

SUFFOLK COUNTY HUMAN RIGHTS COMMISSION

RULES OF PROCEDURE

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The Suffolk County Human Rights Commission adopts the following Rules of Procedure for implementation of Local Law 51-2006, effective January 29, 2007. These Rules shall be made available to the public at the office of the Commission and shall be provided upon request to all parties to any proceeding before the Commission, without charge.

I. Service of Papers

Determinations, notices of hearing, complaints, respondents' answers, Commission decisions, findings of fact and orders shall be served by personal service or registered or certified mail, or ordinary first class mail. However, where a nonresident person or foreign corporation is charged with violating any provision of the law by virtue of the provisions of Local Law 51-2006, the complaint and notice of hearing shall be served only by personal service or by registered mail, return receipt requested, directed to such person or corporation at the last known place of residence or business.

II. Complaint

A. Who May File:

- (1) Any person claiming to be aggrieved by an alleged unlawful discriminatory practice may, in person or by an attorney-at-law, make, sign and file with the Commission office a verified complaint in writing. Assistance in drafting and filing complaints shall be available to complainants at all Commission offices in person, by telephone, by mail or e-mail.
- (2) On its own motion the Commission may initiate its own complaint.
- (3) Any complaint filed in accordance with paragraph (1) or (2) of this subdivision may be filed on behalf of a class of persons similarly situated.

B. Form:

The complaint shall be in writing, either on a form promulgated by the Commission or on any paper suitable for a complaint. The original shall be signed and verified before a notary public or other person duly authorized by law to take acknowledgments. Notarial service shall be furnished without charge by the Commission.

C. Contents:

A complaint shall contain the following:

- (1) the full name and address of the person making the complaint (hereinafter referred to as the "complainant");
- (2) the full name and address of each respondent against whom the complaint is made;

- (3) the alleged unlawful discriminatory practice and a statement of the particulars thereof;
- (4) the date or dates of the alleged unlawful discriminatory practice and, if the alleged unlawful discriminatory practice is of a continuing nature, the dates between which said continuing acts of discrimination are alleged to have occurred; and
- (5) a statement as to any other action, civil or criminal, instituted in any other forum, and as to any pending administrative proceeding based on the same grievance as is alleged in the complaint, together with a statement as to the status or disposition of such other action.

D. Place of Filing:

A complaint shall be filed with the Suffolk County Human Rights Commission at any of its offices, or other place designated by the Commission.

E. Time of Filing:

The complaint must be filed within one year from the date of the occurrence of the alleged unlawful discriminatory practice. If the alleged unlawful discriminatory practice is ongoing, the date of its occurrence shall be any date after its inception, up to and including its cessation.

F. Manner of Filing:

The complaint may be filed by personal delivery, ordinary mail, registered mail or certified mail, addressed to any of the Commission's offices.

G. Service:

A copy of the complaint shall be promptly served by the Commission on the respondent and all persons the Commission deems to be necessary parties, on its own motion or on application of a respondent. A copy of all amendments to the complaint shall be served by the Commission on all parties to the proceeding, except such amendments to the complaint as are made to more correctly identify a respondent or necessary party previously served.

III. Amendments to Complaint

A. Power to Amend:

The Commission or the complainant shall have the power to reasonably and fairly amend the complaint. No party may be removed by any amendment. After a hearing is commenced before an Administrative Law Judge, any amendment is subject to the discretion of the Administrative Law Judge.

B. Complainant's Power:

The complainant has the right to amend the complaint to conform to the proof and

such amendment shall be fully granted in a reasonable manner before the commencement of a hearing.

C. Commission's Power:

The Executive Director or Administrative Law Judge may reasonably amend the complaint to conform to the proof.

D. Service:

- (1) Any amendment to a complaint shall be served upon all parties unless made upon the record at a public hearing before an Administrative Law Judge. If an amendment adds new parties, a copy of the notice of hearing must be served upon such parties.
- (2) When a complaint is amended after an answer has been filed but before the hearing, each respondent who has filed an answer shall be allowed to file an amended answer with the Commission at least fifteen business days prior to the hearing.

IV. Answer

A. Procedure:

- (1) Within ten days after a copy of the complaint is served upon the respondent by the Commission, the respondent shall file a written, verified answer thereto with the Commission, and the Commission shall cause a copy of such answer to be served upon the complainant and any necessary party.
- (2) The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge or information sufficient to form a belief, in which respondent shall so state, and such statement shall operate as a denial.
- (3) Any allegation in the complaint not specifically denied or explained shall be deemed admitted and shall be so found by the Commission unless good cause to the contrary is shown.
- (4) All affirmative defenses shall be stated separately in the answer.
- (5) Upon request of the respondent and for good cause shown, the period within which an answer is required to be filed may be extended at the discretion of the Commission.
- (6) Any necessary party may file with the Commission a written, verified answer to the complaint, and the Commission shall cause a copy of such answer to be served upon the complainant, respondent and any other necessary party.
- (7) Any answer filed pursuant to this section may be amended by filing such

amended answer with the Commission and serving a copy thereof upon the complainant and any necessary party to the proceeding.

