City of Seattle
OFFICE OF HEARING EXAMINER

HEARING EXAMINER

RULES FOR WHISTLEBLOWER RETALIATION CASES

Adopted _____ __, 2025

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HEARING EXAMINER
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TABLE OF CONTENTS

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SECTION 1 GENERAL PROVISIONS

1.1 APPLICABILITY

(a) These Rules For Whistleblower Retaliation Cases ("RWRC" or "Rules") supplement the Seattle Municipal Code and ordinances, and other applicable law, for matters within the jurisdiction of the Hearing Examiner under Subchapter III of Chapter 4.20 SMC, the Whistleblower Protection Code, and govern administrative practice and procedure before the Hearing Examiner. In case of conflict between a RWRC 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 Examiner on or after the Rules' effective date.

1.2 INTERPRETATION OF RULES

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

(b) While a matter is pending before the Examiner, an affected party may request by motion that the Examiner issue a declaratory ruling on the applicability of a Rule to identified, existing circumstances. The motion shall identify the Rule and describe the circumstances for which the declaratory ruling is sought.

(c) The Rules may be waived or modified, at the Examiner's discretion, to promote hearing fairness and efficiency. When questions arise that the Rules do not address, or a procedural conflict is created by the application of the Rules, the Examiner shall determine the practice or procedure most appropriate and consistent with providing fair treatment, and efficiency. The Examiner may look to the Washington State Superior Court Civil Rules ("CR") for guidance (http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=sup&set=CR).

1.3 PETITION FOR RULES (SMC 3.02.040)

Any person may petition the Examiner requesting adoption, amendment or repeal of any rule.
The petition shall be in writing, signed by the petitioner, and include the petitioner's name and address and either:

(a) 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

(b) In the case of a petition for amendment or repeal of a rule, the number of the rule to be amended or repealed, the substance of any requested amendment, and a brief statement of the reason why an amendment or repeal of the rule is necessary or desirable.

Within 60 days of petition submittal, the Examiner will either issue a written denial, with an explanation for the denial, or initiate rulemaking under SMC 3.02.030.

1.4 OFFICE LOCATION AND PUBLIC RECORDS (SMC 3.02.070)

(a) The Office is a separate and independent City office. The Office conducts administrative hearings and issues decisions and recommendations as authorized by the Seattle Municipal Code. The Office's location, mailing address, and operating hours are posted on the Office's webpage.

(b) The Office retains case files, including recordings, exhibits, and decisions or recommendations in accordance with retention schedules. Case files are available to the public during normal business hours for inspection and copying pursuant to the Public Records Act, RCW Chapter 42.56, and other laws governing public records. In addition, most case records from January 2010 to the present and all e-filed documents are available online. http://www.seattle.gov/hearing-examiner/decisions/case-search.

1.5 ACCESSIBILITY AND ACCOMMODATION

(a) Proceedings before the Examiner shall be accessible to the greatest extent practicable.

(b) Upon request, the Office will provide reasonable accommodations to ensure persons needing accommodation can attend, and where appropriate participate, in hearings.

(c) If a hard of hearing, deaf, or non-English speaking party requires an interpreter or other accommodation to fully and fairly participate in an appeal hearing, the Examiner shall appoint a qualified and impartial interpreter in accordance with the Hearing Examiner's adopted procedures for using interpreters or provide other necessary accommodation where feasible. A request for appointment of a qualified interpreter should be submitted at least 7 business days prior to the proceeding for which the services are requested.

SECTION 2 RULES OF GENERAL APPLICATION

2.1 SCOPE OF RULES

These rules apply to contested cases before the Examiner that arise under Subchapter III of Chapter 4.20 SMC, the Whistleblower Protection Code.

2.2 DEFINITIONS

The following definitions apply unless the context requires otherwise:

(a) "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.

(b) "Business days" -days other than Saturday, Sunday, and legal holidays..

(c) "City" – City of Seattle.

(d) "City agency" – any department, office, board, commission, or committee of the City, or any subdivision thereof except public corporations and ad hoc advisory committees.

(e) "Code" – Seattle Municipal Code (also "SMC").

(f) "Commission" - Ethics and Elections Commission.

(g) "Cooperating Employee" – a City employee who:

1. In good faith makes a report of alleged improper governmental action pursuant to SMC 4.20.810.C;
2. Is perceived by the City as having reported pursuant to this chapter, but in fact, did not report;
3. In good faith provides information in connection with an inquiry or investigation of a report or testifies in any proceeding resulting from a report; or
4. Is perceived by the employer as having provided information in connection with an inquiry or investigation of a report made pursuant to this chapter, but in fact, has not done so.

(h) "Complaint" – a document that alleges whistleblower retaliation and is prepared by the Executive Director and filed with the Examiner.

(i) "Days" - calendar days.

(j) "Declaration" - a written statement of fact declared to be true and correct under penalty of perjury under Washington law.

(k) “Discovery” - the disclosure by one party to another party of documents and information relevant to an appeal, or which are reasonably calculated to lead to documents and information relevant an appeal.

(l) "Ex parte communication" - a direct or indirect communication between the Examiner and a proponent, opponent, or a party, made outside a hearing or scheduled conference, and outside the presence of all other parties, regarding the merits of a matter pending before the Examiner.

