

Minutes of the
Cook County Commission on Human Rights
January 14, 2016

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Attendance:

Present: Chairperson K. Gunn; Commissioners K. Ayala-Bermejo, J. Block, E. Clarke-Bey, C. Eatherton, and S. Schultz.

Absent: Commissioners T. Connor, C. Harris, and H. Ratner.

Staff present: Executive Director Ranjit Hakim, Legal Counsel Mary Jean Dolan, Human Rights Investigator Aviva Cahn.

Chairperson Gunn called the meeting to order at 10:08 a.m.

I. Adoption of Agenda

The agenda was approved and adopted by unanimous voice vote.

II. Statements by the General Public

No member of the general public rose to make a statement.

III. Approval of Meeting Minutes — November 12, 2015

The Commissioners unanimously approved the minutes for the November 12, 2015 meeting.

IV. Presentation by Kenith Bergeron, U.S. Department of Justice Community Relations

The Community Relations Service (“CRS”) is the DOJ’s “peacemaker” for community conflicts and tensions arising from differences of race, color, and national origin. Created by the Civil Rights Act of 1964, CRS is the only federal agency dedicated to assist State and local units of government, private and public organizations, and community groups with preventing and resolving racial and ethnic tensions, incidents, and civil disorders, and in restoring racial stability and harmony.

With passage of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, CRS also works with communities to employ strategies to prevent and respond to alleged violent hate crimes committed on the basis of actual or perceived race, color, national origin, gender, gender identity, sexual orientation, religion or disability. CRS facilitates the development of viable, mutual understandings and agreements as alternatives to coercion, violence, or litigation. It also assists communities in developing local mechanisms, conducting training, and other proactive measures to prevent racial/ethnic tension and violent hate crimes committed on the

basis of actual or perceived race, color, national origin, gender, gender identity, sexual orientation, religion, or disability. CRS does not take sides among disputing parties and, in promoting the principles and ideals of non-discrimination, applies skills that allow parties to come to their own agreement. In performing this mission, CRS deploys highly skilled professional conciliators, who are able to assist people of diverse backgrounds. Mr. Bergeron's assignment includes six Midwestern states: Illinois, Minnesota, Wisconsin, Indiana, Michigan, and Ohio.

V. Commission Orders

a. Fritts v. Lo Voltage, 2013E012

Director Hakim provided a brief overview of this sexual orientation discrimination case which ended at administrative hearing and presented a draft order. The administrative law judge held a default proceeding and had complainant prove up damages because the respondent appears to have gone out of business. A full hearing was not held because respondent stopped participating. Judge Kinoy issued a proposed decision on emotional damages in the amount of \$25,000. Complainant did not claim any other type of damages.

The Commission unanimously adopted the draft order accepting the hearing officer's recommendation and fining Respondent \$100. The Commission also gave Complainant leave to file a request for attorneys' fees.

VI. Requests for Reconsideration

a. Sifuentes v. JPMC, 2013E014

Director Hakim provided a brief overview of this age discrimination/ age harassment/retaliation case and presented a draft order. Complainant's case was dismissed at the end of an extended investigation due to a lack of substantial evidence. Director Hakim recommended denying the request for reconsideration.

Commissioner C. Eatherton abstained from participating in the resolution of this matter due to a business relationship with the Respondent. The remainder of the Commission unanimously adopted the draft order denying Complainant's request for reconsideration.

b. Nugent v. Jewel, 2015PA002

Legal Counsel Dolan gave a brief overview of this disability discrimination/service dog accommodation and retaliation case and presented a draft order. The draft order cites a number of reasons for denying reconsideration, including that Complainant did not serve her requests for reconsideration on Respondent and

that Complainant did not present any new evidence that Complainant could not have presented during the course of investigation. However, out of an abundance of caution for a *pro se* litigant and as a way of explaining issues that are likely to re-occur on the docket, the draft order addresses all issues on substantive grounds as well procedural.

The Commission unanimously adopted the draft order denying Complainant's request for reconsideration.

VII. Case Pending Report

Director Hakim presented the case pending report, a copy of which is attached to these minutes.

VIII. Amendments to Procedural Rules

Legal Counsel Dolan presented three proposed amendments to the following Commission rules:

- a. 440.105 Investigation Deferral by serial litigants.
- b. 440.110 Fact Finding or Evidentiary Conference.
- c. 440.135 Access to Files by Parties.

After discussing the proposals at length, the Commissioners asked the staff to integrate their comments into revised proposals to be presented at the next meeting of the Commission.

Director Hakim presented an amendment to eliminate rules set out in Subpart 450 relating to the individual cause of action. Director Hakim also presented an additional four proposed amendments to the following Commission rules:

- a. CCHR Pro. R. 470.100 (dealing with aligning the date of party filing in hearing officer's decisions).
- b. CCHR Pro. R. 470.100 (dealing with aligning the date of party filing in hearing officer's decisions).
- c. CCHR Pro. R. 470.110 (dealing with aligning the date of the Statement of Attorney Fees and Costs service upon the Hearing Officer).
- d. CCHR Pro. R. 480.100 (dealing with aligning the date of party filing in Requests for Reconsideration with the Commission's final order on an Administrative Hearing).