- (8) At least two business days prior to the hearing, the respondent shall, and any necessary party may, file an amended answer to the complaint, sworn to subject to the penalties of perjury.

V. Withdrawals, Discontinuances and Dismissals Before a Hearing

A. Withdrawals and Agreements to Discontinue:

A complainant may withdraw or agree to discontinue his or her complaint at any time. A written statement of withdrawal or a written agreement to discontinue must be signed by the complainant, or his or her attorney, if any. Verbal withdrawals must be documented by the Commission in a dated, written memorandum to the Commission file. The Commission must send written notification of the withdrawal or agreement to discontinue to all named respondents. After a withdrawal or agreement to discontinue, the Commission may file its own complaint based upon the same underlying facts only if it has determined that the complainant will cooperate with the investigation and any subsequent hearing, to the extent that such cooperation would be essential for the Commission to proceed. Withdrawals and agreements to discontinue must be on the record before the Administrative Law Judge if either occurs when a hearing has already commenced. Where a complaint has been withdrawn, the Commission may only reopen its file upon an allegation that the withdrawal was induced by fraud or coercion, or error. The allegation must be presented in a written application for reopening made to the Commission within one year after the issuance by the Commission of a notice that said complaint has been withdrawn.

B. Discontinuance:

- (1) After the service of the notice of hearing a proceeding may be discontinued by the complainant on notice to the respondent and with the consent of the Executive Director.
- (2) The application to discontinue shall be in writing, signed by the complainant or complainant's attorney, or made upon the record at a public hearing before an Administrative Law Judge.

C. Dismissal Before a Hearing:

- (1) The Commission may, in its discretion, dismiss a complaint for administrative convenience at any time prior to the taking of testimony at a hearing. Administrative convenience shall include, but not be limited to, the following circumstances:
 - (i) Commission personnel have been unable to locate the complainant after diligent efforts to do so;
 - (ii) the complainant has repeatedly failed to appear at mutually agreed upon appointments with Commission personnel or is unable or

unwilling to meet with Commission personnel, provide requested documentation, or to attend a hearing;

- (iii) relief is precluded by the respondent's absence or other special circumstances;
 - (iv) the complainant's objections to a proposed conciliation agreement are without foundation;
 - (v) holding a hearing will not benefit the complainant;
 - (vi) the complainant has repeatedly engaged in conduct which is disruptive to the orderly functioning of the Commission; or
 - (vii) prosecution of the complaint will not serve the interest of justice.
- (2) The Commission shall dismiss a complaint for administrative convenience where a complainant requests that it do so for the purpose of commencement by the complainant of a civil action in a court of competent jurisdiction.
- (3) The Commission shall dismiss a complaint if the complaint is not within the jurisdiction of the Commission.
- (4) If after investigation the Commission determines that probable cause does not exist to believe that the respondent has engaged or is engaging in an unlawful discriminatory practice, the Commission shall dismiss the complaint as to such respondent.
- (5) The Commission shall promptly serve notice upon the complainant, respondent and any necessary party of any dismissal pursuant to this section.
- (6) The complainant or respondent may, within thirty days of such service, apply to the Executive Director of the Commission for review of any dismissal pursuant to this section. Upon such application, the Executive Director shall review such action and issue an order affirming, reversing or modifying such determination or remanding the matter for further investigation and action. A copy of such order shall be served upon the complainant, respondent and any necessary party.
- (7) All complaints administratively dismissed pursuant to this section shall be reported in the Yearly Report of the Human Rights Commission mandated by Chapter 89 of the Suffolk County Code and will include:
- (i) the total number of cases administratively dismissed for the reporting period;
 - (ii) the specific protected basis of the affected complainants;
 - (iii) the type of violation or discriminatory act alleged in the complaint; and

(iv) the basis for dismissing the complaint under this subsection.

- (8) Upon dismissal of the complaint, the Executive Director shall have the authority to refer the complaint to the New York State Division of Human Rights for further processing.

VI. Investigations

A. Investigation:

After the filing of a complaint, the Executive Director of the Commission shall make, with the assistance of staff, a prompt and fair investigation of the allegations of the complaint. The proceedings with respect to a complaint shall be commenced within 30 days of its filing, and the investigation shall be completed within 100 days of its filing, unless the Commission determines that it is impracticable to do so, in which case the Commission shall notify the complainant and respondent in writing of the reasons for not doing so.

