Readopt with amendment Hum 301.01, effective 2-3-07 (Document #8815-A), to read as follows:

Hum 301.01 Definitions.

(a) "Affidavit" means a written statement signed and sworn or affirmed before a notary public or justice of the peace.

~~(a)~~***(b)*** "Appearance" means a written notification to the ~~commission~~ ***Commission*** that counsel for a party, intervenor or witness intends to actively participate in a public adjudicative hearing.

(c) "Burden of proof" means the party's duty to prove the allegations made.

(d) "Chair of the Hearing Panel" means the individual whom the Chair of the Commission has designated as the chair of the panel of 3 hearing commissioners.

~~(b)~~***(e)*** "Complaint" means a written verified statement charging illegal discrimination under RSA 354-A.

~~(c)~~***(f)*** "Day" means calendar day and includes the next working day if a deadline falls on a Saturday, Sunday or a holiday.

~~(d)~~***(g)*** "Declaratory ruling" means, pursuant to RSA 541-A:1, V, a ruling by the ~~commission~~ ***Commission*** as to the specific applicability of any statutory provision or of any rule or order of the ~~commission~~ ***Commission***.

~~(e)~~***(h)*** "Determination of probable cause" means a determination made after investigation that there is sufficient evidence upon which a fact finder could form a reasonable belief that the respondent(s) committed one or more unlawful practices.

~~(f)~~***(i)*** "Director" means the ~~executive director~~ ***Executive Director*** of the New Hampshire ~~commission~~ ***Commission*** for ~~human rights~~ ***Human Rights***.

~~(g)~~***(j)*** "Filed" means received by the ~~commission~~ ***Commission*** at its offices either physically or electronically.

~~(h)~~***(k)*** "Hearing ~~commissioners~~ ***Commissioners***" means the 3 commissioners designated by the ~~chair~~ ***Chair*** of the ~~commission~~ Commission to sit as a panel at a public adjudicative hearing.

~~(l) "Presiding officer" means the individual whom the chair of the commission has designated as the chair of the panel of 3 hearing commissioners.~~

~~(m) "Pro hac vice representation" means representation at the commission in a particular case only by an attorney not licensed to practice in New Hampshire.~~

(l) "Investigating Commissioner" means the Commissioner designated by the Chair of the Commission to supervise the Commission's investigation of a complaint, make a determination of probable cause or no probable cause, and, upon a determination of probable cause, conduct efforts at conciliation.

~~(i)~~***(m)*** "Motion" means a request to the ~~presiding officer~~ ***Chair of the Hearing Panel or designee*** for an order or ruling directing some act to be done in favor of the proponent of the motion, including a statement of justification or reasons for the request.

~~(j)~~***(n)*** "Order" means, pursuant to RSA 541-A:1, XI, the whole or part of the ~~commission's~~ ***Commission's*** final disposition of a matter other than a rule, but not including the ~~commission's~~ ***Commission's*** decision to initiate, postpone, investigate or process any matter or to issue a complaint or citation.

~~(k)~~***(o)*** "Parties" means the complainant and one or more respondents.

~~(m)~~***(p)*** "Proof by a preponderance of the evidence" means ***such evidence that when it is weighed or compared with opposing evidence it is more convincing;*** a demonstration by admissible evidence that a fact or legal conclusion is more probably true than not. ***It does not necessarily mean producing more evidence but, instead, relates to the quality of the evidence and its ability to prove or disprove the allegations made.***

~~(o)~~***(q)*** "Public comment hearing" means a proceeding held pursuant to RSA 541-A:11.

~~(p)~~***(r)*** "Respondent" means one or more of the following against which a complaint of discrimination has been filed:

(1) A natural person;

(2) A corporation;

(3) An unincorporated association;

(4) An organization;

(5) A partnership;

(6) A limited liability company;

(7) A professional corporation;

(8) A business; and

(9) A unit of state or local government***, including public schools and public charter schools***.

~~(q)~~***(s)*** "Record" means the materials set forth in RSA 541-A:31, VI.

~~(r)~~***(t)*** "Rulemaking petition" means a petition made pursuant to RSA 541-A:4, I.

(u) "Sufficient evidence" means evidence that is has enough probative value to support a legal determination or factual finding.

~~(s)~~***(v)*** "Verified" means ***either:***

(1) signed, and sworn or affirmed, before a notary public or justice of the peace***; or***

(2) submitted with or on a Commission form that notifies the signatory that any false statements are subject to criminal charges under RSA 641:3.

Readopt with amendment Hum 302.01, effective 2-3-07 (Document #8815-A), as follows:

Hum 302.01 Scope. The rules of this chapter shall apply to public adjudicative hearings scheduled after a determination of probable cause which:

(a) Has not been altered upon reconsideration pursuant to Hum ~~210.03~~ ***211.03***; and

(b) Has not been resolved through conciliation pursuant to Hum ~~211~~ ***307.03***.

Readopt with amendment Hum 303.01, effective 2-3-07 (Document #8815-A), to read as follows:

Hum 303.01 Attorney Representation of Clients in Public Adjudicative Hearings.

(a) An attorney who is an active member in good standing of the Bar of New Hampshire ***or any other state or district in the United States*** may represent a client at a public adjudicative hearing by:

(1) Participating in ~~the hearing and pre-hearing conference(s)~~ ***conciliation, pre-hearing conference(s), and the public adjudicative hearing***;

(2) Signing documents on behalf of ~~his or her~~ ***a*** client, except as otherwise provided in these rules; and

(3) Filing documents.

~~(b) An attorney who is not a member of the Bar of New Hampshire shall be similarly eligible to represent a client if:~~

~~(1) Approved by the commission pursuant to Hum 204.04 to represent his or her client *pro hac vice*; and~~

~~(2) Accompanied at all hearings, conferences and meetings by the New Hampshire attorney who has filed the appearance called for by Hum 204.02(a)(2)a. or Hum 204.02(b)(2), as applicable.~~

Readopt with amendment Hum 303.02, effective 2-3-07 (Document #8815-A), to read as follows:

Hum 303.02 Appearances Required; Service Upon Attorneys.

(a) An attorney representing a party or other person before the ~~commission~~ ***Commission*** at a public adjudicative hearing shall file a written notice of appearance.

(b) An attorney who ceases a representation for which the attorney has filed a written notice of appearance shall immediately file a written notice of withdrawal of appearance.

(c) When a party or other person or entity is represented by an attorney who has filed a written notice of appearance, service upon the attorney shall be deemed valid service upon the person or entity represented, unless the attorney has timely filed a written notice of withdrawal of appearance.

Repeal Hum 303.03, effective 2-3-07 (Document #8815-A), as follows:

Hum 303.03 ~~*Pro Hac Vice* Representation. Pro hac vice representation shall be in accordance with the provisions regarding such representation set forth in Hum 204.02, Hum 204.03 and Hum 204.04.~~

Readopt with amendment Hum 304, effective 2-3-07 (Document #8815-A), to read as follows:

PART Hum 304 ROLES OF THE COMMISSION CHAIR AND THE ~~PRESIDING OFFICER~~ ***CHAIR OF THE HEARING PANEL AND DIRECTOR***; COMPUTATION OF TIME PERIODS; ACCESS TO THE COMMISSION'S ***INVESTIGATIVE*** FILE

Hum 304.01 Role of the Chair of the Commission. The ~~chair of the commission~~ ***Chair of the Commission*** shall:

(a) Schedule the public adjudicative hearing;

(b) Designate the ~~hearing commissioners~~ ***Hearing Commissioners***;

(c) Designate one of the ~~hearing commissioners~~ ***Hearing Commissioners*** to act as ~~presiding officer~~ ***Chair of the Hearing Panel***; and

(d) Designate a ~~commissioner~~ ***Commissioner*** to act ~~presiding officer~~ ***Chair of the Hearing Panel*** if the person first designated withdraws pursuant to Hum 304.02(c).

Hum 304.02 Roles of the Director and the ~~presiding officer~~ ***Chair of the Hearing Panel***.

(a) By decision of the ~~commissioner~~ ***Commission*** pursuant to RSA 354-A:5, III the ~~director~~ ***Director or Director's Designee***, shall:

(1) Schedule the pre-hearing conference(s) and preside over them~~, with the exception of ruling on motions and objections~~;

(2) Accept the filing of motions and objections at or in advance of the pre-hearing conference(s);

(3) ~~Preside~~ ***Schedule and assist the Investigating Commissioner in presiding*** over the conciliation conference(s)***, if requested by the parties***; and

(4) ~~Establish deadlines for the filing of final witness lists, final lists of exhibits, and copies of exhibits~~ ***Rule on motions to continue and/or revise the schedule before the public adjudicative hearing.***

(b) The ~~presiding officer~~ ***Chair of the Hearing Panel*** shall:

(1) Rule upon all motions and objections made before or during the public adjudicative hearing***, except for motions to continue and/or revise the schedule before the public adjudicative hearing***;

(2) Admit and exclude testimony or other evidence at the public adjudicative hearing; and

(3) Otherwise control the public adjudicative proceedings.

(c) The ~~presiding officer~~ ***Chair of the Hearing Panel*** shall withdraw if ~~he or she~~ ***that person***:

(1) Has a direct interest in the outcome of the ***public adjudicative*** hearing, including but not limited to, a financial or family relationship with any party, witness, attorney for a party or witness or intervenor;

(2) Has made statements or engaged in behavior which objectively demonstrates ~~that he or she has prejudged~~ the facts of the case ***have been prejudged***; or

(3) Believes that ~~he or she~~ ***they*** cannot fairly judge the facts of the case.

Hum 304.03 Computation of Time Periods.

(a) Unless otherwise specified, the unit of time for time periods referenced in this chapter shall be calendar days.

(b) Computation of any period of time shall begin with the day after the action or event which sets the time period in motion, and shall include the last day of the period.

(c) If the last day of the period so computed falls on a Saturday, Sunday or a legal holiday, then the time period shall be extended to include the ~~first~~ ***next*** business day ~~following the Saturday, Sunday or legal holiday~~.