These four proposed amendments would make the date upon which a party must make a responsive filing uniformly run from the date of a Commission order (rather than the

date of the receipt of a Commission order). The Commission unanimously adopted all five amendments, a copy of which is attached to these minutes.

IX. Executive Director's Report

Director Hakim reported that the final average time in which all Commission matters were resolved in FY2015 was 416 days. Director Hakim did note, however, that this figure will be adversely affected in FY2016 by the resolution of a Commission matter that has idled on the docket of the Circuit Court of Cook County for 1125 days.

X. Commissioners' Reports

Chairperson Gunn solicited reports from the Commissioners and received none.

XI. Other Business, If any

There was no other business.

XII. Adjourn

By a unanimous voice vote, the meeting was adjourned at 11:52 a.m.

Cases Pending Report January 14, 2016

PENDING INVESTIGATIONS

As of January 1, 2016: 18 pending investigations

CASES SCHEDULED FOR MEDIATION CONFERENCE

2014PA001 Orozco v. Summit Food and Liquor Disability/National Origin

See below.

CASES SCHEDULED FOR ADMINISTRATIVE HEARING

2013E012 Fritts v. Lo Voltage Sexual Orientation
Alleges employment discrimination (termination) based on sexual orientation and race. Finding of Substantial Evidence on April 21, 2015, with respect to sexual orientation claim. Assigned for Hearing to Administrative Law Judge Joanne Kinoy. Initial Status Date June 9, 2015 at 10 a.m. At September 1, 2015 status, Judge Kinoy granted Respondent's counsel's motion to withdraw. Respondent's counsel indicated that his client stopped communicating with him in July, emails do not bounce back as undeliverable, but go unanswered, the company's website and telephone numbers have been disconnected and certified letters to the business location are returned as undeliverable. Complainant did not object to the motion. Respondent given 21 days to appear *pro se* or through new counsel. Complainant's motions to compel discovery responses and impose sanctions entered and continued to status on October 1, 2015 at 10 a.m. On October 1, 2015, Respondent did not appear and so Judge Kinoy entered an order of default and allowed Complainant to prove up damages. Judge Kinoy issued an initial proposed decision on damages on December 9, 2015. Parties to submit exceptions by December 30, 2015.

2013E030 Robertson v. Allstate-Louis Dodd Agency Disability
Alleges employment discrimination (termination of employment and medical benefits) based on disability and failure to accommodate disability. Found Lack of Substantial Evidence on November 20, 2014, with respect to all claims. Reconsideration granted on May 14, 2015 with respect to unlawful termination claim. Assigned for Hearing to Administrative Law Judge Joanne Kinoy. Initial Status Date June 16, 2015 at 9:30 a.m. Discovery closed. Hearing held on November 10, 2015. The parties received an extension until February 8, 2016 to submit post-hearing briefing due to the health of Respondent's counsel.

2014E008 Yankaway v. Beauty 4 U Sexual Harassment
Alleges sexual harassment by a supervising manager. Supervising manager quit when confronted with the allegations by the employer. Case referred to Center for Conflict Resolution for mediation on July 9, 2015. Mediation held September 14, 2015, but the parties could not arrive at an agreement. Found substantial evidence to merit a hearing on November 10, 2015. Assigned for Hearing to Administrative Law Judge Joanne Kinoy. Initial Status Date January 12, 2016 at 10:00 a.m. On schedule for a hearing on May 17, 2016 at 10:00 a.m.

2014PA001 Orozco v. Summit Food and Liquor Disability/National Origin

Alleges respondent public accommodation failed to allow epileptic complainant to shop with seizure detecting service dog. Also alleges discriminatory comment about Mexicans. Found Substantial Evidence of disability discrimination and a Lack of Substantial Evidence of national origin discrimination on September 3, 2015. Assigned for Hearing to Administrative Law Judge Joanne Kinoy on September 4, 2015. At the November 24, 2015 status, parties requested assistance in reaching a settlement. Notice of Mediation Conference issued on November 25, 2015 for a mediation to occur on December 17, 2015 at 9:30 a.m. All hearing dates remain the same. Final Discovery status date on January 5, 2015 at 9:00 a.m. On schedule for a hearing on February 25, 2016 at 10 a.m. The parties notified the Commission on the eve of the mediation that they had reached a settlement in principle. The Commission advised that it would hold the matter on its docket until January 15, 2016 before issuing an order of dismissal.

PENDING LITIGATION

13 CH 17663 Walker v. Cook County Sheriff's Department (2008E017) Sex/Age/Sex Harassment/Retaliation

Administrative Hearing held by Hearing Officer Steven Saltzman on December 13 and 14, 2010, and resumed January 11, 2011. The Commission issued a Decision and Order on January 8, 2013. Commission Respondent filed writ. Commission is represented by the Office of the State's Attorney via ASA Jacqueline Carroll. Administrative record filed with circuit court on January 16, 2014. Briefing for and against writ completed on May 12, 2014. Motion heard on July 30, 2014. Judge ruled in favor of the Commission on February 11, 2015. The Commission's decision is supported by the manifest weight of the evidence and the relief ordered is within its legal authority and not arbitrary or capricious. The Sheriff's Department took an appeal to the First District Appellate Court on March 11, 2015. The record on appeal was filed on May 13, 2015. Petitioner filed its brief on September 28, 2015. The Commission joined Appellee Walker in responsive briefing and filed its brief on November 2, 2015. Petitioner filed its reply brief on November 16, 2015. There is no date set for oral argument.