B. Methods:

Such investigation may be made by field visit, written or oral inquiry, use of testers, review of documents, conference, or any method or combination thereof deemed suitable in the discretion of the Executive Director.

C. Use of Subpoenas and Subpoenas Duces Tecum:

The Executive Director of the Commission may issue subpoenas requiring a witness to appear and give testimony whenever necessary to compel attendance and may issue subpoenas duces tecum to require the production for examination of any books, payrolls, personnel records, deeds, correspondence, documents, papers, corporate records, or any other evidence relating to any matter under investigation or in question before the Commission. Subpoenas duces tecum issued by the Commission may be made returnable at any stage of any investigation or proceeding pending before the Commission. Documents, books and records required for public hearing before an Administrative Law Judge may be subpoenaed by the Administrative Law Judge and made returnable prior to such hearing at such time and place stated in the subpoena, or made returnable before the designated Commission employee. Witness subpoenas issued by the Administrative Law Judge shall be returnable only at the hearing.

D. Injunction and Temporary Restraining Order:

At any time after the filing of a complaint with the Commission alleging an unlawful discriminatory practice in the sale, lease, or rental of real property, where there is reason to believe that the respondent, or any other person acting in concert with the respondent, may do or cause to be done any act that would tend to render ineffectual relief that could be ordered:

- (1) The County may commence or cause to be commenced, a special proceeding in accordance with article sixty-three of the civil practice law

and rules for an order to show cause why the respondent and such other persons should not be enjoined from doing or causing such acts to be done; and

- (2) Where the County has obtained injunctive relief pursuant to this paragraph, in order to prevent the involvement of innocent third parties in the rental or sale of housing accommodations during the pendency of the complaint, a notice may be posted by the County in a conspicuous place on such housing accommodation stating that such accommodation is the subject of a complaint before the Commission and that prospective buyers or renter will take such accommodations at their own risk, provided, however, that no such notice shall be posted where the person charged with discrimination agrees in writing not to sell or rent such housing accommodations during the pendency of the action or proceeding against him or her. Any willful destruction, defacement, alteration or removal of such notice by the owner or the agents or employees of the owner shall be a misdemeanor punishable upon conviction by a fine of up to five hundred dollars.
- (3) Nothing herein shall prevent a complainant from applying to a court of competent jurisdiction for an injunction, temporary or permanent, or from filing a lis pendens against the property.

E. Final Investigative Report:

At the end of each investigation, the Commission shall prepare a final investigative report containing:

- (1) the names and dates of contacts with witnesses;
- (2) a summary and the dates of correspondence with the complainant and the respondent;
- (3) a summary description of other pertinent records;
- (4) a summary of witness statements; and
- (5) answers to interrogatories.

A final investigative report may be amended if additional evidence is later discovered. After the conclusion of an investigation, the Commission shall make available on request of a complainant or respondent a copy of the final investigative report and the information derived from the investigation.

VII. Conciliation

A. Endeavors:

- (1) The Commission may, at any time after the filing of the complaint, endeavor to eliminate the unlawful discriminatory practice complained of by conference, conciliation, mediation and persuasion.

- (2) A conciliation proceeding, to be attended by the parties, should be convened in all appropriate cases by the Commission, prior to a determination after investigation, in an attempt to resolve the parties' differences. Reasonable adjournments of such conciliation proceeding may be given at the discretion of the Investigator or the Executive Director.
- (3) Offers of conciliation by respondent shall be reviewed by the Executive Director to determine whether such conciliation offer is substantial enough to require a determination, in the interest of justice, to terminate the proceeding, on notice to complainant, if the complainant unreasonably refuses to accept the conciliation. The following criteria are among those which should be considered:
 - (i) probability of success after full investigation;
 - (ii) reasonableness of offer;
 - (iii) reasonableness of complainant's refusal, if any;
 - (iv) the amount of the complainant's economic loss, and respondent's degree of responsibility therefore;
 - (v) in appropriate cases, the evidence of the amount of complainant's mental pain and suffering;
 - (vi) the egregiousness of the discrimination charged;
 - (vii) whether the public interest is best served by the continuation of the proceedings.
- (4) Objections by a complainant to a proposed continuation of the proceedings shall be delivered or mailed within 15 days of the service of the proposed agreement by the Commission upon complainant, or earlier, i.e., if made in the context of a conciliation proceeding where both parties or their representatives are present. If the agreement was served by mail, the time for objections shall be extended by five days. The objection shall be specific and in detail.

B. Terms:

The terms of a conciliation agreement shall include provisions requiring the respondent to refrain from the commission of unlawful discriminatory practices in the future, and may contain such further provisions as may be agreed upon by the Executive Director and the respondent.

C. Nondisclosure:

The Commission shall not disclose what has transpired in the course of its endeavors at conciliation and mediation, except to the parties and their representatives.

