesota.

Statutory Authority: *MS s 363.05 subd 1*

5000.0200 GENERAL TERMS.

Subpart 1. **Time.** Unless otherwise specified herein, any period of time prescribed or allowed by parts 5000.0100 to 5000.3300 shall be computed in accordance with rule 6 of the Minnesota Rules of Civil Procedure.

Subp. 2. **Service.** Unless otherwise specified herein, service of any matter under parts 5000.0100 to 5000.3300 shall be accomplished in accordance with the appropriate rule of the Minnesota Rules of Civil Procedure.

Statutory Authority: *MS s 363.05 subd 1*

AGENCY PROCEDURE

5000.0300 DUE PROCESS RIGHTS.

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.

Statutory Authority: *MS s 363.05 subd 1*

5000.0400 CHARGES.

Subpart 1. **Content.** A charge shall contain: the name and address of the person filing the charge; the name and address of the person against whom the charge is filed; a clear and concise statement of the facts which, in the judgment of the person filing the charge, may constitute the alleged unfair discriminatory practice; the signature of the person filing the charge; and any other information required by the commissioner.

Subp. 2. **Filing.** Notwithstanding the provisions of part 5000.0100, subpart 7 and subpart 1 of this part, 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.

Subp. 3. **Service.** A copy of the charge shall be served by the commissioner upon a respondent either by personal delivery or by registered or certified mail within five days after it has been filed with the department.

Subp. 4. **Withdrawal.** A charge may be withdrawn at any time before a complaint is issued by the commissioner.

Subp. 5. **Amended charges.** A charge may be amended: to cure technical defects or omissions; to allege additional facts if they relate to or grow out of the facts alleged in the original charge; to add, remove, or change a party; or if the purposes of the act will be served thereby.

Subp. 6. **Supplemental information.** 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.

Statutory Authority: *MS s 363.05 subd 1*

5000.0500 INVESTIGATION AND DISCOVERY.

Subpart 1. **Written replies.** Any person against whom a charge has been filed may submit to the commissioner a written reply to the charge. Such reply may contain a statement of the respondent's position and may present any evidence related to the subject matter of the charge.

Subp. 2. **Testimony.** The commissioner may by interview or deposition take the testimony of any person, including a party, relating to the subject matter of a charge or a complaint. The attendance of witnesses may be compelled by the use of subpoena as provided in the act.

Subp. 3. **Production and inspection of documents.** The commissioner may order any person, including a party, to produce and permit the inspection and copying or photographing of any designated documents, papers, books, accounts, letters, photographs, or other tangible things, not privileged, which may constitute or contain evidence relating to the subject matter of a charge or a complaint. The production of any matter heretofore enumerated may be compelled by the use of subpoena as provided in the act.

Subp. 4. **Written interrogatories.** 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 15 days of receipt thereof. For good cause, the commissioner may grant an extension of time for the completion and return of the written interrogatories.

Subp. 5. **Confidentiality.** The commissioner shall not disclose any information obtained during investigation or discovery except as permitted by parts 5000.0700, 5000.0800, and 5000.1600.

Statutory Authority: *MS s 363.05 subd 1*

5000.0600 DETERMINATION OF UNFAIR DISCRIMINATORY PRACTICES.

Subpart 1. **Dismissal of charges.** The commissioner shall issue an order dismissing a charge when the subject matter of such charge falls outside the jurisdiction of the act or when the charge was filed more than six months after the occurrence of the alleged unfair discriminatory practice. Such order shall be a final decision of the department. A copy of an order dismissing a charge shall be served by mail upon the charging party and the respondent.

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

MINNESOTA RULES 1985

4407

DISCRIMINATION COMPLAINTS; CERTIFICATES 5000.0700

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 part 5000.0700.

Subp. 2. Probable cause and conciliation. 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 parts 5000.0100 to 5000.3300.

Statutory Authority: *MS s 363.05 subd 1*

5000.0700 APPEAL OF NO PROBABLE CAUSE DETERMINATION.

Subpart 1. Service of notice of appeal. A charging party against whom a determination of no probable cause has been made may appeal such determination to a review board by serving a written notice of appeal upon the commissioner and the respondent by hand delivery or by mail within 15 days after service of an order dismissing a charge.