Hum 304.04 Access to ***and Duplication of the Commission's Investigative*** File After Issuance of Notice of Public Adjudicative Hearing. After a notice of a public adjudicative hearing has been issued:

(a) The parties and intervenors shall have access to all information and documents in the ***investigation*** ~~case~~ file, with the exception of ***notes, memoranda, preliminary drafts, other documents not in their final form of the Commission staff or Commissioners and/or records protected under the attorney-client privilege, the work product doctrine, pursuant to RSA Chapter 354-A, pursuant the Commission's administrative rules, or pursuant RSA 91-A:5*** ~~investigation notes and internal memoranda of the commissioners and staff~~;

(b) ***Members of the public and other non-party participants in the public adjudicative hearing shall have access to the information and documents in the investigation file to the extent such information and documents are not exempt from disclosure pursuant to RSA Chapter 354-A, the Commission's administrative rules, RSA 91-A:5, or are otherwise protected under the attorney-client privilege, work product doctrine, or other privileges*** ~~The parties, other participants in the hearing and the public shall have access to the investigative report.~~;

(c) A state or federal court handling an appeal or case related to a Commission decision or order may request a certified records , which will be prepared in the same manner as provided for in Hum 209.05;

(d) Parties, members of the public, and other non-party participants in the public adjudicative hearing may request that the Commission duplicate all or part of the investigation file provided that:

(1) All requests for duplication must be in writing;

(2) For requests for duplication of 25 or fewer pages, the Commission shall not charge a fee;

(3) For requests for duplication of more than 25 pages and/or recordings of interviews or other audio or video footage, the Commission shall charge fees;

(4) Any fees charged shall be limited to recovering the Commission's actual costs; and

(5) For purposes of counting the number of pages, the Commission shall aggregate the totals if it receives multiple requests from the same person, party, or entity.

(e) In responding to a request for duplication by a non-party, the Commission shall redact information exempt from disclosure pursuant to Hum 304.04(b). In making a case file available for inspection, the Commission shall withhold information exempt from disclosure pursuant to Hum 304.04(b).

Readopt with amendment Hum 305, effective 2-3-07 (Document #8815-A), to read as follows:

Hum 305.01 Motions to Continue and/or Reschedule Deadline or Date.

(a) The parties and other participants in the proceedings may request by motion that a pre-hearing conference, ***public adjudicative*** hearing date, or other matter be continued and rescheduled for good cause as further described in Hum 305.03.

(b) ~~Proponents of motions for continuance and rescheduling shall make a good-faith attempt to obtain concurrence in the motion from all parties.~~ ***Unless they meet the requirements of Hum 305.01(c), motions to continue and reschedule shall be:***

(1) Written, signed and filed not later than 15 days before the originally scheduled deadline or date;

(2) Delivered timely to all parties; and

(3) Certify that timely delivery has been made to all parties.

(c) ~~Unless they meet the requirements of (d) below, motions for continuance and rescheduling shall be~~ ***Emergency motions to continue and reschedule shall be made when***:

(1) Fewer than 15 days remain before the deadline or date sought to be rescheduled; and

(2) The proponent was unable, for reasons beyond the proponent's control, to make the timely written motion required by Hum 305.01(b).

(d) ~~Oral motions for continuance and rescheduling shall be made when~~ ***Emergency motions may be made in writing or orally, but if made orally the proponent must provide the following information, in addition to demonstrating good cause:***

(1) The name of the case;

(2) The docket number of the case; and

(3) Whether the other parties assent, object, or have not had an opportunity to assent or object to the motion.

(e) When an emergency motion is made orally, Commission staff will inform all parties that the motion has been made and will provide non-moving parties with an opportunity to object subject to the limitations of Hum 305.02(b).

~~(e)~~**(f)** All motions for continuance and rescheduling shall state with specificity:

(1) The matter to be postponed and the originally scheduled deadline or date;

(2) The rescheduled deadline or date requested by the proponent; ***and***

(3) The reason for the request for continuance and rescheduling~~; and~~**.**

~~(4) That a good-faith effort has been made to obtain concurrence to the continuance and rescheduling.~~

Hum 305.02 Objections to Motions for Continuance and Rescheduling. Objections to motions for continuance and rescheduling shall be:

(a) Filed within 10 days of the filing date of the motions objected to, if the motions are in writing; and

(b) Made ~~at once, if the motions are made orally~~ ***as soon as possible upon receiving notice that an oral motion to continue and reschedule has been made***.

Hum 305.03 Decisions on Motions for Continuance and Rescheduling.

(a) Motions for continuance and rescheduling shall be granted for good cause, including:

(1) Illness or injury which prevents a party or other participant in the proceedings from timely:

a. Preparing and making required filings;

b. Preparing for a pre-hearing conference or ***public adjudicative*** hearing; or

c. Participating in a pre-hearing conference or ***public adjudicative*** hearing.

(2) A scheduled hearing in another tribunal which:

a. Requires the attendance of the proponent of the motion or of the attorney for the motion's proponent, for which there is nobody who could reasonably substitute for the proponent or the proponent's attorney;

b. Cannot be postponed; and

c. Prevents timely:

1. Preparation and filing of required documents;

2. Preparation for a pre-hearing conference or ***public adjudicative*** hearing; or

3. Participation in a pre-hearing conference or ***public adjudicative*** hearing;

(3) Temporary unavailability of material required to be filed, despite the due diligence of the party responsible for the filing;

(4) Severely inclement weather; or

(5) Such other reasons beyond the control of the proponent of the motion or the ~~commission~~ ***Commission*** that warrant a continuance and rescheduling of the original deadline or date in the interest of justice and efficiency.

(b) If all parties assent to the motion, the motion shall be granted for the first request to continue and reschedule.

(c) Subsequent motions to continue and reschedule must be supported by good cause regardless of whether all parties assent to the motion.

Adopt Hum 306 to read as follows:

PART Hum 306 REMOTE PARTICIPATION

Hum 306.01 Motions for Remote Participation of Parties or Witnesses.

(a) Although the Commission disfavors remote participation and no party or witness is entitled to remote participation, the parties and other participants in the proceedings may request by motion that a party or witness be allowed to participate or testify remotely at a pre-hearing conference, public adjudicative hearing date, or other event for good cause as further described in Hum 306.03.

(b) Unless they meet the requirements of Hum 305.03(c), motions to continue and reschedule shall be:

(1) Written, signed and filed not later than 15 days before the originally scheduled deadline or date;

(2) Delivered timely to all parties; and

(3) Certify that timely delivery has been made to all parties.

(c) All motions for remote participation shall state with specificity:

(1) The party or witness who will participate remotely; and

(2) The reason for the request to participate remotely.

Hum 306.02 Objections to a Motion for Remote Participation Objections to motions for continuance and rescheduling shall be filed within 10 days of the filing date of the motions objected to.

Hum 306.03 Decisions on Motions for Remote Participation

(a) Motions for remote participation shall be granted for good cause, including:

(1) Illness or injury which prevents a party or other participant in the proceedings attending in person;

(2) Lack of access to transportation that would allow the party or witness to attend the proceedings in person;

(3) As an accommodation for a person with a disability-related need or religious need that prevents the person from participating in person; or

(4) Such other extraordinary circumstances that prevent the person from participating in person and whose participation is in the interest of justice and efficiency.

(b) Motions for remote participation shall be denied if such remote participation would unfairly prejudice one or more of the other parties to the case.

Hum 306.04 <u>Procedure for Remote Participation</u>

(a) All remote participation shall occur by video conference unless the remote participant requests and accommodation for disability-related or religious needs.

(b) The Commission shall provide a video conference link to all parties to facilitate remote participation.

(c) With the exception for public adjudicative hearings described in Hum 306.04(d), only parties, witnesses, or other participants authorized by the Commission to participate remotely may do so.

(d) Consistent with RSA Chapter 91-A, for the public adjudicative hearing, if a party, witness, or other participant is authorized to participate remotely, the Commission shall include the video conference information in the public hearing notice so that members of the public may also observe the public adjudicative hearing remotely.

(e) At the public adjudicatory hearing, all remote participants, except for those authorized by the Commission, shall be muted and remain muted throughout the entire hearing.

(f) No remote participant shall disrupt the event occurring. Disruption shall include failing to remain muted when not speaking or causing other audio or video disruptions that distract or disrupt the event.

(g) At the public adjudicatory hearing, all witnesses participating remotely shall at the beginning of their testimony when introducing themselves attest to the following:

(1) The city and state where they are presently located;

(2) The nature of the location where they are presently located, such as home or work;

(3) Whether any other person is present in the room with them; and

(4) Whether they have any notes or materials with them or displayed on the screen or their computer or other electronic device.

(h) If the answer to Hum 306.04(g)(3) or (g)(4) is yes, the Chair of the Hearing Panel shall order that the witness either relocate to a private space where others are not present, ask others present to leave the space, put away any notes or materials they have, or close any other applications on their computer or other electronic device.

(i) At the public adjudicatory hearing, all witnesses participating remotely shall be visible on camera for the duration of their testimony.

(j) If a remote participant fails to comply with the requirements of Hum 306.04(a)-(i), then the Chair of the Hearing Panel may take such corrective actions up to and including ordering that the person in violation shall be removed from the hearing or otherwise disallowed from participating remotely.

Hum 306.05 Responsibility for Remote Participation No party, witness, or other participant has a right to remote participation. The Commission is not responsible for facilitating a party, witness, or other participant's remote participation. It is the responsibility of the party requesting remote participation to facilitate such participation. Inability to comply with this requirement shall not be grounds to continue, reschedule, or suspend a pre-hearing conference, public adjudicative hearing, or other event absent a motion to continue and reschedule consistent with Hum 305.01. Actions taken pursuant to Hum 306.04(j) that limit a remote participant's participation after a failure to comply with the procedure detailed in Hum 306.04 shall not be grounds to continue, reschedule, or suspend a pre-hearing conference, public adjudicative hearing, or other event absent a motion to continue and reschedule consistent with Hum 305.01.

Readopt with amendment and renumber Hum 306, effective 2-3-07 (Document #8815-A), as Hum 307 to read as follows:

PART Hum ~~306~~ ***307*** ~~COMMENCEMENT OF PUBLIC ADJUDICATIVE HEARING; PRE-HEARING REQUIREMENTS~~ ***NOTICE OF SCHEDULING, CONCILIATION, PRE-HEARING CONFERENCE, AND PUBLIC ADJUDICATIVE HEARING***

Hum 307.01 Scheduling Order

(a) Upon a determination of probable cause by the Investigating Commissioner and resolution of any post-determination motions, the Commission shall issue a scheduling order. That scheduling order shall inform the parties of the following:

(1) That the parties have the right, if both agree, to request conciliation pursuant to Hum 307.03 facilitated by the Investigating Commissioner with the assistance of Commission staff;

(2) That a pre-hearing conference will occur no sooner than 120 days after the date that the Commission issued the scheduling order, unless an earlier date is requested by the parties, and that

a public adjudicative hearing will occur no sooner than 30 days after the pre-hearing conference;

(3) The Commission construes the date of the pre-hearing conference as the date upon which the hearing begins for the purposes of removal under RSA 354-A:21-a;

(4) That parties have until the pre-hearing conference to request conciliation pursuant to Hum 307.03 and to engage in discovery pursuant to Hum 309, 310, 311, and 312;

(5) That parties must within 45 days of the date on the scheduling order exchange the preliminary information detailed in Hum 309.02; and

(6) That parties have until 15 days before the date of the pre-hearing conference to file any motions except for those related to scheduling.