(m) “Executive Director” – the Executive Director of the Ethics and Elections Commission.

(n) “File” (when used as a verb) or “filing” - submitting documents to the Examiner. When used as a noun, “file” refers to the documents a Department or the Examiner keeps related to a particular case.

(o) "Good faith" - the individual reporting or providing information has a reasonable basis in fact for reporting or providing the information.

“Hearing Examiner” or “Examiner” – the official the City Council appointed per Chapter 3.02 SMC to serve as the City's Hearing Examiner. In the Rules, the terms “Hearing Examiner” and “Examiner” are used interchangeably to refer to the Hearing Examiner, a Deputy Hearing Examiner, or Hearing Examiner Pro Tempore to whom the Hearing Examiner has delegated authority to preside over a particular matter.

(p) “Law” - federal or state statute or regulation, Code, City ordinance or regulation, or common law.

(q) “Legal Holiday” - a legal holiday designated in SMC 4.20.190

(r) "Motion" - a formal request presented, either in writing (and clearly identified as a motion) or orally during a proceeding, to the Examiner for an order or other ruling.

o) "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.

(p) “Party” – the Executive Director, a Cooperating Employee who has filed a supplemental complaint, or the Respondent.

(q) “Prejudice” to a party - as determined by the Examiner, an impairment of a

legal interest, legal claim, or legal argument, including but not limited to serious delay**,** or preclusion from being able to raise an argument or effectively participate in a hearing.

(r) "Regular business hours" - 8:00 a.m. to 5:00 p.m.

(s) “Respondent” – the City agency or employee alleged to have retaliated against a Cooperating Employee in violation of SMC 4.16.070.F and/or Subchapter III of Chapter 4.20 SMC.

(t) “Serve” or “Service” - submitting documents to other named parties.

(u) “Supplemental complaint” – a document that relates to a claim for damages for emotional distress and is prepared and filed by the Cooperating Employee as provided in these Rules

2.3 REPRESENTATION

(a) Only the following may appear before the Examiner in a representative capacity:

(1) an attorney entitled to practice before the Washington Supreme Court;

(2) with the permission of the 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;

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

(b) As provided in SMC 4.20.865.B.3, a cooperating employee who has filed a supplemental complaint is not subject to restrictions on representation in subsection (a).

2.4 TIME COMPUTATION

In computing a period of time prescribed by the Rules, the day of the event from which the time begins to run is not included. The last day of the period so computed is included unless it is a non-business day, in which case the period extends to the end of: (a) the next business day if the period is counted forward from the event; or (b) the preceding business day if the period is counted backward from the event.

2.5 EXPECTED CONDUCT

All persons appearing before the Examiner shall conduct themselves with civility and courtesy to all persons involved in the hearing. If an individual or group fails to meet this requirement, or if circumstances otherwise warrant, the Examiner may take reasonable measures to maintain order, including but not limited to:

(1) Provide security officers whenever necessary to maintain order, safety, civility, or to protect against witness intimidation.
(2) Recess a hearing and reconvene it under reasonable conditions to assure the violation will not be repeated.
(3) Exclude any disruptive person from further participation and have them removed from the premises. A person so excluded is deemed to have forfeited any right to participate in the hearing.
(4) Limit or prohibit picket signs, posters, flags, or other visible or audible demonstrations as necessary to maintain order, security, and the appearance of fairness in any hearing.
(5) Identify an alternative secure location for the hearing, with specific limits placed on access to the hearing location.
(6) Determine that the hearing should be conducted by written submissions (e.g. briefing, declarations, and exhibits) in whole or in part.

(b) No profanity, combative, rude, degrading or irrelevant statements, questions, or testimony will be allowed, and shall be deemed to be disruptive behavior.

(c) The Examiner may permit tripods, easels, photographic and recording equipment, or other equipment subject to conditions preventing disruption. Flash photography and high-intensity lighting are prohibited.

(d) Witnesses, counsel, and other participants should be referred to and addressed by their surnames, unless leave to do otherwise is granted. Office personnel should be referred to and addressed by their surnames or titles. The Examiner should be addressed as Mr./Ms. Examiner or Examiner (surname).

(e) Except by leave of the Examiner, all communications to the Examiner should be made from a position at or beside the dedicated table location.

(f) During a hearing, party representatives should not approach opposing party representatives, witnesses, the Examiner or hearing staff without leave of the Examiner.

(g) Parties shall adhere to Orders issued by an Examiner.

2.06 APPEARANCE OF FAIRNESS

(a) Hearings shall be conducted in accordance with the appearance of fairness doctrine, codified at RCW Chapter 42.36.

(b) Ex parte communication is prohibited. No interested person, party or representative shall communicate ex parte directly or indirectly with the Examiner concerning the merits or facts of any matter before the Examiner.

(c) This rule does not prohibit ex parte communications about procedural topics, nor does it apply to written submissions made for the record and available to all participants.

(d) If a prohibited ex parte communication is made, the Examiner shall promptly and publicly disclose the communication and provide the parties an opportunity to review and rebut it.