Subp. 2. Receipt of notice. 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 Department of Human Rights.

Subp. 3. Review board. The chairperson of the Department 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.

Subp. 4. Time of hearing. The presiding member of the review board shall set the date, time, and place for the hearing. In no event shall the hearing be held later than 30 days after the date on which the commissioner received a notice of appeal from a charging party. The commissioner, the charging party, and the respondent shall be given at least five days written notice of the date, time, and place of the hearing.

Subp. 5. Appearance at hearing. 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.

Subp. 6. Conduct of hearing. 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.

Subp. 7. Decision. The review board shall by written decision, together with a sufficient statement of the reasons therefor, either sustain the determination of no probable cause or remand the case to the commissioner for further investigation and determination as to whether there is probable cause to believe that the respondent has engaged in an unfair discriminatory practice. A decision of the review board to sustain the commissioner's determination of no probable cause shall be a final decision of the department.

A decision of the review board shall be served by registered or certified mail upon the charging party and the respondent within 30 days after the hearing.

Statutory Authority: *MS s 363.05 subd 1*

5000.0800 CONCILIATION AND SETTLEMENT.

Subpart 1. **Invitation to conciliation.** 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 ten day limitation on the time in which the respondent shall respond to the invitation. For good cause the commissioner may grant an extension of time.

Subp. 2. **Termination of conciliation.** 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 parts 5000.0100 to 5000.3300. Conciliation efforts may be resumed at any time upon written request of the commissioner to the respondent.

Subp. 3. **Settlement agreements.** 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 administrative law judge 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.

Subp. 4. **Confidentiality.** The commissioner shall not disclose any information concerning efforts to eliminate an unfair discriminatory practice by way of conciliation.

Statutory Authority: *MS s 363.05 subd 1*

History: *L 1984 c 640 s 32*

5000.0900 COMPLAINT.

Subpart 1. **When issued.** The commissioner shall issue a complaint: 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 when the commissioner has reason to believe that a person is engaging in an unfair discriminatory practice.

Subp. 2. **Content.** A complaint shall contain: the name and address of the complainant; the name of the respondent; the relief sought and the grounds therefore; and the signature of the complainant.

Subp. 3. **Service and filing.** A complaint shall be served upon a respondent by registered or certified mail and filed with a panel or administrative law judge at least ten days before the date of the hearing on the complaint.

MINNESOTA RULES 1985

4409

DISCRIMINATION COMPLAINTS; CERTIFICATES 5000.1100

Subp. 4. **Amendments.** The commissioner may amend a complaint at any time.

Statutory Authority: *MS s 363.05 subd 1*

History: *L 1984 c 640 s 32*

5000.1000 NOTICE OF HEARING ON COMPLAINT.

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 part 5000.0900. A notice of hearing shall be served upon a respondent at least 30 days before the hearing.

Statutory Authority: *MS s 363.05 subd 1*

5000.1100 CLASS ACTION SUITS.

Subpart 1. **Prerequisites.** With the permission of the charging party, the commissioner may sue on behalf of a class only if: there are questions of law or fact common to the class, and the claims of members of the class are of sufficient similarity that a fair hearing of them is possible in a class action, and the commissioner will fairly and adequately protect the interests of the class, and one of the following three conditions exists:

A. the prosecution of separate actions by the commissioner on behalf of individual members of the class would create a risk of 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 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

B. 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

C. 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 for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: the interest of members of the class in individually affecting the prosecution of separate actions; the extent and nature of any litigation concerning the controversy already commenced by members of the class; the desirability or undesirability of concentrating the litigation of the claims in the administrative hearing; the difficulties likely to be encountered in the management of a class action.

Subp. 2. **Decision to maintain as class action.** After an action is brought as a class action, the panel or administrative law judge shall determine by order whether it is to be so maintained. At the discretion of the panel or administrative law judge, such order may be a part of the final order issued in accordance with Minnesota Statutes, section 363.071. 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.

Subp. 3. **Notice to members.** In any class action, prior to the hearing, the panel or administrative law judge 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

MINNESOTA RULES 1985

5000.1100 DISCRIMINATION COMPLAINTS; CERTIFICATES

4410

each member: 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 the decision, whether favorable or not, will include all members who do not request exclusion.