D. Successful Conciliation:

- (1) If the respondent agrees to the terms of conciliation, as prepared by the Executive Director, then the Executive Director shall serve it upon the complainant.
- (2) If the complainant agrees to the terms of the agreement, or fails to object to such terms within 15 days after its service, the Commission may formally enter into the proposed conciliation agreement by issuing an order embodying such conciliation agreement. The Commission shall serve a copy of such order upon all parties to the proceeding.

VIII. Probable Cause Review

The Executive Director must review all recommendations as to determinations after investigation made by an investigator, for accuracy of facts and legal sufficiency. The Executive Director shall keep a register of all determinations after investigation made by him or her after such review, with notation of the date of determination after review, and a comment if necessary.

IX. Commission-initiated Settlements

A. Administrative Convenience Dismissal:

The Executive Director, or his or her designee may, at any time after a finding of probable cause, endeavor to achieve settlement of a case by proposing a settlement to the respondent which, if agreed to by respondent, will be proposed to complainant, who must agree to such settlement proposal or reject it for sufficient reasons stated in objections. If the proposed settlement is agreed to by respondent and rejected by complainant without sufficient foundation, the case will be dismissed for administrative convenience or an equitable order will be recommended.

B. Settlement Value:

The Executive Director may, in his or her discretion, determine that a case is appropriate for a Commission-initiated settlement. He or she shall set a settlement value for the case, in the form of a lump sum dollar amount, by any such formula as may be appropriate to the facts and circumstances of the case, and/or shall formulate such other terms as would provide an appropriate resolution of the case. The settlement value may be the same as an offer of settlement previously made by a party and rejected by the opposing party.

C. Terms:

After the settlement has been formulated, an agreement setting forth all the proposed terms of the Commission-initiated settlement will be sent to the respondent, along with such other information as is necessary to explain the Commission-initiated settlement process. The Commission shall grant respondent a reasonable time in which to indicate whether respondent will agree to such settlement.

D. Objections:

If the respondent agrees to the terms of the Commission-initiated settlement, then the settlement terms, and an explanation of the Commission-initiated settlement process shall be sent to the complainant. The complainant shall have a stated time period in which to agree to the settlement or submit written objections thereto. The objections shall be specific. After consideration of complainant's objections, the Executive Director shall either accept the objections and refer the case on for hearing, or shall reject the objections and provide complainant with an additional period of time to accept the settlement. If the complainant does not agree to a settlement within the allotted time, and the complainant's objections are determined to be without foundation by the Executive Director, then the case may be dismissed for administrative convenience, or upon request of the respondent, the Executive Director may issue a recommended equitable order, providing that the respondent will pay the complainant the amount proposed in the settlement and dismissing the complaint on the merits.

E. Reasonableness of Settlement:

In determining the settlement value of the case, and the other terms of settlement to be proposed, and in evaluating the reasonableness of a complainant's objections, the Executive Director's determination shall include, but not be limited to the following:

- (1) the probability of success after hearing;
- (2) the amount of complainant's economic loss, and respondent's degree of responsibility therefor;
- (3) in appropriate cases, the evidence of the amount of complainant's non-economic loss;
- (4) the egregiousness of the discrimination charged;
- (5) whether the interests of justice requires the continuation of the proceedings.

F. Disclosure:

The proposed Commission-initiated settlement shall contain terms as set forth in Local Law 51-2006. A successful Commission-initiated settlement shall be confirmed by an order of the Commission. The Executive Director, or any other Commission representative, shall not disclose what has transpired in the course of attempts at Commission-initiated settlement, except to the parties and their representatives, and except that:

- (1) In those cases where the Commission-initiated settlement attempt results in a dismissal for administrative convenience, the dismissal shall contain a recital of the proposed settlement, and the reasons that the complainant's objections to it were rejected.

- (2) In those cases that result in an order of the Commission, the terms of the settlement may be disclosed as with any final order of the Commission.

X. Other Settlements

A. Stipulation:

At any time after a determination of probable cause, the parties may stipulate to settle the case subject to the approval of the Executive Director. Such stipulation shall either be in writing, signed by the parties or their attorneys, or be placed on the record at a public hearing.

B. Terms:

- (1) To the extent practicable, the stipulation shall contain precise and unambiguous terms.
- (2) The stipulation shall include an agreement by the respondent to refrain or cease and desist from the commission of unlawful discriminatory practices in the future.
- (3) The stipulation may include an escrow arrangement for the payment of any monies due thereunder.
- (4) The stipulation should provide for the issuance of an order thereon by the Commission, incorporating its operative terms.

