

City of Seattle  
OFFICE OF HEARING EXAMINER

**PROPOSED REVISED**  
**HEARING EXAMINER**  
**RULES FOR DISCRIMINATION CASES**

(Effective December 1, 2009)

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**HEARING EXAMINER  
RULES FOR DISCRIMINATION CASES**

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City of Seattle  
Office of Hearing Examiner

**RULES FOR DISCRIMINATION CASES**

**SECTION 1 GENERAL PROVISIONS**

**1.01 APPLICABILITY**

(a) These Rules For Discrimination Cases (RDC) supplement Seattle Municipal Code and ordinances, and other applicable law, for matters within the jurisdiction of the Hearing Examiner under Chapters 14.04, 14.06, 14.08 and 14.10 SMC, and govern administrative practice and procedure before the Hearing Examiner, (or Hearing Examiner and members of the Human Rights Commission, as applicable). In case of conflict between a RDC and the Seattle Municipal Code or other applicable law, the Seattle Municipal Code or other applicable law controls.

(b) These Rules apply to all matters properly before the Hearing Examiner (or Hearing Examiner and members of the Human Rights Commission, as applicable) on or after the Rules' effective date.

**1.02 INTERPRETATION OF RULES**

(a) The Hearing Examiner shall interpret the Discrimination Rules and determine their application.

(b) While a matter is pending before the Hearing Examiner (or Hearing Examiner and members of the Human Rights Commission, as applicable), an affected party may request by motion that the Hearing Examiner issue a declaratory ruling on the applicability of a Rule to identified, existing circumstances. The motion must clearly identify the Rule and describe the circumstances for which the declaratory ruling is sought. Unless brought during a hearing, the motion must be in writing.

(c) When questions of practice or procedure arise that are not addressed by these Rules, the Hearing Examiner shall determine the practice or procedure most appropriate and consistent with providing fair treatment and due process. The Hearing Examiner may look to the Washington Civil Rules for Superior Court for guidance.

### **1.03 PETITION FOR RULES (SMC 3.02.040)**

Any interested individual may petition the Hearing Examiner requesting adoption, amendment or repeal of any rule. The petition shall be in writing, signed by the petitioner, and shall include:

- (a) The name and address of the petitioner; and
- (b) In the case of a petition for adoption, the substance of the requested rule, and a brief statement of the reason why adoption of the rule is necessary or desirable; or
- (c) In the case of a petition for amendment or repeal of a rule, the number of the rule to be amended or repealed, the substance of any requested amendment, and a brief statement of the reason why an amendment or repeal of the rule is necessary or desirable.

In accordance with SMC 3.02.040, no later than 60 days after a petition is submitted, the Hearing Examiner will either deny the petition in writing, stating the reasons for the denial, or initiate rulemaking proceedings concerning the subject of the petition in accordance with SMC 3.02.030.

## **SECTION 2    RULES OF GENERAL APPLICATION**

### **2.01    SCOPE OF RULES**

Except as stated in Section 3, Rules in this section apply to contested cases before the Hearing Examiner that do not include a City department as a respondent, and that arise under Chapter 14.04 SMC, the Fair Employment Practices Ordinance (FEP); Chapter 14.06 SMC, the Public Accommodations Ordinance (PA); Chapter 14.08 SMC, the Open Housing Ordinance (OH); and Chapter 14.10 SMC, the Fair Contracting Ordinance (FC).

### **2.02    DEFINITIONS**

The following definitions apply unless the context requires otherwise:

- (a)    “Administrative Code” – Chapter 3.02 SMC.
- (b)    "Affidavit" - a written or printed statement of facts confirmed by oath or affirmation of the one making it, before one having authority to administer oaths.
- (c)    "Business days" - days other than Saturday, Sunday, and national, state and City of Seattle holidays.
- (d)    “Charging Party” – a natural person, the Director, or the Office for Civil Rights, who has filed a charge alleging an unfair employment practice under the FEP, unfair public accommodations practice under the PA, unfair housing practice under the OH, or unfair contracting practice under the FC.
- (e)    “City” – City of Seattle.
- (f)    “City department” – any agency, office, board or commission of the City, or any department employee acting on its behalf, but does not include a public corporation chartered under Chapter 3.110 SMC, or any contractor, consultant or concessionaire or lessee.
- (g)    “Code” – Seattle Municipal Code.
- (h)    “Commission” – Human Rights Commission.
- (i)    “Commission representative” – a member of the Human Rights Commission appointed by the Commission to hear a case with the Hearing Examiner.
- (j)    “Complaint” – a document relating to the charge and facts discovered during an investigation done pursuant to the FEP, PA, OH or FC that is prepared by the City Attorney and filed with the Hearing Examiner.