(b) The scheduling order issued pursuant to Hum 307.01(a) shall also list the following important dates for the case:

(1) The date of the pre-hearing conference;

(2) The date for completion of conciliation and discovery, which shall be the date of the pre-hearing conference;

(3) The date to exchange preliminary information detailed in Hum 309.02;

(4) The last date to file motions except for those related to scheduling;

(5) The last date to request amendments to the scheduling order without a showing of good cause; and

(6) If known, the proposed date for the public adjudicative hearing.

(c) The parties may request amendments to the scheduling order, without needing to show good cause, by either submitting an agreed upon scheduling order or conflicting scheduling orders for the Commission to consider within 60 days of the date on the scheduling order. If the parties submit conflicting scheduling orders, they are encouraged to explain to the Commission why it should adopt their proposed schedule.

Hum ~~306.01~~ ***307.02*** ~~Commencement of Proceedings by~~ Notice of Public Adjudicative Hearing.

(a) ***Fourteen days before the scheduled date of the public adjudicatory hearing***, a written notice ~~of~~ ***announcing the*** public adjudicative hearing ***shall be*** issued to all parties ***and posted publicly on the Commission's website and at the Commission's entrance*** ~~at least 14 days before the scheduled date of the hearing shall commence the proceedings~~.

(b) Pursuant to ***RSA 354-A:21(b)*** and 541-A:31, III, the notice shall include:

(1) A statement of the time, place and nature of the ***public adjudicative*** hearing;

(2) A statement of the legal authority under which the ***public adjudicative*** hearing is to be held;

(3) A reference to the particular sections of the statute and rules involved; and

(4) A short and plain statement of the issues involved.

(c) If a more detailed statement of the issues is available, the ~~commission~~ ***Commission*** shall furnish it upon request.

Hum 307.03 Conciliation.

(a) Following the issuance of a scheduling order, the parties shall have the right to request a conciliation.

(b) The conciliation will be facilitated by the Investigating Commissioner with the assistance of Commission staff appointed by the Director.

(c) Prior to the scheduled conciliation, the parties will submit written conciliation proposals. The proposals will include the following:

(1) Complainant's conciliation proposal should include their theory of liability and damages. A detailed request for relief should include an explanation of how damages have been computed, supporting documentation, such as W-2s and other wage and benefit information, costs incurred, attempts to mitigate damages, evidence or description of compensatory damages including but not limited to pain, suffering, emotional distress, humiliation, or loss of dignity which the complainant intends to rely upon in support of the conciliation proposal.

(2) Respondent's conciliation proposal should discuss their theory of liability and damages. A response to the complainant's conciliation proposal together with any supporting documentation which the Respondent intends to rely upon in support of the conciliation proposal shall be included. In employment cases, respondent is responsible for contacting the Department of Employment Security to determine the amount of any lien and payment of it consistent with NH RSA 282-A et seq.

(3) Each party shall provide their conciliation proposal to the Commission and opposing party by the date specified in the notice of public adjudicative hearing.

(d) If the parties come to an agreement as a result of conciliation, a written memorandum of understanding and/or conciliation agreement shall be drafted and signed or acknowledged by the Investigating Commissioner and the parties or their representatives, which outlines the substance of the terms negotiated at the conciliation.

(e) The case shall be closed when the parties have signed all settlement documents related to the agreement reached at conciliation.

(f) The conciliation must occur and be completed before the date of pre-hearing conference.

Hum ~~306.02~~ ***307.04*** Pre-Hearing Conference.

(a) Parties or their counsel shall attend at least one pre-hearing conference***, which will occur at least 30 days before the public adjudicative hearing unless an earlier date is agreed upon by the parties***.

(b) Matters to be considered at the pre-hearing conference shall include, as appropriate:

(1) Offers of settlement;

(2) Simplification of the issues;

(3) Stipulations or admissions as to issues of fact or proof;

(4) ***The complainant's request for relief*** ~~Limitations on the number of witnesses~~;

(5) ***The parties' final witness lists including names, addresses, contact information and the subject matter of the witnesses' testimony*** ~~Marking of all written exhibits to be presented during the hearing~~;

(6) ***The parties' exhibit lists and any exhibits available for pre-marking*** ~~Scheduling~~;

(7) ***The need for any subpoenas for the public adjudicative hearing pursuant to Hum 308;***

(8) Any potential scheduling issues for the public adjudicative hearing; and

(9) Any other matters which might increase the efficiency of the proceedings.

(c) The deadline to file motions related to all matters other than scheduling shall be 15 days before the pre-hearing conference.

(d) If for any reason multiple pre-hearing conferences occur, the first pre-hearing conference shall be considered for the purposes of determining the commencement of the adjudicative proceeding and for determining the deadline for any motions except those related to scheduling.

Hum ~~306.03~~ ***307.05*** Respondent's Answer to the Complaint Required Before the Public Adjudicative Hearing.

(a) Pursuant to RSA 354-A:21, II(c)***, and Hum 203.01*** the respondent(s) shall submit a verified answer:

(1) ***Filed not later than 30 days after the Commission issues the scheduling order pursuant to Hum 307.01*** ~~Filed in the original with 3 copies not later than 15 days prior to the scheduled date of the hearing~~;

(2) Furnished to the complainant or the complainant's attorney by a method that confirms receipt not later than ~~15~~ 30 days ~~prior to the scheduled date of the hearing~~ ***after the Commission issues the scheduling order pursuant to Hum 307.01; and***

(3) Certified compliance with the requirement of Hum 307.05(a)(2).

(b) The verified answer shall ***contain the following information***:

(1) ~~(1) Be a previously submitted verified response as described in Hum 207.02(b); or (2) contain the following information: a.~~ ***The name and address of the respondent***;

~~b.~~***(2)*** The name and address of the respondent's attorney if the respondent is represented by counsel;

~~c.~~***(3)*** For each allegation of the complaint contested by the respondent:

~~1.~~***a.*** A general or specific denial made on information and belief; or

~~2.~~***b.*** A statement that the respondent is without knowledge or information sufficient to form a belief; and

~~d.~~***(4)*** Any affirmative defenses that the respondent wishes to raise.

(c) Any allegation in the complaint which is not denied in the answer shall be deemed admitted, unless the respondent states in the answer that the respondent is without knowledge or information sufficient to form a belief.

(d) Failure of the respondent(s) to file an answer within the time stated in ~~(a) above~~ ***Hum 307.05(a)*** shall not prevent the ~~commission~~ ***Commission*** from:

(1) Holding the hearing at the time and place specified in the notice of hearing; and

(2) Making its findings and entering its order based upon the testimony taken at the hearing.

(e) Failure of the respondent(s) to file an answer within the time stated in Hum 307.05(a) shall preclude respondent(s) from raising defenses or contesting facts deemed admitted because of the failure to file an answer.

(f) If respondent(s) have filed an answer pursuant to Hum 203.01, then respondent(s) are deemed to have complied with this rule and need not resubmit an answer that had been previously filed with the Commission unless requested to do so by the Commission or Commission staff.

Hum ~~306.04~~ ***307.06*** Complainant's Materials Required Before ***Public Adjudicative*** Hearing.

(a) The complainant shall submit a detailed request for relief which shall be:

(1) ~~Filed in the original with 3 copies not later than 15 days on or before the day of the pre-hearing conference~~ ***Filed on or before the day of the pre-hearing conference***;

(2) Furnished to the respondent(s) or the attorney(s) for the respondent(s) by a method that confirms receipt ~~not later than~~ ***on or before*** the day of the pre-hearing conference; and

(3) Includes, as applicable, the following information:

a. For requests for back ***or front*** pay:

1. A statement of the wage or salary that would have been earned but for the alleged discrimination;

2. The time period that complainant would have earned this wage or salary but for the alleged discrimination; ~~and~~

3. A statement detailing all earnings and other income actually received by the complainant during the period covered by the request for back pay; ***and***

4. Other factors the complainant wishes the commission to consider.

b. For requests for compensatory damages:

1. A statement of the amount of damages requested;

2. ~~Any medical or psychological evidence supporting the request~~ ***Any evidence supporting the request, including lease or mortgage records, actual costs incurred at an alternative lodging, medical or psychological records documenting effects of discrimination***;

3. A description of the complainant's pain, suffering, humiliation and/or embarrassment caused by the alleged discriminatory act; ~~and~~

4. ***A description of the financial harms suffered by the complainant; and***

5. Other factors the complainant wishes the ~~commission~~ ***Commission*** to consider.

Hum ~~306.05~~ ***307.07*** Witness Lists, Lists of Exhibits and Exhibits.

(a) At the pre-hearing conference the parties shall file with the ~~director~~ ***Commission***, giving copies to all other parties:

(1) ~~Preliminary~~ ***Final*** lists of witnesses showing names, addresses and telephone numbers;

(2) ~~Preliminary~~ ***Final*** lists of exhibits; and

(3) Copies of exhibits on the ~~preliminary~~ ***final*** exhibit lists.

(b) ***At the pre-hearing conference pursuant to Hum 307.04, the Commission will mark exhibits for use at the public adjudicative hearing.*** ~~By the deadlines established by the director pursuant to Hum 304.02(a), the parties shall file with the commission and deliver to all other parties:~~

~~(1) Final lists of witnesses showing names, addresses and telephone numbers;~~

~~(2) Final lists of exhibits; and~~

~~(3) Copies of exhibits on the final exhibit lists if not already filed with the commission and delivered to all other parties.~~

~~(c) The filings and deliveries required by (b) above shall be made by personal delivery or certified mail.~~

Readopt with amendment and renumber Hum 307, effective 2-3-07 (Document #8815-A), as Hum 308 to read as follows:

PART Hum ~~307~~ ***308*** SUBPOENAS

Hum ~~307.01~~ ***308.01*** Subpoenas for Public Adjudicative Hearing. Any party or other person permitted to participate in a public adjudicative hearing may request subpoenas for the ***public adjudicative*** hearing by written motion no later than ***30 days prior to the commencement of the public adjudicative hearing*** ~~the date of the prehearing conference~~. Subpoenas shall be issued by the ~~presiding officer~~ ***Chair of the Hearing Panel*** upon a finding that the subpoena is designed to produce relevant information.

Hum ~~307.02~~ ***308.02*** Payment of Fees Related to Subpoenas.

(a) When a subpoena is issued upon the motion of a party or person other than a ~~commissioner~~ ***Commissioner***, the cost of service, witness and mileage fees shall be borne by the party or person at whose request the subpoena is issued.