2.7 FILING AND SERVICE OF DOCUMENTS

(a) Documents may be filed with the Office in hard copy, or in electronic format through the Office e-File web page (see www.seattle.gov/examiner). Unless directed by an Examiner, electronic mail filing with the Office is not authorized, except with regard to exhibits.

(b) Documents are deemed filed with the Examiner when the Office receives them. Documents filed on non-business days, or outside regular business hours, are deemed filed on the next business day. Documents filed during emergency or temporary closures are deemed filed on the day they were filed.

(b) 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.

(c) All documents filed with the Office shall be served on opposing parties. Service shall be initiated on the same day of filing.

(d) Unless otherwise provided by Code, the Examiner, or party agreement, documents other than the summons and complaint shall be served on all parties via electronic mail. Where a party has not provided an electronic mail address, service may be by U.S. Mail or personal service. Proof of service must be filed with the 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 electronic mail. Unless earlier receipt is shown, service by mail is complete on the third day after deposit of a properly stamped and addressed letter or packet into regular U.S. Mail facilities. If the third day falls on a non-business day, service is complete on the next business day.

(f) It is the sender's responsibility to confirm receipt of an e-Filing or of electronic mail service. Requesting a confirmation receipt for electronic mail is recommended. It is the sender's responsibility to file e-Filed materials that the Examiner can read, view, and/or listen to.

2.8 MOTIONS

(a) All motions shall state the order or relief requested and the grounds for the motion. All motions other than those made at a prehearing conference or during a hearing shall be written, and the filing shall be identified as a motion for Examiner consideration.

(b) Within seven days of service of a written motion, or such other time as the Examiner may designate, any other party may file a written response. After the Examiner has received any written responses, or the seven days or other designated time has elapsed, the Examiner may rule on the motion. Failure of a party to file a timely response may be considered as evidence of that party's consent to the motion, and failure to respond to an issue raised in the motion shall constitute abandonment of that issue.

(c) The Examiner may authorize a reply or other additional briefing. Where the Examiner has not yet determined if a party may file a reply, such parties should request a

determination prior to filing a reply.

(d) Parties may request oral argument on a motion. The Examiner may grant or deny the request. Parties are not entitled to oral argument on motions.

(e) For motions made during a prehearing conference or at hearing, and motions made for the extension of time or to expedite the hearing, the Examiner may waive this Rule's requirements.

(f) The Examiner may rule upon motions orally, except for motions that are fully dispositive of a case.

(g) Written decisions on motions do not require findings and conclusions to be made in support of the decision, except for motions that are fully dispositive of a case.

(h) If a schedule for filing motions and related briefing is established by order of the Examiner, motions to dismiss some or all of an appeal may not be filed at any other time without permission of the Examiner.

(i) Motions to dismiss all or part of an appeal, other dispositive motions, and motions to exclude evidence (testimony or exhibits) shall be in writing and shall be filed at the earliest possible time in the proceedings to allow time for the other party to respond, as provided in RWRC 2.8(b).

(j) Motion to Dismiss. A party may move to dismiss an appeal, in whole or in part, if:

(1) The appellant lacks standing to appeal the decision or action being challenged;
(2) The appeal was not filed before the appeal deadline, or does not otherwise conform to appeal requirements;
(3) The Examiner lacks jurisdiction, in whole or in part, over the appeal;
(4) The appeal is frivolous or without merit on its face; or
(5) Other grounds established by law exist.

(k) Motion for Summary Judgment. For reasons of hearing efficiency summary judgment motions are disfavored. A party may move for summary judgment on an appeal or claim with permission of the Examiner, and if:

(1) There is no genuine issue of material fact; and
(2) The moving party can show that when the law is applied to those facts, the party is entitled to judgment on the claim or claims.

The schedule for filing and responsive briefing for a summary judgment motion will be set by the Examiner, and will generally exceed the deadlines identified in RWRC 2.8 (b).

(l) The Examiner may grant a written motion seeking permission to file a brief amicus curiae, if the Examiner determines that the brief would assist the Examiner. A motion to file an amicus curiae brief shall identify:

(1) The moving parties' interest and the person or group the moving partyrepresents, if any;

(2) The moving parties' familiarity with the issues involved in the proceeding;
(3) Issues the amicus curiae brief will address; and
(4) The reason additional argument is necessary.

(m) A primary purpose of prehearing motions is to enhance hearing efficiency. Where filing of a motion will cause delay or inefficiency, the Examiner may prohibit or deny the motion.

(n) Generally, the Examiner issues a decision within 21 days of final briefing on a motion.

(o) Orders on motions may result in the dismissal of all or part of a matter without an in-person hearing.

2.9 COMPLAINT

(a) A complaint filed by the Executive Director shall include the following:

(1) a caption identifying the parties to the case;
(2) a statement that the Executive Director has investigated the matters alleged in the complaint and issued a finding that there is reasonable cause to believe that the respondent engaged in, or continues to engage in, conduct that constitutes retaliation;
(3) a concise statement of the conduct alleged to constitute retaliation; and
(4) 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 Executive Director shall serve the complaint and a summons on the respondent and any other interested parties 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 a cooperating employee who alleges damages for emotional distress may elect to participate in the hearing independently of the Executive Director by filing a notice of ancillary appearance and a supplemental complaint as provided in RWRC 2.10.