- (k) "Days" - calendar days.
- (l) "Declaration" - a written or printed statement of facts declared or certified to be true and correct under penalty of perjury under the laws of the State of Washington.
- (m) "Department" – the Office for Civil Rights.
- (n) "Director" – the Director of the Office for Civil Rights.
- (o) "Hearing Examiner" – the Seattle Hearing Examiner, a Deputy Hearing Examiner, or a Hearing Examiner pro tempore appointed by the Hearing Examiner from a list approved by the Commission pursuant to the FEP, PA, OH, or FC.
- (p) "Hearing Officer" – the Hearing Examiner, or the Hearing Examiner and a Commission representative, when hearing a case.
- (q) "Order" - a ruling, instruction, or other directive issued by the Hearing Examiner in response to a request or motion by a party, or on the Hearing Examiner's own initiative. Where allowed by law, an order may direct how the Hearing Examiner's decision is to be implemented and may be issued as part of that decision or separately.
- (r) "Motion" - a request made to the Hearing Examiner for an order or other ruling.
- (s) "Party" – the Department, the Charging Party, or the Respondent.
- (t) "Person" – a person as defined in the FEP, PA, OH or FC, as applicable.
- (u) "Respondent" – a person alleged to have committed an unfair practice under the FEP, PA, OH or FC.
- (v) "Supplemental complaint" – a document relating to the charge and facts discovered during an investigation done pursuant to the FEP, PA, OH or FC that is prepared and filed by the Charging Party as provided by these Rules

### **2.03 REPRESENTATION**

Only the following may appear before the Hearing Officer in a representative capacity:

- (a) an attorney entitled to practice before the Washington Supreme Court;
- (b) with the permission of the Hearing Examiner, an attorney entitled to practice before the highest court of record in any other state or the District of Columbia, unless prohibited by Washington law;

(c) a legal intern under Rule 9 of the Washington Supreme Court Admission to Practice Rules.

#### **2.04 COMPUTATION OF TIME**

Unless otherwise provided by law, computation of any period of time under these Rules begins with the first day after the day on which the act or event that started the time period occurred. When the last day of the time period so computed is a Saturday, Sunday, or national, state or City holiday, the time period extends to the end of the next business day.

#### **2.05 EXPECTED CONDUCT AND APPEARANCE OF FAIRNESS**

(a) Anyone appearing before the Hearing Officer shall conduct himself or herself with civility and courtesy toward everyone involved in the hearing.

(b) The appearance of fairness doctrine applies to proceedings under these Rules.

(c) No one with an interest in the outcome of a proceeding shall communicate or attempt to communicate *ex parte* with the Hearing Officer or the Hearing Officer's employees or representatives concerning a substantive matter in a proceeding governed by these Rules.

(d) If a prohibited *ex parte* communication is made, the communication shall be publicly disclosed by the Hearing Officer: any written communications, and a memorandum summarizing the substance of and participants in all oral communications, shall promptly be made available to the parties for review and an opportunity provided for them to rebut the communications.

#### **2.06 FILING AND SERVICE OF DOCUMENTS**

(a) Documents are deemed filed with the Hearing Examiner on receipt at the Office of Hearing Examiner on business days between the hours of 8 a.m. and 5 p.m. unless the Hearing Examiner has specified otherwise.

(b) A party may file no more than 15 pages with the Office of Hearing Examiner by electronic facsimile without the prior permission of the Hearing Examiner.

(c) Service of the original summons and complaint shall be by personal service or by other manner of service provided by Superior Court Civil Rule 4.

(d) Unless otherwise provided by law, by the Hearing Examiner, or by agreement of the parties, all documents other than the summons and complaint shall be served on all parties personally, by first-class, registered, or certified mail, or by facsimile

transmission. City agencies may serve other City agencies through the City's regular interoffice mail. Proof of service must be filed with the Hearing Examiner.