12 CH 31377 Pryor v. Universal Foot Care Products, Inc. (2007E035) Race
Petition for Writ of Certiorari filed by Complainant on November 9, 2012. Commission is represented by the Office of the State's Attorney via ASA Alvin Portis. Court ordered remand to Hearing Officer Kinoy for explanation of evidentiary determinations. Supplemental Order issued by the Commission on April 7, 2014. Petitioner reasserted objections on August 8, 2014. Commission filed response brief, and Petitioner sought leave to amend to add a due process claim under section 1983. Judge Rudolfo Garcia continued petition for leave to amend on June 23, 2015 for resolution of the underlying petition for writ. Petitioner filed reply brief in support of petition for writ. On December 9, 2015, Court held oral argument on the petition for writ. Court ruled from the bench to confirm the Commission's decision and deny Petitioner's request for leave to file a 1983 action against the Commission. Petitioner filed a notice of appeal to the First District on January 8, 2016.

Proposed Revisions of the Cook County Commission on Human Rights Procedural Rules

Proposal 1: Allow for Discretionary Deferral of Cases Filed by Serial Litigants

Existing rule:

Section 440.105 **Investigation Deferral**

The Commission on its own initiative may defer investigation of a timely filed Complaint when the same Complaint, or a substantially similar Complaint, has been filed by the Complainant with another similar administrative agency. In addition, any party may file a motion, in accordance with Section 420.170 herein, requesting that the Commission defer investigation into a timely filed Complaint pending resolution of the same Complaint, or a substantially similar Complaint, which has been filed by the Complainant with another similar administrative agency. The following is a non-exhaustive list of factors which the Commission may consider in determining whether to exercise its discretion to defer an investigation:

- (A) Conservation of administrative resources;
- (B) Complainant’s right to a timely investigation;
- (C) Minimization of Respondent's burden;
- (D) Procedural or investigative status of charges/complaints filed with the administrative agency as evidenced by one or more of the following: completion of document exchange, witness interviews, response to questionnaires, and the holding of fact-finding conferences; and
- (E) Administrative agency backlog.

If the Commission defers its investigation of a Complaint in favor of the investigation or adjudication of the same Complaint, or a substantially similar Complaint, with another similar administrative agency, then the factual findings and conclusions of law of that other similar administrative agency shall be binding on the parties to the Complaint pending before the Commission unless the Commission orders otherwise.

Revised rule:

Section 440.105 **Investigation Deferral**

(A) Parallel Filings at Other Agencies

The Commission on its own initiative may defer investigation of a timely filed Complaint when the same Complaint, or a substantially similar Complaint, has been filed by the Complainant with another similar administrative agency. In addition, any party may file a motion, in accordance with Section 420.170 herein, requesting that the Commission defer investigation into a timely filed Complaint pending resolution of the same Complaint, or a substantially similar Complaint, which has been filed by the Complainant with another similar administrative agency. The following is a

non-exhaustive list of factors which the Commission may consider in determining whether to exercise its discretion to defer an investigation:

- (1A) Conservation of administrative resources;
- (2B) Complainant's right to a timely investigation;
- (3C) Minimization of Respondent's burden;
- (4D) Procedural or investigative status of charges/complaints filed with the administrative agency as evidenced by one or more of the following: completion of document exchange, witness interviews, response to questionnaires, and the holding of fact-finding conferences; and
- (5E) ~~Administrative agency backlog~~ Availability of administrative resources.

If the Commission defers its investigation of a Complaint in favor of the investigation or adjudication of the same Complaint, or a substantially similar Complaint, with another similar administrative agency, then the factual findings and conclusions of law of that other similar administrative agency shall be binding on the parties to the Complaint pending before the Commission unless the Commission orders otherwise.

(B) Multiple Filings at the Commission

The Commission on its own initiative may defer investigation of a Complainant's timely filed Complaint when the same Complainant has one or more previously filed Complaint(s) pending at the Commission.

The following is a non-exhaustive list of factors which the Commission may consider in determining whether to exercise its discretion to defer an investigation:

- (1) Availability of administrative resources;
- (2) Availability of alternative administrative and non-administrative forums;
- (3) The number, recentness and extent of administrative resources dedicated to Complaints currently on file with the Commission by the same Complainant; and
- (4) The number, frequency, outcome and extent of administrative resources dedicated to Complaints previously filed by the same Complainant at the Commission and other similar administrative agencies.

If the Commission defers its investigation of a Complaint or Complaints by a Complainant under this Rule 440.105(B), the Commission shall serve the Complainant and the affected Respondent(s) with notice and a copy of this Rule. Complainant shall have 21 days from the date of such notice to file with the Commission and serve on the affected Respondent(s) an election of which Complaint currently on file with the Commission to pursue at the Commission. Complainant may

withdraw any other Complaint(s) currently on file with the Commission pursuant to Rule 420.160 without prejudice to re-filing it with the Commission within 21 days of the date of the Commission's final order disposing of the elected Complaint. Complainant's failure to make a timely election may result in the dismissal of all currently pending Complaints pursuant to Rule 440.125. Nothing in this Rule 440.105(B) shall affect a Complainant's right, if any, to file the withdrawn Complaint(s) in any other available alternative forum.