Subp. 4. Conduct of class action. In the conduct of class actions, the panel or administrative law judge may make appropriate orders: determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; requiring a specific type of notice or other protections for the members of the class or for the fair conduct of the action; 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.

Subp. 5. Required approval. A class action shall not be dismissed or compromised without the approval of the panel or administrative law judge. Notice of the proposed dismissal or compromise shall be given to all members of the class in such a manner as the panel or administrative law judge directs.

Subp. 6. Order. In a class action, the order issued in accordance with Minnesota Statutes, section 363.071, 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.

Statutory Authority: *MS s 363.05 subd 1*

History: *L 1984 c 640 s 32*

5000.1200 ANSWER.

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 administrative law judge. Failure to answer the complaint shall be deemed an admission of the allegations therein. A respondent may amend an answer at any time.

Statutory Authority: *MS s 363.05 subd 1*

History: *L 1984 c 640 s 32*

5000.1300 MOTIONS AND PETITIONS.

Subpart 1. General provisions. A party may assert to a panel or administrative law judge by motion only those claims, defenses, or other matters that are consistent with the act and parts 5000.0100 to 5000.3300. All motions, unless made during a hearing, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought.

Subp. 2. Temporary restraining order. At any time after the commissioner has determined that there is probable cause to believe that a respondent has engaged in an unfair discriminatory practice, the commissioner may petition a district court to issue a temporary restraining order in accordance with the provisions of the act.

Subp. 3. Contempt citation. At any time after a charge has been filed or a complaint issued, the commissioner may petition a district court to cite for contempt any person who disobeys a subpoena issued by the commissioner pursuant to the act.

Subp. 4. Order to comply. When a respondent fails or refuses to comply with a final decision of the department, the commissioner may petition a district court to order the respondent to comply with the order of the department. A petition for such an order shall be made in accordance with the provisions of Minnesota Statutes, section 363.091.

Statutory Authority: *MS s 363.05 subd 1*

History: *L 1984 c 640 s 32*

MINNESOTA RULES 1985

4411

DISCRIMINATION COMPLAINTS; CERTIFICATES 5000.1500

5000.1400 HEARING PANEL OR ADMINISTRATIVE LAW JUDGE.

Subpart 1. **Appointment.** The commissioner shall by order, within ten days after issuing a complaint, appoint a panel or administrative law judge to hear the complaint and thereafter shall promptly serve upon the parties by registered or certified mail a copy of such order.

Subp. 2. **Qualifications.** The members of a panel or an administrative law judge shall not be employees of, or on retainer to, the department. One of the members of a panel and any administrative law judge shall be admitted to practice law in Minnesota. The members of a panel and any administrative law judge, after appointment, shall be considered employees of the department for the purposes of receiving compensation, if any, and authorization to conduct the hearing and decide the issues. In other respects the panel or administrative law judge shall be independent of the department. All appointments hereunder shall be consistent with the intention of this part which is to secure as impartial and objective a panel or administrative law judge as is possible.

Subp. 3. **Authority.** A duly appointed panel or administrative law judge shall have the authority to hear and finally decide the issues raised in the complaint. Such authority shall include, but not be limited to, issuing subpoenas, administering oaths, taking testimony, ordering the production of tangible evidence, hearing and ruling on motions, making such preliminary, interlocutory, and other orders as are appropriate, conducting the hearing, and rendering findings of fact, conclusions of law, and an order deciding the case.

Subp. 4. **Disqualification.** A member of a panel or an administrative law judge 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 administrative law judge shall determine the matter as part of the record and decision in the case.

Statutory Authority: *MS s 363.05 subd 1*

History: *L 1984 c 640 s 32*

5000.1500 PREHEARING CONFERENCE.

Subpart 1. **Purpose.** A prehearing conference may be held at the discretion of the panel or administrative law judge preparatory to any hearing. The prehearing conference shall be an informal proceeding conducted fairly and expeditiously by the panel or administrative law judge for the purpose of simplifying the issues to be determined and to reach a settlement on those issues without the necessity for further hearing. Agreements on the simplification of issues shall be put in the form of stipulations and entered on the record. Any final settlement shall be set forth in a settlement agreement or consent order and made a part of the record. Where a panel is to hear and decide the case, any member of the panel who is an attorney may represent the entire panel at the prehearing conference.