(e) Unless otherwise provided by the Hearing Examiner, or by agreement of the parties, service is complete at the time documents are personally delivered, or confirmed as having been successfully transmitted by facsimile. Unless earlier receipt is shown, service by mail is complete three days after deposit in the regular facilities of the US mail of a properly stamped and addressed letter or packet.

## **2.07 MOTIONS**

(a) All motions shall be addressed to the Hearing Examiner and shall state the order or relief requested and the grounds for the motion. All motions other than those made during a hearing shall be in writing. Every motion, response, and accompanying paper, shall be served on each party representative on the day it is filed with the Hearing Examiner. (See RDC 2.06 on Filing and Service of Documents.)

(b) Within 7 days after service of a written motion, or such other time as may be designated by the Hearing Examiner, any other party may file a written response. After the Hearing Examiner has received any written responses, or the 7 days or other designated time has elapsed, the Hearing Examiner may rule on the motion. Failure of a party to file a timely response may be considered by the Hearing Examiner as evidence of that party's consent to the motion.

(c) The Hearing Examiner may provide for the filing of a reply or other additional briefing on a motion, and may call for oral argument prior to ruling.

(d) For motions made at hearing, and motions made for the extension of time or to expedite the hearing, the Hearing Examiner may waive the requirements of this section and may also rule upon such motions orally.

(e) Motions to dismiss or other dispositive motions, and motions to exclude evidence (testimony or exhibits) shall be filed at the earliest possible time in the proceedings in order to allow time for the other party to respond, as provided in subsection (b) above, and to ensure that the Hearing Examiner will consider the motions on the merits.

## **2.08 COMPLAINT**

(a) A complaint filed by the City Attorney shall include the following:

- (1) a caption identifying the parties to the case;
- (2) a statement that the Department has investigated the matters alleged in the complaint and prepared a finding that there is reasonable cause to believe that the respondent has committed or is committing an unfair practice, and identifying the unfair practice;

(3) a statement that the Department has endeavored to eliminate the unfair practice by conciliation, and has made a finding that no agreement can be reached;

(4) a clear and concise statement of the facts on which the Department's finding is based; and

(5) a request for relief, setting out the terms of relief believed to be appropriate if the matters alleged in the complaint are proved.

(b) The City Attorney shall serve the summons and complaint on the respondent and the charging party as provided in RDC 2.06(c) and file the summons and complaint with the Hearing Examiner. The summons shall be in the usual form provided by law and shall include the following:

(1) a statement that pursuant to these Rules, the respondent is required to respond within 20 days of the filing of the complaint; and

(2) a statement that the charging party may elect to participate in the hearing independently of the City Attorney by filing a notice of ancillary appearance and a supplemental complaint as provided in RDC 2.09 and 2.06.

## **2.09 SUPPLEMENTAL COMPLAINT BY CHARGING PARTY**

(a) If a charging party, other than the Director, wishes to participate in the hearing independently of representation by the City Attorney, the charging party shall file a notice of ancillary appearance and a supplemental complaint with the Hearing Examiner within 20 days after service of the summons and complaint on the charging party, and shall serve them on the respondent and City Attorney as provided in RDC 2.06 for service of the summons and complaint. If the Hearing Examiner finds that the charging party's separate appearance will not unduly delay the proceeding or prejudice the parties, the Examiner may allow the notice of ancillary appearance to be filed at a later date, but in no event later than the start of the hearing.

(b) A supplemental complaint may adopt by reference the complaint filed by the City Attorney and/or may include additional allegations of fact and citation of legal authority that relate to the charge addressed in the complaint.

(c) A charging party who files a notice of ancillary appearance and a supplemental complaint may offer proof at the hearing consistent with the supplemental complaint.

(d) If the charging party does not file a timely notice of ancillary appearance and supplemental complaint, the case in support of the charging party shall be presented solely by the City Attorney.

## **2.10 AMENDMENT OF THE COMPLAINT**

A complaint or supplemental complaint may be amended only with the permission of the Hearing Examiner. Permission shall be given when justice will be served by the amendment and all parties are allowed time to respond to additional or expanded charges that they could not have reasonably foreseen.

## **2.11 ANSWER**

The respondent shall file an answer to the complaint with the Hearing Examiner and serve a copy on all parties of record no later than 20 days after the date the complaint is filed. An answer to a supplemental complaint must be filed with the Hearing Examiner and served on all parties of record no later than 20 days after the date the supplemental complaint is filed. A charging party who is not represented by counsel shall be served by delivering a copy of the answer, addressed to the charging party, to the Department.