Proposal 2: Allow Hearing Officers to Take Testimony at Evidentiary Conferences

Existing rule:

Section 440.110 **Fact-Finding or Evidentiary Conference**

The Commission may order the parties to attend either a Fact-Finding Conference or an Evidentiary Conference. These conferences may be ordered in an attempt to clarify disputed issues of fact or to obtain relevant evidence. The Commission may order the parties to provide written submissions, including affidavits, which would further clarify any disputed issues of fact or to provide additional evidence which would assist the Commission in making an Evidence Determination. A party may be represented at a conference by one or more persons who may or may not be attorneys. Once a conference has been ordered, if a party fails to attend, and such failure is not excused, the party shall be subject to the same penalties as those set forth in Section 440.145(B)(5).

New rule:

Section 440.110 **Fact-Finding or Evidentiary Conference**

The Commission may order the parties to attend either a Fact-Finding Conference or an Evidentiary Conference.

(A) Fact-Finding Conference:

These conferences may be ordered in an attempt to clarify disputed issues of fact or to obtain relevant evidence. The Commission may order the parties to provide written submissions, including affidavits, which would further clarify any disputed issues of fact or to provide additional evidence which would assist the Commission in making an Evidence Determination. A Fact-Finding Conference will be led by the Commission investigator assigned to a case.

(B) Evidentiary Conference:

(1) These conferences may be ordered to resolve simple factual disputes arising from conflicting testimonial evidence by parties and/or witnesses that is potentially determinative as to whether there is substantial evidence of a violation of the Human Rights Ordinance. The Commission may order the parties and/or witnesses to provide in-person, sworn testimony on the disputed fact before a Hearing Officer who will make a determination as to the credibility of any testifying party or witness with respect to the disputed fact. An order of an Evidentiary Conference will provide the parties with notice of the disputed issue of fact and the identity of the testifying parties and/or witnesses. An Evidentiary Conference will be led by a Hearing Officer assigned by the Commission.

(2) The Hearing Officer assigned by the Commission to an Evidentiary Conference cannot:

a. Be a person who was otherwise involved in the investigation of the case that is the subject of the Evidentiary Conference; or

b. Be designated by the Commission as the Hearing Officer for the case that is the subject of the Evidentiary Conference if that case proceeds to an Administrative Hearing under Subpart 460 of these Rules.

(3) At an Evidentiary Conference, the testifying parties and/or witnesses will be examined by the Hearing Officer. The parties to the case, or their attorneys or representatives of record, will then have the opportunity to confront and cross-examine any party or witness testifying at an Evidentiary Conference. The parties to the case, or their attorneys or representatives of record, may also present any additional testimonial or documentary evidence to the Hearing Officer that the parties believe will assist the Hearing Officer in resolving the disputed issue of fact.

(4) The Hearing Officer will present any findings of fact, including any determinations of testimonial credibility, to the Commission investigator assigned to the case that is the subject of the Evidentiary Conference as an additional piece of evidence for inclusion in the investigation report within 21 days of the Evidentiary Conference.

(C) Right to Representation:

A party may be represented at a ~~conference~~ Fact Finding Conference or an Evidentiary Conference by one or more persons who may or may not be attorneys. Once a conference has been ordered, if a party fails to attend, and such failure is not excused, the party shall be subject to the same penalties as those set forth in Section 440.145(B)(5).

Proposal 3: Increase Access to Commission Files to Facilitate Due Process at Evidentiary Conferences

Existing rule:

Section 440.135 **Access to Files by Parties**

- (A) A party or the party’s attorney or representative of record may review documents in the Commission investigation file at any time after the Commission has served notice of an Evidence Determination. A party must provide the Commission with at least 48 hours notice of the party’s intent to inspect the file.
- (B) Notwithstanding Subsection (A) above, the Commission shall not allow parties to inspect internal memoranda, work papers, notes, or other materials generated by Commission staff or agents in the course of an investigation, which reflect the deliberative process, mental impressions, or legal theories or recommendations of the staff or agents of the Commission. In addition, parties shall not be allowed to inspect materials or documents otherwise protected from disclosure by applicable state or federal law.
 - (1) If the Commission deems it necessary, or if a party files a written motion setting forth good cause, the Commission may require a party seeking access to the files to enter into a protective order limiting the use of information from the files to an Administrative Hearing only, and prohibiting any other disclosure of information from the files.
 - (2) The Commission may acknowledge publicly the existence of a Complaint, including the case number, the identities of the parties, the type of case, and the stage of proceedings at which it is pending, unless the Commission deems it necessary to withhold this information for good cause. A party may request, in writing, that the Commission not include the party’s name in any public acknowledgment. The party must state the reasons for any such request.

Revised rule:

Section 440.135 **Access to Files by Parties**

- (A) A party or the party’s attorney or representative of record may review documents in the Commission investigation file at any time after the Commission has served notice of an Evidence Determination; except where the Commission has ordered an Evidentiary Conference pursuant to Rule 440.110(B), in which case, a party or the party’s attorney or representative of record may review documents in the Commission investigation file before an Evidentiary Conference even when such conference occurs before the Commission has served notice of an Evidentiary Determination. ~~In all cases, a~~ party must provide the Commission with at least 48 hours’ notice of the party’s intent to inspect the file.
- (B) Notwithstanding Subsection (A) above, the Commission shall not allow parties to inspect internal memoranda, work papers, notes, or other materials generated by Commission staff

or agents in the course of an investigation, which reflect the deliberative process, mental impressions, or legal theories or recommendations of the staff or agents of the Commission. In addition, parties shall not be allowed to inspect materials or documents otherwise protected from disclosure by applicable state or federal law.