XI. Election of Remedies

Pursuant to Section 8 (a) (b) (c):

- (1) Within 20 days of the Commission's service of notice of probable cause, a complainant or respondent may elect to proceed in a court of appropriate jurisdiction. A complainant or respondent so electing shall notify the Commission in writing.
- (2) Where an election is made pursuant to paragraph 8(a), the Executive Director may elect to commence an action in a court of appropriate jurisdiction within 45 days thereafter.
- (3) If the Executive Director commences an action in a court of appropriate jurisdiction pursuant to 8(b) the complainant shall have the right to intervene in such action at any time.

XII. Hearing

A. Hearing Process:

- (1) After a finding of probable cause by the Executive Director, a hearing may be held before an Administrative Law Judge, who shall be an attorney in good standing designated by the Commission.

- (2) The place of any such hearing shall be the office of the Commission or such other place as may be designated by the Commission. Notice of the date, time and place of such hearing shall be served upon the complainant, respondent and any necessary party.
- (3) The Administrative Law Judge may, in his or her discretion, permit any person who has a substantial interest in the complaint to intervene as a party and may require the joinder of necessary parties.
- (4) Evidence relating to endeavors at mediation or conciliation by, between or among the Commission, the complainant and the respondent shall not be admissible.
- (5) If the respondent has failed to answer the complaint within the time period prescribed in Section C.2.a. of Local Law 51-2006, the Administrative Law Judge shall enter a default and the hearing shall proceed to determine the evidence in support of the complaint; provided, however, that, upon application, the Administrative Law Judge may, for good cause shown, open a default in answering, upon equitable terms and conditions, including the taking of an oral answer by a pro se party.
- (6) A respondent who has filed an answer or whose default in answering has been set aside for good cause shown; or a necessary party; or a complainant; or other person who has intervened, may appear at such hearing in person or otherwise, with or without counsel, and cross-examine witnesses, present testimony and offer evidence.
- (7) The testimony taken at the hearing shall be under oath and shall be transcribed.
- (8) Subsequent to the hearing and to such briefing as the presiding Administrative Law Judge may direct, the presiding Administrative Law Judge shall prepare a recommended decision and order and forward that recommended decision and order, along with the record in the case, to the Executive Director.

B. Consolidations:

Two or more complaints may be scheduled simultaneously before the same Administrative Law Judge, who may consolidate or sever them.

C. Appearances:

- (1) All parties to the proceeding, other than a respondent whose default in answer has not been excused, may be present and shall be allowed to present testimony in person or by counsel and cross-examine witnesses.
- (2) If a notice of hearing has not been delivered to a party, the Commission in its discretion may postpone a scheduled hearing to determine whether that party expects to attend a hearing, or whether the complaint should be

dismissed for administrative convenience, default entered, or other appropriate action taken.

- (3) If a respondent fails to appear at the duly noted time and place of the hearing and the hearing is not adjourned, irrespective of whether an answer to the complaint has been filed, the hearing shall proceed on the evidence in support of the complaint. Upon application, the Administrative Law Judge may, for good cause shown, reopen the proceeding, upon equitable terms and conditions.
- (4) Prior to an order after hearing, a default entered upon a respondent's failure to appear may be reopened, for good cause shown, upon written application to the Administrative Law Judge.

D. New Parties:

- (1) In the discretion of the Administrative Law Judge, any person who has a substantial interest in the complaint may be allowed to intervene as a party, in person or by counsel.
- (2) The Administrative Law Judge may require that any person not already a party be joined as a necessary party to the proceeding. A party may move that a person be joined as a necessary party.
- (3) In such joinder, the hearing shall be adjourned unless the person ordered to be joined is present and consents to waive service of notice of hearing and pleadings and to proceed as if he or she had been designated as such necessary party in the original complaint.
- (4) Upon such waiver of notice by a person who is present, or upon service of such new notice of hearing and an amended complaint, the hearing shall proceed as if the party so joined had been designated in the original complaint.
- (5) In the event of an adjournment due to the addition of a new party, the Commission shall serve a new notice that the prior hearing record may be examined and/or copied at the new party's expense, at the Commission's office during normal business hours, by appointment.

E. Who Shall Conduct:

- (1) Hearings shall be conducted by an Administrative Law Judge designated by the Commission. No person who shall have previously conducted the investigation, engaged in a conciliation proceeding or caused the notice of hearing to be issued, shall act as an Administrative Law Judge in such case.
- (2) The Commission may, in its discretion, at any time prior to the completion of a hearing, substitute one Administrative Law Judge for another. The hearing shall continue upon the previous record.

- (3) Disqualification of an Administrative Law Judge. If a party files a timely and sufficient affidavit of personal bias or disqualification of an Administrative Law Judge, the matter shall be referred to the County Attorney, who shall permit other parties to submit affidavits, and then shall determine the matter upon the merits. Any such determination shall be made part of the record in the case.
- (4) If the Administrative Law Judge is disqualified, the Commission shall designate a replacement Administrative Law Judge.