(b) When a subpoena is issued upon the initiative of the ~~commission~~ ***Commission*** or a ~~commissioner~~ ***Commissioner***, the cost of such service and witness and mileage fees shall be borne by the ~~commission~~ ***Commission***. Such witness and mileage fees shall be the same as those paid witnesses in the district courts of the state.

(c) Witness and mileage fees shall be determined by the Commission in accordance with guidance provided by statute, administrative rules, and other judicial authority. The cost of service shall be consistent with the manner of service chose by the party or person requesting service of the subpoena.

Hum ~~307.03~~ ***308.03*** Vacation or Modification of Subpoena.

(a) Any recipient of a subpoena ***issued pursuant to Hum 308.02*** may petition the ~~commission~~ ***Commission*** to vacate or modify a subpoena issued in its name.

(b) The ~~commission~~ ***Commission*** shall give prompt notice to the party, if any, who requested issuance of the subpoena, and such party shall have the opportunity to respond within a time limit set by the ~~presiding officer~~ ***Chair of the Hearing Panel***.

(c) The ~~presiding officer~~ ***Chair of the Hearing Panel*** shall grant the petition in whole or part upon a finding that:

(1) The testimony sought, or the evidence required to be produced, does not relate to any matter in question in the hearing;

(2) The subpoena for the production of evidence is unreasonable and oppressive; ~~or~~

(3) The subpoena was issued so close in time before the hearing for which the testimony or evidence is sought that the recipient is unable to comply with it~~.~~***;***

(4) The recipient is unable to appear because of death, illness, or injury;

(5) The subpoena seeks confidential or privileged information; or

(6) The subpoena was improperly served.

Hum ~~307.04~~ ***308.04*** Failure to Comply. Upon the failure of any person or entity to comply with a subpoena issued in the name of the ~~commission~~ ***Commission*** and not revoked or modified by the ~~commission~~ ***Commission*** as provided in Hum ~~307.03~~ ***308.03***, an attorney representing the ~~commission~~ ***Commission*** shall seek enforcement of the subpoena in ~~superior court~~ ***Superior Court***.

Adopt Hum 309 to read as follows:

PART Hum 309 GENERAL DISCOVERY PROVISIONS

Hum 309.01 Discovery Schedule. Unless an alternative schedule is adopted pursuant to Hum 307.01(c), the parties shall have the ability to engage in discovery after the Commission issues its scheduling order. Discovery shall end by the date of the pre-hearing conference.

Hum 309.02 Preliminary Disclosures.

(a) As provided in Hum 307.01(a)(5), the parties shall provide the following preliminary information to each other within 45 days of the date on the scheduling order:

(1) Preliminary lists of all witnesses that the party may rely upon to support the party's claims or defenses, including their name, address, and telephone number; and

(2) Copies of all documents, electronically stored information, and tangible things that the party has in its possession, custody or control, and may use to support the party's claims or defenses.

(b) If the documents, electronically stored information, and tangible things described in 309.02(a)(2) have previously been produced to the investigator and Investigating Commissioner, the party need not reproduce those records provided that the party:

(1) Informs the other party or parties that the records have been produced as part of the Commission's investigation;

(2) Provides a description of the records that had been produced to facilitate identifying them; and

(3) Provides a description of when and how the records had been produced to the Commission to facilitate identifying them.

(c) Parties have a duty to supplement these preliminary disclosures if and when they become aware of supplemental information.

Hum 309.03 Discovery. As provided in Hum 310, Hum 311, and Hum 312, parties may obtain discovery through depositions, written interrogatories, and production of documents, things, or records. To the extent parties seek discovery beyond that which is provided for in these rules, they shall file a motion with the Commission detailing the request and justification for the request, which will be reviewed and acted upon by the Chair of the Hearing Panel.

Hum 309.04 Privilege and Confidential Information. If a party withholds information or materials otherwise discoverable by claiming that the information is privileged or confidential, the party shall promptly and expressly notify the opposing party or parties of the claims and describe the general character of the information with sufficient specificity to ensure the other parties can assess the applicability of the privilege or confidentiality claim.

Hum 309.05 Late Discovery Parties seeking discovery after the pre-hearing conference shall file a motion pursuant to Hum 313 explaining the need for late discovery. The Commission shall not grant such a request unless the moving party demonstrates that the information sought was unknown or unavailable in advance of the pre-hearing conference or that the interests of justice require authorizing late discovery.

Readopt with amendment and renumber Hum 308, effective 2-3-07 (Document #8815-A), as Hum 310 to read as follows:

PART Hum ~~308~~ ***310*** DEPOSITIONS

Hum ~~308.01~~ ***310.01*** Depositions by Agreement.

(a) The parties may take depositions by agreement, provided that:

(1) Depositions are limited to 3 individuals chosen by each party; or

(2) Additional depositions are permitted by the ~~presiding officer~~ ***Chair of the Hearing Panel*** pursuant to ***Hum 310.01***(b) ~~below~~.

(b) Additional depositions shall be:

(1) Sought by motions consistent with Hum ~~310~~ ***313***; and

(2) ~~Approved~~ ***Granted*** by the ~~presiding officer~~ ***Chair of the Hearing Panel*** on the determination that they are necessary for a true and full disclosure of the relevant facts.

Hum ~~308.02~~ ***310.02*** Motions for Depositions.

(a) In the absence of an agreement to take a deposition, a party objecting to a deposition being sought shall request relief from the ~~presiding officer~~ ***Chair of the Hearing Panel*** by filing a motion ~~subject to the motion rules in Hum 310~~.

(b) The ~~presiding officer~~ ***Chair of the Hearing Panel*** shall grant the motion for relief if the intended deposition:

(1) Would not lead to the discovery of relevant and admissible evidence; or

(2) Is intended to:

a. Harass the objecting party;

b. Retaliate against the objecting party; or

c. Unnecessarily delay the proceedings.

Hum ~~308.04~~ ***310.03*** Payment of Cost of Depositions. The party requesting a deposition, or seeking the ~~presiding officer's~~ ***Chair of the Hearing Panel's*** approval to take a deposition, shall:

(a) Pay the cost of the deposition; and

(b) Provide a copy of the deposition transcript to the opposing party(ies) and to the ~~commission~~ ***Commission***.

Readopt with amendment and renumber Hum 309, effective 2-3-07 (Document #8815-A), as Hum 311 to read as follows:

PART Hum ~~309~~ ***311*** INTERROGATORIES

Hum ~~309.01~~ ***311.01*** Interrogatories and Answers to Interrogatories.

(a) A party may serve no more than 20 interrogatories on any opposing party after a finding of probable cause.

(b) Interrogatories shall be ~~mailed by certified mail, return receipt requested~~ ***delivered by a method that confirms receipt***.

(c) Answers to interrogatories shall be:

(1) ~~Verified~~ ***Signed under the pains and penalties of perjury before a notary public or justice of the peace***; and

(2) Returned to the party serving the interrogatories and to the ~~commission~~ ***Commission***:

a. Within 30 days of receipt of the interrogatories; and

b. ~~By certified mail, return receipt requested~~ ***By a method that confirms receipt***.

Hum ~~309.02~~ ***311.02*** Objections to Interrogatories; Failure to Respond to Interrogatories.

(a) If a party served with interrogatories wishes to object to any of them, the party shall:

(1) Submit a statement of objection to the ~~presiding officer~~ ***Chair of the Hearing Panel*** and to the party serving the interrogatories within ~~10~~ ***20*** days of receipt of the interrogatories; and

(2) Include in the statement of objection the reason(s) for the objection.

(b) The ~~presiding officer~~ ***Chair of the Hearing Panel*** shall require challenged interrogatories to be answered unless ~~he or she determines~~ determined that:

(1) The information sought can be more conveniently provided in an alternative format or by different means;

(2) The cost of producing the information sought outweighs its likely usefulness or relevance in deciding the issue(s) in the case;

(3) The challenged interrogatories will not lead to the discovery of admissible and relevant evidence;

(4) The challenged interrogatories are intended to harass the party served with them; ~~or~~

(5) The challenged interrogatories are intended to cause unnecessary delay in the proceedings; ***or***

(6) The challenged interrogatories are in excess of the number of interrogatories allowed by Hum 311.01(a) or as agreed upon by the parties.

(c) An order requiring the party to answer challenged interrogatories shall:

(1) Establish a deadline for the answer(s) which:

a. Allows enough time for the party served with the interrogatories to comply with the order; and

b. Ensures that the party serving the interrogatories receives the answers to them in enough time to prepare for the ***public adjudicative*** hearing; and

(2) Include notice to the party served with the interrogatories that failure to answer them on time shall prevent such party from testifying to or otherwise presenting the information sought during the ***public adjudicative*** hearing, unless such party is called by an opposing party.

(d) If the party ordered to answer interrogatories has not done so by the deadline set by the ~~presiding officer~~ ***Chair of the Hearing Panel***, this fact shall be noted in the record and the sanction described in ***Hum 311.02***(c)(2) ~~above~~ shall be imposed.

Adopt Hum 312 to read as follows:

PART Hum 312 REQUESTS FOR PRODUCTION OF RECORDS, DOCUMENTS, ELECTRONICALLY STORED INFORMATION, OR TANGIBLE THINGS

Hum 312.01 Requests for Production.

(a) A party may serve on any other party requests for production of documents, electronically stored information, tangible things, or other records in the party's possession or custody and control.

(b) The party upon which a request for production has been served may allow the requesting party to inspect and copy the records or produce copies of the records for the requesting party.

(c) The request shall set forth individual items or categories of items and describe those items with sufficient specificity to enable the party to comply with the request.

(d) The party upon which a request for production has been served shall respond within 30 days to either schedule an opportunity for the requesting party to inspect the records or to produce copies of the requested records to the requesting party.

(e) If the party upon which a request for production has been served has produced the requested records to the investigator and Investigating Commissioner, the party may decline to reproduce those records so long as it complies with the requirements of Hum 309.02(b).

Hum 312.02 <u>Objections to Requests for Production</u>.

(a) If a party served with a request for production wishes to object to any of them, the party shall:

(1) Submit a statement of objection to the Chair of the Hearing Panel and to the party serving the request for production within 20 days of receipt of the request; and

(2) Include in the statement of objection the reason(s) for the objection.

(b) The Chair of the Hearing Panel shall reject challenges to requests for production unless determined that:

(1) The information sought can be more conveniently provided in an alternative format or by different means;

(2) The cost of producing the information sought outweighs its likely usefulness or relevance in deciding the issue(s) in the case;

(3) The challenged requests will not lead to the discovery of admissible and relevant evidence;

(4) The challenged requests are intended to harass the party served with them;

(5) The challenged requests are intended to cause unnecessary delay in the proceedings; or

(6) The challenged requests involve materials that have been produced to the Commission as part of its investigation and are available to the parties for inspection consistent with the Commission's rules.