Subp. 2. **Right to dismiss.** The panel or administrative law judge may at any stage of the proceedings, including the prehearing conference, after all parties have had an opportunity to present their views, dismiss any sham, capricious, or frivolous case or any case not within the jurisdiction of the department. Where only one member of the panel presides at the prehearing conference, the case may not be dismissed until all three members of the panel have an opportunity to hear the arguments of all parties and to decide the question of dismissal.

Subp. 3. **Limitation.** Prior to a hearing, the panel or administrative law judge shall take no part in any investigation or inquiry into the facts or issues

involved in the case except as permitted by part 5000.1500.

Statutory Authority: *MS s 363.05 subd 1*

History: *L 1984 c 640 s 32*

5000.1600 HEARING ON A COMPLAINT.

Subpart 1. **Parties.** The complainant and the respondent shall be parties to a hearing on a complaint issued in accordance with the act and parts 5000.0100 to 5000.3300.

Subp. 2. **Conduct.** The hearing shall be conducted in the following manner:

A. Complainant may make an opening statement. All other parties may make such statements in a sequence determined by the panel or administrative law judge.

B. Complainant shall present evidence in support of his case. The presentation of evidence by other parties shall follow in a sequence determined by the panel or administrative law judge.

C. Cross-examination of witnesses shall be conducted in a sequence determined by the panel or administrative law judge.

D. When all parties and witnesses have been heard, the parties may make final arguments in a sequence determined by the panel or administrative law judge. Final arguments and any rebuttal evidence may be presented in the form of written memoranda, oral argument, or both.

Subp. 3. **Continuance.** At the discretion of a panel or administrative law judge, a hearing may be continued to a certain date or to a date to be determined in the future.

Statutory Authority: *MS s 363.05 subd 1*

History: *L 1984 c 640 s 32*

5000.1700 EVIDENCE.

Subpart 1. **Parties' rights.** All parties to a hearing may present evidence and oral and written argument with respect to the issues.

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.

Subp. 2. **Admission guidelines.** The panel or administrative law judge 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 administrative law judge shall give effect to the rules of privilege recognizable by law. Evidence which is incompetent, irrelevant, immaterial, or repetitious may be excluded.

Documentary evidence in the form of copies or excerpts may be received or incorporated by reference in the discretion of the panel or administrative law judge or upon agreement of the parties.

The panel or administrative law judge may take notice of judicially cognizable facts and may notice technical facts within the specialized knowledge of the panel or administrative law judge. Where final determination rests on official notice of material facts not appearing in the evidence in the record, a party is entitled, upon timely request, to an opportunity to rebut such facts.

Subp. 3. **Standard of proof.** The complainant shall prove the facts at issue by substantial evidence.

Statutory Authority: *MS s 363.05 subd 1*

History: *L 1984 c 640 s 32*

MINNESOTA RULES 1985

4413

DISCRIMINATION COMPLAINTS; CERTIFICATES 5000.2000

5000.1800 PUBLIC CONDUCT AT HEARING.

Subpart 1. **Media presence.** Television, newsreel, motion picture, still or other cameras may be operated in the hearing room while the hearing is in progress only with the permission of the panel or administrative law judge. No lights or other devices may be used in connection with such cameras other than those employed to light the hearing room. Mechanical recording devices other than those provided by the department or at its direction may be operated in the hearing room during the course of the hearing only with the permission of the panel or administrative law judge.

Subp. 2. **Conduct of individuals.** No person shall interfere with the free, proper, and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt, or threaten interference with or disruption of a hearing. In the event of such interference or disruption or threat thereof, the panel or administrative law judge shall read this part to those persons causing such interference or disruption and thereafter proceed as is deemed appropriate.

Statutory Authority: *MS s 363.05 subd 1*

History: *L 1984 c 640 s 32*

5000.1900 RECORD.

The department shall prepare an official record in each hearing held pursuant to Minnesota Statutes, section 363.071. The record shall contain the following: all pleadings, motions, and intermediate rulings; evidence received or considered; statement of matters officially noticed; questions and offers of proof, objections, and rulings thereon; findings of fact, conclusions of law, and order; and any memorandum of law prepared by the panel or administrative law judge.

