



Minnesota Department of
HUMAN RIGHTS

08 - 0169

January 29, 2008

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Public Safety Budget Division
Minnesota Senate
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St. Paul, MN 55155

The Honorable Michael Paymar
Public Safety Finance Division
Minnesota House of Representatives
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Senator Bill Ingebrigtsen
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RE: ADDENDUM TO SURVEY OF CHARGING PARTIES - JANUARY, 2008

During the 2007 Legislative Session, the Minnesota Legislature passed a law, Chapter 54, Article 1 Section 13, which required the Department of Human Rights (department) to conduct a survey. The purpose of this survey, in general, was to evaluate the outcome of complaints filed with the department and whether or not the charging party was satisfied with the outcome of their complaint, and the process by which the complaint was reviewed and handled by the department.

The department contacted Management Analysis and Development (MAD) at the Minnesota Department of Administration. MAD conducted the survey between August 2007 and October 2007. Participants in the survey were individuals who filed charges with the department, or had their charges resolved between July 1, 2005, and June 30, 2007. MAD provided the department with a summary of the survey findings in December 2007. The survey summary and the department's initial response were provided to the legislature on January 15, 2008 as was required.

In addition to a summary of the survey findings, the legislative directive for the survey required that the department respond with recommended changes in policies, procedures, or staffing the department proposes to undertake to address the findings. The surveyed charging parties and MAD provided suggestions to the department. After carefully considering the suggestions, the department's responses appear in *italics*.

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Suggestions submitted by charging parties

Assistance and coaching. One charging party suggested that charging parties be informed of assistance and coaching services in their communities. Specifically this charging party wrote "...educating people on various community resources and educational tools via the web is helpful information to have. Possibly having someone coach this process without having a tie to the MDHR would be helpful".

The department will update and continue to maintain a community resource list on its website. Additionally, the department will use the updated resource list to 1) conduct a mail and email campaign to newly identified community resources to inform them of tools and information available to the individuals they serve, and 2) invite community resources to participate in education sessions to obtain knowledge and information that might help them provide better information to individuals they serve.

Information about the one-year statute of limitations. Another charging party noted that people should be made aware that the statute of limitations applies equally to District Court filings on the same matters. "The timeliness of the process takes very long. After this process was completed, I decided to go ahead with a legal course of action and it was almost beyond the statute of limitations. It would have been helpful to know that ahead of time that I could have filed the legal complaint at the same time."

The department understands that this issue is a specific concern about a specific case, but recognizes that there are typical questions that most charging parties might have regarding the complaint process. To try to address this, the department will develop and publish a list of "frequently asked questions" (FAQs) via its website and other publications as financial resources allow. It should be noted, however, that by filing a charge with the department, a person's right to bring a civil action in district court is preserved. The statute of limitations is suspended while a charge is being processed. Also, it should be noted that in this particular instance, even with an answer regarding the statute of limitations, the charging party still might not have been satisfied with the department's statutory mandate that when a person who has filed a charge indicates to the commissioner an intent to bring a private civil action in the matter, the commissioner shall suspend processing of the charge and request the charging party to execute, within 30 days, either a) a statement of withdrawal signed by the charging party or attorney of record declaring that a private action will be commenced within 90 days of the initial notice, or b) a request to resume processing the case to its final determination.

Process guidance. Another charging party suggested that people be given better process guidance. "It would be helpful if MDHR could set up an outline (drawing) to show the overall process...a basic overview outline in drawing form could help one see where there case could be heading..."

The department currently produces a flow diagram of its complaint process. This document will be revised for publication on the department's website and for distribution with documentation mailed to a charging party at the start of the complaint process.

MAD suggestions

Evaluate processes at their conclusion. MAD noted that the ultimate outcome of the complaint process influenced the survey participant's satisfaction level, and thus, their response. MAD suggested that rather than conducting after-the-fact evaluations, the department could conduct intermediate evaluations during the process to gauge charging parties' opinions about the process before they know the final outcome.

The department welcomes constructive feedback on its processes at all stages of an investigation. However, it must be pointed out that the department works under a statutory mandate to complete investigations within one year from the date the charge is filed. The department is concerned that to require it to collect and analyze this type of information will further burden its limited resources and potentially detracts from its focus of investigating allegations of illegal discrimination.

Re-examine the department's "neutral" role in advising charging parties in retaining private counsel. MAD noted that many of the surveyed charging parties expected the department would serve as an advocate for them. The department currently does not advise charging parties to retain private counsel. Some charging parties noted that they regretted that they did not hire an attorney or regretted that they could not afford one. In light of these comments, the department should consider advising parties to retain counsel to serve as their advocates, and to link low-income charging parties with legal aid services.

The department does not support this recommendation. The department understands that it is a serious matter for both the charging party and the respondent when a charge is filed. As the agency that is mandated to enforce the State's human rights law, the department is diligent about maintaining its neutral role. The department clearly understands its job is to provide the forum where a potential charging party has the right to bring allegations of discrimination against a respondent, however the department's review of these allegations must be balanced because the Human Rights Act protects persons, e.g. respondents, from "wholly unfounded charges of discrimination". (M.S. 363A Subd. 1.b.) The department takes seriously its role to present a fair and unbiased account of the facts of a situation without support or favor for either party to a charge.

During the charge-filing process, each charging party is informed that they may be represented by legal counsel at any stage of proceedings before the department. In addition to providing this information during the charge-filing process, the department will revise its written communications to charging parties to include this notification.

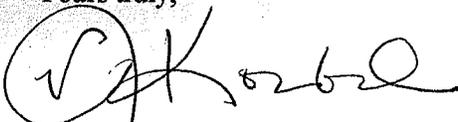
Objectively evaluate the investigation process and perhaps other processes. MAD again notes that a charging party's satisfaction level was influenced by the outcome of their investigation. It noted that charging parties with no probable cause determination could be biased in their judgments based on the outcome of the process for them while positive comments about the same processes for charging parties with probable cause determinations gives one pause in concluding that there are specific problems with the department's investigations. MAD suggested that the Legislature could conduct an objective, third-party evaluation of the department's processes.

Several months before this survey was ordered, the department reorganized its staff to create a Quality Assurance Team (QA). It has been QA's responsibility, along with each case processing supervisor, to ensure that thorough investigations are conducted using standardized criteria and formats, and that investigators consider all relevant case law, statutory definitions, rules, policies and procedures required to render an accurate determination in a charge. The department continuously looks for ways to improve its processes and welcomes the opportunity to participate in an independent evaluation. Such an evaluation, if conducted by a reputable, knowledgeable third party could be valuable in establishing new performance bench marks for the department. It must be noted, however, that any such evaluation would require time and resources, and the department would like to stress again that it is a small agency with limited resources, and that an additional requirement strains the already stretched budget. Even if a survey were to be undertaken by a third-party, and paid for by the legislature, MAD noted that improvement recommendations must be tied to the resources necessary to implement the recommendations. The department agrees.

Finally, the department staff and I have appreciated the opportunity this survey gave us to re-examine some of our methods of communicating including the website, pro-forma documents, policies and procedures. As mentioned previously, we continuously look for ways to better communicate about the complaint process with all parties to a charge.

Please feel free to contact me for additional clarifying information if it is necessary.

Yours truly,



Velma Korb
Commissioner

c: Beth Kadoun, Senior Policy Advisor, Governor's Office
Patrick Flahaven, Secretary of the Senate
Albin Mathiowetz, Chief Clerk, Minnesota House of Representatives
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