2.10 SUPPLEMENTAL COMPLAINT BY THE COOPERATING EMPLOYEE

(a) A cooperating employee who wishes to claim damages for emotional distress, 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 cooperating employee, and shall serve them on the respondent and Executive Director as provided in RWRC 2.07 for service of the summons and complaint.

(b) A supplemental complaint may adopt by reference the complaint filed by the Executive Director and shall include the cooperating employee's request for damages for emotional distress and any additional allegations of fact and citation of legal authority in support of the request.

(c) A cooperating employee 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 cooperating employee does not file a timely notice of ancillary appearance and supplemental complaint, the case in support of the complaint shall be presented solely by the Executive Director.

2.11 AMENDMENT OF THE COMPLAINT

A complaint or supplemental complaint may be amended only with the permission of the 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 allegations that they could not have reasonably foreseen.

2.12 ANSWER

The respondent shall file an answer to the complaint with the 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 Examiner and served on all parties of record no later than 20 days after the date the supplemental complaint is filed. A cooperating employee who is not represented by counsel shall be served by delivering a copy of the answer, addressed to the cooperating employee, to the Executive Director.

2.13 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 Examiner. (See RWRC 2.08 for Motions). A copy of the motion and proof of service must be served on all other parties. (See RWRC 2.07 for Service).

(b) The 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 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 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.

2.14 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 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, approved by the Commission if required by SMC 4.20.860.F, and filed with the Examiner, who shall then sign an order dismissing the complaint.

2.15 NOTICE OF HEARING

(a) Upon receipt of a complaint and answer, the Examiner shall promptly set and give notice of a date for the hearing, which shall be no earlier than 60 and no later than 120 days from the date the complaint was filed, unless otherwise ordered by the Examiner. The Examiner shall give notice of the date of the hearing to the Commission, all counsel of record, and all parties not represented by counsel. The hearing may be had on shorter notice when the Examiner determines that substantial injury to a party would otherwise result. The notice shall include:

(1) a statement of the time, date, place and nature of the proceeding;
(2) a statement of the legal authority for the hearing, including a reference to the applicable law;
(3) a short and plain statement of the matters asserted in the complaint; and
(4) a statement of how the parties may obtain a copy of these Rules.

(b) A copy of the notice of hearing and certificate of service shall be made part of the case record.

2.16 CONTINUANCE OF HEARING OR REOPENING HEARING

(a) A scheduled hearing may be continued on Examiner initiative, or on the motion of a party for good cause shown. Written notice of the date, time, and place of the continued hearing shall be provided to each party. The notice of a continued hearing need not conform to the time requirements for the original notice.

(b) At a hearing the Examiner may, for good cause shown, continue the hearing.

(c) If the Examiner determines at hearing to continue it, and then and there specifies the date, time, and place of the new hearing, no further notice is required.

(d) Following the close of the hearing and/or the record, but before issuing a decision or recommendation, for good cause, the Examiner may reopen the record and/or the hearing and may permit or require written briefs or oral argument.

(e) If a matter is reopened after close of the hearing and/or the record,

unless otherwise agreed, parties shall be provided no less than 10 days notice of the reopened hearing.

2.17 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.

2.18 DISQUALIFICATION OR RECUSAL OF HEARING EXAMINER

(a) Any party may request assigned Examiner disqualification. The request shall be written and identify why the requester believes the assigned Examiner cannot remain objective in hearing the matter. This request must be submitted as soon as the basis for disqualification is known. If not, the objection may be considered waived. A disqualification request should be granted whenever the Examiner has:

(1) a demonstrated personal bias or prejudice concerning the party or matter;
(2) directly served in a professional or business relationship with respect to the specific matter at issue, or is professionally associated with a person who is so engaged; or
(3) has a direct financial or personal interest in proceeding outcome either personally or through a family member.

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

(a) The Hearing Examiner shall rule on the motion and state the basis for the ruling. In case of disqualification or recusal of the Hearing Examiner, the matter shall be assigned to a different Examiner.

(c) The Examiner's decision on a disqualification request shall be documented on the record. The Examiner may orally or in writing:

(1) Recuse themself, if the Examiner determines that the reasons the party offers for disqualification establish that the Examiner's impartiality might reasonably be questioned.
(2) Reject the request, setting forth the reasons for the rejection; or
(3) Disclose any relationship or appearance on the record, stating a bona fide conviction that the interest or relationship will not interfere with rendering an impartial decision.

(d) In such matters, the Examiner may be guided by the current version of the Code of Judicial Conduct, Rule 2.11. (http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Code%20of%20Judicial%20Conduct%20Task%20Force%20Committe/CodeOfJudicialConduct.pdf).

2.19 PREHEARING CONFERENCE

(a) On party request or Examiner initiative, the Examiner may schedule a pre-hearing conference to consider:

(1) Issue identification, clarification, and simplification;
(2) Potential for mediation or settlement;
(3) Stipulations and admissions, including whether the parties can agree to a stipulated record;
(4) Witness and exhibit disclosures;
(5) Discovery;
(6) Motions;
(7) Hearing date and pre-hearing deadlines; and
(8) Other matters appropriate for orderly and efficient case disposition.