## **2.12 DEFAULT**

(a) When a respondent has failed to appear, plead, or otherwise defend as provided by these Rules, and that fact is made to appear by motion and proof of service of the pleadings and notice of hearing, a motion for default may be filed with the Hearing Examiner. A copy of the motion and proof of service must be served on all other parties.

(b) The Hearing Examiner shall rule on the motion for default no sooner than seven days after the date the motion was served, and may call for argument prior to ruling on the motion.

(c) If the motion for default is granted, the Hearing Examiner shall decide whether a hearing is required to determine the appropriate relief to be afforded. A party who has been found in default shall have all rights of a party at any hearing held to determine relief.

(d) The Hearing Examiner may set aside a default for good cause shown by motion and affidavit or declaration, and upon such terms as the Hearing Examiner deems just.

## **2.13 WITHDRAWAL OF COMPLAINT**

The complaint or any part thereof may be withdrawn if the parties agree to a settlement of all or a part of the case, or for other reasons, and upon such terms and conditions as the Hearing Examiner finds just and reasonable. If the complaint or any part is withdrawn upon an agreed settlement, the agreement shall be reduced to writing, signed by the parties, entered by order of the Director in accordance with the Code, and filed with the Hearing Examiner, who shall then sign an order dismissing the complaint.

## **2.14 NOTICE OF HEARING**

Within 20 days of the filing of a complaint, the Hearing Examiner shall set and give notice of a date for the hearing, which shall be no earlier than 90 and no later than 120 days from the date the complaint was filed, unless otherwise ordered by the Hearing Examiner. The Hearing Examiner shall give notice of the date of the hearing to the Human Rights Commission, all counsel of record, and all parties not represented by counsel. The hearing may be had on shorter notice when the Hearing Examiner determines that substantial injury to a party would otherwise result. The notice shall include:

- (a) a statement of the time, date, place and nature of the proceeding;
- (b) a statement of the legal authority for the hearing, including a reference to the section of the applicable ordinance or rules;
- (c) a short and plain statement of the matters asserted as ascertained from the complaint; and
- (d) a statement of how the parties may obtain a copy of these Rules.

## **2.15 CONTINUANCE OF HEARING**

The Hearing Examiner may continue a scheduled hearing on the Examiner's own motion, or on the motion of a party for good cause shown.

## **2.16 PARTICIPATION BY THE HUMAN RIGHTS COMMISSION**

As provided by the FEP, PA and OH, no later than 30 days after notice of the hearing date, the Commission may appoint two members to hear the case with the Hearing Examiner and shall notify the Hearing Examiner in writing of the appointment.

## **2.17 INTERFERENCE PROHIBITED**

In performing adjudicative functions, the Hearing Officer is an independent official and is not responsible to, or subject to the supervision or direction of, any elected official, any officer or employee of any department, or anyone else whether or not associated with City government.

## **2.18 DISQUALIFICATION OR RECUSAL OF A HEARING OFFICER**

(a) In the event of personal bias, prejudice, financial interest, or other reason substantially affecting objectivity, a Hearing Officer shall recuse himself or herself from hearing a matter.

(b) Prior to hearing, a party who reasonably believes that a Hearing Officer assigned to a matter cannot remain objective in hearing it due to personal bias, prejudice, financial interest, or other substantial reason, may request by written motion and an affidavit of prejudice that the Hearing Officer be disqualified from hearing the matter. The motion and affidavit should be made at the earliest possible time, preferably no more than 7 business days prior to the date the hearing is to begin. The affidavit of prejudice must set forth in detail the reasons for the belief that the Hearing Officer cannot remain objective in hearing the matter.

(c) The fact that a Hearing Officer has considered the same or a similar issue in another case, or has made a ruling adverse to the interests of the party in the same or another case, is not a basis for disqualification.

(d) The Hearing Examiner shall rule on the motion and state the basis for the ruling. If the Hearing Examiner determines that grounds for disqualification exist, the Hearing Examiner shall disqualify the Hearing Officer named in the affidavit.

(e) In case of disqualification or recusal of the Hearing Examiner, the matter shall be assigned to a different Hearing Examiner.