(c) An order requiring the party to respond to requests for production shall:

(1) Establish a deadline for the production(s) which:

a. Allows enough time for the party served to comply with the order; and

b. Ensures that the party serving the requests for production receives the answers to them in enough time to prepare for the public adjudicative hearing; and

(2) Include notice to the party served with the requests for production that failure to comply on time may prevent such party from testifying to or otherwise presenting the information sought during the public adjudicative hearing.

(d) If the party ordered to answer requests for production has not done so by the deadline set by the Chair of the Hearing Panel, this fact shall be noted in the record and the sanction described in Hum 312.02(c)(2) shall be imposed.

Readopt with amendment and renumber Hum 310, effective 2-3-07 (Document #8815-A), as Hum 313 to read as follows:

PART Hum ~~310~~ ***313*** MOTIONS

Hum ~~310.01~~ ***313.01*** Default Rule Governing Motions.

(a) Unless governed by other more specific rules in this chapter, requests for actions to be taken by the ***Hearing Panel*** ~~hearing commissioners~~ or the ~~presiding officer~~ ***Chair of the Hearing Panel*** shall be made:

(1) Orally and on the record if the requests are made during the course of a public adjudicative hearing; or

(2) By written motions meeting the requirements of ***Hum 313.01***(b) ~~below~~.

(b) ***Written*** motions***, except for those related to scheduling,*** shall:

(1) Be ~~in writing and~~ signed by the proponent or the attorney for the proponent;

(2) State with specificity the grounds thereof;

(3) State the relief sought;

~~(4) State compliance with (c) below on seeking concurrence;~~

~~(5)~~***(4)*** Be copied to all other parties;

~~(6)~~***(5)*** ~~State~~ ***Certify*** that a copy was sent to all other parties; and

~~(7)~~***(6)*** Be filed not later than 15 days before ~~to~~ the ~~public adjudicative hearing~~ ***pre-hearing conference***; ***or***

(7) If unable to be filed 15 days before the pre-hearing conference, explain why the party could not comply with that deadline and filed as soon as possible after becoming aware of the need for the motion.

(c) ~~The moving party shall make a good-faith attempt to obtain concurrence from opposing parties in the relief sought, except in the case of dispositive motions or other motions in which it can reasonably be assumed that the proponent will be unable to obtain concurrence.~~

~~(d)~~ Supporting memoranda, documents and copies of any cited court cases shall be filed with the motion ~~unless a continuance for a later filing has been sought pursuant to Hum 305 and granted by the presiding officer~~.

Hum ~~310.02~~ ***313.02*** Objections to Motions.

(a) ~~An objection to a motion filed pursuant to Hum 310.01 shall be filed within 10 days after the motion was filed.~~ ***An objection to a motion filed pursuant to Hum 313.01(a)(1) shall be made orally and on the record and state with specificity the grounds for the objection and the relief sought.***

(b) An objection to a motion filed pursuant to Hum 313.01(a)(2) shall be filed no later than 10 days after the motion was filed.

(c) An objection to a motion shall:

(1) Be in writing and signed by the objecting party or the attorney for the objecting party;

(2) State with specificity the grounds for the objection;

(3) State the relief sought;

(4) Be copied to all other parties; and

(5) Certify that a copy was sent to all other parties.

~~(b)~~***(d)*** Supporting memoranda, documents and copies of any cited court cases shall be filed with the objection ~~unless a continuance for a later filing has been sought pursuant to Hum 305 and granted by the presiding officer~~.

Hum ~~310.03~~ ***313.03*** Decisions on Motions. Motions shall be decided by the ~~presiding officer~~ ***Chair of the Hearing Panel*** without an oral hearing, provided that an oral hearing shall take place under the following circumstances:

(a) When scheduled at the ~~commission's~~ ***Commission's*** own initiative; or

(b) Upon a party's request when the ~~presiding officer~~ ***Chair of the Hearing Panel*** determines that an oral hearing will materially assist ~~him or her~~ in ruling on the motion or is required to comply with law.

Readopt with amendment and renumber Hum 311, effective 2-3-07 (Document #8815-A), as Hum 314 to read as follows:

PART Hum ~~311~~ ***314*** INTERVENTION

Hum ~~311.01~~ ***314.01*** Motions to Intervene.

(a) Any person or entity, other than a party, having a direct interest in the outcome of the public adjudicative hearing and wishing to intervene in the ***public adjudicative*** hearing shall make a written motion before ~~the beginning of the hearing~~ ***the pre-hearing conference***.

(b) The motion to intervene shall include, but not be limited to, the following:

(1) A statement of the limited purpose or purposes for which the person or entity wishes to appear; and

(2) Pertinent facts substantiated by a notarized affidavit to support the reasons for intervention.

(c) The motion to intervene shall be directed to the ~~presiding officer~~ ***Chair of the Hearing Panel***.

(d) The motion to intervene shall be ~~mailed to~~ ***delivered by a method that confirms receipt to*** all parties named in the notice of the public adjudicative hearing.

(e) Any motion to intervene filed more than 60 days after the scheduling order in Hum 307.01 has been issued must also provide a statement explaining why the movant could not file its motion earlier.

Hum ~~311.02~~ ***314.02*** Objections to Motions to Intervene.

(a) Any parties wishing to object to a motion to intervene shall file objections ~~as soon as practicable~~ ***within 10 days of receipt of the motion***.

(b) If the motion to intervene is filed ~~at least~~ ***within*** ~~3~~ ***60*** days ~~before the hearing~~ ***of the scheduling order***, a party opposing it shall have the burden of persuading ~~presiding officer~~ ***Chair of the Hearing Panel*** that the intervention should not be granted.

(c) If the motion to intervene ~~less than~~ ***more than*** ~~3~~ ***60*** days ~~before the hearing~~ ***after the scheduling order***, the proponent of the motion to intervene shall have the burden of persuading the ~~presiding officer~~ ***Chair of the Hearing Panel*** that the intervention should be granted ***and that the proponent could not have filed the motion within the 60 days***.

Hum ~~311.03~~ ***314.03*** Decision on Motions for Intervention.

(a) The ~~presiding officer~~ ***Chair of the Hearing Panel*** shall rule on motions for intervention in advance of the hearing.

(b) The ~~presiding officer~~ ***Chair of the Hearing Panel*** shall grant a motion to intervene if ~~he or she determines~~ ***determined*** that:

(1) The interests of justice will be advanced; and

(2) The orderly and prompt conduct of the ***public adjudicative*** hearing will not be impaired by ~~allowing~~ ***granting*** the intervention.

Readopt with amendment and renumber Hum 312, effective 2-3-07 (Document #8815-A), as Hum 315 to read as follows:

PART Hum ~~312~~ ***315*** JOINDER AND SEVERANCE

Hum ~~312.01~~ ***315.01*** Joinder. Whenever it shall appear that 2 or more complaints involve substantially similar or substantially related issues, the ~~hearing commissioners~~ ***Hearing Commissioners*** shall join those proceedings for ***the public adjudicative*** hearing, for decision or both.

Hum ~~312.02~~ ***315.02*** Severance. Whenever it shall appear that prejudice to a party or parties or undue delay might be thereby avoided, the ~~hearing commissioners~~ ***Hearing Commissioners*** shall sever one or more issues or parties, and dispose of those issues and include those parties in another proceeding.

Readopt with amendment and renumber Hum 313, effective 2-3-07 (Document #8815-A), as Hum 316 to read as follows:

PART Hum ~~313~~ ***316*** WAIVER OF RULES

Hum ~~313.01~~ ***316.01*** Motions for Waiver of Rules.

(a) Any party or other participant in a public adjudicative hearing wishing a waiver of one or more rules in this chapter shall request such a waiver by:

(1) Submitting a written motion complying with ***Hum 316.01***(b) ~~below~~; or

(2) If time is insufficient for the submission of a written motion and of objections thereto, making an oral motion stating:

a. The rule to be waived;

b. The purpose of the waiver request; and

c. The likely impact on all parties of the requested waiver.

(b) A written motion for waiver of a rule shall:

(1) Be filed not later than 15 days prior to the anticipated application of the rule to be waived;

(2) Be addressed to the ~~investigating commissioner~~ ***Chair of the Hearing Panel, Commissioner***, or ***Commission*** staff person who is responsible for applying the rule to be waived;

(3) Be provided to all other parties ~~together with a request for concurrence~~;

(4) Recite the rule to be waived;

(5) State the purpose of the waiver request;

(6) State the likely impact on all parties of the requested waiver;

(7) ~~State compliance with the requirement to seek concurrence~~ ***Certify that a copy has been sent to all parties***; and

(8) I~~f thought by its proponent~~ ***If necessary***, be accompanied by memoranda, documents and copies of cited court opinion.

(c) Objections to written motions for waiver of rules shall be filed within 10 days of the filing date of the motion. ***Objections shall:***

(1) Be in writing;

(2) Be addressed to the Chair of the Hearing Panel, Commissioner, or Commission staff who is responsible for applying the rule to be waived;

(3) Be provide to all other parties;

(4) Recite the rule to be waived;

(5) State the objection to the waiver request;

(6) State the likely impact on all parties of the requested waiver;

(7) Certify that a copy has been sent to all parties; and

(8) If necessary, be accompanied by memoranda, documents and copies of cited court opinion.

Hum ~~313.02~~ ***316.02*** Decisions on Motions for Waiver of Rules. The ~~presiding officer~~ ***Chair of the Hearing Panel or other appropriate Commissioner or Commission staff person*** shall waive the rule if the waiver:

(a) Appears to be lawful; and

(b) Is more likely to promote a fair and accurate ***public adjudicative*** hearing than would adherence to the particular requirement or limitation set by the rule.

Readopt with amendment and renumber Hum 314, effective 2-3-07 (Document #8815-A), as Hum 317 to read as follows:

PART Hum ~~314~~ ***317*** RECORDING; TRANSCRIPTS; PAYMENT FOR RECORD FOR JUDICIAL REVIEW

Hum ~~314.01~~ ***317.01*** Recording. The ~~commission~~ ***Commission*** shall make an official verbatim recording of all public adjudicative hearings.

Hum ~~314.02~~ ***317.02*** Transcripts.

(a) The stenographic or other recording made at a public adjudicative hearing shall not be transcribed unless a transcript is requested.

(b) If a party or any other person or entity requests a transcript:

(1) Transcription shall be at the expense of the person or entity making the request, except under the circumstances described in ***Hum 317.02***(c) ~~below~~; and

(2) A copy of the transcript shall be provided to the ~~commission~~ ***Commission***.