A verbatim record of the hearing shall be taken by a court reporter. The commissioner shall provide upon request and without cost to a respondent a transcript of a hearing.

Statutory Authority: *MS s 363.05 subd 1*

History: *L 1984 c 640 s 32*

5000.2000 DECISION OF HEARING PANEL OR ADMINISTRATIVE LAW JUDGE.

Subpart 1. **On the record.** No factual information or evidence not part of the record shall be considered by the panel or administrative law judge in deciding a case.

Subp. 2. **Issuance of final order.** At the conclusion of a hearing held pursuant to Minnesota Statutes, section 363.071 and upon consideration of the record, the panel or administrative law judge shall decide the case by issuing an order in accordance with Minnesota Statutes, section 363.071. Such order shall be supported by written findings of fact and conclusions of law, which may be supplemented by a written memorandum. Such order shall be a final decision of the department and shall be appealable in accordance with the provisions of Minnesota Statutes, section 363.072 and part 5000:2100.

Subp. 3. **Service.** Findings of fact, conclusions of law, orders, and memoranda issued pursuant to Minnesota Statutes, section 363.071 shall be served in accordance with the provisions of that section. All other decisions and orders shall be served on the parties by registered or certified mail.

Statutory Authority: *MS s 363.05 subd 1*

History: *L 1984 c 640 s 32*

MINNESOTA RULES 1985

5000.2100 DISCRIMINATION COMPLAINTS; CERTIFICATES

4414

5000.2100 DISTRICT COURT REVIEW.

Any person aggrieved by a final decision of the department reached after a hearing held pursuant to Minnesota Statutes, section 363.071 and rendered in accordance with part 5000.2000 may seek judicial review pursuant to Minnesota Statutes, sections 14.63 to 14.68.

Statutory Authority: *MS s 363.05 subd 1*

5000.2200 POLICY LETTERS.

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.

A request for a policy letter shall be in writing and shall contain: the name and address of the person making the request and of other interested persons, if any; a statement of all known relevant facts; a statement of reasons why the policy letter should be issued; and the signature of the person making the request.

Statutory Authority: *MS s 363.05 subd 1*

5000.2300 SEVERABILITY.

If any provision of parts 5000.0100 to 5000.3300 is held invalid, the invalidity does not affect any provision of these rules which can be given effect without the invalid provision and to this end the provisions of these rules are severable.

Statutory Authority: *MS s 363.05 subd 1*

5000.2400 CONSTRUCTION.

Parts 5000.0100 to 5000.3300 shall be construed liberally to effectuate the purposes of the act.

Statutory Authority: *MS s 363.05 subd 1*

CERTIFICATES OF COMPLIANCE FOR PUBLIC CONTRACTS

5000.2500 CONTRACT AWARDS.

No agency shall award any contract estimated to exceed \$2,000 to any bidder unless prior to the award of the contract, the bidder is a holder of a certificate of compliance or has pending before the commissioner an application for a certificate of compliance which has not been denied.

Statutory Authority: *MS s 363.073 subd 1*

5000.2600 ISSUANCE OF CERTIFICATES OF COMPLIANCE.

Subpart 1. **Persons eligible.** Certificates of compliance shall be issued to any person who makes written application to the commissioner therefor and is not found pursuant to Minnesota Statutes, section 363.073, subdivision 2 to have committed an unfair discriminatory practice in respect of any public contract which the applicant has performed within six months of making application or which the applicant is performing at the time of, or subsequent to, making such application.

Subp. 2. **Written application.** Application shall be made in accordance with parts 5000.0100 to 5000.3300 upon such forms as the commissioner shall provide and shall be mailed or delivered to the St. Paul office of the Department of Human Rights.

Where an applicant has performed on a public contract within six months of making application for a certificate of compliance or where an applicant is performing a public contract at the time of, or subsequent to, making such application, the commissioner may request additional information relative to the applicant's compliance with the act in respect of the public contract.

MINNESOTA RULES 1985

4415

DISCRIMINATION COMPLAINTS; CERTIFICATES 5000.2700

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.

Subp. 3. Compliance with federal regulations. In lieu of the requirements for issuance of a certificate of compliance as provided herein, an applicant shall be issued a certificate of compliance upon certification to the commissioner by the appropriate federal agency that the applicant's business operation located within the state is in compliance with the regulations of the federal government in respect of discriminatory practices.