## **2.19 PREHEARING CONFERENCE**

(a) On the Hearing Examiner's own initiative, or at the request of a party, the Hearing Examiner may direct that a conference be held prior to the hearing to consider:

- (1) Clarification and simplification of the issues;
- (2) Disclosure of witnesses to be called and exhibits to be presented;
- (3) Stipulations of fact and concerning the authenticity and contents of documents;
- (4) Discovery;
- (5) Motions;
- (6) Other matters deemed by the Hearing Examiner appropriate for the orderly and efficient disposition of the case.

(b) The Hearing Examiner shall give notice to all parties of any prehearing conference.

(c) If the Commission has appointed commission representatives to sit as Hearing Officers on the case, the Hearing Examiner shall notify the appointed commission representatives of the conference. They may attend the conference and participate in all matters that the Hearing Examiner deems substantive or dispositive in nature. If only one commission representative chooses to participate in the conference, the Hearing Examiner shall resolve all matters raised that require a ruling.

(d) All parties shall be present or represented at any prehearing conference unless a party has waived the right to be present or represented and been excused by the Hearing Examiner.

(e) Following the prehearing conference, the Hearing Examiner shall enter an order reciting the actions taken and deadlines imposed, and ruling on any motions made at the conference.

## **2.20 DISCOVERY**

Prehearing discovery is permitted as follows:

(a) Depositions may be taken and used in the manner provided by Washington Civil Rules for Superior Court 26, 27, 29, 30, 31 and 32. Whenever those rules refer to the court, the Hearing Examiner shall be substituted. Depositions shall be transcribed upon the request of any party and payment of the reasonable costs of transcription.

(b) Interrogatories may be propounded and used in the manner provided by Washington Civil Rules for Superior Court 26, 29 and 33, except that the party upon whom the interrogatories have been served shall serve a copy of the answers on the party submitting the interrogatories within 14 days, or such shorter or longer time as the Hearing Examiner may allow upon motion filed and served after the interrogatories have been served. Whenever Civil Rules 26, 29 and 33 refer to the court, the Hearing Examiner shall be substituted.

(c) Requests for admission of fact may be served on a party in the manner provided by Washington Civil Rules for Superior Court 26, 29 and 36, except that the party upon whom the requests have been served shall serve a response on the party submitting the requests within 14 days, or such shorter or longer time as the Hearing Examiner may allow upon motion filed and served after the requests for admission have been served. Whenever Civil Rules 26, 29 and 36 refer to the court, the Hearing Examiner shall be substituted.

(d) Requests for production of documents and tangible things, and for entry upon land may be made in the manner provided by Washington Civil Rules for Superior Court 26, 29 and 34, except that the party upon whom the requests have been served shall serve a response on the party submitting the requests within 14 days, or such shorter or longer time as the Hearing Examiner may allow upon motion filed and served after the requests have been served. Whenever Civil Rules 26, 29 and 34 refer to the court, the Hearing Examiner shall be substituted.

(e) Requests for a physical or mental examination may be made in the manner provided by Washington Civil Rules for Superior Court 26, 29 and 35. Whenever Civil Rules 26, 29 and 35 refer to the court, the Hearing Examiner shall be substituted.

## **2.21 FAILURE TO PROVIDE DISCOVERY/SANCTIONS**

(a) If under Rule 2.20 a deponent fails to answer a question propounded or submitted, or a corporation or other entity fails to make a designation, or a party fails to answer or respond to an interrogatory or request for production submitted, or a party fails to respond that a requested inspection will be permitted or fails to permit inspection as requested, a party may file and serve a motion for an order compelling the requested discovery. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order. If the motion is denied, the Hearing Examiner may enter a protective order as provided in Civil Rule 26(c). If the motion is granted, the Hearing Examiner shall direct the deponent to answer, or shall direct the party or designated representative to provide or permit the requested discovery. If a deponent or party fails to comply with the Hearing Examiner's order, the Hearing Examiner may enter such oral or written orders regarding the failure as are just including, but not limited to the following:

- (1) infer that the admission, testimony, documents or other evidence sought would have been adverse to the party;
- (2) order that the matter which was the subject of the order be taken as established adversely to the party;
- (3) order that the party may not introduce into evidence or otherwise rely upon the testimony of the individual, officer or agent, or the documents or other evidence, that was the subject of the order;
- (4) permit the use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown without regard to the disobedient party's objection;
- (5) order that a pleading or part thereof, or a motion or other submission by the party that was the subject of the order be stricken, or that a decision be rendered against a party, or both.