(c) Pursuant to RSA 354-A:21, II(c) the ~~commission~~ ***Commission*** shall pay the cost of transcription when the transcript is sought by a party who is an individual without the funds to pay for transcription.

(d) The copy of any transcript provided to, or made by, the ~~commission~~ ***Commission*** shall be:

(1) Kept in the ~~commission's~~ ***Commission's*** office;

(2) Available for examination; and

(3) Available for copies to be made on request and upon payment for the copies.

Readopt with amendment and renumber Hum 315, effective 2-3-07 (Document #8815-A), as Hum 318 to read as follows:

PART Hum ~~315~~ ***318*** CONDUCT OF PUBLIC ADJUDICATIVE HEARINGS

Hum ~~315.01~~ ***318.01*** Rights of the Parties at Public Adjudicative Hearing.

(a) Parties may call, examine and cross-examine witnesses identified on the witness lists submitted pursuant to Hum ~~306.05(a)(1)~~ ***307.07(a)***.

(b) Parties may offer documents and other evidence submitted pursuant to Hum ~~306.05(a)(2)~~ ***307.07(a)*** for inclusion in the record of the proceedings.

(c) Parties shall have a full and fair opportunity to present their cases.

(d) Parties shall be permitted to file ***post-public adjudicative hearing*** briefs within such time limits as the ~~presiding officer~~ ***Chair of the Hearing Panel*** determines.

Hum ~~315.02~~ ***318.02*** Default.

(a) The ~~commission~~ ***Commission*** shall issue a default order against any party to whom a notice of ***public adjudicative*** hearing has been served if the party:

(1) Fails to appear for hearing; and

(2) Fails to:

a. Notify the ~~commission~~ ***Commission*** of non-appearance before the scheduled time of the public adjudicative hearing; and

b. ~~Request a continuance and rescheduling in accordance~~ ***File a motion to continue and reschedule consistent*** with Hum 305***.03***.

(b) A party against whom a default order has been entered may request by a motion complying with Hum ~~310.01~~ ***313.01*** that the default order be set aside.

(c) An objection to a motion for a default order to be set aside shall be governed by Hum ~~310.02~~ ***313.02***.

(d) A motion to set aside a default order shall be granted when the proponent of the motion was prevented from appearing by:

(1) Serious illness of the proponent or a member of the proponent's immediate family; ~~or~~

(2) The death of a member of the proponent's immediate family; ***or***

(3) Other good cause demonstrated by the proponent.

Hum ~~315.03~~ ***318.03*** Method of Presentation of the Case Supporting the Complaint.

(a) ***The Director or Director's designee shall submit into evidence:*** ~~When the complainant is not represented by an attorney, the case in support of the complaint shall be presented by a member of the commission staff or by an attorney representing the commission~~

(1) The complaint;

(2) The answer(s) of respondent(s);

(3) The report and findings of the Investigating Commissioner;

(4) Any reports arising out of any prehearing conferences if deemed relevant; and

(5) Exhibits selected from the investigative file.

(b) ***If an appearance has been filed on behalf of the complainant, the complainant's attorney shall present the case in support of the complaint.*** ~~When the complainant is represented by an attorney:~~

~~(1) A member of the commission staff shall present only:~~

~~a. The complaint;~~

~~b. The answer(s) of the respondent(s);~~

~~c. The report and findings of the investigating commissioner; and~~

~~d. Exhibits selected from the investigation file; and~~

~~(2) The complainant's attorney shall present the case in support of the complaint.~~

(c) If no appearance has been filed on behalf of the complainant, the complainant shall have the right to present the complainant's case.

(d) If the complainant is not represented by an attorney, the complainant may request that a member of the Commission's staff or an attorney representing the Commission present the case in support of the complainant. The Commission will determine who will present the case if such a request is made.

(e) Notwithstanding Hum 318.03(b)-(d), the Commission reserves the right to present a case in support of the complainant to further its purpose of ending discrimination. Any such presentation shall be conducted by a member of the Commission's staff or by an attorney representing the Commission.

(f) In addition to any inquiries or arguments made by the complainant or their attorney, members of the Hearing Panel reserve the ability to make inquiries of witnesses testifying on behalf of the complainant, the complainant, or counsel for the complainant related to the issues raised in the case.

Hum ~~315.04~~ ***318.04*** Order of Proof.

(a) The case in support of the complainant's position shall be presented first.

(b) ~~The case in support of the non-discriminatory defense(s) of the respondent(s) shall be presented after the complainant's case has been presented~~ ***After the complainant's case has been presented, the respondent(s) shall have an opportunity to present a case, including addressing any non-discriminatory defense(s) or justifications***.

(c) After the presentation of ~~the non-discriminatory defense(s) of the respondent(s)~~ ***the case for the respondent(s)***, the complainant shall have the opportunity to rebut ~~the~~ ***any*** defense(s) ***or justifications*** and demonstrate that the non-discriminatory defense(s) is pretextual.

Hum ~~315.05~~ ***318.05*** Evidence.

(a) Testimony shall be given under oath or affirmation.

(b) Testimony and other evidence shall not be limited by the strict rules of evidence prevailing in courts of law or equity, provided, however, that the rules of privilege recognized under the laws of the state of New Hampshire shall be applied.

(c) In addition to witness testimony and exhibits, acceptable evidence may include:

(1) Stipulations if they are signed by the person to be bound by the stipulation or by ~~his or her~~ ***the person's*** attorney; and

(2) Facts of which the ~~presiding officer~~ ***Chair of the Hearing Panel*** takes official notice pursuant to Hum ~~315.06~~ ***318.06***.

(d) The following evidence shall not be accepted:

(1) Unduly repetitious evidence;

(2) Evidence concerning settlement or conciliation efforts; ~~and~~

(3) Evidence ruled by the ~~presiding officer~~ ***Chair of the Hearing Panel*** as not relevant to any factual or legal issues in dispute***; or***

(4) Evidence ruled by the Chair of the Hearing Panel as unfairly prejudicial, likely to cause confusion of the issues, or likely to cause a trial within a trial.

Hum ~~315.06~~ ***318.06*** Official Notice of Facts.

(a) The ~~presiding officer~~ ***Chair of the Hearing Panel*** shall take official notice of facts on that person's own initiative or on the motion of one or more parties.

(b) When the ~~presiding officer~~ ***Chair of the Hearing Panel*** officially notices a fact or facts:

(1) It shall be so stated on the record; and

(2) Any party shall be given the opportunity to show the contrary.

(c) Pursuant to RSA 541-A:33, V, official notice may be taken of any of the following:

(1) Facts which could be judicially noticed in the state's courts;

(2) The record of other proceedings before the ~~commission~~ ***Commission***; ~~and~~

(3) Codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association***; and***

(4) Generally recognized technical or scientific facts within the Commission's specialized knowledge.

Hum ~~315.07~~ ***318.07*** Burden and Standard of Proof. ~~In order to~~ ***To*** receive a favorable decision the complainant shall have the burden of proving the case for the complaint by a preponderance of the evidence.

Hum 318.08 Proposed Findings of Fact and Other Post-Hearing Briefing. If either party wishes to file proposed findings of ~~act~~ fact and conclusions of law or any other further briefing after the public adjudicative hearing ends. They must inform the Commission before the end of the public adjudicative hearing. The Chair of the Hearing Panel will set the schedule for any post-hearing briefing. If the request comes from one party, all parties shall have an opportunity to file such post-hearing briefing.

Readopt with amendment and renumber Hum 316, effective 2-3-07 (Document #8815-A), as Hum 319 to read as follows:

PART Hum ~~316~~ ***319*** FINDINGS OF FACT; COMMISSION DECISIONS AND ORDERS

Hum ~~316.01~~ ***319.01*** Basis for Commission Decisions.

(a) The ~~commission's~~ ***Commission's*** decision in a discrimination case shall be:

(1) Based upon the evidence presented at the public adjudicative hearing;

(2) Made by majority vote of the 3 ~~hearing commissioners~~ ***Hearing Commissioners***; and

(3) Set forth in ~~an~~ ***a written*** order ***that details the findings of fact and conclusions of law reached by the Hearing Commissioners***.

(b) A ~~hearing commissioner~~ ***Hearing Commissioner*** shall not participate in the decision if ~~he or she~~ ***that person*** has not personally heard all of the testimony, unless the decision does not depend on the credibility of any witness and the record provides a reasonable basis for evaluating the testimony.

Hum ~~316.02~~ ***319.02*** Findings of Fact; Orders.

(a) If, upon all the evidence, the ~~hearing commissioners~~ ***Hearing Commissioners*** decide that a respondent has engaged in an unlawful discriminatory practice, the ~~commission~~ ***Commission*** shall:

(1) Issue the ~~hearing commissioners'~~ ***Hearing Commissioners'*** findings of fact ***and conclusions of law in a written*** ~~and an~~ order***, which shall also include any administrative fines levied and/or monetary damages, equitable relief, and declaratory relief necessary to effectuate the elimination of or redress of the unlawful discriminatory practice(s), and enters judgment for the complainant***;

(2) Cause the ~~findings of fact and~~ order to be ~~sent by certified mail~~ ***delivered by a method that confirms receipt*** to:

a. The respondent at the address given during the hearing or in the answer; and

b. The complainant at the address given in the complaint or at the hearing; ~~and~~

(3) Deliver a copy of the order to the ~~attorney general~~ ***Attorney General*** of the State of New Hampshire***; and***

(4) Post a copy of the order on the Commission's website.

(b) If, upon all the evidence, the ~~hearing commissioners~~ ***Hearing Commissioners*** decide that a respondent did not ~~engaged~~ engage in any unlawful practice, the ~~commission~~ ***Commission*** shall:

(1) ~~State the hearing commissioners' findings of fact upon the record~~ ***Issue the Hearing Commissioners' findings of fact and conclusions of law in a written order and enter judgment for the respondent***;

(2) ~~Order the complaint dismissed (3)~~ Cause the order to be ~~sent by certified mail~~ ***delivered by a method that confirms receipt*** to:

a. The respondent at the address given during the hearing or in the answer; and

b. The complainant at the address given in the complaint or at the hearing; ~~and~~

~~(4)~~***(3)*** Deliver a copy of the order to the ~~attorney general~~ ***Attorney General*** of the State of New Hampshire; ***and***

(4) Post a copy of the order on the Commission's website.

Hum ~~316.03~~ ***319.03*** Retention of Final Commission Decisions. The ~~commission~~ ***Commission*** shall maintain a copy of the final decision in its records for at least 5 years following its date of issuance, unless the director of the division of records management and archives of the department of state sets a different retention period pursuant to rules adopted under RSA 5:40. ***Copies of the Commission's orders after a public adjudicative hearing shall remain on the Commission's website permanently.***

Readopt with amendment and renumber Hum 317, effective 2-3-07 (Document #8815-A), as Hum 320 to read as follows:

PART Hum ~~317~~ ***320*** RECONSIDERATION AND REVIEW OF CASE DECISIONS

Hum ~~317.01~~ ***320.01*** Initiation of Reconsideration of Case Decision by the Commission or On Motion of A Party.