F. Form and Content of Proof:

The Administrative Law Judge, in conducting the hearing, may utilize any procedures consistent with due process to elicit evidence concerning the ultimate issues. The following guidelines shall govern:

- (1) Hearsay evidence is fully admissible.
- (2) There shall be no required order to the presentation of the evidence.
- (3) Documentary evidence may be admitted without testamentary foundation, where reasonable.
- (4) Witness information need not be introduced in the form of question and answer testimony.
- (5) Information from witnesses may be introduced in the form of affidavits, without oral examination and cross examination.
- (6) The parties shall not be denied the right to examine or cross examine a witness, where necessary and reasonable.
- (7) Oral testimony shall be given under oath.
- (8) Evidence shall not be received in camera.
- (9) Written stipulations may be introduced in evidence if signed by the person sought to be bound thereby or by that person's attorney-at-law. Oral stipulations may be made on the record at open hearing.
- (10) All materials relating solely to conciliation or settlement discussions shall be placed in a separate folder and shall not form part of the formal evidentiary record.
- (11) Where reasonable and convenient, the Administrative Law Judge may permit the testimony of a witness to be taken by telephone, subject to the following conditions:
 - (i) a person within the hearing room can testify that the voice of the witness is recognized, or identity can otherwise be established; and

- (ii) the Administrative Law Judge, reporter and respective attorneys can hear the questions and answers; and
 - (iii) the witness is placed under oath and testifies that he or she is not being coached by any other person.
- (12) Where affidavits or other forms of proof are not sufficient, an administrative law judge may authorize a deposition to be taken on oral or written questions and shall admit such deposition into evidence at a hearing in lieu of the personal appearance and testimony of the deponent at the hearing, subject to the following conditions:
- (i) all parties and counsel have been offered a reasonable opportunity to participate in the taking of the deposition and to cross-examine thereat;
 - (ii) the deponent is unable to come to a hearing for reasons of personal hardship substantially shown to the Administrative Law Judge;
 - (iii) the deposition was taken before any person authorized to administer an oath in the place where the deposition is taken, and is either subscribed and sworn to by the deponent, or certified as accurate by the stenographer, or is taken in the form of a tape recording;
 - (iv) the absence of cross-examination shall not be a bar to the admission of such deposition; provided, however, that if justice so requires, the deponent may be subject to further inquiry by additional deposition;
 - (v) any other reasonable condition fixed by the Administrative Law Judge.

G. Powers of the Administrative Law Judge:

The Administrative Law Judge shall have the following powers to control the presentation of the evidence and the conduct of the hearing:

- (1) fully control the procedure of the hearing, subject to these rules, and to rule upon all motions and objections, and make such orders as may be necessary in the interest of justice;
- (2) refuse to consider objections which unnecessarily prolong the presentation of the evidence;
- (3) foreclose the presentation of evidence that is cumulative, argumentative, or beyond the scope of the case;
- (4) place evidence in the record without an offer by a party;
- (5) call and to examine witnesses;
- (6) administer oaths;

- (7) exclude non-party witnesses who have not yet testified from the hearing room;
- (8) direct the production of documents and other evidentiary matter;
- (9) propose stipulations of fact for the parties' consideration;
- (10) issue interim findings of fact at any point during the hearing process;
- (11) issue questions delimiting the issues for hearing;
- (12) propose settlement terms for the parties' consideration at any time during the proceeding, or to issue an equitable order.
- (13) direct further hearing sessions for the taking of additional evidence or for other purposes, upon the Administrative Law Judge's own finding that the record is incomplete or fails to provide the basis for an informed decision;
- (14) amend the complaint to conform to the proof.

H. Investigation File:

The Commission's investigation file, which is also available to the parties, will be made available to the Administrative Law Judge at least 30 days prior to the preliminary conference.

I. Preliminary Conference:

The first session of the hearing, for which the parties receive notice shall begin with a preliminary conference before the Administrative Law Judge. The conduct of this preliminary conference shall be as follows:

- (1) All legal and factual issues of the case which relate to the conduct of the hearing or the presentation of the evidence will be discussed, and the parties, by their advocates, shall be prepared to address these issues.
- (2) Parties shall bring to the preliminary conference all documentary evidence in their control which is to be offered in evidence. Items already present in the investigatory file need not be separately produced. The Administrative Law Judge will determine what documents are necessary to complete the record. Documents shall be assembled and placed in the record at this time through notation by the Administrative Law Judge.
- (3) Parties will provide a list of proposed witnesses, with explanation of their identity and the scope of their knowledge of the facts of the case. The Administrative Law Judge will determine the witnesses necessary to complete the record.
- (4) The Administrative Law Judge may, at his or her discretion or at the suggestion of a party, request the production of additional documents

and/or additional witnesses, and may agree to the issuance of subpoenas, as necessary.