(b) If a deponent or party fails to make discovery, or to comply with an order of the Hearing Examiner, the Hearing Examiner may also invoke the aid of the City Attorney, who shall apply to the appropriate court for an order or other action as necessary to secure enforcement of the Hearing Examiner's discovery orders.

## **2.22 SUBPOENAS**

(a) A party may file a motion for a subpoena to require a person to appear and testify at a deposition or hearing, or for a person to produce at a prehearing conference, deposition, or hearing, specified documents or other physical exhibits within the person's custody and control.

(b) A request for a subpoena for a person shall include the person's name and address, show the relevance of that person's testimony, and demonstrate the reasonableness of the scope of the subpoena sought. A request for a subpoena for

documents or other physical exhibits shall include the name and address of the person who is to produce the documents or other physical exhibit, specify the materials to be produced, indicate the relevance of the materials subpoenaed to the issues in the case, and demonstrate the reasonableness of the scope of the subpoena sought.

(c) The party requesting the subpoena shall be responsible for serving it. An affidavit or declaration of personal service or mailing shall be filed with the Hearing Examiner and a copy served on all other parties.

(d) Unless otherwise allowed by the Hearing Examiner, subpoenas shall be served no later than 7 days prior to the date the appearance or production is ordered.

(e) A subpoena may be issued with like effect by an attorney of record in the proceeding. The issuing attorney must sign the subpoena.

(f) Unless otherwise allowed by the Hearing Examiner, any motion to limit or quash a subpoena shall be filed with the Hearing Examiner no later than 5 days after the date the subpoena was received.

(g) Requests for subpoenas and the rulings upon such requests may be made *ex parte* unless otherwise ordered by the Hearing Examiner. Requests for subpoenas normally require at least 2 business days for the Office of Hearing Examiner to process.

## **2.23 SUBMISSION OF DOCUMENTARY EVIDENCE PRIOR TO HEARING**

If the Hearing Examiner determines that it would assist the orderly and efficient process of the hearing, the Examiner may require:

(a) that all documentary evidence that is to be offered during the hearing be filed with the Examiner, and a copy served on the parties, sufficiently in advance of the hearing to permit study by the parties in preparation of cross-examination and rebuttal evidence, and that documentary evidence not submitted in advance not be admitted in evidence without a clear showing that the offering party had good cause for failing to produce the evidence when required; and

(b) that all documents submitted in advance of the hearing pursuant to subsection (a) be deemed admitted unless a party files a written objection to the authenticity or admissibility of a document prior to the hearing. Upon a clear showing of good cause for failure to file a written objection, the Hearing Examiner may permit a party to challenge the authenticity or admissibility of the document at hearing.

## **2.24 PRESIDING OFFICIAL**

(a) The hearing shall be conducted by the Hearing Examiner sitting alone or as chairperson of a tribunal consisting of the Hearing Examiner and representatives of the Commission.

(b) The Hearing Examiner conducting a hearing has the duty to ensure a fair and impartial hearing, to take all necessary action to avoid undue delay in the proceedings, to gather facts necessary for making the decision, and to maintain order. The Examiner has all powers necessary to these ends including, but not limited to the power to:

- (1) determine the order of the presentation of evidence;
- (2) administer oaths and affirmations;
- (3) issue subpoenas;
- (4) rule on offers of proof and receive evidence;
- (5) rule on procedural matters, objections and motions;
- (6) question witnesses and request additional exhibits;
- (7) permit or require oral or written argument, briefs, proposed findings of fact and conclusions, or other submittals the Examiner finds appropriate, and determine the timing and format for such submittals;
- (8) regulate the course of the hearings and the conduct of the parties and others; and
- (9) hold conferences for settlement, simplification of issues, or for any other proper purpose.

## **2.25 PARTIES' RIGHTS AND RESPONSIBILITIES**

(a) Each party, including a charging party who elects to participate in the hearing independently of representation by the City Attorney, has the right to notice of hearing, presentation of evidence, rebuttal, objection, cross-examination, argument, and other rights determined by the Hearing Examiner as necessary for the full disclosure of facts and a fair hearing.

(b) Parties have the right to be represented by an attorney; representation by an attorney is not required.

(c) When a party has designated a representative, the representative shall exercise the rights of the party.