Subp. 4. Available information. Upon request, the commissioner shall furnish to any unit of state or local government which awards public contracts or to any local commission a list of persons who either have received certificates of compliance or have pending an application therefor. Any unit of state or local government which awards public contracts desiring to receive such information on a regular basis may register with the commissioner for that purpose. The commissioner shall, at least quarterly, provide such a list to registered units of state or local government which award public contracts and local commissions.

Statutory Authority: *MS s 363.073 subd 1*

5000.2700 COMPLIANCE REVIEW.

Subpart 1. Purpose. For the purpose of obtaining information regarding compliance with the act by an applicant or holder, the commissioner may conduct compliance reviews.

Subp. 2. Questionnaires and on-site investigations. Upon receipt of an application for a certificate of compliance, the commissioner may send to an applicant who has performed on a public contract within six months of making such application or who is performing on a public contract at the time of, or subsequent to, the making of such application, a compliance review questionnaire which shall be completed and returned by the applicant to the commissioner within 30 days of receipt thereof. For good cause, the commissioner may grant an extension of time for completion of the compliance review questionnaire.

The commissioner may make an on-site investigation of the business operation of an applicant in respect of public contracts which an applicant has performed within six months of making application or is performing at the time of, or subsequent to, the making of an application under rules herein. Where the commissioner makes such on-site investigation, the applicant shall permit access to the commissioner during normal business hours to his books, records, accounts, and personnel relevant to compliance with the act with respect to public contracts.

Where an applicant has not performed on a public contract within six months of making application for a certificate of compliance, or is not presently engaged in the performance of a public contract at the time of making an application to the commissioner, and does not become so engaged while the application is pending, the commissioner shall issue a certificate of compliance to the applicant within 90 days upon receipt of the application, provided the applicant has complied with the requirements of part 5000.2600, subpart 2.

Subp. 3. Duties of holders. 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.

Holders of certificates of compliance shall file with the commissioner a contract compliance review report in respect of their performance under public

MINNESOTA RULES 1985

5000.2700 DISCRIMINATION COMPLAINTS; CERTIFICATES

4416

contracts six 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.

In addition to receiving contract compliance review reports, the commissioner may conduct further investigations, including review of employment practices and on-site inspections of the holder's business operations with respect to public contracts.

Nothing contained herein shall be construed to exempt holders who are also certified as being in compliance with the regulations of the federal government in respect of discriminatory practices pursuant to part 5000.2600, subpart 3 from the applicable compliance review procedures in this subpart.

Statutory Authority: *MS s 363.073 subd 1*

5000.2800 DENIAL, SUSPENSION, AND REVOCATION.

Subpart 1. Issuance of complaint by commissioner. Whenever the commissioner has received a verified charge filed pursuant to Minnesota Statutes, section 363.06, subdivision 1 in respect of a public contract and the commissioner has determined that probable cause exists to credit the allegations of the unfair discriminatory practice, the commissioner may issue a complaint in accordance with the provisions of Minnesota Statutes, section 363.06.

Whenever the commissioner has reason to believe that an applicant for, or a holder of, a certificate of compliance has engaged in an unfair discriminatory practice in respect of a public contract, the commissioner may issue a complaint in accordance with the provisions of Minnesota Statutes, section 363.06.

Subp. 2. Elimination of discrimination. In complying with subpart 1 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.

Subp. 3. Order to deny, suspend, or revoke. If the panel or administrative law judge finds that an applicant or a holder has committed an unfair discriminatory practice in respect of a public contract, the panel or administrative law judge shall make findings of fact and conclusions of law and shall issue an order denying, suspending, or revoking the certificate of compliance, and directing the applicant or holder to cease and desist from engaging in the unfair discriminatory practice found to exist, and to take such affirmative or remedial action with respect to the unfair discriminatory practice as will effectuate the purposes of Minnesota Statutes, chapter 363. The panel or administrative law judge shall cause the findings of fact, conclusions of law, and order to be served upon the applicant or holder personally.