(b) Prehearing conferences will be held by video conference, unless otherwise arranged. In-person attendance at a prehearing conference will be arranged on request. A request by a party to appear by telephone shall be made at least two days in advance and is allowed at the discretion of the Examiner.

(c) The Examiner shall notify the parties of any prehearing conference. Notice may be electronic, written, or oral.

(d) Parties shall be represented at any prehearing conference unless a party waives the right to be present or if the Examiner has excused participation.

(e) Following the prehearing conference, the Examiner may issue an order reciting actions taken and deadlines imposed, and rule on any motions made at the conference.

(f) Failure to adhere to a pre-hearing order deadline may result in forfeiting the right to take the action subject to the deadline where failure to meet a pre-hearing order deadline causes prejudice to a party or impairs the Examiner's ability to decide the matter.

(g) The Examiner may hold more than one prehearing conference in a proceeding.

REMOTE HEARING APPEARANCE

(a) A party may appear by telephone or video conference (collectively "remote" appearance) at a hearing when authorized by the Rules or directed by the Examiner to do so in advance of the hearing. A request for a remote appearance must be made as early as possible and should be made no later than one week in advance of the hearing. Authorization for a party or witness to appear remotely is subject to successful completion of a system test, prior to the hearing, to ensure the party's system is compatible with the Office equipment.

(b) Procedural hearings such as prehearing conferences or a status conference will be held by video conference. Appeal hearings for citations will also be held by video conference. Parties may request, or the Examiner may order in-person or telephonic participation for such matters.

(c) To the degree possible, hearings conducted remotely should be treated as an in-person hearing in accordance with the Seattle Municipal Code and the Rules. This includes logging in to participate in the hearing on time, and each participant conducting themselves with the decorum and respect owed to each other and the hearing forum as if they were attending an in-person hearing.

(d) It is inevitable that remote hearings will encounter limitations concerning technology. All parties are urged to be patient with regard to the technological and other difficulties experienced by others.

(e) If in the determination of the Examiner, the technology supporting the hearing is not performing adequately, the Examiner may suspend or continue the hearing, make arrangements for submission of materials or testimony at a later date, or make other necessary arrangements.

(f) Parties shall adhere to any protocols for remote hearings issued by the Examiner, and the Rules.

(g) Parties to an appeal appearing remotely.

(1) A party to an appeal authorized to appear remotely shall send electronic copies of documents it intends to submit as evidence to the Examiner and other parties, with receipt by the Examiner and other parties no later than seven days before the hearing (or such other date the Examiner identifies). On request of the Examiner, a single hard copy of each exhibit must also be mailed to the Office.

(2) All exhibits shall be marked numerically and presented in sequential order. Electronic documents shall have one- to three-word titles clearly identifying the document.

(3) A party appearing remotely shall arrange a means to receive exhibits from other parties instantaneously during the hearing (e.g., electronic mail).

(4) No exhibits will be admitted by showing documents through a videoconference call.

(5) Exhibits submitted for purposes of impeachment may be admitted according to order of the Examiner, or during the hearing subject to Examiner discretion.

(6) If a party is not able to access the hearing due to a technological failure, the party shall notify the Office immediately.

(h) Witnesses appearing remotely.

(1) The party calling the witness shall provide all necessary exhibits to the witness before the hearing, so the witness may refer to them during the hearing.

(2) The party calling the witness shall ensure email communication is available with the witness during the hearing.

2.20 DISCOVERY

2.20.01 General.

(a) Discovery is the process of prehearing fact-finding through the use of certain methods commonly used in civil litigation, including but not limited to written interrogatories, deposition of witnesses (oral and written), requests for documents, and requests for admissions. Parties who wish to utilize this process must do so at the earliest possible time to avoid later delay in the hearing process. Discovery should be limited to relevant, non-duplicative material and not be overburdensome to other parties.

(b) The Examiner typically is not involved in the discovery process and is not copied on documents produced, or on correspondence and electronic mail about discovery matters.

(c) In response to a motion, or on Examiner initiative, the Examiner may compel discovery, or prohibit or limit discovery (for example where it is overly burdensome, harassing, or unnecessary).

2.20.02 Discovery Rules. 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 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 20 days, or such shorter or longer time as the 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 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 20 days, or such shorter or longer time as the 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 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 20 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 Examiner shall be substituted.

2.21 FAILURE TO PROVIDE DISCOVERY/SANCTIONS

(a) If under RWRC 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 Examiner may enter a protective order as provided in Civil Rule 26(c). If the motion is granted, the 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 Examiner's order, the 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 Examiner, the 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 Examiner's discovery orders.

2.22 SUBPOENAS

(a) A motion may be made in writing for a subpoena to require a person to appear and testify at a deposition or hearing, or for a person to produce specified documents or other physical exhibits at a prehearing conference, deposition, or hearing.

(b) A motion for a subpoena to require a person to testify shall include the person's name and address, relevance of that person's testimony, non-duplicative nature of the testimony sought, and reasonableness of the scope of the subpoena sought. A request to subpoena documents or other physical exhibits shall include the name and address of the person producing the documents, identify the materials to be produced, state their relevance, 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 Examiner and served on all parties.