- (1) If the Commission deems it necessary, or if a party files a written motion setting forth good cause, the Commission may require a party seeking access to the files to enter into a protective order limiting the use of information from the files to an Administrative Hearing only, and prohibiting any other disclosure of information from the files.
- (2) The Commission may acknowledge publicly the existence of a Complaint, including the case number, the identities of the parties, the type of case, and the stage of proceedings at which it is pending, unless the Commission deems it necessary to withhold this information for good cause. A party may request, in writing, that the Commission not include the party's name in any public acknowledgment. The party must state the reasons for any such request.

Proposal 4: Eliminate rules related to unconstitutional individual right of action

Existing rule:

SUBPART 450 **INDIVIDUAL RIGHT OF ACTION**

Subsequent to a timely filing of a Complaint with the Commission, where such Complaint alleges a violation(s) under Article III, IV, V, VI, VII, or VIII of the Ordinance, and prior to an Evidence Determination, a Complainant may request of the Commission to have the claims asserted in that Complaint decided in a civil action in a court of general jurisdiction. The Commission in its discretion may approve the request and shall issue a written authorization to the Complainant to proceed before such a court. Upon receipt of the written authorization, the Complainant shall give notice of his or her decision to proceed to court, to the Commission and to all other Complainants and Respondents to whom the Complaint relates. A Complainant has 90 days from the date the written authorization is received within which to bring suit.

The Commission, in exercising its discretion in determining whether to grant or deny a Complainant's request to proceed to court under Article X(D)(2) of the Ordinance, is not limited to, but may evaluate and consider, the following in making its determination:

- (A) Whether the nature of the allegations contained in the Complaint and the present posture of an ongoing investigation establish the likelihood that the investigation will exceed the 180-day directory time period for completion of an investigation;
- (B) Whether the investigation into the allegations contained in the Complaint is almost complete;
- (C) Whether the nature of the allegations contained in the Complaint indicates that the Complaint should be dismissed because of jurisdictional deficiencies;
- (D) Whether the purposes and goals of the Ordinance (i.e., conciliation/settlement, cease-and-desist) will be effectuated by continuing before the Commission;
- (E) Whether the allegations contained in the Complaint present a case of first impression for the Commission;
- (F) Whether the Complaint filed relates to a systemic investigation by the Commission; and
- (G) The expertise of the Commission.

Revised rule:

SUBPART 450 **INDIVIDUAL RIGHT OF ACTION[RESERVED]**

~~Subsequent to a timely filing of a Complaint with the Commission, where such Complaint alleges a violation(s) under Article III, IV, V, VI, VII, or VIII of the Ordinance, and prior to an Evidence Determination, a Complainant may request of the Commission to have the claims asserted in that Complaint decided in a civil action in a court of general jurisdiction. The Commission in its~~

~~discretion may approve the request and shall issue a written authorization to the Complainant to proceed before such a court. Upon receipt of the written authorization, the Complainant shall give notice of his or her decision to proceed to court, to the Commission and to all other Complainants and Respondents to whom the Complaint relates. A Complainant has 90 days from the date the written authorization is received within which to bring suit.~~

~~The Commission, in exercising its discretion in determining whether to grant or deny a Complainant's request to proceed to court under Article X(D)(2) of the Ordinance, is not limited to, but may evaluate and consider, the following in making its determination:~~

- ~~(A) Whether the nature of the allegations contained in the Complaint and the present posture of an ongoing investigation establish the likelihood that the investigation will exceed the 180-day directory time period for completion of an investigation;~~
- ~~(B) Whether the investigation into the allegations contained in the Complaint is almost complete;~~
- ~~(C) Whether the nature of the allegations contained in the Complaint indicates that the Complaint should be dismissed because of jurisdictional deficiencies;~~
- ~~(D) Whether the purposes and goals of the Ordinance (i.e., conciliation/settlement, cease and desist) will be effectuated by continuing before the Commission;~~
- ~~(E) Whether the allegations contained in the Complaint present a case of first impression for the Commission;~~
- ~~(F) Whether the Complaint filed relates to a systemic investigation by the Commission; and~~
- ~~(G) The expertise of the Commission.~~

Proposal 5: Align date of party filing

Existing rule:

