

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by
David Beaulieu, Commissioner,
Department of Human Rights,

Complainant,

MOTION

vs.

Ford Motor Company,

Respondent.

RULING REGARDING
COMPLAINANT'S

TO TAPE RECORD
ADVERSE EXAMINATION

This matter is pending before the undersigned Administrative Law Judge pursuant to a Notice of and Order for Hearing issued on July 23, 1992. Richard L. Varco, Jr., Assistant Attorney General, 1100 Bremer Tower, Seventh Place and Minnesota Street, St. Paul, Minnesota 55101, appeared on behalf of the Complainant. George A. Koeck and J. Thomas Vitt, Attorneys at Law, Dorsey & Whitney, 220 South Sixth Street, Minneapolis, Minnesota 55402-1498, appeared on behalf of the Respondent.

On Friday, February 12, 1993, a conference call was held with counsel for the parties in which the Complainant requested that an Order be issued requiring the tape recording of an adverse psychiatric examination to be conducted of the Complainant on Wednesday, February 17, 1993. Counsel for the parties agreed to an expedited consideration of the Complainant's request, and an oral ruling regarding the Motion was rendered in a telephone conference call on Monday, February 15, 1993.

Based upon the entire record herein, and for the reasons set forth in the Memorandum which is attached hereto, IT IS HEREBY ORDERED that the Complainant's request is DENIED.

Dated this 22nd day of February, 1993.

BARBARA L. NEILSON
Administrative Law Judge

MEMORANDUM

In the Complaint filed herein, the Complainant alleges that the Charging Party, Phillip Harris, was subjected to racial discrimination during the course of his employment by the Respondent which resulted in mental anguish and suffering. As a result, the mental health of the Charging Party is an issue in this case and the parties have scheduled an adverse psychiatric examination for February 17, 1993. The Complainant has requested that the adverse examination be tape recorded in order to provide the Complainant with the best record of the examination. The Respondent has opposed the request for tape recording based upon the contention that the physician who is to conduct the adverse examination does not typically tape record examinations, it would be unfair to require a tape recording of the adverse examination where no tape recording has been conducted of previous exams conducted by the Complainant's personal psychiatrist, and Rule 35 of the Minnesota Rules of Civil Procedure ensures that the Complainant will be provided adequate information concerning the conclusions reached by Dr. Westermeyer and the basis for such conclusions.

The decision by the Minnesota Court of Appeals in Wood v. Chicago Milwaukee St. Paul & Pacific Railroad 353 N.W.2d 195, 197 (Minn. Ct. App. 1984), suggests that it may be appropriate in "exceptional cases" to allow an adverse examination to be tape-recorded. The Administrative Law Judge is not persuaded that this matter presents such an exceptional case. The only argument made regarding the need for the tape recording is the fact that it will yield a verbatim record of the examination and thus will provide the most accurate record of the exam. There has been no allegation of a particular need to protect the Complainant during this examination. There thus has not been a sufficient showing of need for the protection of the Complainant to outweigh the need for an Independent examination conducted in accordance with the physician's normal practice. See 2 Minn. Practice 35.6 at 172 (2d Ed. 1985). There are adequate provisions in Rule 35 of the Minnesota Rules of Civil Procedure to allow the Complainant in this case discovery of the findings and conclusions reached as a result of the adverse exam, and the Judge is concerned that requiring the examination to be tape-recorded could result in an unfair situation for the Respondent. Accordingly, the Complainant's request has been denied.

B.L.N.