- (5) The Administrative Law Judge may, at the preliminary conference or at a later time propose possible stipulations of fact, or issue to the parties interim or tentative findings of fact, and/or issue to the parties questions for hearing, and may take any other steps necessary to limit and frame the issues to be addressed in the hearing.
- (6) The Administrative Law Judge shall establish a schedule for the presentation of testimony, and shall, to the extent practical, resolve all issues relating to the conduct of the hearing and the presentation of the evidence.
- (7) The record of the preliminary conference will be kept in the form of the Administrative Law Judge's formal notes.

J. Hearing Record:

The record of the hearing may be taken by shorthand reporting, tape recording, or other reasonable method. The method chosen shall be within the discretion and direction of the Administrative Law Judge. At all hearing sessions, the Administrative Law Judge shall take formal notes listing all matters made part of the record, which shall be attached as an appendix to the recommended order.

K. Public Hearings:

Hearings shall be open to the public, except in extraordinary circumstances. Oral testimony shall not be taken in camera. The testimony taken at the hearing shall be under oath and shall be transcribed. The Administrative Law Judge may exclude from the hearing room or from further participation in the proceeding any person who engages in improper conduct at the hearing, except a party to the proceeding, an attorney of record, or a witness engaged in testifying. The hearing shall be conducted with dignity and respect.

L. Trade Secrets and Privacy:

Where desirable, the Administrative Law Judge in consultation with counsel may provide for the use of devices such as deletion of names and coding in order to protect personal privacy or information, including trade secrets which, if made public, would result in unfair advantage to competitors. In extraordinary circumstances, the Administrative Law Judge shall have the discretion to close the hearing to the public to protect the rights of the parties. Parties may move for such protective orders as may be required to protect the release of data including but not limited to health records, trade secrets, proprietary materials, or financial data.

M. Ex Parte Communications:

No person shall communicate with the Administrative Law Judge subsequent to the commencement of a hearing on any matter relating to the case, other than a status

inquiry, unless a copy of such communication is sent to all parties to the proceeding. If such a communication is made in violation of this rule, a copy of the communication, or a written summary if the communication was oral, shall be sent to all the parties by the Administrative Law Judge.

XIII. Settlements

A. Agreement:

Where the parties agree to a settlement during the course of a hearing, the procedures set forth in rule X. shall apply.

B. Termination of Proceeding:

Where voluntary settlement is not reached, offers of settlement by respondent shall be reviewed by the Administrative Law Judge to determine whether such settlement offer is substantial enough to require an order, in the interest of justice, terminating the proceeding. The following criteria are among those which should be considered:

- (1) probability of success after full hearing;
- (2) reasonableness of offer;
- (3) reasonableness of complainant's refusal, if any;
- (4) amount of the complainant's economic loss, and respondent's degree of responsibility therefore;
- (5) in appropriate cases, the evidence of the amount of complainant's non-economic loss;
- (6) egregiousness of the discrimination charged;
- (7) whether the interest of justice is best served by the continuation of the proceedings.

C. Objections:

Objections by a complainant to a proposed settlement shall be oral or written, at the discretion and direction of the Administrative Law Judge, who shall set a time frame for the submission of the objections. The objections shall be specific and in detail.

D. Equitable Order:

Where the Administrative Law Judge finds the terms of the proposed settlement to be in the interest of justice, and that the complainant's objections to the proposed settlement are without foundation, he or she may, upon request of respondent, issue a recommended equitable order for the Executive Director's consideration, providing that the respondent will pay the complainant the amount proposed in the settlement and dismissing the complaint on the merits.

XIV. Hearing Procedures

A. Oral Arguments and Briefs:

The Administrative Law Judge may permit the parties or their attorneys, the County's attorney and intervenors and interested organizations to argue orally within such time limits as the Administrative Law Judge may determine. Trial briefs will only be permitted where specifically requested by the Administrative Law Judge, on particular points of law. Any such brief shall be filed in duplicate with the Administrative Law Judge, with proof of service upon all counsel in the proceeding and parties appearing without counsel. Full written arguments will be permitted in the form of objections.

B. Continuations, Adjournments and Substitutions of Administrative Law Judge:

The Commission may postpone a scheduled hearing, or continue a hearing from day to day or adjourn it to a later date or to a different place, by announcement thereof at the hearing or by appropriate notice to all parties. No adjournment of a scheduled hearing shall be granted except upon affidavit of actual engagement before a higher tribunal or for good cause shown in writing. The County Attorney may review and change the adjourned dates.

C. Time Frames for Recommended Orders:

The County Attorney shall establish time frames for writing of recommended orders by the Administrative Law Judge who conducts the hearing. The Administrative Law Judge shall adhere strictly to such time frames.