Section 470.100 **Hearing Officer's Decisions**

- (A) Within 60 days after the conclusion of an Administrative Hearing or within 60 days after submission of the last of any post-hearing briefs ordered by the Hearing Officer, the Hearing Officer shall submit to the parties and file with the Commission his/her initial proposed decision and order including: (i) a summary of the respective contentions of the parties; (ii) findings of fact based upon and limited to the testimony and other evidence of record; (iii) a determination as to whether or not a preponderance of the evidence sustains the Complaint, or each claim thereof; (iv) conclusions of law, including an analysis of each legal claim and reasoning to support the Hearing Officer's determinations; and (v) an initial proposed order, including any appropriate relief and a recommendation as to whether to award reasonable attorney fees and costs.
- (B) The parties shall each have 21 days from the date of service of the Hearing Officer's initial proposed decision and order to serve simultaneously on all other parties and the Hearing Officer, and to file with the Commission, all exceptions to the initial proposed decision and order and to file any Request for Reconsideration of any interlocutory orders (i.e., substantial evidence determinations, motions to dismiss). The exceptions should include relevant legal analysis for any objections to legal conclusions, grounds for reversal or modification of any finding of fact including specific references to the record and transcript, and/or grounds for modification or reversal of relief ordered, if any. The parties shall each have 14 days from the date of service of the objections to serve simultaneously on all other parties and the Hearing Officer, and to file with the Commission, any response to any other party's exceptions, if any; such a response must include relevant legal analysis for any response to objections to legal conclusions. Replies shall be permitted only upon leave of the Hearing Officer upon good cause shown.
- (C) Within 21 days of receipt of the last response or reply, the Hearing Officer shall rule upon all exceptions and shall submit to the Commission: i) his/her final proposed decision and order, including the reasons for acceptance or rejection of the exceptions; ii) his /her initial proposed decision and order; and iii) all of the parties' exceptions, responses, and replies.

Revised rule:

Section 470.100 **Hearing Officer's Decisions**

- (A) Within 60 days after the conclusion of an Administrative Hearing or within 60 days after submission of the last of any post-hearing briefs ordered by the Hearing Officer, the Hearing Officer shall submit to the parties and file with the Commission his/her initial proposed decision and order including: (i) a summary of the respective contentions of the parties; (ii) findings of fact based upon and limited to the testimony and other evidence of record; (iii) a determination as to whether or not a preponderance of the evidence sustains the Complaint, or each claim thereof; (iv) conclusions of law, including an analysis of each legal claim and reasoning to support the Hearing Officer's determinations; and (v) an

initial proposed order, including any appropriate relief and a recommendation as to whether to award reasonable attorney fees and costs.

- | (B) The parties shall each have 21 days from the date ~~of service~~ of the Hearing Officer's initial proposed decision and order to serve simultaneously on all other parties and the Hearing Officer, and to file with the Commission, all exceptions to the initial proposed decision and order and to file any Request for Reconsideration of any interlocutory orders (i.e., substantial evidence determinations, motions to dismiss). The exceptions should include relevant legal analysis for any objections to legal conclusions, grounds for reversal or modification of any finding of fact including specific references to the record and transcript, and/or grounds for modification or reversal of relief ordered, if any. The parties shall each have 14 days from the date of service of the objections to serve simultaneously on all other parties and the Hearing Officer, and to file with the Commission, any response to any other party's exceptions, if any; such a response must include relevant legal analysis for any response to objections to legal conclusions. Replies shall be permitted only upon leave of the Hearing Officer upon good cause shown.

- (C) Within 21 days of receipt of the last response or reply, the Hearing Officer shall rule upon all exceptions and shall submit to the Commission: i) his/her final proposed decision and order, including the reasons for acceptance or rejection of the exceptions; ii) his /her initial proposed decision and order; and iii) all of the parties' exceptions, responses, and replies.

Proposal 6: Align date of party filing

Existing rule:

Section 470.105 **Commissioners' Decisions**

- (A) The Commissioners, or a panel of three Commissioners, as so designated by the Chairperson, shall review the entire record, including the Hearing Officer's final proposed decision and order. The panel of Commissioners will recommend to the full body of Commissioners a final Commission decision and order.
- (B) The Commissioners shall adopt, reject, or modify the Hearing Officer's final proposed decision and order, in whole or in part, or may remand for additional hearings on some or all of the issues presented. The Hearing Officer's findings of fact shall be adopted unless the Commissioners determine that they are against the manifest weight of evidence. The Commissioners shall adopt the Hearing Officer's final proposed decision and order if it is not contrary to the evidence presented at the Administrative Hearing.
- (C) If the Commissioners find that a Respondent has not violated the Ordinance, the Commissioners shall promptly issue a written decision and order dismissing the Complaint as to such Respondent, and setting forth findings of fact and conclusions of law. If the Commissioners find that a Respondent has engaged in a violation of the Ordinance, the Commissioners shall promptly issue a written decision and order stating the Commission's findings of fact, conclusions of law, and order for relief.
- (D) The decision of the Commission shall be in writing and shall be issued within 60 days of the submission of the Hearing Officer's final proposed decision and order. The written decision and order shall be sent to all parties by mail. Any party may request a rehearing of the matter by the Commission by filing a Request for Reconsideration in accordance with Section 480.100(C) herein within 30 days of receipt of the Commission's decision and order.
- (E) All final decisions and orders of the Commission shall have precedential effect.

Revised rule:

Section 470.105 **Commissioners' Decisions**

- (A) The Commissioners, or a panel of three Commissioners, as so designated by the Chairperson, shall review the entire record, including the Hearing Officer's final proposed decision and order. The panel of Commissioners will recommend to the full body of Commissioners a final Commission decision and order.
- (B) The Commissioners shall adopt, reject, or modify the Hearing Officer's final proposed decision and order, in whole or in part, or may remand for additional hearings on some or all of the issues presented. The Hearing Officer's findings of fact shall be adopted unless the Commissioners determine that they are against the manifest weight of evidence. The Commissioners shall adopt the Hearing Officer's final proposed decision and order if it is

not contrary to the evidence presented at the Administrative Hearing.