(a) The ~~commission~~ ***Commission*** may on its own initiative reconsider and review any case decision made pursuant to Hum ~~316~~ ***319*** for good cause as set forth in Hum ~~317.04~~ ***320.04***, provided that, before doing so, it has given notice to all parties and intervenors of its decision to reconsider and review.

(b) A party may request reconsideration and review of a case decision by ~~filing a motion~~:

(1) ~~Complying with the motion rules in Hum 310.01(b)-(d); and~~ ***Filing a motion within 30 days of the date of the letter notifying the party of the determination, which includes:***

a. A written request for reconsideration signed by the moving party or the attorney for the moving party;

b. The grounds for the request;

c. ~~Including any~~ Any memorandum and supporting documents the party wishes to submit. Copies of any cited court cases shall be produced to the Commission and/or other parties upon request; and

d. ~~Certifying~~ Certification that the motion has been provided to all parties.

~~(2) Doing so within 30 days of the certified mailing described in Hum 316.02(a)(2) or Hum 316.02(b)(3), as applicable.~~

Hum ~~317.02~~ ***320.02*** Objections to Motions for Reconsideration. Objections to a motion for reconsideration and review shall be governed by Hum ~~310.02~~ ***313.02***.

Hum ~~317.03~~ ***320.03*** Decision Maker Granting or Denying Reconsideration.

(a) ~~Decisions~~ ***After consultation with the Hearing Commissioners, decisions*** granting or denying reconsideration and review shall be made by the ~~presiding officer~~ ***Chair of the Hearing Panel*** unless:

(1) Reconsideration is undertaken by the ~~commission~~ ***Commission*** on its own initiative; or

(2) The motion for reconsideration alleges a bias or conflict of interest on the part of the ~~presiding officer~~ ***Chair of the Hearing Panel*** or either of the other 2 ~~hearing commissioners~~ ***Hearing Commissioners*** such that the bias or conflict might have prevented a fair decision and actual harm to the motion's proponent.

(b) If the motion alleges such bias or conflict of interest ***described in Hum 320.03(a)(2)***, the ~~commission chair~~ ***Chair of the Commission*** shall:

(1) Review the motion for reconsideration and allegations of bias or conflict of interest;

(2)~~(1)~~ Grant reconsideration ~~on his or her the determination that such allegations of bias or conflict of interest might be true~~ ***if and only if the Chair of the Commission concludes that the allegations might be true***; and

(3)~~(2)~~ ***If the motion for reconsideration is granted, appoint*** ~~Appoint~~ a new panel of 3 ~~hearing commissioners~~ ***Hearing Commissioners*** to review the decision in the case and issue a final decision.

(c) If the motion alleges such bias or conflict of interest on the part of the Chair of the Commission because the Chair of the Commission served as part of the Hearing Panel, decisions regarding allegations of bias of conflict of interest shall be reviewed by the most senior Commissioner, determined by the length of their service on the Commission.

Hum ~~317.04~~ ***320.04*** Bases for Granting Reconsideration and Review of the Commission's Case Decision. In addition to the basis set forth in Hum ~~317.03(b)~~ ***320.03(b)***, a motion for reconsideration and review shall be granted for:

(a) The existence of new and material evidence of which the motion's proponent was unaware and which the proponent could not with due diligence have uncovered and submitted before the issuance of the case decision;

(b) Mistake of fact or law made by the ~~hearing commissioners~~ ***Hearing Commissioners*** or the ~~commission~~ ***Commission***; or

(c) Other unanticipated reasons indicating that justice has not been served by the ~~commission's~~ ***Commission's*** decision.

Hum ~~317.05~~ ***320.05*** Procedural Effect of Reconsideration. Reconsideration initiated by the ~~commission~~ ***Commission*** or on motion granted by the ~~commission chair~~ ***Chair of the Commission*** or ~~presiding officer~~ ***Chair of the Hearing Panel*** shall:

(a) Stay the original order issued by the ~~commission~~ ***Hearing Panel***; and

(b) Be completed with the issuance of a final decision no later than 45 days ***after the granting of a motion for reconsideration and review.*** ~~of the following, as applicable:~~

~~(1) The issuance of the notice required by Hum 317.01(a); or~~

~~(2) The granting of a motion for reconsideration and review.~~

(c) Upon issuance of a final decision, the Commission's website will be updated with the new order and an notice detailing the changes made between the original order and the final decision.

Hum ~~317.06~~ ***320.06*** Method of Review of Case Decision. After approval of reconsideration of a case decision, review of the case decision shall be:

(a) On the record if reconsideration was approved because of:

(1) Alleged mistake of law by the ~~commissioners~~ ***Hearing Panel*** or the ~~commission~~ ***Commission***; or

(2) Any reason alleged pursuant to Hum ~~317.04(c)~~ ***320.04(c)*** which does not require a further ***public adjudicative*** hearing to determine material facts; or

(b) After a ***public adjudicative*** hearing of the material facts if reconsideration was approved:

(1) Pursuant to Hum ~~317.03(b)(2)~~ ***320.03(b)(2)***; or

(2) Pursuant to Hum ~~317.04~~ ***320.04*** because of:

a. Alleged existence of new and material evidence of which the ~~hearing commissioners~~ ***Hearing Commissioners*** were aware because they were not submitted to them;

b. Alleged mistake of fact by the ~~commissioners~~ ***Hearing Panel*** or the ~~commission~~ ***Commission***; or

c. Any reason alleged pursuant to Hum ~~317.04(c)~~ ***320.04(c)*** which requires a ***public adjudicative*** hearing to determine material facts.

Readopt with amendment and renumber Hum 318, effective 2-3-07 (Document #8815-A), as Hum 321 to read as follows:

PART Hum ~~318~~ ***321*** DECLARATORY RULINGS

Hum ~~318.01~~ ***321.01*** Purpose of Declaratory Rulings. The purpose of a declaratory ruling is to give information to individuals and entities potentially subject to:

(a) Allegations of illegal discrimination in violation of RSA 354-A; or

(b) Allegations of violation of such federal laws prohibiting discrimination as are within the jurisdiction of the ~~commission~~ ***Commission*** to enforce.

Hum ~~318.02~~ ***321.02*** Petitions for Declaratory Rulings.

(a) Any person or entity may petition for a declaratory ruling if that person or entity is potentially subject to allegations of discrimination as further described in Hum ~~318.01~~ ***321.01***.

(b) A petition for a declaratory ruling:

(1) Shall relate only to actual present or potential future circumstances;

(2) Shall not relate to past or purely hypothetical circumstances;

(3) Shall not relate to circumstances forming the foundation for a pending investigation, administrative hearing or litigation in any state or federal agency or court;

(4) Shall be written in such a manner as to avoid references to:

a. Specific individuals and entities;

b. Business secrets;

c. Information which is exempt from disclosure pursuant to RSA Chapter 91-A; and

d. Information which is confidential pursuant to any law or pursuant to the order of any administrative agency or court;

(5) Shall, if accompanied by supporting documents, be accompanied only by documents which do not refer to the information listed in ***Hum 321.02***(4)(a) ~~above~~ or from which such information has been redacted;

(6) Shall, at the option of the petitioner, be accompanied by additional material chosen to clarify the petition;

(7) Shall include the information required by ***Hum 321.02***(c) ~~below~~; and

(8) Shall include the following declaration signed by the individual submitting the petition, the authorized representative of such individual, or the authorized representative of the entity submitting the petition:

"I declare that I have examined this petition for a declaratory ruling, including the accompanying documents, and state that, to the best of my knowledge and belief, the petition complies with the administrative rules governing declaratory rulings by the New Hampshire Commission for Human Rights, and that the facts presented in the petition are true, correct and complete".

(c) A petition for declaratory ruling shall include:

(1) The name and address of the person submitting the petition or the individual submitting it on behalf of another person or of an entity;

(2) A description of the set of facts to which the petition relates;

(3) Identification of the particular administrative rule(s), statute(s) or order(s) the petitioner believes might apply to the facts presented; and

(4) The specific question(s) which the petitioner wants answered, stated in

terms of:

a. Whether or not the rule(s), statute(s) or order(s) identified by the petitioner would apply to the facts stated by the petitioner; and

b. If so, how they would apply.

Hum ~~318.03~~ ***321.03*** Commission Responses to Petitions for Declaratory Rulings.

(a) If a declaratory ruling will be delayed by the ~~commission's~~ ***Commission's*** need for additional information, the ~~commission~~ ***Commission*** shall so notify the petitioner within 60 days of receipt of the petition.

(b) If additional information is required, the ~~commission~~ ***Commission*** shall, in its notice to the petitioner:

(1) Specify the information required;

(2) Require that the additional information be provided in a statement that includes the declaration specified in Hum ~~318.02(b)(9)~~ ***321.02(b)(8)***;

(3) Request any material necessary to establish or clarify the additional information set forth in such statement; and

(4) Specify the date by which such information and materials are to be submitted.

(c) The ~~commission~~ ***Commission*** shall deny in writing a petition for a declaratory ruling :

(1) Within 120 days of receipt of the petition if:

a. The petitioner is not a person or entity entitled to submit a petition;

b. The petition identifies no administrative rule(s), statute(s) or order(s) within the jurisdiction of the commission; or

c. The petition does not comply with Hum ~~318.02~~ ***321.02***; and

(2) Within 120 days of the deadline set by the Commission, if the petitioner does not timely provide the additional information and materials sought by the commission pursuant to ***Hum 321.03***(b) ~~above~~.

(d) If the Commission does not deny a petition for declaratory ruling, it shall grant the petition by ruling in writing on the questions stated by the petitioner pursuant to Hum ~~318.02(e)(4)~~ ***321.02(c)(4)*** within 120 days of the receipt of:

(1) The petition; or

(2) The additional information requested pursuant to ***Hum 321.03***(b) ~~above~~.

(e) The ~~commission~~ ***Commission*** shall draft declaratory rulings in a manner intended to avoid the disclosure of:

(1) The identity of specific individuals and entities;

(2) Business secrets;

(3) Information which is exempt from disclosure pursuant to ***RSA Chapter*** 91-A; and

(4) Information which is confidential pursuant to any law or pursuant to the order of any administrative agency or court.