(d) Unless otherwise provided by order of the Hearing Examiner, if a party expects to offer a document as an exhibit at the hearing, the party shall supply a copy of the document to every other party.

## **2.26 AMICUS CURIAE**

The Hearing Examiner may grant a written motion seeking permission to file a brief *amicus curiae* if the Examiner determines that the brief would assist the Hearing Officer. The motion shall not exceed six double-spaced pages and shall state the movant's identity and interest in the case, the specific issues to be addressed in the brief, and the reasons the movant believes additional briefing is needed. The Hearing Examiner

may permit *amicus curiae* to present oral argument if the Examiner determines that it would assist the Hearing Officer and sufficient time is available.

## **2.27 TESTIMONY**

(a) All testimony before the Hearing Officer shall be taken under oath or affirmation. All witnesses are subject to cross-examination by the other party.

(b) The rules of privilege apply to the extent recognized by law.

(c) The Hearing Examiner may allow testimony via teleconference or videoconference or similar electronic means. Each party to the proceeding shall have the opportunity to hear (or for a videoconference, to both hear and see) testimony given in this manner and to question the person giving such testimony. Any costs associated with electronic conferencing shall be borne by the party requesting it.

## **2.28 EVIDENCE**

(a) Relevant, material and reliable evidence shall be admitted. Such evidence includes that on which responsible individuals would commonly rely in the conduct of their important affairs. Irrelevant, unreliable, immaterial, and unduly repetitive evidence shall be excluded.

(b) Documentary evidence may be received in the form of copies or excerpts. The Hearing Examiner may require that the parties be given an opportunity to compare the copy with the original, and that the complete document from which an excerpt is taken be made available for inspection by all parties.

(c) The Hearing Examiner may take official notice of judicially cognizable facts. Before a decision is issued, parties must be notified of the facts noticed and their source, and afforded an opportunity to contest or rebut them. A Hearing Officer may utilize his or her experience, technical competence and specialized knowledge in evaluating the evidence.

(d) A Hearing Examiner ruling or Hearing Officer decision may refer to and utilize any part of the Code.

## **2.29 BURDEN AND STANDARD OF PROOF**

(a) The Department, and the charging party if the charging party has filed a supplemental complaint, has the burden of proving a *prima facie* case against the respondent.

(b) Unless otherwise provided by applicable law, the standard of proof is a preponderance of the evidence.

### **2.30 HEARING FORMAT**

The hearing is informal in nature but structured to elicit relevant evidence efficiently while providing the parties a fair opportunity for hearing. The hearing shall include the following elements in an order determined by the Hearing Examiner to be appropriate to the case:

- (a) Hearing Examiner's introductory statement;
- (b) parties' brief opening statements (optional);
- (c) presentation of department's case;
- (d) presentation of charging party's case if the charging party has entered an ancillary appearance;
- (e) presentation of respondent's case;
- (f) opportunity for rebuttal;
- (g) opportunity for questions from the Hearing Officer; and
- (h) parties' closing arguments.

### **2.31 HEARING OFFICER'S DECISION**

(a) The Hearing Officer shall issue a written decision and provide a copy to each party within 30 days from the date on which the record is closed. The decision shall also be filed as a public record in the Office of the City Clerk.

(b) The decision shall include a brief summary of the evidence considered, findings of fact, conclusions of law, a ruling on the requested relief and a brief statement of the reasons for the ruling, and information regarding any subsequent procedural steps available for appealing the decision.

(c) When the Hearing Examiner sits with two Commission representatives, each Hearing Officer shall have one vote on the decision. The decision shall be made by majority as provided in these Rules.

(d) When a matter is heard by the Hearing Examiner and one Commission representative, the decision of the Hearing Examiner, as chairperson of the tribunal, shall be determinative.

### **2.32 ABSENCE OF HEARING OFFICER**

(a) When a Commission representative is absent during the course of the hearing, the Hearing Examiner may decide to proceed with the hearing. If the absent representative reviews the record of those parts of the hearing the representative missed, the representative may participate in the decision process.

(b) When a Commission representative is unable to continue to hear a case, the Commission may appoint a substitute representative, who shall review the record to the point of his or her substitution before participating in the decision process.

### **2.33 RECORD**

The case record includes the following:

- (a) all pleadings;
- (b) all exhibits admitted;
- (c) a statement of any matters officially noticed and any responses by the parties;
- (d) findings, conclusions and decision of the Hearing Officer; and
- (e) recording of the hearing.

