

# One Minute Memo™



## MCAD Issues New Pre-Determination Procedures

On February 20, 2007, the Massachusetts Commission Against Discrimination (MCAD) issued a new Standing Order regarding procedures in cases at the pre-determination stage. The new Order will help standardize the MCAD's practices, making the experiences of litigants in the Boston and Springfield offices more consistent.

Under the new Standing Order, effective immediately:

- Agency attorneys will be involved in every case at inception whenever possible. They will review all probable cause, lack of probable cause, and lack of jurisdiction recommendations by Investigating Commissioners.
- The Springfield office's two units, the attorney assisted unit and the *pro se* unit, will no longer exist. As a result, the Boston and Springfield offices will be governed by the same pre-determination procedures.
- The June 3, 2004 Standing Order regarding pre-determination discovery is vacated. Investigating Commissioners may now order pre-determination discovery at their discretion in the following three situations: 1) upon request from the parties; 2) if recommended by MCAD staff; or 3) when fairness so requires.
- The Commission may conduct pre-determination discovery in its name at any point after accepting the complaint of discrimination. The parties may request that the Commission seek specific information as part of its investigation. They also may request investigative conferences.
- Pre-determination discovery is to be completed within ninety (90) days. Discovery will be limited, and any party found to have abused the discovery privilege will be subject to sanctions including, but not limited to, those contained in the MCAD's rules and regulations and/or barring counsel from conducting pre-determination discovery on behalf of the Commission in *any* matter.
- Parties providing information to the Commission in response to discovery requests also must provide the same information to the opposing party unless the Investigating Commissioner issues a protective order.
- Complainants must now serve opposing parties with a copy of their rebuttal to the position statement unless a protective order has been issued for "good cause shown."
- Within thirty (30) days of the close of the pre-determination discovery period, the parties may submit memoranda of fact and law. A single, joint submission is encouraged.
- Pre-probable cause determinations, a procedure utilized only in the Springfield office, will no longer be issued.

- Only in the most compelling circumstances will parties be permitted more than twenty-five (25) total days of extensions during the investigative process. All requests for extensions must be made in writing.

While the new procedures are likely to increase the amount of discovery at the pre-determination stage, it is not yet clear whether the MCAD will allow the level of pre-determination discovery that existed prior to the June 3, 2004 Order. If you have questions about how the new Standing Order will affect a pending case, please feel free to contact your Seyfarth Shaw attorney or any Seyfarth Shaw attorney on the website at [www.seyfarth.com](http://www.seyfarth.com).

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