(d) Unless otherwise allowed by the Examiner, subpoenas shall be served no later than ten business days prior to the date the appearance or production is ordered. (See 2.22 (h) for

additional time constraints on processing subpoena requests).

(e) A subpoena may be issued with like effect by an attorney of record in the proceeding without filing a motion. The issuing attorney must sign the subpoena.

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

(g) Requests for subpoenas shall be served on opposing parties on the same date they are filed.

(h) Subpoena requests require three business days for the Office to process.

2.23 SUBMISSION OF DOCUMENTARY EVIDENCE PRIOR TO HEARING

If the 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 Examiner may permit a party to challenge the authenticity or admissibility of the document at hearing.

2.24 PRESIDING OFFICIAL

The Examiner conducting a hearing shall take measures to ensure a fair and impartial hearing, avoid delay, gather facts necessary for making the decision or recommendation, and maintain order. The Examiner has all powers necessary to these ends, including but not limited to:

(a) Determine the order for presenting evidence;

(b) Determine the appropriate hearing location and setting to ensure safety, and efficiency of the hearing;

(c) Administer oaths and affirmations;

(d) Issue subpoenas;

(e) Rule on offers of proof and receive evidence;

(f) Rule on procedural matters, objections, and motions;

(g) Question witnesses and request additional exhibits;

(h) Permit or require oral or written argument, briefs, proposed findings of fact and conclusions, or other appropriate submittals, and determine the timing and format for such submittals;

(i) Regulate the hearing proceeding and participant conduct to maintain order and provide a fair hearing; and

(j) Hold conferences for issue simplification or any other proper purpose.

2.25 PARTIES' RIGHTS AND RESPONSIBILITIES

(a) Each party in an appeal proceeding has the right to hearing notice, presentation of evidence, rebuttal, objection, cross-examination, argument, and other rights the Examiner determines necessary for the full disclosure of facts and a fair hearing (except where a matter has been dismissed as a result of pre-hearing motion or otherwise).

(b) Parties have the right to attorney representation, but it is not required.

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

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

2.26 TESTIMONY

(a) Witnesses testifying at hearing shall take an oath or affirmation to be truthful in their testimony. Witnesses are subject to cross-examination by other parties.

(b) Testimony and argument are limited to matters relevant to the Examiner's decision.

(c) The Examiner may limit testimony length to expedite the proceedings. The Examiner may pre-set allotted time for testimony. If parties are unable to complete their testimony and arguments within the allotted time, and the hearing may not be continued, it is within Examiner discretion to leave the record open and to provide an opportunity to submit written materials after the close of the hearing.

(d) No person shall be compelled to divulge information, which could not be compelled in a court of law. A witness has the right to invoke any legally recognized privilege. The rules of privilege (e.g., attorney-client, etc.) apply to the extent recognized by law.

(e) The Examiner may allow witness testimony to be submitted by sworn statement, granting to such statement the evidentiary weight warranted under the circumstances.

(f) Facts or argument from an unsworn attorney or other representative are not evidence.

(g) Although Examiner hearings are open to the public, a person who is not a party is generally not permitted to testify, or comment, in appeal hearings unless a party calls them as a witness.

(h) Interpreters. Before beginning to interpret, every interpreter shall take an oath that, to the best of the interpreter's ability, a true interpretation shall be made that is understandable for the person utilizing the interpreter, and that the interpreter shall repeat statements in English to the Examiner and the other parties. (See also HER 1.06).

(i) Cross-Examination. Subject to the below, every party may cross-examine witnesses:

(1) Cross-examination is limited to direct testimony subject matter, the foundation for opinions and statements, and to determine any bias, conflict of interest, or any other issue that reflects on credibility.
(2) Expert witnesses may also be subject to cross-examination on the sufficiency of their qualifying credentials.
(3) The Examiner will prohibit irrelevant, cumulative, unduly repetitious, argumentative, or abusive cross-examination.
(4) Only one person representing each party may cross-examine a witness. In cases with multiple parties with shared interest, the Examiner may place limits on the cross-examination of an individual witness by such parties to protect against undue repetition in the questions being asked.
(5) A party may seek re-direct testimony after cross-examination. Re-direct is limited to the subjects addressed during cross-examination.
(6) The Examiner may limit cross examination of opinion testimony offered by an interested person who does not claim to be an expert.
(7) The Examiner may establish reasonable time limits for cross-examination, consistent with the requirements of due process.

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

2.27 EVIDENCE

Evidence, including hearsay, may be admitted if the Examiner determines it is relevant, comes from a reliable source, and has probative (proving) value. Such evidence is that which reasonable persons would commonly rely on in conducting important affairs.

(b) The Examiner may exclude evidence that is irrelevant, unreliable, immaterial, unduly repetitive, or privileged.

(c) At public hearings on matters in which the Examiner prepares a recommendation for the City Council, opinion evidence of non-experts may be admitted into the record. At appeal hearings, opinion evidence from non-experts is discouraged but the Examiner may admit the testimony and give it appropriate weight.