- (C) If the Commissioners find that a Respondent has not violated the Ordinance, the Commissioners shall promptly issue a written decision and order dismissing the Complaint as to such Respondent, and setting forth findings of fact and conclusions of law. If the Commissioners find that a Respondent has engaged in a violation of the Ordinance, the Commissioners shall promptly issue a written decision and order stating the Commission's findings of fact, conclusions of law, and order for relief.
- (D) The decision of the Commission shall be in writing and shall be issued within 60 days of the submission of the Hearing Officer's final proposed decision and order. The written decision and order shall be sent to all parties by mail. Any party may request a rehearing of the matter by the Commission by filing a Request for Reconsideration in accordance with Section 480.100(C) herein within 30 days of ~~receipt~~ the date of the Commission's decision and order.
- (E) All final decisions and orders of the Commission shall have precedential effect.

Proposal 7: Align date of party filing

Existing rule:

Section 470.110 **Statement of Attorney Fees and Costs**

- (A) No later than 21 days after receipt of the Commission's decision and order upon an Administrative Hearing awarding attorney fees or costs, a Complainant who is awarded attorney fees or costs may serve upon the Hearing Officer a statement of fees and/or costs, supported by argument and affidavits. Such supporting documentation shall include the following:
- (1) The number of hours for which compensation is sought, itemized according to the work that was performed and the individual who performed the work;
 - (2) The hourly rate customarily charged by each individual for whom compensation is sought, or, in the case of a public law office which does not charge fees or which charges fees at less than market rates, documentation of the rates prevalent in the practice of law for attorneys in the same locale with comparable experience and expertise; and
 - (3) Documentation of costs for which the party seeks reimbursement.
- (B) Copies of such statements and supporting documents shall also be served by the Complainant on all other parties and shall be filed with the Commission, and proof of service shall be provided. Neither fees nor costs will be awarded in the absence of a proper statement thereof.
- (C) If a statement of fees and/or costs is timely filed by the Complainant as provided above, all other parties shall have the opportunity to file written responses thereto. Such responses shall be served upon the Hearing Officer and filed with the Commission within 14 days after the service of such statement, and copies thereof shall be served at the same time on all other parties.
- (D) The Complainant may submit a reply brief by serving it on the Hearing Officer and the other parties and filing it with the Commission no more than 5 days after receipt of the response.
- (E) A party may request additional time to file a pleading governed by this section pursuant to Section 490.180.
- (F) Within 21 days of receipt of the parties' final submission, the Hearing Officer shall submit to the parties his/her initial proposed decision regarding the petition for attorney fees and costs.
- (1) The parties shall each have 21 days to serve simultaneously on the other party and the Hearing Officer and to file with the Commission all objections to the initial proposed decision regarding the petition for attorney fees and costs, including

grounds for modification of any finding of fact and relevant legal analysis for any objections to legal conclusions. The parties shall then each have 14 days to serve on the other party and the Hearing Officer and to file with the Commission any response to another party's objections, if any; such a response must include relevant legal analysis for any response to objections to legal conclusions. Replies shall only be permitted upon leave of the Hearing Officer upon good cause shown.

- (2) Within 21 days of receipt of the last response or reply, the Hearing Officer shall submit to the Commissioners: (a) his/her final proposed decision regarding the petition for attorney fees and costs, including the reasoning for acceptance or rejection of the objections of the parties; (b) his/her initial proposed decision; and (c) all of the parties' objections, responses, and replies.
- (G) The decision of the Commission shall be in writing and shall be issued within 60 days of submission of the Hearing Officer's final proposed decision. The written decision and order shall be sent to all parties by mail.

Revised rule:

Section 470.110 **Statement of Attorney Fees and Costs**

- (A) No later than 21 days after ~~receipt~~ the date of the Commission's decision and order upon an Administrative Hearing awarding attorney fees or costs, a Complainant who is awarded attorney fees or costs may serve upon the Hearing Officer a statement of fees and/or costs, supported by argument and affidavits. Such supporting documentation shall include the following:
 - (1) The number of hours for which compensation is sought, itemized according to the work that was performed and the individual who performed the work;
 - (2) The hourly rate customarily charged by each individual for whom compensation is sought, or, in the case of a public law office which does not charge fees or which charges fees at less than market rates, documentation of the rates prevalent in the practice of law for attorneys in the same locale with comparable experience and expertise; and
 - (3) Documentation of costs for which the party seeks reimbursement.
- (B) Copies of such statements and supporting documents shall also be served by the Complainant on all other parties and shall be filed with the Commission, and proof of service shall be provided. Neither fees nor costs will be awarded in the absence of a proper statement thereof.
- (C) If a statement of fees and/or costs is timely filed by the Complainant as provided above, all other parties shall have the opportunity to file written responses thereto. Such responses shall be served upon the Hearing Officer and filed with the Commission within 14 days after the service of such statement, and copies thereof shall be served at the same time on all other parties.