(f) In accordance with RSA 541-A:16, II(b), the ~~commission~~ ***Commission*** shall file declaratory rulings on the day of issuance with the ~~director of legislative services~~ ***Director of Legislative Services***. ***The Commission shall also file declaratory rulings on the day of issuance with the Attorney General for the State of New Hampshire.***

Hum ~~318.04~~ ***321.04*** Effect of Declaratory Rulings. A declaratory ruling issued by the ~~commission~~ ***Commission*** shall:

(a) Apply only to the petitioner;

(b) Be confined to the set of facts and information contained in the petition or additional submissions made in conjunction with the petition; and

(c) Not constitute a finding that such facts and information have occurred or will occur as presented.

Readopt with amendment and renumber Hum 319, effective 2-3-07 (Document #8815-A), as Hum 322 to read as follows:

PART Hum ~~319~~ ***322*** RULEMAKING

Hum ~~319.01~~ ***322.01*** Rulemaking Notice. A copy of a notice of proposed rulemaking shall be sent to any person who has made a written request to receive such notices from the ~~commission~~ ***Commission within six months of the notice of proposed rulemaking's issuance***.

Hum ~~319.02~~ ***322.02*** Petitions for Rulemaking.

(a) Any person may seek the adoption, amendment, or repeal of a rule by submitting to the ~~commission~~ ***Commission*** a petition pursuant to RSA 541-A:4.

(b) Each petition for rulemaking shall contain:

(1) The name and address of the individual petitioner or, if the request is that of an organization or other entity, the identity of such organization or entity and the name and address of the representative authorized by the entity to file the petition;

(2) A statement of the purpose of the petition, whether ***it be*** the adoption, amendment, or repeal of a rule;

(3) If amendment or adoption of a rule is sought, the text proposed;

(4) If amendment or repeal of a rule is sought, identification of the current rule sought to be amended or repealed;

(5) Reference to the statutory provision that authorizes or supports the rulemaking petition; and

(6) Information or argument useful to the ~~commission~~ ***Commission*** when deciding whether to begin the rulemaking process.

Hum ~~319.03~~ ***322.03*** Disposition of Petitions for Rulemaking.

(a) The ~~commission~~ ***Commission*** shall request additional information or argument from the petitioner for rulemaking or from others if such additional information or argument is required to reach a decision.

(b) The ~~commission~~ ***Commission*** shall grant the petition for rulemaking unless the adoption, amendment or repeal sought would result in:

(1) A rule that is not within the rulemaking authority of the ~~commission~~ ***Commission***;

(2) Duplication of a rule or of a statutory provision;

(3) Inconsistency between the existing rules and the statutory mandate of the ~~commission~~ ***Commission***;

(4) Inconsistency of one administrative rule with another; or

(5) Excessive burden upon the ~~commission~~ ***Commission*** in terms of cost or a reduction in efficiency or effectiveness.

(c) Within 30 days of receipt of a sufficient petition the ~~commission~~ ***Commission*** shall dispose of it in the following manner:

(1) By notifying the petitioner that the petition is granted and beginning rulemaking proceedings as required by RSA 541-A:4; or

(2) By notifying the petitioner in writing that the petition is denied and the reasons for its denial.

(d) The denial of a petition for rulemaking shall not entitle the petitioner to a hearing.

Readopt with amendment and renumber Hum 320, effective 2-3-07 (Document #8815-A), as Hum 323 to read as follows:

PART Hum ~~320~~ ***323*** PUBLIC COMMENT HEARINGS

Hum ~~320.01~~ ***323.01*** Purpose. The purpose of this part is to provide uniform procedures for the conduct of public comment hearings held pursuant to RSA 541-A:11.

Hum ~~320.02~~ ***323.02*** Public Access and Participation.

(a) Public comment hearings shall be open to the public, and members of the public shall be entitled to testify, subject to the limitations of Hum ~~320.03~~ ***323.03***.

(b) People who wish to testify shall be asked to write on the speaker's list:

(1) Their full names and addresses; and

(2) The names and addresses of organizations, entities or other persons whom they represent, if any.

(c) Written comments, which may be submitted in lieu of or in addition to oral testimony, shall be accepted ~~for 10 days after~~ ***until*** the adjournment of a ***public comment*** hearing or ~~after~~ ***until*** the adjournment of a postponed or continued ***public comment*** hearing.

Hum ~~320.03~~ ***323.03*** Limitations on Public Participation. The ~~commission chair~~ ***Chair of the Commission*** or other person designated by the ~~commission~~ ***Commission*** to preside over a public comment hearing shall:

(a) Refuse to recognize for speaking or revoke the recognition of any person who:

(1) Speaks or acts in an abusive or disruptive manner;

(2) Fails to keep comments relevant to the proposed rules that are the subject matter of the public comment hearing; or

(3) Restates more than once what ~~he or she~~ ***that person*** has already stated; and

(b) Limit presentations on behalf of the same organization or entity to no more than 3, provided that all those representing such organization or entity may enter their names and addresses into the record as supporting the position of the organization or entity.

Hum ~~320.04~~ ***323.04*** Media Access. Public comment hearings shall be open to print and electronic media, subject to the following limitations when such limitations are necessary to allow a hearing to go forward:

(a) Limitation of the number of media representatives when their number together with the number of other members of the public present exceeds the capacity of the hearing room;

(b) Limitation on the placement of cameras to specific locations within the hearing room; or

(c) Prohibition of interviews conducted within the hearing room before or during the hearing.

Hum ~~320.05~~ ***323.05*** Conduct of Public Comment Hearings.

(a) Public comment hearings shall be attended by a quorum of the ~~commission~~ ***Commssion***.

(b) Public comment hearings shall be presided over by the ~~commission chair~~ ***Chair of the Commission*** or a ~~commissioner~~ ***Commissioner*** knowledgeable in the subject area of the proposed rules who has been designated to preside over the ***public comment*** hearing.

(c) The ~~chair or other person~~ ***Chair of the Commissioner or other Commissioner*** presiding over a ***public comment*** hearing shall:

(1) Call the ***public comment*** hearing to order;

(2) Identify the proposed rules that are the subject matter of the ***public comment*** hearing and provide copies of them upon request;

(3) Cause a recording of the ***public comment*** hearing to be made;

(4) Recognize those who wish to be heard;

(5) If necessary, establish limits pursuant to Hum ~~320.03~~ ***323.03*** and Hum ~~320.04~~ ***323.04***;

(6) If necessary to permit the ***public comment*** hearing to go forward in an orderly manner, effect the removal of a person who speaks or acts in a manner that is personally abusive or otherwise disrupts the ***public comment*** hearing;

(7) If necessary, postpone or move the ***public comment*** hearing; and

(8) Adjourn or continue the ***public comment*** hearing.

(d) ***A public comment*** hearing shall be postponed in accordance with RSA 541-A:11, IV when:

(1) The weather is so inclement that it is reasonable to conclude that people wishing to attend the ***public comment*** hearing will be unable to do so;

(2) There is no quorum of the ~~commission~~ ***Commission***; or

(3) Postponement will facilitate greater participation by the public.

(e) A ***public comment*** hearing shall be moved to another location in accordance with RSA 541-A:11, V when the original location is not able to accommodate the number of people who wish to attend the ***public comment*** hearing.

(f) A ***public comment*** hearing shall be continued past the scheduled time or to another date in accordance with RSA 541-A:11, III when:

(1) The time available is not sufficient to give each person who wishes to speak a reasonable opportunity to do so; or

(2) The capacity of the room in which the ***public comment*** hearing is to be held does not accommodate the number of people who wish to attend; and it is not possible to move the ***public comment*** hearing to another location.

Readopt with amendment and renumber Hum 321, effective 2-3-07 (Document #8815-A), as Hum 324 to read as follows:

PART Hum ~~321~~ ***324*** EXPLANATION OF ADOPTED RULES

Hum ~~321.01~~ ***324.01*** Requests for Explanation of Adopted Rules. Any interested person may, within 30 days of the final adoption of a rule, request a written explanation of that rule by making a written request to the ~~commission~~ ***Commission*** including:

(a) The name and address of the person making the request; or

(b) If the request is that of an organization or other entity, the name and address of such organization or entity and the name and address of the representative authorized by the organization or entity to make the request.

Hum ~~321.02~~ ***324.02*** Contents of Explanation. The ~~commission~~ ***Commission*** shall, within 90 days of receiving a request in accordance with Hum ~~321.01~~ ***324.01***, provide a written response which:

(a) Concisely states the meaning of the rule adopted;

(b) Concisely states the principal reasons for and against the adoption of the rule in its final form; and

(c) States, if the ~~commission~~ ***Commission*** did so, why the ~~commission~~ ***Commission*** overruled any arguments and considerations presented against the rule.

Appendix

Rule	Statute
Hum 301	RSA 354-A:5, V, VII; RSA 541-A:16, I(b); RSA 541-A:30-a
Hum 302	RSA 354-A:5, V, VII; RSA 354-A:21, II(b); RSA 541-A:30-a
Hum 303	RSA 354-A:5, V, VII; RSA 354-A:21, II(b); RSA 541-A:16, I(b); RSA 541-A:30-a
Hum 304	RSA 354-A:5, VII; RSA 354-A:21, II(c), (f); RSA 541-A:16, I(b)(2); RSA 541-A:30-a, III(f), (k)
Hum 305	RSA 354-A:5, VII; RSA 541-A:30-a, III(h)
Hum 306	RSA 354-A:5, VII; RSA 354-A:21, II(b)-(c)
Hum 307	RSA 354-A:5, VII; RSA 354-A:21, II(a)-(c), (f); RSA 541-A:16, I(b)(2); RSA 541-A:30-a, III(c); RSA 541-A:31, V(b)
Hum 308 through Hum 313	RSA 354-A:5, VII; RSA 354-A:5, XIV; RSA 354-A:21, I(b); RSA 354-A:21, II(f); RSA 541-A:16, I(b)(2)
Hum 314 and Hum 315	RSA 354-A:21, II(a), (f); RSA 541-A:16, I(b)(2); RSA 541-A:32
Hum 316	RSA 354-A:5, VII; 541-A:16, I(b); RSA 541-A:30-a, III(j)
Hum 317 through Hum 318	RSA 354-A:5, VII; RSA 354-A:21, II(c), (f); 541-A:16, I(b); RSA 541-A:30-a, III(d), (e); RSA 541-A:31, IV, VII; RSA 541-A:33, IV, V
Hum 319	RSA 354-A:5, VII; RSA 354-A:21, II(d), (f); RSA 541-A:16, I(b)(2); RSA 541-A:30-a, III(*l*)
Hum 320	RSA 541-A:16, I(b)(2); RSA 354-A:21, II(f)
Hum 321	RSA 541-A:16, I(d)
Hum 322 through Hum 324	RSA 354-A:5, V; RSA 541-A:11, VII; RSA 541-A:16, I(b)(3), (c)