(d) All evidence that a party plans to submit at hearing shall be exchanged with all other parties to the appeal, except as otherwise agreed by the parties or ordered by the Examiner. Any evidence offered at the hearing that was not disclosed by the party offering it may be excluded, unless

the Examiner permits it for impeachment purposes, or the party demonstrates extenuating circumstances apply.

(f) The Examiner determines the probative value, if any, of all admitted evidence.

(g) In passing upon the admissibility of evidence, the Examiner may consider, but shall not be bound to follow, the Washington State Rules of Evidence (http://www.courts.wa.gov/court_rules/?fa=court_rules.rulesPDF&groupName=ga&setName=ER). Where the Rules of Evidence conflict with the Rules or Code, the Rules or Code shall take precedence.

OBJECTION

An objection to admitting testimony or evidence shall identify the grounds for objection. Any evidence entered into the record without objection is admissible.

Evidence/Exhibits

(a) A party to an appeal shall send electronic copies of exhibits it intends to submit as evidence to the Examiner and other parties, with receipt by the Examiner and other parties no later than seven days before the hearing (or such other date the Examiner identifies). On request of the Examiner, a single hard copy of each exhibit must also be mailed or delivered to the Office

(b) Documents submitted as exhibits must be legible. Unless challenged for authenticity and found unreliable by the Examiner, documents may be received in their entirety or as excerpts. The 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.

(c) The Examiner may exclude any evidence imposing an unreasonable custodial burden. The Examiner may require substitute photographs, reduced-sized copies, or written or oral descriptions.

(d) Copies of any screen presentation, such as PowerPoint, must be provided as specified above.

(e) Exhibits submitted for the record will not normally be returned.

(f) Exhibits at remote hearings must comply with Rule 3.11.

2.28 BURDEN AND STANDARD OF PROOF

(a) In any proceeding against an individual employee for retaliating against a cooperating employee in violation of SMC 4.16.070.F, the Executive Director has the burden of proving retaliation by a preponderance of the evidence.

(b) In any proceeding against a City agency, the Executive Director has the burden of proving a prima facie case of the cooperating employee's status under SMC 4.20.805, the timeliness of the cooperating employee's complaint under SMC 4.20.860.A.1, and the adverse change alleged to be retaliation against the cooperating

employee. The City agency must then show that no retaliation occurred by proving by a preponderance of the evidence that the cooperating employee's status as a cooperating employee was not a contributing factor in the agency's decision to implement an adverse change against the cooperating employee.

(c) The cooperating employee has the burden of proving by a preponderance of the evidence that the emotional distress claimed in the supplemental complaint was caused by the alleged retaliation.

2.29 HEARING FORMAT

(a) Hearings have a structured format to elicit relevant evidence efficiently and fairly.

(b) The hearing shall include the following elements in an order determined by the Examiner to be appropriate to the case:

(c) Hearing Examiner's introductory statement;

(d) parties' brief opening statements (optional);

(e) presentation of Executive Director's case;

(f) presentation of cooperating employee's case if the cooperating employee has filed a supplemental complaint;

(g) presentation of respondent's case;

(h) opportunity for rebuttal; and

(i) parties' closing arguments.

The Examiner may modify the order of presentation to promote clear and fair presentation. With the Examiner's approval, the order of presentation may be modified by agreement of the parties. Recesses will be set by the Examiner.

(d) The order of presentation does not alter any legally established burden or presumption.

OFFICIAL NOTICE

(a) The Hearing Examiner may take official notice of judicially cognizable facts. In addition, the Examiner may take notice of general, technical, or scientific facts within his or her specialized knowledge.

(b) A Hearing Examiner ruling, decision, or recommendation may refer to and utilize any part of the Code and any issued Examiner decision.

2.30 HEARING EXAMINER'S DECISION

(a) 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 is closed. A copy of the decision and the certificate of service shall be made part of the case record. 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. The decision may also include an order directing parties to take actions consistent with the decision.

2.31 RECORD

On conclusion of the hearing 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) the findings, conclusions and decision of the Examiner; and

(e) the recording of the hearing.

(f) The Examiner's administrative file may include other information or materials that are not part of the record.

CLERICAL ERRORS AND CLARIFICATIONS

Clerical mistakes in decisions, recommendations, orders, or the record, and errors arising from oversight or omission, may be corrected by Examiner order or initiative, or in response to a motion for clarification by a party. A motion for clarification does not stop, or alter, the running of the time period provided by law for appealing the Examiner's decision.

2.32 PROCEEDINGS RECORDED

Examiner proceedings are electronically recorded. Hearing recordings are part of the official record. Copies of the recordings are available for each proceeding on the Office of Hearing Examiner website under the case number for each matter (http://www.seattle.gov/hearing-examiner/decisions/case-search).

2.33 MEDIATION AND SETTLEMENT

2.33.01 PURPOSE

(a) Mediation is a process that allows the participants to explore resolution of an appeal without going through a formal hearing procedure. In mediation, a neutral third party (a "mediator") facilitates communication and negotiation between the parties to assist them in finding mutually acceptable solutions to disagreements. The process is voluntary, and the parties may or may not reach a written agreement. The mediator does not have the power to make a decision for the parties but can help the parties find a resolution that is mutually acceptable. The only people who can resolve the dispute in mediation are the parties themselves. Mediation is more flexible than the formal appeal process and may allow the participants greater control over the process and outcome and may allow consideration of outcomes beyond those an Examiner might have authority to address.