### **SECTION 3 CASES TO DETERMINE RELIEF WHERE RESPONDENT IS A CITY DEPARTMENT**

The Rules in this section govern hearings in which a City department is the respondent under Chapter 14.04 SMC, the Fair Employment Practices Ordinance, and Chapter 14.10 SMC, the Fair Contracting Ordinance. The following Rules in Section 2, “Rules of General Application,” also apply to these hearings: 2.02, 2.03, 2.04, 2.05, 2.06, 2.07, 2.15, 2.19, 2.20, 2.21, 2.22, 2.23, 2.25, 2.27, 2.28, 2.29, and 2.33.

#### **3.01 PLEADINGS**

(a) The Department shall file with the Hearing Examiner the Director's certification for a hearing to determine the appropriate monetary relief and a copy of the Director's determination and order. On the same day the certification is filed with the Hearing Examiner, the Department shall serve a copy on the respondent City department.

(b) No later than 14 days after the Director's certification is filed and served, the respondent City department may file an answer with the Hearing Examiner and serve a copy on the Department. The City department's failure to answer shall not be deemed an agreement to the requested relief.

#### **3.02 NOTICE OF HEARING**

After receiving the Director's certification, the Hearing Examiner will establish a date for the hearing and give written notice to all parties of record at least 20 days prior to the hearing. The notice shall include the following:

- (a) a statement of the time, date, place and nature of the proceeding;
- (b) a statement of the legal authority for the hearing, including a reference to the appropriate section of the applicable ordinance;
- (c) a short and plain statement of the matters asserted; and
- (d) a statement of how the parties may obtain a copy of these Rules.

#### **3.03 PRESIDING OFFICIAL**

(a) The hearing shall be conducted by the Hearing Examiner.

(b) The Hearing Examiner conducting the hearing has the duty to ensure a fair and impartial hearing, to take all necessary action to avoid undue delay in the proceedings, and to maintain order. The Examiner has all powers necessary to these ends including, but not limited to the power to:

- (1) determine the order of presentation of evidence;
- (2) administer oaths and affirmations;
- (3) issue subpoenas;
- (4) rule on offers of proof and receive evidence;
- (5) rule on procedural matters, objections and motions;
- (6) question witnesses and request additional exhibits;
- (7) permit or require oral or written argument, briefs, proposed findings of fact and conclusions, or other submittals the Examiner finds appropriate, and determine the timing and format for such submittals;
- (8) regulate the course of the hearings and the conduct of the parties and others; and
- (9) hold conferences for settlement, simplification of issues, or for any other proper purpose.

### **3.04 INTERFERENCE PROHIBITED**

In performing adjudicative functions, the Hearing Examiner is an independent official and is not responsible to, or subject to the supervision or direction of, any elected official, any officer or employee of any department, or anyone else whether or not associated with City government.

### **3.05 DISQUALIFICATION OR RECUSAL OF THE HEARING EXAMINER**

(a) In the event of personal bias, prejudice, financial interest, or other reason substantially affecting objectivity, the Hearing Examiner shall recuse himself or herself from hearing a matter.

(b) Prior to hearing, a party who reasonably believes that the Hearing Examiner assigned to a matter cannot remain objective in hearing it due to personal bias, prejudice, financial interest, or other substantial reason, may request by written motion and an affidavit of prejudice that the Hearing Examiner be disqualified from hearing the matter. The motion and affidavit should be made at the earliest possible time, preferably no more than 7 business days prior to the day the hearing is to begin. The affidavit of prejudice must set forth in detail the reasons for the belief that the Hearing Examiner cannot remain objective in hearing the matter.

(c) The fact that Hearing Examiner has considered the same or a similar issue in another case, or has made a ruling adverse to the interests of the party in the same or another case, is not a basis for disqualification.

(d) The Hearing Examiner shall rule on the motion and state the basis for the ruling.

(e) In case of disqualification or recusal of the Hearing Examiner, the matter shall be assigned to a different Hearing Examiner.

### **3.06 HEARING EXAMINER'S DECISION**

The Hearing Examiner shall issue a written decision and provide a copy to each party within 30 days from the date on which the record was closed. The decision shall include findings of fact, conclusions of law when appropriate, and an order for the appropriate monetary relief.