- (D) The Complainant may submit a reply brief by serving it on the Hearing Officer and the other parties and filing it with the Commission no more than 5 days after receipt of the response.
- (E) A party may request additional time to file a pleading governed by this section pursuant to Section 490.180.
- (F) Within 21 days of receipt of the parties' final submission, the Hearing Officer shall submit to the parties his/her initial proposed decision regarding the petition for attorney fees and costs.
 - (1) The parties shall each have 21 days to serve simultaneously on the other party and the Hearing Officer and to file with the Commission all objections to the initial proposed decision regarding the petition for attorney fees and costs, including grounds for modification of any finding of fact and relevant legal analysis for any objections to legal conclusions. The parties shall then each have 14 days to serve on the other party and the Hearing Officer and to file with the Commission any response to another party's objections, if any; such a response must include relevant legal analysis for any response to objections to legal conclusions. Replies shall only be permitted upon leave of the Hearing Officer upon good cause shown.
 - (2) Within 21 days of receipt of the last response or reply, the Hearing Officer shall submit to the Commissioners: (a) his/her final proposed decision regarding the petition for attorney fees and costs, including the reasoning for acceptance or rejection of the objections of the parties; (b) his/her initial proposed decision; and (c) all of the parties' objections, responses, and replies.
- (G) The decision of the Commission shall be in writing and shall be issued within 60 days of submission of the Hearing Officer's final proposed decision. The written decision and order shall be sent to all parties by mail.

Proposal 8: Align date of party filing

Existing rule:

Section 480.100 **Request for Reconsideration**

(A) Review Other than After an Administrative Hearing

After the Commission has issued an order dismissing a Complaint other than after an Administrative Hearing, including a dismissal because of a finding of lack of substantial evidence, or after the Commission has issued a default order and judgment, either party may obtain review of the order by filing a Request for Reconsideration with the Commission and serving copies on all other parties within 30 days from the date of the Commission's order. The other parties shall each have 21 days from the date of service of the Request for Reconsideration to file a response to the Request for Reconsideration.

(B) Interlocutory Order

After the Commission or a Hearing Officer has issued an interlocutory order (i.e., any order not covered by Subsection (A) of this section or by Section 470.105), such as a ruling on a motion challenging jurisdiction, any party may obtain review of the interlocutory order only after the Commission has issued an order dismissing the Complaint, or as part of its objections to the Hearing Officer's initial proposed decision and order following an Administrative Hearing. The requesting party must file its objections, if any, to the interlocutory order, within 21 days from the date of the initial proposed decision and order. Any other party must respond to the interlocutory order objections, if at all, as part of its response to the objections to the Hearing Officer's initial proposed decision and order as set forth in Section 470.100(B).

Notwithstanding the foregoing, a party may file a Request for Reconsideration of a decision ruling upon a motion to disqualify, upon receipt of such a decision as provided in Section 460.115.

(C) Rehearing

After the Commission has issued its final order and decision on an Administrative Hearing either party may file within 30 days of receipt of this order a Request for Reconsideration seeking a rehearing before the Commission. The Request for Reconsideration shall state briefly and specifically the legal issues claimed to have been overlooked or misapprehended by the Commission in its final order and decision. The Commission, at its discretion may order that a response to the Request for Reconsideration be filed. A rehearing will be granted by the Commission only when it is clear that the Request for Reconsideration raises legal issues of significant impact. A Request for Reconsideration allowing a rehearing will be granted sparingly.

Revised rule:

Section 480.100 **Request for Reconsideration**

(A) Review Other than After an Administrative Hearing

After the Commission has issued an order dismissing a Complaint other than after an Administrative Hearing, including a dismissal because of a finding of lack of substantial evidence, or after the Commission has issued a default order and judgment, either party may obtain review of the order by filing a Request for Reconsideration with the Commission and serving copies on all other parties within 30 days from the date of the Commission's order. The other parties shall each have 21 days from the date of service of the Request for Reconsideration to file a response to the Request for Reconsideration.

(B) Interlocutory Order

After the Commission or a Hearing Officer has issued an interlocutory order (i.e., any order not covered by Subsection (A) of this section or by Section 470.105), such as a ruling on a motion challenging jurisdiction, any party may obtain review of the interlocutory order only after the Commission has issued an order dismissing the Complaint, or as part of its objections to the Hearing Officer's initial proposed decision and order following an Administrative Hearing. The requesting party must file its objections, if any, to the interlocutory order, within 21 days from the date of the initial proposed decision and order. Any other party must respond to the interlocutory order objections, if at all, as part of its response to the objections to the Hearing Officer's initial proposed decision and order as set forth in Section 470.100(B).

Notwithstanding the foregoing, a party may file a Request for Reconsideration of a decision ruling upon a motion to disqualify, upon receipt of such a decision as provided in Section 460.115.

(C) Rehearing

After the Commission has issued its final order and decision on an Administrative Hearing either party may file within 30 days of ~~receipt~~ the date of this order a Request for Reconsideration seeking a rehearing before the Commission. The Request for Reconsideration shall state briefly and specifically the legal issues claimed to have been overlooked or misapprehended by the Commission in its final order and decision. The Commission, at its discretion may order that a response to the Request for Reconsideration be filed. A rehearing will be granted by the Commission only when it is clear that the Request for Reconsideration raises legal issues of significant impact. A Request for Reconsideration allowing a rehearing will be granted sparingly