XV. Representation by an Attorney

A. Appearance:

If any party designates an attorney-at-law to represent that party before the Commission, such attorney shall file a notice of appearance with the Commission. An attorney-at-law who appears for a party to the proceeding at any stage therein, including an application for an injunction, shall remain that party's attorney throughout the proceeding until:

- (1) party represented files with the Commission a written revocation of the attorney's authority; or
- (2) attorney submits a written request on notice for withdrawal from the Commission and the Commission approves such withdrawal; or
- (3) attorney states on the record at a Commission hearing that the attorney requests Commission approval to withdraw; or
- (4) party represented states on the record at a Commission hearing that the attorney's authority is revoked; or

- (5) Commission receives notice of the attorney's death or disqualification; or
- (6) a motion to disqualify an attorney is granted because of conflict of interest.

B. Notice to Attorneys:

Copies of all written communications or notices in the matter directed to the party shall be sent to the attorney alone or to both the party and the attorney.

C. Effectiveness of Service:

Service of any document or paper (except subpoenas and subpoenas duces tecum) in the matter on such attorney shall be deemed service on the party represented; provided, however, that the Commission may, in addition, serve any document or paper on the party such attorney represents.

D. Who Shall Present Case in Support of Complaint:

- (1) If the complainant is not represented by an attorney, the case in support of the complaint shall be presented before the Administrative Law Judge by the county's attorney. However, such attorney shall not have an attorney-client relationship with the complainant.
- (2) If the complainant is represented by an attorney, such attorney shall solely present the case in support of the complaint on the consent of the County Attorney. The County Attorney shall prepare and submit to the Administrative Law Judge a statement in lieu of appearance together with the jurisdictional papers.
- (3) The complainant's and respondent's attorneys shall have full and complete access to the file, and to copies of documents (at reasonable cost) necessary to the hearing, at an office maintained by the Commission convenient to such attorney, by appointment.
- (4) The complainant's and respondent's attorneys may consult with the County Attorney, or with the Administrative Law Judge at the hearing, concerning any proposed settlement of the case.
- (5) The Administrative Law Judge may, in the exercise of discretion, request the appearance of the County Attorney.

E. Public Interest:

- (1) Where the County Attorney determines that there exists a substantial public interest, the Commission shall appear at the hearing.
- (2) In such case, the County Attorney and complainant's attorney may agree on the procedure to be followed in the presentation of the case, including joint presentation by the County Attorney and the Commission representative.

F. Payment of Award:

When an attorney has ceased to represent a complainant, the Commission shall have no obligation to notify said attorney of any award of money to a complainant by way of conciliation, settlement, order after hearing or otherwise, and may consent to or order the delivery and payment of the award by the respondent to the complainant. When a complainant is represented by an attorney at the time of an award, the terms of payment thereof shall provide that said award shall be paid in the form of a check or draft made payable to the complainant but delivered to the complainant's attorney.

XVI. Orders after Hearing

A. Form:

An order issued after hearing shall set forth the findings of fact of the Commission, the determination and, in discretion of the Commission, an opinion containing the reasons for the decision.

B. Content:

An order after hearing may include a directive for the payment of interest on any money awarded.

C. Preparation and Order:

- (1) After all testimony is taken and briefs, if any, are submitted, the Administrative Law Judge shall prepare a proposed order for the Commission containing findings of fact and a decision, and a copy of said proposed order shall be served on all parties. Objections to the proposed order shall be in writing and be filed in the Commission's office 21 days after service of the proposed order. When objections are so filed, the hearing shall be deemed to be completed at the time of such filing.
- (2) When the interests of justice so require, the Administrative Law Judge may issue an order based on the record. If an alternative proposed order is under consideration by the Commission, a copy of said alternative proposed order shall be served on all the parties. Objections to the alternative proposed order shall be in writing, and be filed in the Commission's office within 21 days after service of the alternative proposed order.

D. Service:

Copies of orders signed by the Commission shall be sent to the complainant, respondent and all parties, including interveners and their attorneys. A copy of the order shall be delivered to such public officers as the Commission deems proper.

E. Filing:

Copies of all orders rendered after a hearing shall be filed at the administrative offices

of the Commission, and at the office where the complaint was filed. Such orders shall be open to public inspection during regular office hours of the Commission.

XVII. Civil Penalties for Violating Orders of the Commission and the Executive Director

Any person, who shall willfully resist, prevent, impede or interfere with the Commission or any of its employees or representatives in the performance of duty under this article, or shall willfully violate an order of the Commission or director or a conciliation agreement, shall be liable for a civil penalty of not more than fifty thousand dollars (\$50,000) and an additional civil penalty of not more than one thousand dollars (\$1,000) per day for each day that the violation continues.