(b) Settlement is the voluntary resolution of a dispute through party agreement. The Examiner does not participate in the settlement process.

(c) Mediation or settlement may be used to address some, or all of the issues that have been raised in a notice of appeal. The Examiner encourages the use of mediation and/or settlement to reach voluntary and mutually acceptable solutions.

2.33.02 INITIATION

(a) Mediation may be requested by the parties, or it may be suggested by the Examiner. Parties may initiate mediation privately at any time.

(b) Settlement is initiated privately between the parties at any time.

(c) If all parties agree to mediate or engage in settlement discussions, and to extend deadlines in the proceedings, the Examiner may continue any deadlines and hearings.

2.33.03 RESOURCES

(a) At any time, a party may request a referral for mediator services.

(b) The Examiner may provide information on mediation resources, including free or low-cost mediation services, but the Examiner does not warrant or represent the quality or suitability of any such resource.

(c) In some cases, the Examiner may request another Examiner to offer mediation services. If another Examiner mediates the case:

(1) The Examiner serving as mediator shall not be the Examiner assigned to the case.
(2) The Examiner serving as mediator may not communicate or discuss the mediation, or any other aspect of the case, with the Examiner assigned to the case, except procedural matters to arrange the mediation.
(3) The parties must agree to the Examiner serving as mediator.

(4) Whether an Examiner may serve in such a role is dependent on availability, and subject to Examiner discretion.

2.33.04 CONDUCT OF MEDIATION

(a) Before mediation, each party representative shall file a declaration affirming:

(1) A party representative with authority to settle the matter will be available for the duration of the mediation; and
(2) The party representative with authority to settle the matter has reviewed the mediation materials submitted by that party, as well as the materials submitted by opposing parties.

(b) Mediation during an Examiner proceeding is governed by the Uniform Mediation Act, RCW Chapter 7.07. To the extent the Rules are inconsistent with RCW Chapter 7.07, state law governs.

(c) During mediation, prehearing procedures, including but not limited to discovery and motions for dispositive orders, shall continue according to the prehearing order.

2.33.05 PRIVILEGE

(a) A mediation communication is a statement, whether oral, written, or nonverbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.

(b) A mediation communication is privileged, except as provided by Chapter 7.07 RCW, and is not subject to discovery or admissible in evidence in a proceeding before the Examiner unless the privilege is expressly waived. In any subsequent Hearing Examiner proceeding following a mediation, the following privileges apply:

(1) A mediation party may refuse to disclose, and may prevent any other person from disclosing, a mediation communication.
(2) Evidence or information otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in mediation.

(c) A privilege under subsection (b) of this Rule may be waived in a written agreement or orally during the proceeding if expressly waived by all parties to the mediation and:

(1) In the case of the privilege of the mediator, it is expressly waived by the mediator.
(2) In the case of the privilege of a nonparty participant, it is expressly waived by the nonparty participant.

(3) A person who discloses or makes a representation about a privileged mediation communication that prejudices another person in a proceeding is precluded from asserting a privilege under subsection (b) of this Rule, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.

(4) There is no privilege for a mediation communication that is a written agreement signed by all parties to the dispute.

2.33.06 OUTCOME

(a) When the parties determine mediation is complete, they shall report the outcome of the mediation to the Examiner.

(b) The following applies if agreement is reached as a result of mediation or settlement:

(1) If the agreement resolves all appeal matters at issue, and calls for case dismissal, the Examiner shall order dismissal upon notification by the parties.

(2) If the agreement resolves all matters at issue in the appeal and is signed by all parties, but calls for additional action by the Examiner (e.g., the parties may request review of the agreement by the Examiner, or request that the Examiner modify or condition a department decision based on the parties' agreement), the parties shall file the agreement or a stipulation with the Examiner, and the Examiner shall convene a hearing to address the parties' request.

(3) If the agreement resolves only some matters at issue in the appeal, and calls for dismissal of those issues, the Examiner shall order dismissal of those issues. The hearing process shall resume as if no mediation had occurred with regard to the remaining issues. The agreement on the dismissed issues shall not be used as evidence or proof of anything except that an agreement has been reached, unless all parties signed the agreement and agreed to waive the privilege in writing.

(4) If the agreement resolves only some matters at issue in the appeal, and calls for additional action by the Examiner, the parties shall file a copy of the agreement or a stipulation with the Examiner, and the Examiner shall convene a hearing to address the parties' request. As to the remaining issues on appeal, the hearing process shall resume as if no mediation had occurred with regard to those remaining issues. The agreement on the dismissed issues shall not be used as evidence or proof of anything except that an agreement has been reached, unless all parties signed the agreement and agreed to waive the privilege in writing.

(e) The following applies if no agreement is reached:

(1) The hearing process shall resume as if no mediation or settlement discussion had occurred; and

(2) Information exclusively shared by parties at a mediation may not be used as evidence in the hearing process, unless all parties agree to waive their privilege.