Subp. 4. Notice. Upon denial, suspension, or revocation of a certificate of compliance by a panel or administrative law judge in an order based upon a finding that an applicant or holder has committed an unfair discriminatory practice in respect of a public contract, the commissioner shall notify all agencies and departments of the state and local commissions of such denial, suspension, or revocation, and, in addition, shall notify any county, city, borough, town, township, school, school district, or any other district in the state or other political subdivision of the state for which the applicant or holder is performing under a public contract.

Subp. 5. Effect of order on public contract. In making an order based on a finding that the holder or applicant has committed an unfair discriminatory practice in respect of a public contract, the panel or administrative law judge

MINNESOTA RULES 1985

4417

DISCRIMINATION COMPLAINTS; CERTIFICATES 5000.3000

shall not terminate or abridge any public contract which the applicant or holder has with any department or agency of the state where the commissioner's complaint was issued after the date of the award of the public contract.

Subp. 6. Reinstatement. The commissioner shall reinstate a suspended certificate of compliance within 90 days after he finds that the former holder has ceased engaging in any unfair discriminatory practice, and has in all other respects complied with the order of the panel or administrative law judge.

Subp. 7. Hearing and appeal. A hearing on a complaint issued pursuant to subpart 1 shall be conducted in accordance with rules for public hearing promulgated by the commissioner and in accordance with Minnesota Statutes, chapters 15 and 363.

Minnesota Statutes, section 363.072 shall govern any appeal taken from the order of the panel or the administrative law judge. For purposes of appeal, the order of the panel or the administrative law judge shall be considered to be the final decision of the Department of Human Rights.

Statutory Authority: *MS s 363.073 subd 1*

History: *L 1984 c 640 s 32*

5000.2900 REAPPLICATION FOR COMPLIANCE CERTIFICATE.

Following the denial or revocation of a certificate of compliance, a person may reapply for said certificate by submitting to the commissioner a compliance application upon such forms as the commissioner shall provide. In addition to the information required pursuant to parts 5000.2500 and 5000.2600, the compliance application shall set forth information showing that the respondent-applicant has ceased engaging in the unfair discriminatory practice upon which the panel or administrative law judge based its order denying or revoking the respondent-applicant's certificate of compliance, and has in all other respects complied with the order of the panel or administrative law judge.

Upon receipt of the compliance application, and the other information required by this part, 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.

A denial of compliance application shall not be construed to prevent a person from submitting another compliance application.

Statutory Authority: *MS s 363.073 subd 1*

History: *L 1984 c 640 s 32*

5000.3000 REFERRAL TO LOCAL COMMISSIONS.

The commissioner may refer an application for a certificate of compliance to a local commission for investigation, study, and report in accordance with Minnesota Statutes, section 363.115. The local commission shall, within 60 days upon receipt of the referral, make a report and recommendations to the commissioner. Such report and recommendations shall be conducted by the local commission in accordance with parts 5000.0100 to 5000.3300 and shall be made in lieu of an investigation made by the commissioner in accordance with these rules.

Upon receipt of the report, the commissioner shall, within 30 days, issue the certificate of compliance or issue a complaint upon a determination that there is reason to believe that the applicant is engaging in an unfair discriminatory practice in respect of a public contract.

Statutory Authority: *MS s 363.073 subd 1*

MINNESOTA RULES 1985

5000.3100 DISCRIMINATION COMPLAINTS; CERTIFICATES

4418

5000.3100 VIOLATIONS.

Except where otherwise specifically provided, any person violating, or failing to comply with a provision of the act or parts 5000.0100 to 5000.3300 shall be deemed by the commissioner to have committed an unfair discriminatory practice as set forth in Minnesota Statutes, section 363.03, subdivision 6 and the commissioner may issue a complaint pursuant thereto.

Statutory Authority: *MS s 363.073 subd 1*

5000.3200 SEVERABILITY.

If any provision of parts 5000.0100 to 5000.3300, or the application thereof to any person is held invalid, the invalidity does not affect any provision or application of these rules which can be given effect without the invalid provision or application, and to this end the provisions of these rules are severable.

Statutory Authority: *MS s 363.073 subd 1*

5000.3300 CONSTRUCTION.

Parts 5000.0100 to 5000.3300 shall be construed liberally to effectuate the purposes of the act.

Statutory Authority: *MS s 363.073 subd 1*